

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

October 26, 2018 - 9:00 a.m.
 49 Donovan Street
 Concord, New Hampshire

DAY 15
Morning Session ONLY

{Electronically filed with SEC 11-1-18}

IN RE: SEC DOCKET NO. 2015-04
Application of Public
Service of New Hampshire
d/b/a Eversource
Energy for Certificate
of Site and Facility
(Adjudication Hearing)

PRESENT FOR SUBCOMMITTEE/SITE EVALUATION COMMITTEE:

Patricia Weathersby <i>(Presiding Officer)</i>	Public Member
David Shulock	Public Utilities Comm.
Dir. Elizabeth Muzzey	Div. of Hist. Resources
Charles Schmidt, Admin.	Dept. of Transportation
Dir. Christopher Way	Div. of Economic Dev.
Michael Fitzgerald	Dept. of Env. Services

ALSO PRESENT FOR THE SEC:

Michael J. Iacopino, Esq. Counsel for SEC
(Brennan, Lenehan, Iacopino & Hickey)

Pamela G. Monroe, SEC Administrator

(No Appearances Taken)

COURT REPORTER: Cynthia Foster, LCR No. 14

{SEC 2015-04} [Morning Session ONLY] {10-26-18}

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P R O C E E D I N G S

(Hearing resumed at 9:00 a.m.)

PRESIDING OFFICER WEATHERSBY: Good morning all. Welcome to Day 15 of the hearings on the Seacoast Reliability Project. Without jinxing ourselves, we anticipate that we'll close the record at the end of the day today after we hear from some important witnesses. If she could be sworn in, please.

(Whereupon, **Patricia O'Donnell** was sworn in by the court reporter)

PATRICIA M. O'DONNELL, SWORN

ADMINISTRATOR MONROE: Madam Chair, before you start with the examination, Mr. Needleman spoke with me, and I believe there are three outstanding questions from yesterday that he has the answers to.

PRESIDING OFFICER WEATHERSBY: Great. Attorney Needleman.

MR. NEEDLEMAN: Thank you. I apologize, I can't remember which Committee members asked which questions, but I'll just provide you with the answers.

So there was a question, at one point we

1 put in Applicant's Exhibit 263 which was a list
2 of listed state and federal historic sites, and
3 there was a question about where that came from,
4 and the answer was that the list was compiled by
5 Preservation Company from publicly available
6 information. The federal sites came from the
7 National Register, the state sites came from DHR
8 website. It was compiled in, I think, March of
9 2016, and I didn't realize until afterward that
10 it actually already was an exhibit in the
11 docket. It's Counsel for the Public Exhibit 11,
12 PDF page 135.

13 There was a question asked regarding Mr.
14 Frizzell's property and the selection of the
15 structure types on that property, and whether
16 you could have a monopole versus side-by-side
17 poles, and the answer from engineering is that
18 either would work but that in the end
19 side-by-side was chosen because they are
20 approximately 20 feet lower than monopole which
21 means if you use monopole they will be higher,
22 and they would be visible from more properties
23 around the site.

24 I'm told that if they did use the higher

1 monopole, it wouldn't have an effect from an
2 aesthetic analysis or historic analysis, but it
3 would just an effect on neighbors in the area
4 which is why they chose the lower poles.

5 And then there was a question about burial
6 on Mr. Frizzell's property if he paid for the
7 burial and why that was not an option in
8 Eversource's mind. There are a couple of
9 components to it. One is that if that were
10 done, it would require two transition
11 structures, one on either side of his property,
12 and it would obviously also require underground
13 cable. Both of those are quite a bit more
14 costly than the overhead and so that was a major
15 component.

16 In addition, Eversource generally does not
17 contract out segments of trenching on projects
18 like this. What the engineers tell me is
19 there's more to this type of trenching than
20 putting a backhoe in the ground, and then there
21 is also the added issue of having to make sure
22 that the trenching and digging is done in a
23 manner that's consistent with DES requirements
24 here in the event contaminated soil or things

1 like that were encountered, and so those were
2 the reasons why that approach was not chosen.

3 PRESIDING OFFICER WEATHERSBY: Good. Thank
4 you for that information.

5 Attorney Aslin? Would you like to
6 introduce your witness and have her adopt her
7 testimony?

8 MR. ASLIN: Yes. Thank you, Madam Chair.

9 **DIRECT EXAMINATION**

10 **BY MS. ASLIN:**

11 Q Good morning, Ms. O'Donnell. How are you?

12 A Good morning. I'm fine.

13 Q Great. If you could please state your full name
14 and your place of employment for the record?

15 A Patricia M. O'Donnell. Employment is Heritage
16 Landscapes, LLC, and I'm a preservation
17 landscape architect and planner.

18 Q Thank you. Do you have in front of you today
19 your original Prefiled Direct Testimony which is
20 dated July 31st, 2017, and has been marked as
21 Counsel for the Public Exhibit 5?

22 A I do.

23 Q Do you also have your July 31st, 2017,
24 Assessment Report that was attached to your

1 Prefiled Testimony and has been marked as
2 Counsel for the Public Exhibit 5-a?

3 A Yes.

4 Q Finally, do you have in front of you your
5 Supplemental Testimony dated July 20th, 2018,
6 which has been marked as Counsel for the Public
7 Exhibit 6?

8 A Yes.

9 Q Great. And do you have any changes or
10 corrections to make to any of those documents?

11 A I do not.

12 Q Okay. Do you then adopt and swear to those
13 testimonies as your testimony today in this
14 docket?

15 A Correct. I do.

16 Q Okay. Thank you.

17 MR. ASLIN: Madam Chair, she's available
18 for cross.

19 PRESIDING OFFICER WEATHERSBY: Thank you.
20 Attorney Patch.

21 **CROSS-EXAMINATION**

22 **BY MR. PATCH:**

23 Q Good morning. My name is Doug Patch, I am
24 counsel to the Town of Durham and University of

1 New Hampshire.

2 A Good morning.

3 Q I wanted to start by looking at your testimony,
4 CFP Exhibit 5, and page 3.

5 One of the points you made there was that
6 the Applicant's report follows rigid adherence
7 to National Register listing and eligibility,
8 but there is a broader definition of historic
9 sites expressed in New Hampshire's legislation
10 which the Applicant has ignored. Is that
11 correct?

