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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

November 2, 2016 - 10:40 a.m.
Public Utilities Commission
21 South Fruit Street Suite 10
Concord, New Hampshire

**IN RE: SEC DOCKET NO. 2015-04
APPLICATION OF PUBLIC SERVICE
COMPANY OF NEW HAMPSHIRE d/b/a
EVERSOURCE ENERGY FOR A
CERTIFICATE OF SITE AND FACILITY.
(Hearing on Pending Motions)**

PRESENT: SITE EVALUATION COMMITTEE:

Cmsr. Robert R. Scott	Public Utilities Comm.
<i>(Presiding as Presiding Officer)</i>	
Dir. Elizabeth Muzzey	Dept. of Cultural Res./ Div. of Historical Res.
David Shulock, Designee	Public Util. Comm./Legal
Evan Mulholland, Designee	Dept. of Environmental Services
Charles Schmidt, Designee	Dept. of Transportation

**SUBCOMMITTEE MEMBERS APPEARING
VIA TELECONFERENCE:**

Patricia Weathersby	Public Member
Rachel Whitaker	Alternate Public Member

ALSO PRESENT FOR SEC: Michael J. Iacopino, Esq.
(Brennan Lenehan)
Pamela G. Monroe, Admin.

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

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OTHER APPEARANCES AS NOTED:

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REPTG. the CONSERVATION LAW FOUNDATION:

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Donna Heald McCosker (Donna Heald), *pro se*

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P R O C E E D I N G

1
2 PRESIDING OFCR. SCOTT: Thank you.

3 Good morning, everybody. Thanks for your
4 patience. And, again, this morning we will
5 be -- the Site Evaluation Committee
6 Subcommittee is meeting on some motions
7 regarding the Seacoast Reliability Project,
8 Docket Number 2015-04.

9 So, why don't we start. You'll
10 notice we have five Committee members here.
11 So, we do have a physical quorum. We'll also
12 have two Committee members by phone. We'll
13 start with introducing the members by phone.

14 So, Ms. Weathersby. Patty, can you
15 introduce yourself?

16 MS. WEATHERSBY: Patricia Weathersby,
17 public member.

18 PRESIDING OFCR. SCOTT: Ms. Whitaker.

19 MS. WHITAKER: And Rachel Whitaker,
20 alternate public member.

21 PRESIDING OFCR. SCOTT: Okay. Then,
22 I'll move to my left.

23 DIR. MUZZEY: Elizabeth Muzzey,
24 representing the Department of Cultural

1 Resources.

2 MR. MULHOLLAND: Evan MulHolland,
3 Department of Environmental Services.

4 MR. SCHMIDT: Chuck Schmidt,
5 representing New Hampshire DOT.

6 MR. SHULOCK: David Shulock, Public
7 Utilities Commission.

8 PRESIDING OFCR. SCOTT: And my name
9 is Bob Scott. I'm with the Public Utilities
10 Commission. And I'm Presiding Officer for this
11 hearing.

12 And we also have with us --
13 Mr. Iacopino, do want to say something?

14 MR. IACOPINO: Mike Iacopino, Counsel
15 to the Committee.

16 PRESIDING OFCR. SCOTT: And you all
17 know, she's not a member of the Committee, but
18 you all know Ms. Monroe, hopefully.

19 So, again, especially for the *pro se*
20 potential intervenors, I want to -- what we'll
21 be doing today is deliberating amongst
22 ourselves. This probably doesn't make for good
23 theater for you all, but thank you for coming.

24 If one of the members wish to ask a

1 question of you all, we'll discuss that amongst
2 ourselves before doing that. That will be my
3 decision ultimately to have you speak. But,
4 generally speaking, this is not a proceeding
5 whereby we're going to be hearing from the
6 audience.

7 So, to start, we'd like to look at --
8 we have intervening -- requests for -- I'll
9 start with a request by Mr. Smith, Nick Smith.
10 This is a ruling for the Presiding Officer,
11 myself. He's asked for -- he's petitioned to
12 intervene. We noted there is some confusion,
13 if you will, on the -- which e-mail list to use
14 to intervene on, *etcetera*. We do have a
15 suggestion from the Applicant that he be
16 grouped with the Durham Point/Little Bay
17 Abutters. That seems to -- they appear to have
18 a similar interest as he does. So, based on
19 his filing, as Presiding Officer, I will grant
20 him intervenor status, and group him with the
21 Durham/Little Bay Abutters at this point.

22 Is Mr. Smith here?

23 *[No verbal response.]*

24 PRESIDING OFCR. SCOTT: Okay. I'm

1 not seeing him here. Okay. So that I'm able
2 to do unilaterally as presiding officers.

3 My original order on August 24th,
4 2016, on the intervention requests and
5 combining intervenors, was again something
6 that, as Presiding Officer. I'm empowered to
7 do. We have, for the Committee, we do have
8 motions to reconsider the intervenor status, as
9 far as scope, particularly for the Conservation
10 Law Foundation -- Law Foundation, excuse me.
11 And, then, on how the groupings were done from
12 the DeCapo -- DeCapo, I apologize if I'm
13 getting the pronunciation wrong, the
14 Durham/Little Bay Abutters, Ms. McCosker, have
15 all objected to the groupings. So, those are
16 the first issues that we need to discuss.

17 So, I guess I'll start with the
18 Conservation Law Foundation. Again, they were
19 granted intervenor status as a single party,
20 but they have objected to limitations on scope.

21 Did anybody have any comments or
22 questions to talk about to start with the
23 Conservation Law Foundation filing?

24 Mr. Mulholland.

1 MR. MULHOLLAND: So, Mr. Chairman and
2 the members of the Subcommittee, I've reviewed
3 this. And it strikes me that all of the other
4 parties are not limited. So, it seems a little
5 inconsistent to limit CLF and not limit, for
6 instance, the Durham Point Abutters. I mean,
7 CLF would be fully able to talk about the other
8 aspects under 162-H as any of the other groups.

9 So, I would, you know, be willing to
10 talk about this with everyone, to see what
11 everyone thinks about, you know, extending full
12 intervenor to CLF.

13 PRESIDING OFCR. SCOTT: Anybody else?

14 Go ahead.

15 DIR. MUZZEY: I would also be
16 interested in discussing whether or not the
17 full status could be extended to CLF, in
18 particular noting the geography of the
19 environment of the vicinity of our project, and
20 the expansive nature of Little Bay and its
21 effect on the surrounding environment. I can
22 see where full intervenor status may be a more
23 appropriate way to go with this request.

24 PRESIDING OFCR. SCOTT: Would you

1 mind elaborating a little bit more? Right now,
2 just for clarification, they have been limited
3 to discuss natural resource/environmental
4 issues. So, you're saying they should be
5 allowed a greater purview than that?

6 DIR. MUZZEY: Well, given what I know
7 about the Little Bay/Great Bay area, and I'm
8 sure many of the locals know far more than I
9 do, it does have quite an expansive influence
10 on the surrounding area, and that it may be
11 difficult to separate out where their interests
12 in Little Bay begin and end because of that
13 influence of the water way.

14 So, I'm foreseeing difficulty in
15 making those types of delineations, and feeling
16 that it may be more practical to grant them
17 full intervenor status.

18 I would also note that they do make
19 the point in their motion that, while they
20 anticipate focusing on issues related to Little
21 Bay, and hopefully identified this focus in
22 their motion to intervene, they're also
23 interested in advancing solutions that
24 strengthen the region's environmental and

1 economic vitality. And that seems to be a
2 broader focus as well.

3 PRESIDING OFCR. SCOTT: Anybody else?

4 Mr. Schmidt.

5 MR. SCHMIDT: Yes. I was along the
6 same line as Evan. Everyone else was given
7 overall intervenor status. Their original
8 request was limited, but I think their
9 far-reaching needs or knowledge, we should
10 extend it to them.

11 PRESIDING OFCR. SCOTT: Okay. And if
12 you can, make sure you're talking into the
13 microphone.

14 MR. SCHMIDT: Sure. Sorry about
15 that.

16 MR. SHULOCK: I think the scope of
17 their intervention was appropriately limited to
18 allow them to protect their stated interests.

19 PRESIDING OFCR. SCOTT: Okay. Now,
20 we're three to one here.

21 MS. WEATHERSBY: May I chime in?
22 It's Patty.

23 PRESIDING OFCR. SCOTT: Please do.

24 MS. WEATHERSBY: So, I would be in

1 favor of expanding their -- the scope of their
2 intervenor status to include economic issues
3 concerning -- concerning the Project area. I
4 don't think that they need to testify
5 concerning rates, electric rates, etcetera.
6 But I do think that a greater role in the
7 interplay between the environment and the
8 economics associated with the environment,
9 particularly in regard to Little Bay. There is
10 shellfish industry, fishing, recreational
11 opportunities, and businesses that depend on
12 the bay.

13 And, so, I would be in favor of
14 expanding the scope, as I said, to include
15 economic issues concerning the Project. The
16 Project environment -- I don't know how
17 particularly to say that, but economic issues
18 related to environmental issues.

19 PRESIDING OFCR. SCOTT: Mr.
20 Mulholland.

21 MR. MULHOLLAND: So, other members of
22 the Committee, Mr. Chairman, you know, we've
23 given full intervenor status to all the other
24 intervenors. We've got Newington, Durham, UNH,

1 Nature Conservancy, Ms. Frink, all the Little
2 Bay Abutters, Fat Dog Shellfish. All of these
3 people technically can talk and bring witnesses
4 and cross-examine on any of the topics in
5 162-H. They're not going to, likely, all of
6 the aspects. We don't know. But, you know, we
7 can anticipate that they're not going to do it
8 on everything.

9 And I just think CLF will focus on
10 the ones that are appropriate for CLF. And it
11 doesn't make sense to limit them. And we're
12 going to get into arguments in the future over
13 "can they cross on this topic, but not this
14 topic?" I think it's going to be just a
15 distraction. And I think it would be easier
16 just to hear what CLF has to say about for us
17 to make an appropriate decision.

18 PRESIDING OFCR. SCOTT: Rachel, do
19 you have anything else, before we look at a
20 potential vote here?

21 MS. WHITAKER: No. I was just going
22 to say, I didn't catch who it was that was just
23 speaking before you, Bob, but I agree with that
24 person.

1 PRESIDING OFCR. SCOTT: That was --

2 MS. WHITAKER: That makes a lot of
3 sense to me.

4 PRESIDING OFCR. SCOTT: --
5 Mr. Mulholland.

6 I will note for the record,
7 obviously, we have the -- The Nature
8 Conservancy also was granted intervenor status
9 without limits. But, again, they have property
10 in the area.

11 So, is anybody interested in a
12 motion? We have -- Ms. Weathersby I think was
13 trying to not, correct me where I'm wrong, Ms.
14 Weathersby, you were suggesting that they not
15 be granted full intervenor status, but still
16 have some limits, is that correct?

17 MS. WEATHERSBY: I can go with full
18 intervenor. I think it should be expanded.
19 And I think Evan's point concerning that they
20 will -- his observation that they will focus on
21 the issues that are important to them and not
22 go too far afield. And I think that that is a
23 correct observation.

24 And, so, I'd be in favor of full

1 intervenor status. I don't think we need to
2 limit it. My point was that I thought it
3 should be broadened at least somewhat, but I
4 can go full intervenor as well.

5 PRESIDING OFCR. SCOTT: Does anybody
6 wish to make a motion?

7 MR. MULHOLLAND: I will, Mr.
8 Chairman.

9 PRESIDING OFCR. SCOTT: Mr.
10 Mulholland.

11 MR. MULHOLLAND: So, I'm Evan
12 Mulholland. I'll move, I don't know what the
13 technical way to do this is, but for CLF to
14 be -- have the same intervenor status as the
15 other intervenors.