12 A It is correct.

13 Q I want to show you the New Hampshire definitions
14 in the Site Evaluation Committee rules which I
15 have up on the screen here where it says that
16 historic sites means, and I've underlined what I
17 really want to ask you about. Any building,
18 structure, object, district, area or site that
19 is significant in the history, architecture,
20 archeology or culture of its communities.

21 To find out whether any of these items are
22 significant in a community, shouldn't part of
23 the analysis involved talking with people in the
24 community, particularly those who value historic

1 sites and resources like a local Historic
2 Association?

3 A Yes.

4 Q Do you know whether Ms. Widell or any of her
5 associates ever met with the DHA or other
6 members of the Durham community prior to doing
7 their assessment and filing their testimony?

8 A My knowledge would only come from their Prefiled
9 Testimony and reports, and it doesn't appear in
10 either of those that they met with Durham
11 Historic Association or others directly in the
12 Town of Durham.

13 Q I mean, you can get a certain amount of
14 information from websites and other sources, but
15 actually talking to people who value that in the
16 community seems to me to be a very important
17 aspect of that assessment. Would you agree?

18 A I would.

19 Q I want to draw your attention to Stipulations
20 that Public Counsel has entered into with
21 Eversource. It's Applicant's Exhibit 184,
22 paragraphs 13 to 15, the heading on for those
23 paragraphs is Historic Sites. Are you familiar
24 with those?

1 A I think I've seen this before. I'm not sure
2 what the exhibit number is, but you're citing it
3 as 184, and you're showing it to me so we'll
4 take it at that value.

5 Q I think the date on it, I'll go up just to be
6 clear, is August 15th of this year.

7 A Right. Okay.

8 Q I don't know if that helps.

9 A I saw this.

10 Q Is it something that you were involved in the
11 writing of?

12 A No.

13 Q And do these Stipulations in any way change the
14 testimony that you have submitted?

15 A The stipulations show a limited group of
16 resources under point 14 for historic sites with
17 adverse effects. In our testimony, we've
18 indicated that the narrowing of the sites to be
19 considered by the SEC doesn't conform to New
20 Hampshire law in our assessment, and it doesn't
21 change our testimony. This is essentially what
22 was agreed.

23 Q In your Original Testimony, CFP 5, you express
24 concerns about the Applicant's failure to

1 adequately analyze the impact of the Project on
2 stone walls, and that was, on I believe it's on
3 page 3 of your testimony. Do you recall that?

4 A I do. I'm not finding the exact line.

5 Q Would you like me to help you find that?

6 A Is this what you're showing? Stone walls.

7 Q Okay. Page 3 of 5.

8 Q I think it's the --

9 A I got it.

10 Q Okay. And that it's the sentence, I think there
11 at the top of page 3 beginning, "Further, a
12 pervasive history." Is that the one?

13 A I have it.

14 Q Okay. And so that's where I think you had
15 expressed concern about their failure to
16 adequately analyze the impact of the Project on
17 stone walls.

18 A Correct.

19 Q Or at least that was part of it. And was this
20 of particular concern for the Durham Point
21 Historic District?

22 A It's a concern throughout Durham. The mapping
23 that we used with the Applicant's layer showed
24 475 stone walls in Durham.

1 Q So it wasn't just in the Historic District. It
2 was throughout Durham essentially?

3 A It's along the corridor. So the marking, the
4 map layer that we used in GIS came from the
5 Applicant, and in Durham within the hundred foot
6 corridor it shows 475 stone walls. That's a
7 lot.

8 Q And one of the things that I believe you also
9 said in your Supplemental Testimony was that
10 stone walls contribute to the rural character of
11 the Durham Point Historic District.

12 A Correct.

13 Q I think that's on line 15, correct? And then in
14 your Supplemental Testimony you indicated that
15 the Applicant's additional submissions do not
16 adequately address stone walls. Is that
17 correct?

18 A Yes.

19 Q And you said in your Original Testimony, CFP
20 Exhibit 5, I believe it's page 4?

21 A Line 7?

22 Q Okay.

23 A 7, 8, 9?

24 Q Yes. Thank you. You identified here as well

1 that there were actually more historic sites
2 than what the Applicant had identified. Again,
3 given what you had said earlier about your, you
4 think there's a broader view of historic sites
5 than what the Applicant had used. Is that fair
6 to say?

7 A I think the way you stated it which is that I
8 think there's a broader view, what we interpret
9 the broader view as is the New Hampshire law and
10 the SEC process.

11 Q Thank you for clarifying that.

12 In the Original Testimony, again, on page
13 4, you had said that Durham retains community
14 character. Is that right? Do you remember
15 where you said that?

16 A Line 25. Page 4.

17 Q Great.

18 A And we state that the three towns, Newington,
19 Madbury and Durham, each retain community
20 character.

21 Q And what do you mean by that?

22 A Well, character of a town is comprised of all of
23 its resources and assets. When we look at
24 places, we think about the natural and the

1 cultural resources. The natural resources are
2 the place as originated, the cultural resources
3 as shaped by people over time, and the composite
4 is the character as expressed physically. We're
5 not talking about values. We're talking about
6 the place. There's a degree of cohesion and
7 rural and open character in each of the three
8 towns.

9 Q I next, I have it on the screen, but I next want
10 to show you an excerpt from the Durham master
11 plan which the excerpts have been marked as
12 TD-UNH Exhibit 24 and electronic page 3.