16 MR. SCHMIDT: I'll second that.

17 PRESIDING OFCR. SCOTT: Okay. So, we
18 have a motion to amend the ruling on CLF to
19 basically give them unlimited intervenor
20 status.

21 Any discussion on that?

22 *[No verbal response.]*

23 PRESIDING OFCR. SCOTT: Okay. Are we
24 ready for a vote?

1 *[Multiple members nodding in the*
2 *affirmative.]*

3 PRESIDING OFCR. SCOTT: Okay. All in
4 favor say "aye" please?

5 *[Multiple members indicating*
6 *"aye".]*

7 PRESIDING OFCR. SCOTT: Okay. All
8 right.

9 All opposed?

10 *[Two members indicating "nay".]*

11 PRESIDING OFCR. SCOTT: Okay. So,
12 the ayes have it.

13 So, we'll move on to the next issue.
14 So, we now have -- and maybe somebody can help
15 me, is it "DeCapo" or "DeCappo"? I don't want
16 to keep getting their names wrong. I
17 apologize.

18 MR. CASSIE: It's "DeCappo".

19 PRESIDING OFCR. SCOTT: Thank you
20 very much. I apologize again.

21 MR. CASSIE: No problem.

22 PRESIDING OFCR. SCOTT: So, we have a
23 objection from the DeCapos.

24 ADMINISTRATOR MONROE: "DeCappo".

1 PRESIDING OFCR. SCOTT: "DeCappo".
2 Sorry about that. And one of the issues they
3 have raised, and people can flesh out a little
4 bit, in their filing is they already -- they
5 have a separate counsel. There was some
6 concerns raised in their filing about the
7 ability of the counsel to represent in a
8 grouping and a concern about conflicts within
9 that grouping, I think regarding potential
10 settlement as an example.

11 Does anybody want to have some
12 discussion about that? Any points anybody
13 would like to raise?

14 Ms. Muzzey.

15 DIR. MUZZEY: To begin the
16 conservation, I'll just note that, in the
17 information submitted by the DeCapos, they do
18 note that they are the only intervenor with a
19 dock and motor access to Little Bay, and they
20 feel that this changes some of their
21 conversations about this Project, as does their
22 opinions about drilling under Little Bay and
23 the adjacent oyster and clam beds.

24 So, they have raised some additional

1 concerns that others in the current group have
2 not raised.

3 PRESIDING OFCR. SCOTT: Anybody else?

4 MR. MULHOLLAND: Mr. Chairman?

5 PRESIDING OFCR. SCOTT: Please. This
6 is Mr. Mulholland.

7 MR. MULHOLLAND: So, at this point,
8 I'm not convinced there's any reason to
9 separate them from the way that the Chairman
10 initially put them together. You know, we're
11 not here to adjudicate individual people's
12 rights. I mean, we're here to determine
13 whether or not the Application meets the
14 requirements to get a Certificate of Site and
15 Facility, and all of those things are, you
16 know, laid out in the law and the rules.

17 Nothing in the motion from the
18 attorneys for Mr. DeCapo convinces me we should
19 do anything other than the way you set it up
20 already.

21 PRESIDING OFCR. SCOTT: Anybody else?

22 Maybe I'll hand the microphone to Attorney
23 Iacopino -- oh, go ahead, on the phone, I hear
24 somebody.

1 MS. WEATHERSBY: Yes. It's Patty.
2 So, I was wondering, in my mind, the DeCapos
3 have some different interests than the other
4 groups, and that their concerns are both with
5 the waterway and their waterfront access and
6 the condition of Little Bay, the jet plowing,
7 was different than the others that they have
8 been grouped with that have the issues more of
9 land-based for the transmission lines and the
10 poles and the screening, etcetera.

11 So, I'm wondering if maybe, I think
12 the Millers also, which are part of that group,
13 are also waterfront, and I wonder if we want to
14 just split that group to a waterfront group
15 that has, obviously, both land concerns and
16 water concerns, so, DeCapos and Miller, and
17 then the other folks in a separate intervenor
18 group.

19 PRESIDING OFCR. SCOTT: You are
20 suggesting -- this is Commissioner Scott. Are
21 you suggesting a broader change, so that it
22 would be the Little Bay Abutters and the
23 Waterfront Durham Point people?

24 MS. WEATHERSBY: So, I'm suggesting

1 that I think the group now consists of DeCapo,
2 Miller, Gans, Fitch, Moore, and McCosker, and
3 separating DeCapo and Miller into their own
4 group.

5 PRESIDING OFCR. SCOTT: Any comments
6 on that?

7 Ms. Muzzey.

8 DIR. MUZZEY: I think that that
9 comment does build on some of the current
10 concerns that I read in the DeCapos' motion, in
11 that we have a group which has water-based
12 concerns, such as boating, the clam beds, the
13 effects of drilling under Little Bay, that may
14 or may not happen to those types of resources
15 and those types of pursuits. And it may be
16 helpful to discuss how groups do operate before
17 the SEC, and whether a group could -- could
18 present two different sets of concerns in one
19 umbrella group.

20 I know, in the past, we have heard
21 from different members of groups speaking, you
22 know, more pointed concerns, the idea of
23 perhaps one person from a group speaks to air
24 quality, another person from a group speaks to

1 archaeological resources, that type of thing.
2 Although, they have been grouped
3 geographically, we have allowed the groups to
4 present information in that manner. I believe
5 that's been at the discretion of the Chair in
6 the past.

7 So, I'm not certain that grouping all
8 these folks together would necessarily mean
9 that only one type of concern could be heard
10 from one person representing the group.
11 Although, it seems like that is the concern
12 that we're hearing from the public here.

13 PRESIDING OFCR. SCOTT: Anybody else?

14 MR. SHULOCK: If I may? I guess
15 that, if we are going to split groups based
16 upon those types of concerns, then we ought to
17 consider limiting the scope of their
18 intervention to the concerns for which they
19 have been split into. So, for instance, if
20 they're land-based, that they address those
21 issues; if they're water-based or shore-based,
22 they address those issues.

23 MR. SCHMIDT: If I may? When I first
24 read it, I saw the value of the uniqueness.

1 But I think the approach of having -- keeping
2 them under one umbrella, and then having the
3 opportunity to experts, so to speak, speak in
4 that area is the better approach.

5 I think, if we, again, if we get into
6 limiting the various groups, we'll have that
7 debate throughout. By keeping it under one
8 umbrella, we can hear both sides -- both
9 concerns, rather, and make an informed decision
10 that way.

11 So, I would propose to keep it the
12 way it is, and then have the ability to ask
13 questions or inquire about the appropriate
14 concerns, be it in the water, so to speak.

15 PRESIDING OFCR. SCOTT: Mr.
16 Mulholland.

17 MR. MULHOLLAND: I have a follow-up,
18 just sort of a question for the Chairman. If
19 we leave these intervenors in the same group,
20 can an individual property owner testify about
21 his or her property? Can he be called by the
22 group to explain the impacts?

23 PRESIDING OFCR. SCOTT: I'll defer at
24 the end here to Attorney Iacopino. But, yes.

1 I mean, typically, what will happen is the
2 groups of intervenors will be allowed to,
3 during the process of our hearings, to put a
4 panel on. And what I would expect is the
5 panelists that they put on would cover
6 different topics that are important to them, as
7 well as the testimony, right? They would be
8 expected to have prefiled testimony also. So,
9 just because you're in a grouping doesn't mean
10 you can't cover those topics relatively
11 individual -- individually within that, within
12 that realm.

13 So, if your question is is "are they
14 limited if they don't do that, as far as
15 getting their concerns raised to the
16 Committee?" I don't think so.

17 MR. MULHOLLAND: Uh-huh.

18 PRESIDING OFCR. SCOTT: Attorney
19 Iacopino, did you have anything to add on that?

20 MR. IACOPINO: I would point out that
21 that has been done in other cases, where there
22 are a number of parties that have been grouped
23 into a single -- into a single intervenor
24 group. In fact, we just did that last week in

1 the Antrim Wind matter. It doesn't prohibit
2 the individuals from filing prefiled testimony.

3 And the other thing I would point out
4 to you is that you can issue an order that,
5 similar to what was done in Northern Pass,
6 whereas if there is something that comes up
7 which renders a member of an intervenor group's
8 interests not protected by the group, they can
9 file a motion with the Committee to seek relief
10 from whatever that is. And the appropriate
11 relief may be peeling them out of the
12 intervenor group at that point in time, or it
13 may be allowing them to file additional
14 documents or additional testimony, or to take a
15 different tack in cross-examination. That's a
16 way to make sure that the intervenors are --
17 that their interests are not stepped on by
18 virtue of their consolidation.

19 The only other legal point I wanted
20 to point out is Ms. Weathersby has mentioned
21 the Millers being on the waterfront and the
22 DeCapos. I don't know if any of the other
23 individual people who have sought to intervene
24 have waterfront property at this point in time.

1 But I would point out that, if you're going to
2 go that route and make two separate sets of --
3 two separate groups of intervenors based on
4 whether they're waterfront or land-based, we
5 may want to make sure that we know each
6 intervenor that actually has waterfront
7 property, so that it can be appropriately
8 designated in the order.

9 Did I leave any questions unanswered?
10 I'm sorry. I addressed like three different
11 things there, so --

12 PRESIDING OFCR. SCOTT: I think we
13 also have the -- in the filing, there was a
14 presumption that the attorney representing
15 would be in conflict somehow and would be
16 legally barred from representing. Do you have
17 an opinion on that?

18 MR. IACOPINO: The statute allows you
19 to group intervenors. The statute does not
20 make any distinction between intervenors that
21 are represented by counsel or not represented
22 by counsel. Lawyers understand what their --
23 what their ethical obligations are.

24 The fact that an individual who

1 sought intervention is represented by a lawyer
2 and is granted intervention as a member of a
3 group has never, although it's been frequently
4 raised, has never been granted by the Site
5 Evaluation Committee that that was a reason to
6 peel somebody out of an intervention group.

7 The determinative ruling that you'd
8 make is whether their interests are such -- are
9 similar, so that they -- so that they are
10 grouped, and that that intervention does not
11 interfere with their individual interests.
12 That's the determinative issue that the
13 Subcommittee must decide. It's not -- it's not
14 an issue of who the lawyer for any individual
15 party is going to represent. So, it's really,
16 from a legal standpoint, that's really a
17 nonissue.

18 PRESIDING OFCR. SCOTT: Mr.
19 Mulholland.

20 MR. MULHOLLAND: This is a question,
21 I guess, for the group. I'm not sure of the
22 answer. If the group stays a group, but one of
23 the individual property owners drops out and
24 doesn't want to be involved anymore, does the

1 group -- what happens to the group? If the
2 group can't get that person to like act with
3 them, that person doesn't want to be part of
4 the proceeding anymore, what happens?

5 PRESIDING OFCR. SCOTT: And, again,
6 I'm going to defer to Mr. Iacopino. But my
7 understanding is, if you're granted intervenor
8 status, you're grouped, and then you elect not
9 to participate anymore, then you just don't
10 participate. I don't think there's any
11 requirement to the group to do anything for
12 you.

13 Is that correct, Mr. Iacopino?

14 MR. IACOPINO: That's correct. We do
15 appreciate a formal withdrawal from the
16 group -- or, from the proceeding from anybody
17 who has been granted intervention, either as a
18 single party or as a member of a group.