13 There's actually a whole section on
14 community character. And I'm pointing out one
15 sentence, but there's a lot more in here, and I
16 won't go through it all with you, but this
17 sentence that I've highlighted up on the screen
18 says "Durham is a balanced community that is
19 successfully maintained traditional
20 neighborhoods, natural resources, rural
21 character, and time-honored heritage, while
22 fostering a vibrant downtown, achieving energy
23 sustainability and managing necessary change.

24 Do you see that? Did I read that

1 correctly?

2 A You did. I see it.

3 Q It's clear from this as well as other provisions
4 in the master plan and just from the involvement
5 of the Town of Durham and the Durham Historic
6 Association that community character is
7 important to the Town of Durham. Would you
8 think that's a fair statement?

9 A The master plan indicates that community
10 character is important to Durham.

11 Q Will this Project threaten that character?

12 A It creates a level of change that has an impact.

13 Q Negative impact?

14 A I think so.

15 Q On page 5 of your testimony, after you discussed
16 community character, you said the effects of,
17 the three towns that you mentioned, three of the
18 four towns affected by the Project, you said the
19 effects in these towns where the proposed
20 corridor extends will be unreasonably adverse if
21 the project is constructed as proposed, correct?

22 A That is what is said in that sentence on page 5,
23 correct.

24 Q And this was your Original Testimony. Has

1 anything changed since then? Have they done
2 things that would change that particular
3 conclusion that you reached?

4 A They've made some progress, but they're still
5 looking at a very small subset of what we
6 believe are the historic resources and the
7 heritage of these three towns, and our
8 Supplemental Testimony indicates that our
9 position remains the same.

10 Q And you said, I think, in your Supplemental
11 Testimony that, and I think we're on, try to get
12 us on to page 3, you talked about avoidance,
13 minimization and mitigation measures. Is that
14 fair to say?

15 A Yes.

16 Q Earlier in that testimony, actually on page 2,
17 you had said that the Durham Historic
18 Association provided historic resources
19 testimony on July 31st of '17, and you had said,
20 and again, this is in your Supplemental
21 Testimony, that that testimony by the Durham
22 Historic Association calls into question the
23 windshield survey technique used by the
24 Applicant to identify historic resources in

1 Durham. Is that correct?

2 A You're reading from the testimony, and you're
3 reading it accurately.

4 Q Okay. Thank you. And then in your Supplemental
5 Testimony on page 3, you indicate that the
6 Applicant's additional submissions do not change
7 your conclusion that the Applicant's assessment
8 of no unreasonable adverse effect to historic
9 sites is unsupported by the incomplete record.

10 Did I read that correctly?

11 A Yes.

12 Q And that's your testimony, correct?

13 A Correct.

14 Q Thank you. I have no further questions.

15 PRESIDING OFFICER WEATHERSBY: Thank you.
16 Attorney Boepple?

17 **CROSS-EXAMINATION**

18 **BY MS. BOEPPLE:**

19 Q Good morning.

20 A Good morning.

21 Q Beth Boepple representing the Town of Newington.

22 So good morning. Nice to see you again,
23 Ms. O'Donnell. You may recall we met during the
24 Northern Pass hearings.

1 A We did.

2 Q And you may also recall that we had some
3 discussions that we may revisit today so please
4 bear with me. If you feel like you're repeating
5 yourself, this would be new for this particular
6 Subcommittee.

7 A We know we're here about the Seacoast.

8 Q I'm sorry?

9 A We know we're here about the Seacoast Project.

10 Q Right. There are some issues that came up that
11 I think are also relevant here.

12 So with that, would you, in general terms
13 Attorney Patch just touched on this in terms of
14 the historic resources and talked about how it's
15 defined under New Hampshire statutes. I'd like
16 to ask you if you would agree that one of the
17 differences in the way you looked at this
18 particular Project and the way the Applicant's
19 historic witness looked at it was from a broader
20 perspective of what historic resources are?

21 A Correct, and that broader perspective is based
22 on our reading of New Hampshire law as opposed
23 to the Section 106 process.

24 Q Thank you. Would it also be fair to say that

1 another difference between the way you looked at
2 this Project and Ms. Widell looked at it is you
3 also considered cultural resources as part of
4 your review?

5 A I wouldn't use those words. So let me reframe
6 slightly.

7 Q Please.

8 A Historic resources, broadly conceived, include
9 those defined in federal law as being about
10 important people, important events, and
11 important type or place that is likely to yield
12 information about the past. So those are the
13 four criteria for listing on the National
14 Register. These are mimicked in State Register
15 rules.

16 So when you look at those, and you look at
17 the New Hampshire statutes, particularly the one
18 relevant to historic resources, what you come
19 away with is a fairly broad envelope that's
20 underpinned by a final clause. I should find
21 it. It's in my report.

22 On page 2, indent, "historic resource"
23 means any historic property listed in the
24 Register, which is being used by the Applicant

1 predominantly, either national or state or those
2 that they consider eligible.

3 Part (b) is what I'd like to speak to. Any
4 object, or group of objects, located in or
5 associated with an historic property or that
6 enhances an understanding and appreciation of
7 New Hampshire history.

8 So this is RSA 227-C:1 section (b). It's a
9 more inclusive definition.

10 Q Do you use the term "cultural resource" at all
11 throughout your report?

12 A No, I do. And cultural landscapes as well.

13 Q And how does that fit in with the definition of
14 historic resources?

15 A In the preservation literature, historic and
16 cultural are somewhat interchangeable. Older
17 law is going to say historic. Contemporary or
18 more recent guidance will use the term cultural.
19 Understood that cultural implies the shaping of
20 a place by humanity.

21 Q And in your review of the communities that this
22 project would impact, you were looking from that
23 broader perspective.

24 A I was.

1 Q Is that fair to say? Thank you.

2 So while we're on definitions, did you,
3 would you consider scenic resources sometimes to
4 be part of what you were doing?

5 A I think we have another law to cite here. I'm
6 not sure I can find the page in my report, but
7 scenic resources are also defined as historic.

8 Chris, can you help me with that citation?

9 MS. BOEPPLE: I may have it. Hold on.

10 A Page 5, under heading E, we've cited the SEC
11 102.23 as defined by New Hampshire RSA 227-C,
12 employed broad definition of historic site to
13 include sites holding cultural value regardless
14 of their assessed age -- sorry. I thought the
15 word scenic was in here. Wrong locale.

16 Chris, I still need your help on this.

17 Q Historic resource. I've got it up on the
18 screen.

19 A There you go.

20 Q There's a definition for historic resource. Do
21 you see that?

22 A I do. I think what we actually need is the
23 definition for scenic resource.

24 Q Right. Well, I have that as well.

1 A Okay. That says --

2 Q Site 102.45.

3 A Right. And subpart (e), historic sites that
4 possess a scenic quality.

5 Q Okay. Great. So that brought us exactly to the
6 rule that I wanted to also discuss. So you are
7 familiar with this rule, correct?

8 A Yes.

9 Q And you did consider this as you were
10 considering doing your assessment and your
11 report?

12 A Correct.

13 Q So yesterday Attorney Needleman during his
14 cross-examination of Counsel for the Public's
15 aesthetic witness asked some questions about
16 this very definition, and in his questioning he
17 was focusing on the phrase "the public has a
18 legal right of access." So the rule then says
19 okay, the public has a legal right of access,
20 but then it talks about that these various
21 instances, if you will.

22 So taking those one at a time, is it
23 possible that a resource designating pursuant to
24 applicable statutory authority, which is sub

1 (a), is private property?

2 A Yes.

3 Q Okay. But it nevertheless would be considered a
4 scenic resource, correct?

5 A Yes.

6 MR. NEEDLEMAN: Objection. That calls for
7 a legal conclusion.

8 MS. BOEPPLE: I'm not asking for legal
9 conclusions. I'm asking for how this witness
10 used this rule to determine what resources to
11 review in her assessment.

12 MR. NEEDLEMAN: I think that actually
13 specifically calls for a legal conclusion
14 because it directly contracts another portion of
15 the rule.

16 PRESIDING OFFICER WEATHERSBY: I agree with
17 Attorney Needleman, and I'm going to sustain the
18 objection, and you could ask the question that
19 you were trying to get at.

20 BY MS. BOEPPLE:

21 Q So let's try and rephrase that.

22 Ms. O'Donnell, as you reviewed this rule,
23 and you looked at each of these different
24 designations, did you consider whether or not

1 you were looking at public or private land?

2 A We considered the viewshed model because access
3 includes visual access. So we looked at the
4 relationship of the viewshed model provided by
5 the Applicant as well as the physical geography,
6 and the definition of scenic resource, again,
7 looking at these subcategories, conservation and
8 easement lands, lakes, rivers, ponds,
9 recreational trails, parks, historic sites, town
10 and village centers in relationship to
11 viewsheds. Access can be defined as walking on
12 the land or next to with visual access.

13 Q Okay. Thank you. On page 4 of your report, you
14 list the materials you reviewed, and then you go
15 on and you describe other investigation you
16 conducted in doing your assessment. Is that
17 correct?

18 A It is correct.

19 Q And rather than read through this section, could
20 you just briefly summarize the efforts that you
21 undertook to review and make sure you were
22 considering all historic resources in your
23 assessment?

24 A We looked first at all the Applicant materials

1 that are listed here and that are shown on the
2 screen. We looked at the APE, the hundred-foot
3 and the half-mile. We looked at the
4 relationship between the historic hundred-foot
5 and half-mile to the scenic three-mile to either
6 side corridor. We looked at the mapping in both
7 cases for scenic and historic. We also looked
8 at, to a degree and lesser degree, the natural
9 resource work and the community planning level
10 work as provided by the Applicants.

11 Parallel to the document review, we looked
12 at the corridor from public rights-of-way. We
13 looked at the data sets the Applicant was using.
14 We sought additional data sets using the New
15 Hampshire GRANIT GIS publicly available layers,
16 and we looked at the Town Plan records and Town
17 statements about its historic resources, the
18 value to the town.

19 And then we looked at, using all of those
20 sets, what in our opinion a more complete
21 capture of historic resources would be based on
22 New Hampshire law and SEC's rules.

23 Q Great. Thank you. So I'm going to show you
24 Newington's Exhibit 1-3 which is a portion of

1 Newington's master plan, and it's the section
2 that's labeled "Policies" which I have up on the
3 screen.

4 A I see that.

5 Q Does that look familiar or would that have been
6 part of your review?

7 A I believe it was. We may not have cited this
8 specific sentence, but we did in the Newington
9 level work in Chapter 4 of our report look at
10 the intent in master plans and other such
11 documents in each town.

12 Q So you would have discovered this policy number
13 one that says Newington's rural residential
14 character should be preserved?

15 A Yes.

16 Q And the protection of the quality of the town's
17 residential area is central to the master plan.

18 A Right, as written here.

19 Q And would you agree that based on that policy,
20 the introduction of industrial elements like
21 transmission line poles that are part of this
22 Project might be contrary to preservation of the
23 rural character?

24 A Yes. I would agree.

1 Q Further down in the policy section of the town's
2 master plan, I'd like to direct your attention
3 to Policy Eleven and Policy Twelve, and do you
4 see the Policy Eleven is directed to the
5 shorelines of Great Bay and Little Bay?

6 A I do see that.

7 Q And that those should be protected? And could
8 you read the rest of that section for us,
9 please?

10 A Policy Eleven?

11 Q Yes, please.

12 A The shorelines of Great Bay and Little Bay
13 should be protected. The bays' scenic and
14 natural resources are unparalleled in New
15 Hampshire. The bay and its immediate environs
16 provide habitat to a wide range of wildlife.
17 Several bald eagles, for example, are known to
18 winter along the Newington shore. As one of the
19 richest estuaries in North America, the bay has
20 been designated by the federal government as a
21 National Estuarine Research Reserve.