19 But, you know, there is no -- no
20 requirement that you have to stay in this case,
21 either as part of a group or as an individual,
22 if you choose to no longer do so. And, indeed,
23 we have had that happen amongst environmental
24 groups in the past. And, recently, Sierra Club

1 decided to withdraw from the Northern Pass
2 docket. And they sent us a notice saying
3 they're withdrawing. That group continues --
4 the group that they were in continues to exist
5 and goes forward.

6 PRESIDING OFCR. SCOTT: Anybody else?

7 MS. WHITAKER: This is Rachel. I
8 have a question. If these group -- these
9 little groups of people can stay in the same
10 intervenor group, but potentially offer
11 different concerns or concerns from different
12 perspectives. How do we make sure that they
13 know that there's a case, so that there isn't
14 continued concern on their part moving forward?

15 PRESIDING OFCR. SCOTT: I didn't
16 catch the last part of that, Rachel.

17 MS. WHITAKER: So, how do we make
18 sure that the different members of this
19 intervenor group know that moving forward they
20 can represent different interests, even if
21 they're in the same intervenor group?

22 PRESIDING OFCR. SCOTT: So, you're
23 suggesting if they have -- if they end up with
24 a contradictory interest? Is that what you're

1 suggesting?

2 MS. WHITAKER: Right. Because the
3 way I understand it, from the conversation
4 that's going on, is that they could stay in the
5 same intervenor group, but they can represent
6 different interests within that same intervenor
7 group. How do we make sure that they all know
8 that?

9 PRESIDING OFCR. SCOTT: I suppose
10 that, as far as communicating, I guess we could
11 put it in the order. Where I thought you were
12 going, Rachel, was "what if they end up
13 disagreeing and having divergent issues?" And
14 I wonder -- I'll throw that one to
15 Mr. Iacopino.

16 MR. IACOPINO: And I think I
17 addressed that a few minutes ago as well. And
18 you can certainly put in your order that, if
19 the group and, in particular, intervenor within
20 the group disagree, and that disagreement
21 affects the rights and interests of the
22 intervenor, that that intervenor can file a
23 motion for relief with the Committee to -- for
24 it to do one of two things. Either have them

1 peeled out of the intervenor group altogether
2 or to allow them to address a particular issue
3 apart from their intervenor group.

4 And there is language to that effect
5 in the Northern Pass Order on Intervention that
6 was issued by the entire Subcommittee, which I
7 can certainly provide to the Committee, as soon
8 as I find it.

9 MS. WHITAKER: And that sounds great
10 to me. I just would want to make sure that, if
11 we decide to keep the intervenor group as it
12 is, that the different members of this
13 intervenor group understand that it's not going
14 to limit them as individuals for what they can
15 express for concerns. Does that make sense?

16 PRESIDING OFCR. SCOTT: I think that
17 makes sense.

18 MS. WHITAKER: Okay.

19 PRESIDING OFCR. SCOTT: So, I think,
20 among other things, one of our things we need
21 to grapple with is, in grouping, are the
22 interests enough aligned -- yes, it's a
23 possibility what we just discussed, but,
24 obviously, if we feel that way up front, we

1 don't want to group that way. Is there -- are
2 the interests enough aligned that it won't
3 negatively impact the orderly proceeding here,
4 right? So, you know, this is about trying to
5 get to a decision on the Application and
6 hearing all the appropriate voices.

7 So, is -- I think one of the things
8 we need to grapple with is will the grouping
9 assist that or will it hinder that? Is there a
10 better way to do it? I think is what we need
11 to grapple with here.

12 Patty -- Ms. Weathersby suggested the
13 dividing up water and non -- waterfront and
14 non-waterfront. I don't know if that's --
15 again, it sounds like we need a little bit more
16 homework done before we -- if we're going to go
17 down that path.

18 Does anybody have any feelings as far
19 as keep it the way it is or divide it
20 differently?

21 MR. SCHMIDT: It seems like the
22 majority of the issues will be common. There's
23 just slight individual issues, like the
24 waterfront, whatever, that may -- they may want

1 to address separately. But I think, overall,
2 the issues will be common amongst the members.

3 PRESIDING OFCR. SCOTT: So, is
4 that -- you prefer to keep the grouping as is?

5 MR. SCHMIDT: I do.

6 PRESIDING OFCR. SCOTT: Okay. Ms.
7 Muzzey.

8 DIR. MUZZEY: Would it also be
9 appropriate to discuss the concerns of Donna
10 Heald McCosker as well? Because I believe she
11 was grouped with the larger group, and also has
12 some concerns that she feels are substantial
13 and differentiate her from the larger group.
14 Would now be an appropriate time to talk about
15 that?

16 PRESIDING OFCR. SCOTT: Unless
17 somebody wants to make a motion on the other
18 one, we can move on to that, and maybe get --
19 end up with the same result, perhaps. So,
20 that's fine. It's definitely something we need
21 to take up today.

22 DIR. MUZZEY: Okay.

23 PRESIDING OFCR. SCOTT: So, would you
24 like to discuss that now?

1 DIR. MUZZEY: Yes. That would be
2 great.

3 PRESIDING OFCR. SCOTT: Okay.

4 DIR. MUZZEY: I just wanted to note
5 that it appears that this member of the public
6 has both a home and a business on her property,
7 and discusses concerns that relate to both of
8 those in her September 6, 2016 correspondence
9 with the Committee. Reading this, although I'm
10 not personally familiar with the property, as
11 she has described it, I see parallels with the
12 intervenors as owners of Fat Dog Shellfish, in
13 that they have concerns for their business as
14 potentially presented by the Project.

15 And I'm wondering if this is -- this
16 idea of a separate intervenor based on concerns
17 for their business pursuits is something that
18 we should consider and add to this discussion
19 of the larger group?

20 PRESIDING OFCR. SCOTT: So, if I
21 could, she also made a -- suggested concerns
22 about impact to her well and that type of
23 thing. That is less -- am I reading from your
24 comment, that's less of a concern with you, as

1 far as separating, than having a separate
2 business?

3 DIR. MUZZEY: No. Actually, I was
4 probably remiss in not mentioning the well
5 concern, because I don't think that any of the
6 other intervenors in this group did mention
7 that.

8 PRESIDING OFCR. SCOTT: Anybody else?

9 MS. WEATHERSBY: I'll try. This is
10 Patty. To me, it seems as though
11 Ms. McCosker's concerns are fairly typical with
12 the other landowners as well, with the
13 [inaudible] twist, her business, which I
14 understand she has plants and greenhouses that
15 she's put in the utility right-of-way, and a
16 concern about the clearing and the use of that
17 right-of-way. She is using it for her
18 business, and everyone else is using it for
19 their personal needs. And I think that the
20 concerns is this impact, that it impacts her
21 both professionally and personally, where the
22 others have just personal impacts, but it's all
23 resulting from the same activities.

24 And, so, I don't really see

1 Ms. McCosker's interests being all that
2 different than any other Little Bay Abutters
3 group.

4 PRESIDING OFCR. SCOTT: Hold on,
5 Patty. We may need you to repeat something
6 here for the transcript.

7 *(Court reporter indicated there*
8 *were a few garbled sections of*
9 *the audio, but to continue on.)*

10 PRESIDING OFCR. SCOTT: Okay. Sounds
11 like you're good to go.

12 Any other comments or --

13 MR. SHULOCK: I'd just say I agree.
14 I think that her interests are similar to the
15 other intervenors, and it's appropriate that
16 she be placed in the larger group.

17 PRESIDING OFCR. SCOTT: So, as far as
18 discussions, is there anything we haven't
19 discussed yet? And I don't know if anybody
20 wants more discussion or anybody's interested
21 in crafting a motion?

22 While we're waiting, maybe, Mike, you
23 can -- is there a legal standard we need to be
24 concerned with here?

1 MR. IACOPINO: Sure. I'll address
2 the legal standard for you.

3 Just at the outset, the Subcommittee
4 should recognize that this is a *de novo*
5 decision for you to make. You're not bound by
6 the decision that was made by the Chair
7 initially. And it's not like a rehearing,
8 where the parties have to demonstrate good
9 cause. You use the same standard that the
10 Chair used when he issued his original order.
11 And that is that the petition must demonstrate
12 that the petitioner's rights, duties,
13 immunities or other substantial interests may
14 be affected by the proceeding or that the
15 petitioner qualifies as an intervenor under any
16 provision of law, and that the interests of
17 justice and the orderly and prompt conduct of
18 the proceedings are not allowed -- are not
19 impaired by allowing the intervention.

20 With respect to the issue of the
21 groupings, you may limit the issues pertaining
22 to a particular intervenor, you may limit the
23 procedures in which a particular intervenor may
24 participate, you may combine intervenors and

1 other parties for the purposes of a proceeding,
2 so long as the limitations placed on the
3 intervenors do not prevent the intervenor from
4 protecting an interest that formed the basis of
5 the intervention.

6 That's the standard that you apply in
7 this context.

8 And I earlier mentioned the language
9 from the Northern Pass. Did you want to hear
10 what was used in that particular docket?

11 PRESIDING OFCR. SCOTT: Certainly.

12 MR. IACOPINO: Okay. "The
13 Subcommittee finds that it is a matter of
14 internal governance as to the process for group
15 decisions and how to communicate with the
16 Subcommittee, the Applicant, and the other
17 parties. All groupings of intervenors should
18 attempt, in good faith, to reach decisions on
19 representation, discovery, pleadings and other
20 issues raised in the docket. Any individual
21 intervenor, however, if unable to agree with
22 his group, has a right to file a motion stating
23 that it disagrees with the group and a motion
24 for alternative relief."

1 PRESIDING OFCR. SCOTT: I suppose the
2 only other filing we haven't explicitly
3 discussed is the Durham Point/Little Bay
4 abutters' filing to be treated differently. I
5 guess we've discussed it obliquely by
6 discussing the other two parties.

7 Does anybody wish to discuss that
8 further?

9 MR. MULHOLLAND: I think we've
10 covered it.

11 PRESIDING OFCR. SCOTT: Okay. Is
12 anybody interested in a -- Ms. Muzzey.

13 DIR. MUZZEY: I have one further
14 question before we might move to a motion.

15 And looking through all of the
16 materials, I don't see that Counsel for the
17 Public has weighed in on this question. Am I
18 wrong in that? Or has Counsel for the Public
19 weighed in?

20 MR. MULHOLLAND: I think Counsel for
21 the Public assented to most of the individual
22 property owners' requests.

23 DIR. MUZZEY: Right.

24 MR. MULHOLLAND: I think.

1 PRESIDING OFCR. SCOTT: I'll exercise
2 my prerogative and we'll ask the Counsel for
3 the Public, since he's sitting before us.

4 MR. ASLIN: Thank you, Mr. Chairman.
5 Yes. That's correct. I did assent to the
6 motions filed for reconsideration of the issues
7 in grouping. I assented to CLF already, but
8 you've dealt with that.

9 So, if you want further comment, I
10 can give it. But that was what's in the record
11 right now.

12 PRESIDING OFCR. SCOTT: Is that
13 sufficient?

14 DIR. MUZZEY: Thank you. Yes, it is.

15 PRESIDING OFCR. SCOTT: Okay.
16 Anybody?

17 MR. SHULOCK: I'll make a motion.

18 PRESIDING OFCR. SCOTT: Please.

19 MR. SHULOCK: I move that the three
20 motions for rehearing on the groupings of
21 interventions be denied.

22 PRESIDING OFCR. SCOTT: Do I have a
23 second.

24 MR. SCHMIDT: I can second that.

1 PRESIDING OFCR. SCOTT: Mr. Schmidt
2 seconds.

3 Any discussion?

4 MR. MULHOLLAND: Mr. Chairman, --

5 MS. WEATHERSBY: I guess this means
6 that separating the group into waterfront and
7 non-waterfront is not the way people want to
8 go?