22 Q Are you aware and in your review of the Project,
23 did you see that concrete mattresses were to be
24 installed along Little Bay?

1 A We did. Again, to a lesser degree than we were
2 focused on the historic reviews, we did look at
3 the environmental reviews. The statement in
4 Policy Eleven is particularly referencing scenic
5 and natural resources.

6 Q In your expert opinion regarding historic
7 resources and the importance of the Little Bay
8 from a historical perspective, would you agree
9 that the concrete mattresses would have an
10 effect?

11 A My focus of my work was not on natural
12 resources. As a landscape architect, I'm aware
13 of the communities that meet at the shoreline of
14 any water body, either human-shaped or natural,
15 and what you're suggesting in the concrete pads
16 at the edge of the bay, the habitat will be
17 reduced and the quality of the water and the
18 quality of the estuarine environment will be
19 diminished in the area that that work is done,
20 based on understanding that shoreline and --

21 MR. NEEDLEMAN: Madam Chair, objection.
22 This is well beyond the scope of this witness's
23 testimony.

24 MS. BOEPPLE: I wasn't asking for an

1 environmental opinion. I was actually asking
2 for her opinion as an historic and aesthetic
3 expert to comment on that the impact of the
4 mattresses in that respect.

5 A So the simple answer is there will be a gap in
6 the habitat at that location which will likely
7 be noticeable from a scenic perspective.

8 Q Thank you. I'd like to draw your attention also
9 to Policy Twelve. Newington seeks to ensure the
10 preservation of the town's historic resources.
11 And could you please tell us the rest of that
12 policy? Could you read that for us slowly?

13 A Much of Newington's historic, architectural and
14 scenic resources have suffered in the past due
15 to the arrival of Pease Air Force Base and the
16 rapid growth east of the Spaulding Turnpike.
17 The Town seeks to protect remaining resources.

18 Q And would you say that these policies,
19 particularly Policy Twelve, states Newington's
20 desire to really ensure the preservation of the
21 town's historic resources?

22 A Yes, specifically indicating in this text
23 remaining resources to be protected.

24 Q And as you did your assessment and your review,

1 you considered these policies?

2 A Yes.

3 Q And you found them to be indicative of how
4 important it is for the town, correct?

5 A Yes.

6 Q Thank you. I'd like to show you another section
7 of Newington's master plan, and this is in
8 Newington's Exhibit 1-6. This is its
9 Recommendations section. Are you familiar with
10 this portion of Newington's master plan, Ms.
11 O'Donnell?

12 A It was in the office. We did review it. I
13 don't think I'm the one who read it, but I know
14 we looked at it.

15 Q So you'll see that all of these different
16 sections within this Recommendations page deal
17 with historic resource of one form or another in
18 the town; is that correct?

19 A Correct.

20 Q And do you see under the section of Newington's
21 Old Town Center, could you read that first
22 sentence for us, please?

23 A Is exceptional not only for its historic sites,
24 but also for its remarkable state of

1 preservation.

2 Q And would you agree with that statement?

3 A I found the town center upon our drive review of
4 the sites to be cohesive and retaining its
5 qualities in a state of preservation.

6 Q And what about the Roads section? Did you
7 review that or could you read that first
8 sentence?

9 A We did review the scenic roads in Newington in
10 relation to its ordinance. We also created a
11 map of designated scenic roads, Newington
12 included. So under the word "Roads," the scenic
13 road ordinance regulates activities affecting
14 trees and stone walls in the vicinity of
15 town-owned roads. The historic character of
16 Newington's rural roads should be respected.
17 Work near these roadways should be carefully
18 monitored, and this section of the ordinance
19 should be strictly enforced.

20 Q So with respect to the roads, are you aware that
21 part of the anticipated followup to this
22 particular Project is relocation of some of
23 these distribution lines to the roadways within
24 Newington?

1 A Yes. I was aware of that.

2 Q And in your review of the Applicant's materials,
3 did you see anything where they addressed the
4 relocation of that line and its impact on the
5 roads in Newington?

6 A There wasn't a specific reference to their
7 mitigation of the road conditions that I saw.

8 Q Would you agree that installing new poles and
9 perhaps new lines along some of Newington's
10 roads that's not been covered in this
11 Application would be something that should be
12 considered and certainly its impact on the
13 historic resources of Newington?

14 A I would agree that the roads, changes to the
15 roads and this statement in relationship to the
16 retention of roads should be looked at.

17 I'm looking at our map HL Newington dated
18 16 June 2017 from our report, and the corridor
19 doesn't appear to be along scenic roads with the
20 exception of three perpendicular or close to
21 perpendicular crossings.

22 Q You're looking at the Project route, correct?

23 A Yes.

24 Q As opposed to location of the distribution line

1 along roadways, correct?

2 A Right.

3 Q And the reason you're looking at the location of
4 the Project line as opposed to where those
5 transmission lines would be located is because
6 they weren't part of the Application; is that
7 correct?

8 A There isn't anything that I saw that showed
9 that.

10 Q Thank you. I'd like to continue looking at
11 Newington's Exhibit 1-6, and you see Newington's
12 Town Forest, that section there?

13 A I do.

14 Q Could you read that first portion of that
15 paragraph, please?

16 A Dating to 1640, is believed to be the oldest
17 such community forest in the nation. The forest
18 is an integral component of Newington's historic
19 town center.

20 Q Would you agree that's another example of the
21 importance the town places on its heritage and
22 protection of its historic resources?

23 A I agree.

24 Q And then I'm going to -- excuse me. Going to

1 skip down to Knights Brook Corridor. Could you
2 read that section, please?

3 A One of the region's most scenic and historically
4 significant landscapes of open fields and
5 farmland is that 250-acre tract situated
6 immediately northwest of the town center,
7 comprised of the Frink, Pickering, Hislop and
8 the former Rowe properties. Every effort should
9 be made to preserve this open space.