9 PRESIDING OFCR. SCOTT: Well, that's
10 not the motion that was just made.

11 MR. SHULOCK: I think we're about to
12 find out.

13 *[Laughter.]*

14 MS. WEATHERSBY: Carry on.

15 PRESIDING OFCR. SCOTT: Mr.
16 Mulholland.

17 MR. MULHOLLAND: Mr. Chairman, I am
18 going to support this motion. I think it's
19 important to include that language that
20 Attorney Iacopino put in there about
21 irreconcilable disputes among the group. And,
22 you know, I think it's appropriate, because we
23 want to make sure that we don't have
24 competitive cross-examination, for instance.

1 We only want, you know, the Applicant's experts
2 to be cross-examined by the group sufficient
3 for us to explore the issue. We don't want to
4 have each individual property owner
5 cross-examine the expert over and over. And I
6 think this is appropriate for us to get all the
7 information in that we need.

8 And, if it's not, we'll deal with it
9 when it comes up. But, I think, for now, I'm
10 going to support this.

11 PRESIDING OFCR. SCOTT: So, in that
12 context, as far as providing guidance, assuming
13 we vote on -- this motion passes, basically,
14 what we're saying is the door's open for one of
15 the intervenors, for example, if one of the
16 intervenors becomes a settling party with the
17 Applicant, and now wants to testify on a
18 different -- in opposition, they should come to
19 us and ask for that ability. Is that
20 effectively what we're saying as an example?

21 MR. MULHOLLAND: Yes.

22 PRESIDING OFCR. SCOTT: And, beyond
23 that, since, in their motions themselves, they
24 have made -- they have laid out why they don't

1 think they should be together, and it would
2 need to be more than that, because otherwise,
3 you know, they have already made one case,
4 we're saying they need to make more of a case,
5 is that correct?

6 MR. MULHOLLAND: Yes.

7 MR. SCHMIDT: Yes.

8 PRESIDING OFCR. SCOTT: Okay. I just
9 want to be clear for the record.

10 Okay. Any other discussion on that
11 motion?

12 DIR. MUZZEY: I had a question for
13 Attorney Iacopino. In that language that you
14 read from, --

15 MR. IACOPINO: Yes.

16 DIR. MUZZEY: -- I believe it was the
17 Northern Pass Project, did that address this
18 idea of, if there are different particular
19 interests in the group, that the Committee
20 would be interested in hearing those particular
21 interests even if more than one spokesperson
22 from the group?

23 MR. IACOPINO: No. This was just on
24 whether or not an intervenor -- the language

1 that I read simply concerned whether, in those
2 instances where an intervenor felt that their
3 interests were not being properly represented
4 with the group or there was some dispute with
5 the group regarding the actions to be taken in
6 the case because they had different interests.
7 That's what that was about.

8 I think what you're addressing is
9 something that we've done, and we've been very
10 flexible over -- for years about allowing
11 different folks within the intervention
12 group -- within any intervenor group to sort of
13 be the lead on any particular issue. And
14 that's always been something that's been
15 allowed by the Chair.

16 I would tell you that it's a
17 procedural issue that is subject to the Chair.
18 But, for instance, we have had situations where
19 one member of the group might take the
20 responsibility within the group to address,
21 say, noise issues, and another individual
22 within the group takes the opportunity to
23 address the environmental issues.

24 And what happened in those cases was

1 that individual was the person who did the
2 cross-examination during the adjudicative
3 hearings, and was usually the person who filed
4 the testimony that was most relevant to the
5 particular issue for that group.

6 We have done that in a number of
7 occasions. We have done it a couple of times
8 in Antrim Wind proceedings. And we've done it
9 in some other dockets in the past as well.

10 And, again, though, that's something
11 that has traditionally been a procedural matter
12 that has been addressed by the Chair as a
13 procedural issue.

14 Quite frankly, I think that most
15 intervenor groups that have participated, and I
16 think the folks in Northern Pass are learning
17 this right now, have found that actually to be
18 a good thing, as opposed to a bad thing,
19 because they're able to share the workload with
20 some definition to it, so that everybody knows
21 what's going on.

22 But, in any event, that's a different
23 issue than the issue that I was addressing,
24 where the core interests of the intervenor is

1 different or turns out to be different than the
2 group, and they come to the Committee seeking
3 either to peel out of the group or to act as a
4 different party with respect to that issue.

5 DIR. MUZZEY: I do think this has
6 been helpful to discuss how groups actually
7 operate before the Committee, and how the
8 Committee interacts with both groups and
9 individuals within the groups. I would be
10 willing to support the motion, if we could also
11 recognize that individuals within this Durham
12 group may wish to address specific issues
13 before the Committee, and that the Committee
14 would be interested in that type of
15 presentation.

16 PRESIDING OFCR. SCOTT: Any other
17 discussion?

18 Mr. Mulholland.

19 MR. MULHOLLAND: A question for Ms.
20 Muzzey. Are you also talking about different
21 submissions of prefiled direct testimony from
22 different members of the group, talking about
23 the impacts that they see as important, I think
24 separately? Because I think that's probably

1 okay, if we want to hear that, too.

2 DIR. MUZZEY: Yes, I am.

3 MR. IACOPINO: And, just so you know,
4 in the past, we have received, for instance,
5 where we've had intervenor groups, we've done
6 both ways. Sometimes different members of the
7 intervenor groups have submitted prefiled
8 testimony that deals with one issue. We've
9 also had intervenor groups where, if there
10 were, you know, three or four members, and they
11 all address the same issue in their own words
12 in their prefiled testimony.

13 So, I don't -- I can't recall a case
14 where we've ever limited the prefiled testimony
15 as a matter of procedure to individual
16 witnesses. We've had it occur both ways.

17 PRESIDING OFCR. SCOTT: Anybody else?
18 Any other -- go ahead.

19 MS. WEATHERSBY: This is Patty.
20 Mike, could you also address how the interplay
21 here with discovery requests. Because one of
22 my concerns, in part of my suggestion of
23 splitting the group up, was that if there's --
24 one group has substantially broader interests,

1 that could affect the discovery requests that
2 the group is trying to submit, because I
3 understand they're limited.

4 Is that something that also can be
5 broadened by request?

6 MR. IACOPINO: Yes. There are two
7 things that can happen in that situation. If
8 it is such a -- well, let me just back up so
9 that everybody knows what Ms. Weathersby is
10 discussing. There is a limit of 50 data
11 requests by our rules. And, presumably, there
12 could be disputes within a group over what
13 questions get asked as data requests or what
14 documents are requested during the data -- in
15 the form of data requests. There are two
16 different ways that that can be handled, and
17 we've seen both in the past.

18 Sometimes groups have come to us and
19 filed a motion to expand the number of data
20 requests that they're allowed to ask. And they
21 specifically lay out that, you know, "There are
22 these differing interests within our group. We
23 agree with each other on the -- you know,
24 ultimately, but we need to ask -- we need more

1 data requests."

2 And, of course, it also could become
3 such a problem within the group that somebody
4 could seek to file a separate set of data
5 requests on their own or even seek to be -- to
6 be peeled out of that group and to represent
7 themselves as a single party, you know,
8 depending upon, I suppose, the extent of the
9 disagreement.

10 So, there are two ways in which that
11 can be addressed. It really hasn't become much
12 of an issue. I always tell all parties, if
13 there are discovery issues, talk about them
14 with the other parties. If it's a discovery
15 issue with the Applicant, go to the Applicant
16 and say "We have this issue. We would
17 appreciate if you would assent to answering
18 more than 50 data requests." And, quite
19 frankly, in my experience, most of these issues
20 in the past, and my past on this Committee,
21 helping out this Committee, goes back to 1998,
22 most of these issues get resolved informally,
23 if it's a matter of just needing additional
24 information or having, you know, asking for

1 more ability to do discovery.

2 But, ultimately, if it doesn't get
3 worked out informally, the Committee is the
4 place to come with that. And, as I said, there
5 are at least those two ways to deal with that
6 particular issue.

7 PRESIDING OFCR. SCOTT: Are we ready
8 for a vote? Any further discussion?

9 Mr. Schmidt.

10 MR. SCHMIDT: With Ms. Muzzey's
11 comments going to come out in the form of an
12 amendment? Or how -- are we acting on the
13 initial motion or --

14 (Chairman Scott and Mr. Iacopino
15 conferring.)

16 PRESIDING OFCR. SCOTT: Is that your
17 desire, Ms. Muzzey?

18 DIR. MUZZEY: If the Committee is
19 willing, I would like to amend the motion to
20 include both the language that Attorney
21 Iacopino read to us from the Northern Pass
22 Project, as well as the information that I
23 noted about individuals in the group might wish
24 to address specific issues.

1 PRESIDING OFCR. SCOTT: Mr. Shulock,
2 is --

3 MR. SHULOCK: I'm willing to amend my
4 motion to deny, but include explanatory
5 language of the intervenors' rights in the
6 order.

7 PRESIDING OFCR. SCOTT: And we still
8 have a second for that?

9 MR. SCHMIDT: I'll second that.

10 MR. IACOPINO: Well, wait. Wait.
11 No. You seconded the first motion, right?

12 MR. SCHMIDT: I did.

13 MR. IACOPINO: Oh, okay. Okay.

14 MR. SCHMIDT: So, yes. I'll second
15 that as well.

16 PRESIDING OFCR. SCOTT: Yes. Okay.
17 So, I think we got our procedural rules down
18 pat here now.

19 Are we ready for a vote on that or is
20 there any further discussion?

21 *[No verbal response.]*

22 PRESIDING OFCR. SCOTT: Nothing from
23 the phone?

24 MS. WEATHERSBY: No. I'm okay.

1 PRESIDING OFCR. SCOTT: Okay.

2 Hearing none.

3 MS. WHITAKER: Ready for a vote.

4 PRESIDING OFCR. SCOTT: Okay. So,
5 all in favor, indicate by saying "aye" please?

6 *[Multiple members indicating*
7 *"aye".]*

8 PRESIDING OFCR. SCOTT: All opposed?

9 MS. WEATHERSBY: Aye. I'm opposed.

10 PRESIDING OFCR. SCOTT: Okay. So, we
11 have one opposed. Okay. Thank you. So, the
12 motion passes.

13 I think next is -- and I think that
14 dispenses with all our motions on intervention
15 and grouping.

16 We do have, and I'll follow this up
17 in a written order, but we do have a motion to
18 strike, and an objection to that. I am ruling
19 against the motion to strike, and I'll follow
20 that up with a written order.

21 We'll now move to the waiver issues.
22 So, we have, in the original filing, we have
23 requests for waiver to the SEC Site
24 301.03(c)(3), which is regarding property

1 lines, residences, industrial buildings and
2 other structures and improvements. We also
3 have, and we'll take these one at a time, we
4 also have similar waiver requests for Site
5 301.03(c)(4), which regards -- regarding
6 wetlands and surface waters. We have similar
7 requests for Site 301.03(c)(5), regarding
8 natural, historic, and cultural and other
9 resources.

10 And, then, we have -- just for the
11 record, we have the original filing, which was
12 correct at the time of the filing, we have a
13 waiver request for what at the time was Site
14 301.08(c)(2), regarding decommissioning. We've
15 amended our rules since then, in August, if I
16 have the date right, and that now has been
17 changed to "(d)(2)", but it's the same
18 language. So, again, the filing was correct at
19 the time of the filing.

20 So, with that, why don't we start
21 with Site 301.03(c)(3), which is, again, the
22 property lines, residences, industrial
23 buildings, and other structures and
24 improvements.

1 I do want to take note that we do
2 have similar projects, Northern Pass and
3 Merrimack Valley, that have done rulings on
4 these type of requests. Granted, they're not
5 exactly the same as our Project.

6 So, on a thumbnail, Northern Pass was
7 granted an exemption, a waiver, but with an
8 exception for substations, transition stations,
9 and converter terminals. And Merrimack Valley,
10 which, again, I think is the closest analogue
11 to what we're doing with the Seacoast Project,
12 was granted, subject to the condition that the
13 Applicant must provide tax maps and assessor
14 cards for all the abutting properties that
15 extend beyond the limits of the existing
16 conditions that are being mapped.

17 And I'll summarize, you all have the
18 filings. The Applicant argues that it's
19 impractical and unreasonably burdensome.

20 We have filings from the Counsel for
21 the Public where they -- where he notes that
22 they have not demonstrated that the mapping and
23 resource identification requirements are
24 onerous or inapplicable or inappropriate. And

1 that there's a discussion regarding how best to
2 print the maps so that the readable scale would
3 be technically feasible or unfeasible.

4 Newington opposes. The DeCapo family opposes.
5 That's kind of laying out the issue.

6 So, why don't we start with that. Is
7 there any discussion on that, which, again, is
8 SEC Site 301.03(c)(3)?

9 Mr. Mulholland.

10 MR. MULHOLLAND: Mr. Chairman. So,
11 just to start us off talking about this, the
12 rule requires the Applicant to show property
13 lines, residences, industrial buildings and
14 other structures and other improvements on the
15 site, which, you know, there's the site, and on
16 abutting property with respect to the site.

17 And the question we're dealing with
18 is, if the abutting property is very large, it
19 doesn't show up on the maps how far out were
20 they supposed to go? And so that I'd like to
21 have some discussion about, on this one, why do
22 we want to see residences, industrial
23 buildings, property lines, other improvements
24 past 100 feet, if it's on a property that

1 actually abuts the line?

2 PRESIDING OFCR. SCOTT: And, if I
3 could add to that perhaps, another thing to
4 think about as we explore this is are there --
5 do we need the Applicant to create something
6 out of whole cloth, so to speak, or they can,
7 again, I think it was, as I outlined, in other
8 dockets they required them to submit tax maps
9 and other documents that could show similar
10 things without creating extra work. I'm not
11 sure I have a feeling on that yet, but I think
12 that's something else to discuss.

13 Ms. Muzzey.

14 DIR. MUZZEY: Thank you. This is a
15 section of our rules that we changed most
16 recently, I believe, in 2015 or so. And the
17 reason why, in my memory, that we made those
18 changes is that the Committee, itself, to have
19 a fuller understanding of the actual site of
20 the facility itself. And there was a great
21 deal of discussion as to defining the facility
22 itself, but then also the immediate abutters,
23 and what does "abutter" mean in this case.

24 And, after much discussion, the

1 Committee determined that they wanted
2 information about the facility itself, as well
3 as anything within 100 feet of that facility.
4 Those things that would be most immediately
5 impacted by some sort of change on the site of
6 that facility, whether it's brand new
7 construction or a rehabilitated energy
8 structure or whatever is coming before the
9 Committee for a certificate.

10 And it is difficult to define that
11 type of thing. It did take a great deal of
12 discussion. But I do feel there is value in
13 the Committee having that closer look at the
14 immediate environs of the facility, whether
15 that's a transmission line, as is the case with
16 what we're considering now, or an energy plant,
17 a biomass facility, that type of thing. It may
18 differ -- the analysis may differ, the
19 identification effort may differ, depending on
20 the facility, and whether it's linear, whether
21 it's a wind farm, whether it's, again, that
22 actual biomass -- a biomass plant that's very
23 site-specific.

24 But the Committee did want to have

1 that identification effort of that immediate
2 area in order to more comprehensively
3 understand the facility. This differs from
4 information that's presented elsewhere in the
5 Application, for instance, with historical and
6 archeological resources, where we have a
7 different concept that gets considered, and
8 that's the area of potential effect. It may
9 also differ from the analysis that's done on
10 wetlands, where we have permit areas, that type
11 of thing.

12 So, this is more a facilities-based
13 analysis and identification effort, as opposed
14 to a resource analysis that happens elsewhere
15 in the Application. And that's sort of my
16 quick summary of what the Committee's thoughts
17 were when they created that rule back in 2015.

18 I don't know if you, Commissioner
19 Scott, has anything to add to that, because I
20 believe you were there as well.

21 PRESIDING OFCR. SCOTT: At least in
22 body. So, is your -- one of the issues that
23 comes up is how far do you go on adjoining
24 property beyond the 100 feet you're talking

1 about?

2 DIR. MUZZEY: Uh-huh.

3 PRESIDING OFCR. SCOTT: So, is it
4 your feeling that, in order to help us make our
5 decision, you know, if there's a large parcel,
6 that we need to go beyond that? How important
7 is that to making our decision? That I didn't
8 get out of your comment, I think.

9 DIR. MUZZEY: My opinion at this
10 point is that it depends. And I know that's
11 not always a very satisfactory answer. It
12 depends on the project and the surrounding
13 properties. We have some projects where there
14 may be many properties of a very large scale.
15 Those could be, for instance, a 500-acre
16 woodlot, that may not have a lot of human
17 intervention on it. We may have another
18 project where the abutting properties, that
19 100-foot boundary, would have mainly smaller --
20 smaller-scaled lots, you know, the 12-acre lot,
21 perhaps, the half-acre house lot, if we're in
22 the middle of a city.

23 And, so, it depends upon the nature
24 of the area immediately surrounding the

1 facility, in my mind, as to how potentially
2 arduous this task is. And, certainly, I think
3 it remains a valuable task, from the
4 Committee's perspective, no matter -- no matter
5 what surrounds the facility.

6 I don't believe, in this case, we
7 have -- we have heard from the Applicant that
8 there are large 500-acre lots or any hundreds
9 of acre lots or thousands of acre lots in this
10 particular case. So, it's difficult for me to
11 know, in the absence of that information, as to
12 really the degree of difficulty and
13 inconvenience this may pose. It would have
14 been very helpful to know that in this case.

15 PRESIDING OFCR. SCOTT: Any other
16 thoughts?

17 MS. WEATHERSBY: This is Patty. So,
18 my understanding was that we wanted the
19 abutting properties mapped, and showing the
20 property lines and the structures that may be
21 on the property, was to get an understanding of
22 the use of that property. You know, is it a
23 hospital? Is it a school? Is it a home? Is
24 it a museum, etcetera? To help us better

1 understand the implications that the Project
2 may have on that property.

3 That said, I agree that, if it's a
4 very, very large property, it would be unduly
5 burdensome. At some point, there becomes a
6 line where the information just simply isn't
7 helpful anymore.

8 I will note that I think, in Northern
9 Pass, they mapped out to a quarter-mile on
10 either side of the right-of-way, and Merrimack
11 Valley to 700 feet, whereas here they're asking
12 to stop at 300 feet.

13 So, I agree there should be a line
14 that they don't have to go beyond. But I would
15 be more comfortable with something greater than
16 300 feet.

17 PRESIDING OFCR. SCOTT: Would you
18 care to -- do you have a thought on what you
19 would be comfortable with?

20 MS. WEATHERSBY: I think the 700 -- I
21 think this Project is very similar to Merrimack
22 Valley in some ways, and, so, the 700 feet, and
23 then providing the tax maps and abutter cards I
24 think would be plenty of information for us.

1 PRESIDING OFCR. SCOTT: And -- oh,
2 just a second. On that same topic, so, you
3 were on Merrimack Valley, that didn't pose any
4 problems for you then?

5 MS. WEATHERSBY: No, it didn't.

6 PRESIDING OFCR. SCOTT: Okay.

7 Mr. Mulholland.

8 MR. MULHOLLAND: I think that that's
9 a reasonable answer. What I wish we knew was
10 how many properties -- the number of properties
11 that would still be cut at 700 feet. It would
12 be interesting to know. We don't know if
13 that's one property or, you know, tens of
14 properties. Just pointing that out for
15 everyone.

16 PRESIDING OFCR. SCOTT: Mr. Shulock.

17 MR. SHULOCK: If I may, I'd like to
18 echo something that Ms. Muzzey said. And my
19 difficulty with granting this motion, or
20 granting this motion with a different line, is
21 I don't know what I'm basing that on. In the
22 motion, all we, I think, kind of essentially
23 have is an assertion that it's unreasonable and
24 that it's onerous. But I don't get a good

1 understanding from the motion exactly why. I
2 have no data to base that on, just the broad
3 assertion.

4 And I don't know what I would base a
5 700-foot line on or a quarter-mile line on at
6 this point.

7 PRESIDING OFCR. SCOTT: Ms. Muzzey.

8 DIR. MUZZEY: And setting it at
9 700 feet may actually incorporate far more
10 properties than if we had stayed with the rule
11 as written, as with 100-foot delineation,
12 except for those larger properties. It would
13 be -- it would have been far easier to have
14 this discussion if we had specifically known,
15 for instance, "there are three properties that
16 extend beyond 100-foot line delineated in the
17 rules, and this how we would like to treat it."
18 We would then have the data that you just
19 referred to. And, I agree, that would be a far
20 more justified determination at that point.

21 PRESIDING OFCR. SCOTT: For Attorney
22 Iacopino, if we were to deny the waiver request
23 on this part, would that preclude the Applicant
24 from re-applying for a waiver with a number

1 with some justification, other than what they
2 have already done?

3 MR. IACOPINO: Good question. My --
4 and subject to further research, I would say
5 no, it probably would not. But I think that
6 that issue is easily -- easily addressed by
7 this Committee, if that's your inclination, by
8 simply making a data request to the Applicant
9 in the context of this motion. And, obviously,
10 you would have to forgo ruling on the motion
11 today. We would have to come back on another
12 day to complete deliberations. But, if you
13 need additional information, it's certainly
14 always within the prerogative of the Committee
15 to request that information from the Applicant.

16 So, if you denied the motion today,
17 there would be issues of "What does that denial
18 mean?" "Can they bring the same motion again?"
19 If what you're really looking for is
20 information, you could withhold ruling today,
21 make a request of the Applicant to provide you
22 the information that you seek, and then
23 reconvene.

24 Either way, under those

1 circumstances, it would require reconvening of
2 the Committee, either to rule on the subsequent
3 motion or to rule on this motion after you've
4 received the information.

5 PRESIDING OFCR. SCOTT: Thank you.
6 You're used to being in a difficult spot, I
7 know, being put on the spot.

8 Further discussion?

9 MR. SCHMIDT: Mr. Chair, so, would
10 that be equivalent to tabling it for today?

11 PRESIDING OFCR. SCOTT: Well, again,
12 I think what Attorney Iacopino is suggesting is
13 one possible solution -- outcome could be we
14 don't rule on this, ask the Applicant for more
15 information as a data request. But, as he
16 stated, that then we would have to re-notice
17 another meeting, come back as a group, and rule
18 on that waiver at that time, presumably.

19 MR. SCHMIDT: Thank you.

20 PRESIDING OFCR. SCOTT: Mr.
21 Mulholland.

22 MR. MULHOLLAND: Is an alternative
23 just to deny it and wait for them to give us
24 more information, if they feel like it?

1 PRESIDING OFCR. SCOTT: Well, that
2 was my original question.

3 MR. MULHOLLAND: Is that what you
4 said originally?

5 PRESIDING OFCR. SCOTT: Right.
6 Right. Yes.

7 Mr. Shulock.

8 MR. SHULOCK: This is on a separate
9 issue, and I'm not sure exactly how to get at
10 this. But, in the Town of Newington's
11 objection, there's a statement in Paragraph 6
12 that "it's unclear whether affected property
13 owners are aware that the Application has been
14 filed or that Eversource has sought waivers of
15 rules intended to protect property owners."