10 Q In your review of the project and its impact,
11 would you agree that burial of the line in at
12 least through part of this area would help
13 further this Recommendation, but failure to bury
14 it in, say, the Pickering farm does in fact do
15 exactly the opposite?

16 A The Knights Brook Corridor taken largely as
17 stated here, 250-acre tract, is not all
18 addressed in the Applicant's materials as an
19 underground corridor as yet.

20 Q Would you agree with me that if it were buried
21 throughout, perhaps throughout all of Newington
22 that would help further these goals and policies
23 and recommendations?

24 A I think line burial is an option, and it does

1 aide in retaining resources. It has to be done
2 carefully, but I think the Applicant has
3 demonstrated an approach that appears to be well
4 thought out in other locations of burial. So
5 yes, it would further the overall values stated
6 in the Newington master plan to not have the
7 large scale line as proposed in the Seacoast
8 Project go through the Town of Newington
9 aboveground.

10 Q Thank you. Are you familiar with or have you
11 seen the MOU and the MOA that the Applicant has
12 submitted just recently? I'm going to try to
13 get you exhibit numbers on those. Applicant's
14 Exhibit 200.

15 A Yes. I did read them. The MOU contains the MOA
16 as a series of attachments so there are two
17 documents, but the MOU includes the MOA.

18 Q And do you have an understanding of what the
19 purpose is of the MOU?

20 A It's designated on the first page that, with all
21 the "whereas" language, that the US Army Corps
22 of Engineers is the lead agency and that
23 compliance with the National Historic
24 Preservation Act and Section 106 is cited as

1 well as the New Hampshire SHPO's considerations,
2 and at the bottom of the first page it lists the
3 four properties that have been designated as
4 concern by the New Hampshire SHPO.

5 Q Would you say that this is a comprehensive list
6 of historic resources that might be affected by
7 this Project?

8 A No.

9 Q So would you also, would it also be fair to say
10 that you don't consider this agreement a final
11 and full resolution of all of the adverse
12 impacts that this Project may have on the
13 historic resources?

14 A It is not.

15 Q So it may have some an applicability to some
16 protection of some resources, but it is not
17 something, for example, that the SEC could point
18 to and rely upon as providing full protection
19 for historic resources.

20 A The SEC should not rely upon it.

21 Q Thank you. No further questions.

22 PRESIDING OFFICER WEATHERSBY: Thank you.
23 Next scheduled examiner is Ms. Mackie. Durham
24 Historic Association.

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CROSS-EXAMINATION

BY MS. MACKIE:

Q Good morning. I'm Janet Mackie from the Durham Historic Association.

In your testimony you mention the Durham Historic District which is shown here on our Exhibit Number 7. In its Visual Assessment, the Applicant's expert included the John Sullivan House which is a national landmark, but they did not include an assessment as to whether the transmission lines could be seen from the rest of the Historic District which is higher in elevation and over a mile long.

Do you consider that it would have been appropriate to provide us with a visual assessment from this location?

A A district -- let me answer it from the perspective of a property versus a district. I believe we cited in our report in chapter 2, I'm looking for a sentence that essentially says in meaning, not in words, that the Applicant persistently looks at individual properties whether they're in districts or they're listed separately and that the segmentation of a

1 district into individual properties is
2 insufficient to capture the larger scale effects
3 that cross the entire district.

4 Q Thank you. You also mention in your resource
5 the importance of conservation land as a
6 cultural resource and also sometimes it's a
7 historic resource?

8 A Yes.

9 Q This is a map showing the -- this is just to set
10 the ground work. Particularly the map on the
11 top section. This is DHA Exhibit 1, our
12 Original Testimony. The point of it is just to
13 show the green indicates public access lands in
14 Durham, and my question has to do with some of
15 those lands. For example --

16 MR. IACOPINO: Ms. Mackie, can you blow
17 that up so the Committee can see what you're
18 referring to?

19 A Can you tell us a page number on that from the
20 first testimony?

21 Q It's on page 2 of DHA's Original Testimony.

22 All of this green area has public trail
23 access, of course, and my question has to do
24 with East Foss Farm. East Foss Farm

1 communicates on the other side of the tracks
2 with West Foss Farm, and this is DHA Exhibit 10.
3 This shows the trails and where they go.

4 And the visual assessment person for
5 Eversource said there was no visibility of the
6 lines from the trails, and I'm just wondering,
7 well, it looks to me that the trail crosses the
8 tracks so it must have be visible right
9 underneath the lines, but is this an important
10 area in your assessment to be considered for
11 visual assessment and impact on historic
12 resources?

13 A Yes. Yes, it is important.

14 Q Can you say why it's important?

15 A I'm trying to compare the map you're showing me
16 to the one in our report which is HL Durham
17 dated 16 June 2017, and it shows that the
18 transmission line is along the track bisecting
19 two conserved particles parcels so the
20 transmission line is on the left where your W
21 hits the track there. That's where the line,
22 the track symbol. The line is showing there
23 along the railroad with the power line adjacent
24 so it's bisecting two pieces of conservation

1 land.

2 The overlay I have from the Applicant of
3 their viewshed model which I believe your
4 question was is this in view from the trails.
5 Correct me if I'm wrong. But the viewshed model
6 does not show a broad view from the trails in
7 this area. It's probably a topographic
8 relationship. There are small fingers of views
9 in the viewshed model shown in the area. Those
10 are shown on HL Durham map.

11 So if we rely on the viewshed model, it
12 doesn't look like there's broad visibility from
13 all trails although there will be occasion
14 visibility as you move through those conserved
15 lands.

16 Q And did you assign any cultural or historic
17 significance to East Foss Farm?

18 A It's a part of the discussion we provided about
19 conserved lands in general, and it's a part of
20 the discussion provided about the Town of Durham
21 in Chapter 4 of our report.