16 And, so, I'm wondering whether notice
17 to abutters or to property owners would have
18 been different had the waiver not been filed?
19 Are there other people out there who, under the
20 rule not waived, would have gotten notice who
21 have not gotten it? And is that what the Town
22 of Newington was getting at with that
23 statement?

24 PRESIDING OFCR. SCOTT: I didn't

1 understand that to be an issue when I read it.
2 Are you suggesting we should ask the Town of
3 Newington what they meant?

4 (Mr. Shulock nodding in the
5 affirmative.)

6 MS. GEIGER: Yes. Thank you.
7 Attorney Shulock, the objection that you're
8 referring to was filed back in April, and that
9 was before the process and procedural orders
10 had been issued by the Committee to give the
11 public and interested parties notice of the
12 proceeding. So, that was the context within
13 which that statement was made.

14 I filed a subsequent supplemental
15 objection on the same Motion for Waiver. But
16 that statement, it was accurate at the time it
17 was made, it's no longer accurate in my
18 opinion, --

19 MR. SHULOCK: Okay.

20 MS. GEIGER: -- because I think the
21 Committee has satisfied its notice obligations.

22 MR. SHULOCK: Thank you.

23 PRESIDING OFCR. SCOTT: Thank you for
24 that. Any other discussion on this issue?

1 [No verbal response.]

2 PRESIDING OFCR. SCOTT: We could do a
3 couple things. We could, if somebody wants to
4 bring a motion, we could vote. We could --
5 we're basically at lunchtime, we could go to
6 lunch and think about it and come back. What
7 are people's desires here?

8 Mr. Schmidt looks like he's reaching
9 for his microphone.

10 MR. SCHMIDT: I would propose a
11 motion to settle it now. And I will make a
12 motion to deny the request. And I'm not sure
13 if I can add this, but it would be due to
14 insufficient information at this time.

15 PRESIDING OFCR. SCOTT: Mr. Iacopino,
16 I think that's valid, right? I mean, we could
17 be effectively saying, assuming the motion says
18 that, "we're denying based on insufficient
19 cause in the filing."

20 MR. SCHMIDT: I want to make sure
21 that we find a way to leave the door open, so,
22 if it's not the best approach.

23 MR. IACOPINO: You could make a
24 motion to deny the motion as presently

1 presented due to insufficient information, with
2 leave to the Applicant to file a subsequent
3 motion, in other words, without prejudice --

4 MR. SCHMIDT: Okay.

5 MR. IACOPINO: -- to the Applicant
6 filing a subsequent motion detailing the
7 information that you're looking for.

8 MR. MULHOLLAND: I'll second.

9 PRESIDING OFCR. SCOTT: Any
10 discussion? Mr. Mulholland has some discussion
11 on his second.

12 MR. MULHOLLAND: I just want to
13 mention to the group, our group here, that the
14 Applicant didn't really talk about what was in
15 the rule about how onerous or duplicable, or
16 how -- what alternative method they would use.

17 So, I think they could, I wish they
18 had, but they didn't. So, that's why I
19 seconded it.

20 PRESIDING OFCR. SCOTT: And I know,
21 for myself, early on in this particular
22 discussion, I was wondering out loud what other
23 things could be done. Are there -- but, you're
24 right. It's not been articulated, *per se*. We

1 have some example of what they have done in
2 other, you know, tax maps, that type of thing,
3 in other proceedings. But that would help me
4 make a decision in the affirmative, if I had
5 that also. I agree.

6 MR. IACOPINO: Mr. Chairman, may I
7 ask a question? Is this motion directed just
8 to the waiver requested under Site
9 301.03(c)(3), which is the waiver with regard
10 to location of property lines, residences,
11 industrial buildings, and other structures and
12 improvements? Or is the motion directed to
13 301.03(c)(3), (4), and (5)? (4) involves
14 wetlands and surface waters, and (5) involves
15 historic above ground and below ground
16 resources.

17 MR. SCHMIDT: My understanding, from
18 the initial statement, is we were going to
19 handle them individually.

20 MR. IACOPINO: Okay.

21 MR. MULHOLLAND: And my second was to
22 the individual rule.

23 PRESIDING OFCR. SCOTT: And that was
24 my understanding, too. But I couldn't speak

1 for your mention.

2 MR. SCHMIDT: That's fine.

3 MR. IACOPINO: I just want to make
4 sure.

5 PRESIDING OFCR. SCOTT: Any other
6 discussion on the motion regarding 301(c)(3)(c)
7 -- excuse me, I'll start again, 301.03(c)(3),
8 for the record?

9 *[No verbal response.]*

10 PRESIDING OFCR. SCOTT: No other
11 discussion. All in favor say "aye"?

12 *[Multiple members indicating*
13 *"aye".]*

14 PRESIDING OFCR. SCOTT: All opposed?

15 *[No verbal response.]*

16 PRESIDING OFCR. SCOTT: So, I hear
17 that as unanimous.

18 Okay. So, taking the same order, we
19 would address the waiver request for
20 301.03(c)(4), regarding the mapping of wetlands
21 and surface waters. Again, noting what's been
22 done in other venues, to the extent they're
23 similar. That was granted on the Northern Pass
24 Project. It was also granted for Merrimack

1 Valley. The Subcommittee, I'm paraphrasing I
2 think, found that it was unlikely that the
3 Project would have an effect on any other water
4 body -- excuse me -- on any water body that is
5 over, because, again, they had the 700-foot
6 requirement, 700 feet away from the edge of the
7 right-of-way.

8 While the Counsel for the Public
9 noted a lack of sufficient information to make
10 a determination, again, I'm paraphrasing him,
11 so hopefully he'll jump up and down or
12 something if I say it wrong. However, given
13 that the Applicant provided wetland and surface
14 water information out to approximately 1,000
15 feet on either side of the Project
16 right-of-way, he was satisfied that that met
17 the purpose of the rule, and didn't object to
18 that part of the waiver.

19 And I'll start with asking Counsel
20 for the Public, did I mischaracterize your
21 position?

22 MR. ASLIN: No, Mr. Chairman. That's
23 correct.

24 PRESIDING OFCR. SCOTT: Okay. So,

1 any discussion on that issue?

2 Ms. Muzzey is reaching for her
3 microphone. But not ready to speak.

4 MR. MULHOLLAND: Mr. Chairman?

5 PRESIDING OFCR. SCOTT: Please.

6 MR. MULHOLLAND: I do want to discuss
7 it, but I'd make a motion to grant this waiver
8 on the specific wetlands and water body issue.
9 I'd like to hear some discussion, though.

10 MR. SCHMIDT: I'll second it for a
11 discussion.

12 PRESIDING OFCR. SCOTT: Okay. So, we
13 have a motion made and seconded.

14 Maybe I can start the discussion. Is
15 there a concern with the dredging of the bay,
16 as it relates to this waiver? You know, are
17 those two things related, do we think? Or,
18 we'll have enough information regarding that
19 part of it?

20 MR. MULHOLLAND: Well, we know where
21 the bay is.

22 PRESIDING OFCR. SCOTT: This is true.
23 So, you don't feel that's an issue then, it
24 sounds like?

1 *[Mr. Mulholland indicating in*
2 *the negative.]*

3 PRESIDING OFCR. SCOTT: Ms. Muzzey.

4 DIR. MUZZEY: Well, again, this is --
5 this is a request for identifying the resource.
6 It's not an analysis of those, of those
7 effects. That does occur elsewhere in the
8 Application. So, I would agree that it is a
9 well-known -- it is a well-known, established
10 fact that where Little Bay is. I would agree
11 with Mr. Mulholland on that.

12 PRESIDING OFCR. SCOTT: Any other
13 discussion?

14 MS. WEATHERSBY: This is Patty. I
15 just have a question.

16 So, it's my understanding the
17 Applicant identified water bodies within the
18 right-of-way, not in -- on abutting properties,
19 that they went out to a thousand feet based --
20 and they made their maps based on the United
21 States Fish & Wildlife Service National Wetland
22 Maps. I'm not familiar with those.

23 Does anyone know if those will
24 provide us with enough information to know the

1 location of the wetlands and surface waters?

2 MR. MULHOLLAND: Well, I mean -- Evan
3 Mulholland here. I mean, I know those are
4 based on aerial surveys, with some ground
5 truthing. But it's not as detailed as, you
6 know, a formal wetlands delineation, where you
7 go and flag the different soils and vegetation
8 types. I just -- I didn't learn that from
9 their pleadings, I just sort of knew that
10 beforehand.

11 MS. WEATHERSBY: But it would be
12 sufficient to, while it might not give us the
13 exact -- exact boundary, it will give us the --
14 it approximates that? And my other question I
15 guess is, are these updated? I know wetland
16 boundaries change. Are they only out every 20
17 years? Or are they current every year?

18 I'm just wondering about, if they're
19 basing this, the maps on the federal government
20 maps, are the maps current and sufficient?

21 MR. MULHOLLAND: Well, this is Evan
22 Mulholland again, fellow Commissioner on the
23 phone Weathersby. I mean, don't forget,
24 everyone here, that the Applicant essentially

1 has to get a Wetland Permit through this
2 proceeding. I mean, the wetland review is
3 incorporated for the wetlands that will
4 actually be impacted.

5 PRESIDING OFCR. SCOTT: And, if I'm
6 correct, that in itself will, assuming there
7 are wetlands of issue, etcetera, that will
8 incorporate a full delineation, correct?

9 MR. MULHOLLAND: The ones that are
10 impacted, yes.

11 PRESIDING OFCR. SCOTT: Right.

12 MS. WEATHERSBY: Good point.

13 PRESIDING OFCR. SCOTT: Any other
14 discussions?

15 *[No verbal response.]*

16 PRESIDING OFCR. SCOTT: Do we feel
17 comfortable for a vote?

18 *[No verbal response.]*

19 PRESIDING OFCR. SCOTT: Do we feel
20 uncomfortable for a vote?

21 *[No verbal response.]*

22 PRESIDING OFCR. SCOTT: I'm going to
23 assume we're comfortable for a vote then, since
24 there's no further discussion.

1 All in favor of, again, make sure I
2 get this right, so this would be granting the
3 waiver regarding 301.03(c)(4), regarding the
4 mapping of wetlands and surface waters. So,
5 all in favor please say "aye"?

6 *[Multiple members indicating*
7 *"aye".]*

8 PRESIDING OFCR. SCOTT: Any opposed?

9 *[No verbal response.]*

10 PRESIDING OFCR. SCOTT: Okay.

11 Hearing none. So, that's been unanimously
12 granted.

13 So, the next waiver request is Site
14 301.0 -- for Site 301.03(c)(5), which is
15 regarding the mapping of natural, historic,
16 cultural, and other resources. Again, to the
17 extent it's relevant here, we have, in Northern
18 Pass, this waiver was granted, based on a
19 finding that it's highly unlikely that
20 construction and operation of the project would
21 have a negative impact on any archeological
22 sites located on the abutting properties. In
23 Merrimack Valley, it was also -- a similar
24 request was also granted for a waiver, based on

1 the limited potential impact areas outside of
2 those previously mapped by the Applicant and
3 the onerous task of remapping the resources.
4 That's the language from the order.

5 The Counsel for the Public argued
6 that the waiver is not warranted. And, with
7 regard to natural resource identification and
8 mapping, the Counsel for the Public also argued
9 that the Applicant did not explain how it would
10 be impractical or unduly burdensome to comply
11 with the rule.

12 And we also had objection from the
13 Town of Newington. And they noted, in
14 Newington, they note -- they drew to our
15 attention that, in the impact -- the Project
16 area is a historic district. The Frink Farm is
17 on the National Register. That the Little Bay
18 Road is designated as a scenic road.