22 Q Now, this is an older map so it doesn't show it,
23 but the white part, all this, is now also
24 conservation land, and if I told you that this

1 section was a field, is a cottontail rabbit
2 field, would you expect that you'd be able to
3 see from that trail across the field to the
4 corner of the transmission lines?

5 A If you're defining field as open space, yes, of
6 course. I think you would have views there.
7 The viewshed model shows some larger coverage
8 than under the conserved lands we just spoke to
9 in that area.

10 Q Okay. Another area of conservation is east.
11 This is DHA Exhibit 9. This shows Longmarsh
12 Preserve.

13 Now, yesterday Mr. Needleman talked about
14 Sweet Trail which on this map is shown right
15 here, but my question has to do with the other
16 trails on this land. This one here crosses the
17 easement which you can barely see. It's right
18 here. And in our testimony in our Exhibit 1 we
19 indicate that was an old Indian trail that was
20 later used by the colonists to get from
21 Newmarket to Dover.

22 Would you consider that a public access
23 trail such as that crossing the easement would
24 be affected by the high voltage transmission

1 lines? I mean the view from the trail?

2 A The view from the trail would be of the new
3 lines so yes.

4 Q So do you think that the construction of these
5 new higher poles affects the historical
6 integrity of the trail?

7 A It changes the experience so I would suggest
8 yes.

9 Q Okay. The other trail I wanted to point out is
10 in the Langmaid Farm, and it goes from the
11 cellar hole up to the easement and then along
12 the easement through the quarry area right here.

13 A I see that.

14 Q It goes right past the quarrymen's bench that we
15 mentioned in our testimony, and that trail being
16 a circular trail and going right along the
17 easement, I'm interested in your assessment of
18 whether the introduction of high voltage
19 transmission lines affects the historical or
20 cultural experience of the quarry section.

21 A I would say yes. I think that Durham Historical
22 Association's identification of the quarrymen's
23 bench and other granite quarrying resources is
24 adding to the group of resources that has not

1 been considered by the Applicant.

2 Q Well, one of the things you mention in your
3 report is how new elements cannot only affect
4 present experience, but it also can affect
5 future experience, and that raised a question in
6 my mind which was in the event we decide in the
7 future to file an application to have the quarry
8 site which is much larger than the part crossed
9 by the easement listed on the National or State
10 Registers, could the existence of high voltage
11 power lines affect the integrity of that area to
12 the extent that it would no longer qualify for
13 state or federal listing?

14 A You're asking for me to provide a judgment about
15 the listing eligibility?

16 Q The integrity.

17 A The integrity of the property has 7
18 characteristics, and one of them, setting and
19 location, will be affected by the presence of
20 the large corridor of power line transmission.
21 So I can't make a judgment as to whether or not
22 the property would no longer be listable, but it
23 would be a factor in the listing process.

24 Q Okay. Thank you. Now, along that same line,

1 another thing we've been trying to get at is
2 what effect does the introduction of high
3 voltage transmission lines into the corridor
4 have on the three defined Historic Districts
5 that the Applicant's consultant referenced, and
6 we're trying to get to the question of adverse
7 effect.

8 Just for example, I've chosen pole number
9 85 which is the corner pole where the line
10 within the Durham Point Historic District
11 changes course from almost due to a southeast,
12 and this is what it looks like now. I'm sorry.
13 The engineering drawings are Applicant's Exhibit
14 149. And this is the F 107 drawings. The
15 current section looks like this. There are
16 three lines in the top photograph. This is from
17 DHA Exhibit 4. So it's sort of a distribution
18 line now. And this is going to be the
19 replacement if the high voltage transmission
20 lines are permitted, and I'm wondering if you
21 could give us an idea of whether you think this
22 will be an adverse effect on the Historic
23 District.

24 A They will be more visible because of height and

1 clearing, and I do believe that's an adverse
2 effect.

3 Q Okay. Now, the second Historic District is the
4 Newmarket-Bennett Road Historic District which
5 goes along the north side of Bennett Road which
6 is also a scenic road. There will be 15 poles
7 in that district at an average height of 82
8 feet. Most of this is on, at least 95 percent
9 of this land within this district crossed by the
10 easement is public access land. Could you give
11 us your opinion on whether that would result in
12 an adverse effect?

13 A It creates a different sense of feeling and
14 association for the District because of the
15 large scale of the new transmission lines.

16 Q And on East Foss Farm, which is part of the UNH
17 Historic District, there will be 12 poles of the
18 average height of 91 feet. Would you consider
19 that to pose an adverse effect as well?

20 A Yes.

21 Q Okay. I have one last question.

22 Applicant's Exhibit 51 which is the
23 viewshed map. As I said, this is Applicant's
24 Exhibit 51 which is Mr. Raphael's viewshed

1 compilation of the views I think pretty much
2 from anywhere and the key is the colored areas
3 may have some amount of view of the transmission
4 lines. And I've blown up part of it so we can
5 see it better. 157 is labeled by Mr. Raphael as
6 Wagon Hill Farm, and at a point he says the
7 elevation above sea level is 66 feet.

8 And if I understand this map correctly, and
9 I know you used it in your analysis, the green
10 areas are places where you may be able to see
11 through to the lines, and looking across, you
12 mention in your testimony also, looking across
13 from Wagon Hill Farm you may be able to see the
14 tension lines. And looking across in this way
15 up here through to here (indicating).

16 A I think the shading actually indicates that
17 anywhere within the shaded area you're going to
18 be able to potentially see the lines based on
19 their viewshed model. That's what the viewshed
20 model is defined as.

21 Q Right, but what I'm getting at is the white area
22 in between the 157 and the lines is lower. It's
23 closer to sea level. That's why you can't see
24 anything. But on the higher elevations marked

1 with the green, you can see right through to the
2 transmission line. I believe you said that you
3 thought you'd be able to see through in that
4 direction from Wagon Hill potentially?