19 So, I'll give Counsel for the Public
20 the same out that I gave him last time. Did I
21 mischaracterize your position?

22 MR. ASLIN: No, Mr. Chairman.

23 PRESIDING OFCR. SCOTT: Okay. I try
24 not to put words in people's mouths.

1 All right. So, any discussion on
2 this? I will note from, maybe I'll start the
3 discussion, I do see, and I'll defer much to
4 Ms. Muzzey, but, given that we have the
5 historical content, for want of a better word,
6 in Newington, special area -- especially the
7 area, that does give me a little bit of pause
8 for a waiver.

9 But I would want to hear more from
10 especially Ms. Muzzey, but would anybody have
11 any comments?

12 DIR. MUZZEY: I was also impressed
13 with the concerns of the Town of Newington when
14 it came to this waiver, and concerns, in
15 particular, for some of the resources, both
16 that have already been identified and could be
17 easily provided to the Committee, and also
18 resources that the Town felt were not
19 identified and that perhaps this effort would
20 bring to the Committee.

21 So, I would agree with both Counsel
22 for the Public and the Town of Newington's
23 request that we not grant this waiver based on
24 those types of concerns.

1 PRESIDING OFCR. SCOTT: Any other
2 discussion?

3 Mr. Mulholland.

4 MR. MULHOLLAND: I agree. I think it
5 would be important to see the relative
6 relationship between the proposed line and the
7 whole property, some of these properties that
8 extend beyond the 100-foot. I don't understand
9 why we couldn't see that.

10 PRESIDING OFCR. SCOTT: Go ahead.

11 DIR. MUZZEY: I would also add that,
12 during our site visit, there were concerns in
13 particular about the resources in this part of
14 Newington. And, at that time, there was not
15 information available for the Committee to
16 understand the extent of the Newington Historic
17 District, the extent of the Pickering Farm.
18 And, so, that was lacking at that point. And
19 it may be lacking now as well, and we do need
20 to have those identified.

21 PRESIDING OFCR. SCOTT: Any further
22 discussion?

23 Mr. Schmidt.

24 MR. SCHMIDT: I agree. I think the

1 Town of Newington brought forward some
2 excellent points. And Ms. Muzzey's comment
3 about us not being able to readily identify
4 when we were in the field, just brings it
5 further to the surface. So, I would agree that
6 we should not grant the waiver.

7 PRESIDING OFCR. SCOTT: Mr.
8 Mulholland.

9 MR. MULHOLLAND: Are we also talking
10 about the underground resources, the
11 archeological resources?

12 PRESIDING OFCR. SCOTT: Ms. Muzzey.

13 DIR. MUZZEY: This section of the
14 rules is in regard to natural resources, as
15 well as historical and archeological resources.

16 I would note that the locations of
17 archeological resources are protected under
18 state and federal law, something this Committee
19 has worked with before. So, that portion of
20 the submission would be protected, in order to
21 protect those archeological resources.

22 MR. MULHOLLAND: Thank you.

23 PRESIDING OFCR. SCOTT: Any other
24 discussion?

1 *[No verbal response.]*

2 PRESIDING OFCR. SCOTT: Or a motion?

3 DIR. MUZZEY: I move that we deny
4 this waiver based on the information presented
5 to us in our deliberations today.

6 MR. SHULOCK: I'll second.

7 PRESIDING OFCR. SCOTT: Any
8 discussion?

9 *[No verbal response.]*

10 PRESIDING OFCR. SCOTT: Hearing none,
11 the motion is that we deny the waiver request
12 for Site 301.03(c)(5), regarding mapping of
13 natural, historic, cultural, and other
14 resources.

15 All in favor please say "aye"?

16 *[Multiple members indicating*
17 *"aye".]*

18 PRESIDING OFCR. SCOTT: Any opposed?

19 *[No verbal response.]*

20 PRESIDING OFCR. SCOTT: Okay. The
21 motion is passed.

22 So, I believe our final waiver
23 request regards decommissioning. And, again,
24 as I mentioned at the outset, though the

1 filing -- the waiver request I believe was
2 proper at the time, which cited SEC "Site
3 301.08(c)(2)", regarding decommissioning, that
4 our understanding is that is now changed to
5 "(d)(2)".

6 So, is that correct, Ms. Monroe? Is
7 that your understanding?

8 ADMINISTRATOR MONROE: I'm sorry.

9 PRESIDING OFCR. SCOTT: Okay. I
10 won't put you on the spot.

11 ADMINISTRATOR MONROE: You put me on
12 the spot.

13 PRESIDING OFCR. SCOTT: We've been --
14 we need to take a short break. So, that will
15 probably be like a five-minute break or -- yes.
16 So, we'll take a five-minute break and we'll be
17 right back.

18 *(Recess taken at 12:14 p.m. and*
19 *the hearing resumed at 12:19*
20 *p.m.)*

21 PRESIDING OFCR. SCOTT: Okay. We're
22 back on the record. For those on the phone, I
23 hope you had a good break.

24 That's as funny as I get. All right.

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[Laughter.]

PRESIDING OFCR. SCOTT: All right. So, again, for decommissioning, some -- you know, I'll lay out a little bit, there's a lot more in the record.

The Applicant asserts that "the FERC pre-approved transmission tariff provides a satisfactory alternative mechanism for recovering the cost of decommissioning". Therefore, a "separate financial assurance is not required" because of that situation.

Going back, again, to the other projects that we've been discussing, for Northern Pass, it was denied, a similar motion for a waiver, as the Subcommittee found that the Applicant had not demonstrated that the decommissioning requirements were overly burdensome and inapplicable to the Project, and they had not provided an adequate alternative.

In Merrimack Valley, it was granted, based on the individualized circumstances of being -- of the Project being a reliability project, and, again, the FERC-approved tariff.

Let's see. The Counsel for the

1 Public agrees -- hold on a second, I'm getting
2 the -- agrees to the part (b), as far as the --
3 in his filing, as far as that being a
4 reliability project, is unneeded, because of
5 that, the FERC tariff, and suggests that a
6 waiver of Section (c) is unnecessary, given
7 that there's no transformers being talked
8 about, and so that therefore it's inapplicable
9 for the Project. So, I don't know if there's
10 any discussion on that, that issue.

11 Again, as we did the rulemaking,
12 there was a lot of discussion regarding, at
13 least from my end, I'll speak for me, regarding
14 the 4-foot requirement on decommissioning and
15 digging things up. And I know I personally
16 suggested that a waiver could be a venue for
17 applicants, if that didn't make sense.

18 So, any discussion on this issue?

19 *[No verbal response.]*

20 PRESIDING OFCR. SCOTT: Patty, maybe
21 I'll pick on you, if you can hear me on the
22 phone. I know you've had the privilege of
23 being on all these projects, is that correct?

24 MS. WEATHERSBY: That's correct.

1 PRESIDING OFCR. SCOTT: Maybe not
2 correct on the "privilege" part, I guess. Did
3 you have any thoughts on, since you've had
4 these discussions before for other projects, on
5 how decommissioning, a waiver would apply here
6 or should it apply?

7 MS. WEATHERSBY: Right. So, my
8 feeling is that a -- that, you know, both with
9 the one we're in and the Merrimack Valley is
10 pretty applicable here. They're both
11 reliability projects, and their FERC-approved
12 tariffs will kick in at the end. So, I think,
13 in that case, what we did was that, for
14 decommissioning, the applicant had to submit a
15 report to the SEC every ten years concerning
16 the status of the lines, and the need for the
17 Project, and to promptly notify the SEC of any
18 retirement obligation. And, then, at that
19 time, when a retirement obligation arose, they
20 would submit to the SEC a decommissioning plan
21 that was in accordance with the rules that may
22 be in place at that time, trying not to second
23 guess what the rules may be then. But I think
24 that would be an appropriate way to go here

1 concerning the plan.

2 The four-foot excavation and removal
3 of everything down to four feet, that wasn't
4 really addressed. Well, I think -- I can't
5 remember, I think, well, wait, I don't remember
6 if that was addressed.

7 My personal feeling is, concerning
8 Little Bay, it may make more sense to leave
9 that cable there. But I honestly don't have
10 enough information to really make that
11 decision. So, I'll stop there.

12 PRESIDING OFCR. SCOTT: Thank you,
13 Patty. Mr. Mulholland.

14 MR. MULHOLLAND: Mr. Chairman, I'm
15 also struggling with the deciding this now.
16 You know, it seems like maybe we could have
17 testimony on what should be appropriate in a
18 decommissioning plan later on, especially as to
19 the 4-foot depth. I know the Applicant wanted
20 to submit information about that at the time of
21 decommissioning.

22 I'm just -- I'm wondering if we could
23 put something in our final order about this?
24 Or is there some way we can get more

1 information during the proceeding? That can
2 we -- do we have to rule on this right now? I
3 don't know.

4 PRESIDING OFCR. SCOTT: Mr. Iacopino.

5 MR. IACOPINO: You do not have to
6 rule on this right now. However, if you chose
7 not to rule on this, it probably would be
8 prudent to give the parties some idea of what
9 your intentions are.

10 I think that this -- the similar
11 motion was granted in the Merrimack Valley.
12 And, then, it was during the substance of the
13 hearings and deliberations that the issue of
14 the -- well, there was no discussion of the
15 plan, but of the ten-year report that Ms.
16 Weathersby mentioned came up. And it's
17 actually part of the order, the final order in
18 that case.

19 You could choose to take a similar
20 course as was taken in that case, which, in
21 that case, they actually granted the waiver.
22 However, the matter was addressed during the
23 course of the substantive hearings.

24 You could choose to deny this and

1 require them to provide the information. Or
2 you could do the same as you did with the other
3 motion. If there's more information that you
4 need now, in order to rule on this motion, you
5 could take a similar course as you did before,
6 which is to deny the motion without prejudice
7 to refiling with additional information.

8 But, just so that you understand the
9 discussion about this ten-year report, that
10 came up as part of the actual decision, final
11 decision in Merrimack Valley. My recollection
12 of Merrimack Valley was that the waiver was
13 actually granted. So that what we're talking
14 about is what has to be in the Application
15 versus what you ultimately decide.

16 PRESIDING OFCR. SCOTT: And I assume
17 you're all following, but also there's four
18 components to this decommissioning. So, there
19 would be the part (a), which is "A description
20 of sufficient and secure funding to implement
21 the plan"; and then part (b), which is "The
22 provision for financial assurance"; (c)
23 regards -- is a statement that "All
24 transformers shall be transported off-site";

1 and (d), which is I was, by shorthand, talking
2 about, which is that "All underground
3 infrastructure at depths of less than four feet
4 below grade shall be removed from the site and
5 all underground infrastructure at depths
6 greater than four feet below finished grade
7 shall be abandoned in place."

8 So, one thing we could do is rule
9 differently on (a), (b), (c) or (d), or some
10 combination thereof. And, as we just
11 discussed, that doesn't preclude us from taking
12 up, assuming we issue a certificate, a
13 condition, even if we have granted the motion
14 regarding a waiver on the filing.

15 Any other comments?

16 MS. WEATHERSBY: So, this is Patty
17 again. I think this Project, unlike Northern
18 Pass, is a reliability project, and it's
19 possible that it will never be decommissioned.
20 But we don't know. So, they could, if they
21 prepared a decommissioning plan now, it would
22 likely be a good amount of time before it was
23 ever implemented, and would probably be
24 out-of-date.

1 So, I don't really have a problem
2 with not having them prepare the plan as part
3 of the Application. But I would like to see,
4 you know, discussion of this during the
5 hearings, and perhaps impose a certificate
6 condition like we did in Merrimack Valley.

7 PRESIDING OFCR. SCOTT: So, Ms.
8 Weathersby, as part of that, some of my
9 thinking I think is that, if financial
10 assurance is not an issue, because of the FERC
11 tariff, if we are generally comfortable with
12 that, I think a lot of the rest of that falls
13 out. Because, at least in my mind, a lot of
14 the plan and how detailed the plan is, and how
15 do you implement the plan, ties into "do you
16 have enough financial assurance to make that
17 happen?" And, if -- if we're comfortable that
18 there's enough financial assurance because of
19 the nature of the Project. I'll argue, too,
20 that then the rest of that, where I want to see
21 it eventually, is less important to me to see
22 up front. Because it's really other projects,
23 at least in my mind, that I need those details
24 in order to assess whether the correct

1 financial assurance is there.

2 Does that ring true with you, too?

3 MS. WEATHERSBY: Yes, it does.

4 PRESIDING OFCR. SCOTT: Anybody else?

5 Ms. Muzzey.

6 DIR. MUZZEY: One issue that several
7 people have raised is also the idea of the
8 "independent, qualified person preparing a
9 decommissioning plan" versus someone who may be
10 part of the Applicant's organization. I don't
11 know whether -- if there's not a desire to have
12 a plan prepared for this particular proposed
13 Project, that that's no longer an issue. But I
14 can speak to, when we were working on revised
15 rules, that that did result in this request for
16 an "independent, qualified person", we heard
17 from a great number of members of the public
18 who were concerned that this plan should be
19 prepared by an independent person.

20 And, so, my thought is is that, if we
21 do request a plan as part of this Application,
22 that that is an important part of the rule, and
23 that that would require a good deal of
24 discussion before we decided to waive that

1 aspect of it.

2 I also wanted to note that, thinking
3 of the "four feet below grade", although much
4 of this route is owned in fee by the Applicant,
5 one of our responders to this motion noted that
6 some is on easement corridors. And, so, you
7 know, do we want to burden those property
8 owners with infrastructure left behind, and
9 should we somehow account for that during our
10 proceeding?

11 PRESIDING OFCR. SCOTT: So, I think
12 one of the things we're uncovering is is how
13 much are we comfortable with, once we have a
14 proceeding on this, do we need in front of us
15 or do we feel comfortable, which I think was in
16 tone to some extent, that some of this could be
17 put in a condition, but how much do we need to
18 see up front to make people comfortable, I
19 think?

20 So, if we were to waive the filing
21 requirement, again, it doesn't mean we can't
22 discuss it and require something, but it would
23 be harder to have a concrete discussion during
24 the deliberations -- during the proceeding

1 itself, and the deliberations after. If we
2 want, we'd have to tease that out somehow.

3 So, again, maybe I'm stating the
4 obvious. But what do people feel for a
5 discussion? Does the issue of who prepares a
6 report, is that a concern at this juncture? Do
7 we need that in the filing? Again, what we
8 could do is some hybrid here. I'm not sure
9 what that would look for a decommissioning
10 plan.

11 MR. IACOPINO: Mr. Chairman, just
12 from a legal standpoint, I would point out that
13 the whole decommissioning issue would be
14 relevant with respect to the criteria that the
15 Committee must consider in determining whether
16 or not the Project will have an impact on the
17 orderly development of the region, and that's
18 where it's traditionally been dealt with.

19 So, it's during that portion of the
20 adjudicative hearings and the deliberations
21 that you ultimately make that you would be
22 addressing the issue of decommissioning.

23 MR. SCHMIDT: Mr. Chair, I would have
24 no problem approving the waiver and addressing

1 it in more detail later. I'm not sure what
2 you -- you alluded to what are more or less
3 ground rules that we should lay out now, I'm
4 not sure what we need to look into that a
5 little bit or discuss that. So, we maybe we
6 need to focus on that a little bit.

7 I think, as a whole, we're agreeable
8 to the waiver. But we just need to set
9 ourselves up for the deliberations.

10 PRESIDING OFCR. SCOTT: So, what I
11 was getting at is, and you just hit upon it, if
12 we grant the waiver, so there's no -- what that
13 means is there's no decommissioning plan filed.

14 MR. SCHMIDT: Right.

15 PRESIDING OFCR. SCOTT: We now go
16 into the proceedings. How does that work?

17 MR. SCHMIDT: Right.

18 PRESIDING OFCR. SCOTT: Right. So,
19 I'm not -- and I'm not sure of the answer to
20 that. That would lead me to think, for
21 instance, that, if we agree that financial
22 assurance is not an issue, if we agree the
23 transformer part is not an issue, we could
24 grant those waivers for those sections. And,

1 perhaps, if we felt we needed to have a plan to
2 discuss at the proceedings, we could still
3 require a plan to be done, as an example. So,
4 I'm just trying to think through another
5 alternative to doing that.

6 Patty, I'm going to pick on you
7 again. You said you did that very thing with
8 your recollection with the Merrimack Valley
9 Reliability Project. So, am I correct that you
10 denied -- excuse me, you approved the waiver,
11 but then you had subsequent testimony and
12 discussion and deliberations that led you to
13 put --

14 MS. WEATHERSBY: Correct. Right. We
15 denied -- excuse me, we granted the waiver, so
16 they did not need to have a decommissioning
17 plan presented as part of the Application.
18 There was a discussion during the hearings on
19 the Project that concerned decommissioning.
20 And it was the consensus of the Committee that
21 we didn't want a plan now, essentially, before
22 the Project was operational, but that we wanted
23 a plan to be developed at the time of -- when
24 the Project was going off-line.

1 But, to know that, we also wanted
2 them to check in with us every now and then and
3 let us know how things were going. So, I think
4 we had them report back to us every ten years
5 about the status of the Project. There was a
6 requirement for prompt notification concerning
7 retirement obligation, and then that triggered
8 the need for a decommissioning plan. And I
9 think we said that needed to be in accordance
10 with the rules that were then applicable.

11 So, in the present case, we could do
12 something like that. And, if people want to
13 say, you know, "a decommissioning plan in
14 accordance with the rules that are applicable,
15 except that we will require a independent --
16 the plan be produced by an independent
17 consultant rather than in-house."

18 You know, we can do whatever we want
19 at the time of the hearing. But that was how
20 it went in Merrimack Valley, that we didn't
21 feel the need for a plan at the time of
22 application, but we fleshed out what we wanted
23 during the hearings.

24 And I personally think that that

1 makes sense, that that approach makes sense in
2 this matter.

3 PRESIDING OFCR. SCOTT: So, again, to
4 paraphrase, so, at least from your end, you
5 don't see a need to have a plan up front that
6 we would review and comment on up front as part
7 of the certificate?

8 MS. WEATHERSBY: I don't. I think
9 that whatever we -- they go through that whole
10 analysis and expense, and it would likely be
11 out-of-date. So, I don't -- I don't find that
12 that would be useful right now.

13 PRESIDING OFCR. SCOTT: Ms. Muzzey.

14 DIR. MUZZEY: I know that there are
15 differences with reliability projects and other
16 types of energy projects that may come before
17 this Commission. But I'll make the very
18 obvious statement that probably any
19 decommissioning plan that is created for an
20 energy facility will be a bit out-of-date in
21 various ways by the time that facility is
22 decommissioned.

23 What we're talking about is a plan
24 and an applicant's commitment to considering

1 decommissioning in a way that addresses the
2 public's concerns and the need for orderly
3 development and other aspects of the public
4 interest.

5 I feel it's helpful to have those
6 discussions. I wouldn't want to avoid those
7 discussions. And I'm not yet convinced that an
8 entire waiver of this, of this requirement in
9 our rules, is the best way to go.

10 PRESIDING OFCR. SCOTT: And I'll aim
11 this at a lot of the -- essentially, the *pro se*
12 intervenors. Whatever we do here, what we're
13 talking about is what is filed in the
14 Application. So, for instance, if we were to
15 suggest we agree that, if financial assurance
16 isn't needed for the filing, that doesn't mean
17 during the proceeding somebody can't challenge
18 that and ask questions about that, as far as
19 the docket itself. So, I say that, I think,
20 hopefully, the Committee understands that, but
21 I say that for the public here.

22 So, what I think I hear is two --
23 obviously, there's Ms. Weathersby suggesting
24 that "we grant the waiver in its entirety". I

1 think I'm hearing Ms. Muzzey say "we grant the
2 waiver perhaps in part." Is that correct?

3 DIR. MUZZEY: Uh-huh.

4 PRESIDING OFCR. SCOTT: Does anybody
5 want to make a motion, see who goes first here?

6 If you were to do "in part", what
7 parts would you, Ms. Muzzey, be interested in,
8 for discussion purposes?

9 DIR. MUZZEY: Well, we've discussed
10 that part (b) may not be appropriate for this
11 Project. And it seems that (c), as the Project
12 is currently planned, a waiver would not be
13 needed in that. But it could be simply stated
14 that there are no transformers envisioned as
15 part of this Project at this time.

16 So, mainly, I would assume (b).

17 PRESIDING OFCR. SCOTT: Thoughts,
18 anybody?

19 MR. MULHOLLAND: If I were to make a
20 motion, I'd move to grant the waiver for the
21 whole thing. And we'll deal with any
22 conditions we want to put on during the
23 hearing.

24 PRESIDING OFCR. SCOTT: Is that a

1 motion?

2 MR. MULHOLLAND: Yes.

3 PRESIDING OFCR. SCOTT: Okay. Do we
4 have a second?

5 MR. SCHMIDT: I'll second it.

6 PRESIDING OFCR. SCOTT: We have a
7 second from Mr. Schmidt.

8 Discussion?

9 MR. MULHOLLAND: A little discussion.
10 I mean, in the Application, there is some
11 discussion of decommissioning. They do
12 explain -- the Applicant does explain what they
13 intend to do, and how that's rolled into their
14 operations and the FERC tariff.

15 PRESIDING OFCR. SCOTT: And, again,
16 I'll state the obvious. We have the Applicant
17 in the room, and they're clearly hearing our
18 discussions. So, I think they would --
19 assuming we -- if we granted the motion, I
20 think they understand that we want to talk more
21 about it in the proceeding, and most likely in
22 the certificate also.

23 Any other discussion?

24 *[No verbal response.]*

1 PRESIDING OFCR. SCOTT: Okay. So,
2 the motion is to grant the waiver for Site
3 301.08(d), which used to be (c), prior to --
4 again, so that, just to fill the record, I know
5 I've mentioned a couple times, so it was
6 changed to (d) on August 16th, 2016.

7 Ready for a vote. All in favor say
8 "aye"?

9 *[Multiple members indicating*
10 *"aye".]*

11 PRESIDING OFCR. SCOTT: Oh. Did I
12 not get a second?

13 MR. IACOPINO: I don't recall a
14 second.

15 MR. SCHMIDT: No, I seconded.

16 PRESIDING OFCR. SCOTT: Oh, yes. Mr.
17 Schmidt seconded. Okay.

18 So, one more time, I apologize. That
19 was a practice vote.

20 All in favor please say "aye"?

21 *[Multiple members indicating*
22 *"aye".]*

23 PRESIDING OFCR. SCOTT: All opposed
24 say "nay"?

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*[Three members indicating
"nay".]*

PRESIDING OFCR. SCOTT: So, we have three nays, the rest are ayes. So, the ayes have it.

I think that concludes. Before Mr. Iacopino runs away, are there any other issues we need to address while we have the Committee together?

[No verbal response.]

PRESIDING OFCR. SCOTT: Seeing none, that concludes our proceeding for today. And thank you for your attendance.

***(Whereupon the hearing was
adjourned at 12:45 p.m.)***