5 A We did say that.

6 Q Right. And yet when Mr. Raphael --

7 A And Wagon Hill is beyond the one-mile APE.

8 Q I'm sorry?

9 A I'm just looking at my map and comparing, and
10 the one mile line is below the 157. So it's in
11 the three-mile of the scenic assessment, but
12 it's not in the one-mile of the historic
13 assessment. There's an issue because the
14 Preservation Company and Widell testimony
15 address one mile and the scenic assessment
16 addresses six miles. So they're mismatched.

17 Q I was just trying to understand, and I was
18 hoping you could help me, when Mr. Raphael was
19 testifying about this map, he said that his
20 computer program showed that from Wagon Hill
21 Farm you could see a pole about where I've
22 circled, but that was it. Does that make any
23 sense to you?

24 A I wasn't here for his testimony, and I didn't

1 look at the model in that way. The viewshed
2 model shows all the areas that can see the line
3 based generally on topography and the height of
4 the poles.

5 Q Right. He testified, I believe, that he used in
6 his viewshed program a height of trees of 40
7 feet which was conservative.

8 A What I'm saying is I can't interpret the
9 testimony.

10 Q Okay.

11 A I can just understand what the viewshed model
12 appears to be showing.

13 Q Okay. One last question then.

14 This is our DHA Exhibit 5 in which we've
15 attempted to produce something that shows how
16 many poles are within the three Historic
17 Districts that the experts for Eversource
18 described because there's no maps that show
19 them. And I've marked the Historic Districts
20 next to the relevant poles for the poles that
21 are within a Historic District, whether it's the
22 UNH Historic District shown here or the
23 Newmarket-Bennett Road shown down there or the
24 Durham Point shown over here, and the upshot of

1 the whole thing is that 66 percent of the poles
2 for the F 107 line are within nationally
3 eligible --

4 MR. NEEDLEMAN: Objection, Madam Chair.
5 This is testimony.

6 MS. MACKIE: I'm trying to lay the ground
7 work to ask her a question about adverse effect
8 because we have no map to refer to.

9 PRESIDING OFFICER WEATHERSBY: Why don't
10 you ask the question that you're seeming to ask
11 and if she needs clarification --

12 BY MS. MACKIE:

13 Q My question is in Durham itself, 66 percent of
14 the proposed transmission line goes through
15 federally eligible Historic Districts, never
16 mind all the other undocumented --

17 MR. NEEDLEMAN: Same objection.

18 MS. MACKIE: Sorry.

19 Q My question is do you think that's an adverse
20 effect on the Town of Durham to have two thirds
21 of the project going through Historic Districts?

22 A Yes.

23 Q Thank you. No further questions.

24 PRESIDING OFFICER WEATHERSBY: Thank you.

1 Ms. Frink?

2

CROSS-EXAMINATION

3 **BY MS. FRINK:**

4 Q Good morning, Ms. O'Donnell. My name is Helen
5 Frink. I'm an Intervenor and a Consulting Party
6 in these proceedings representing the Darius
7 Frink Farm that you see here.

8 I believe this is one of the historic
9 resources you reviewed; is that correct?

10 A Correct.

11 Q And can you tell me whether this is also a
12 scenic resource?

13 A We would define it as a scenic resource as well
14 as an historic.

15 Q Thank you. I'm going to bring up an aerial view
16 now of the farm, and I'd like to ask you whether
17 its setting, landscape and view are also
18 significant in terms of historic and scenic
19 resources.

20 A Yes.

21 Q On page 16 of your Prefiled Direct Testimony,
22 you have a bright blue section called Assess
23 Integrity. Could you please explain for us more
24 broadly what integrity means? And I'm asking

1 about integrity as part of the definition of a
2 historic resource.

3 A Okay. So page 16 and 17 of our report created a
4 graphic to look at how the Applicant reviewed
5 historic sites, and the second item is Assess
6 Integrity. I believe that's what you're
7 referencing?

8 Q Yes. Yes. My question is what exactly is meant
9 by integrity there.

10 A Let me just suggest that your question is about
11 a chart that was our way of getting at how the
12 Applicant assessed integrity. But under the
13 Secretary of Interior's standards and guidelines
14 for historic preservation, integrity is defined
15 as 7 aspects.

16 Q That's exactly what I'd like to hear, if you
17 can. The 7 aspects that signify integrity.

18 A Yes. So I often test myself to see if I can
19 remember all 7. I usually get 6. But setting,
20 location, design, materials, workmanship,
21 feeling and association.

22 Q Wonderful. Thank you. Does this property
23 exhibit integrity?

24 A It does, of the 7 aspects of integrity.

1 Q Of all 7.

2 A As it exists today, it does.

3 Q Thank you. On page 54 of your Prefiled Direct
4 Testimony, you wrote about the appearance of the
5 underground trench after construction. What was
6 your concern there about the appearance of the
7 trench?

8 A On page 54, we wrote a paragraph about the Frink
9 Farm and direct effect.

10 Q Yes.

11 A The issue is that this is agricultural land.

12 Q Yes.

13 A And its ongoing agricultural use relates to how
14 the soil is managed in the work that's carried
15 out. The paragraph says that it's possible that
16 they'll be backfills or compaction during the
17 course of the work that could limit its
18 continued effective use as prime agricultural
19 land.

20 Q Does that have any impact on the issue of
21 integrity as you define things like materials
22 and setting?

23 A I think you could go into that discussion, but I
24 believe that the integrity here is the integrity

1 of land use and its persistence as agricultural
2 land.

3 Q Very good. You also considered the transition
4 tower to be located near the western boundary of
5 our farm; is that correct?

6 A I did.

7 Q And I believe that you referred there to a
8 three-pole transition structure, and I think
9 that it was after your work was done that Mr.
10 Raphael filed this visual simulation. You see a
11 monopole here; is that correct?

12 A I do see that in what you're showing.

13 Q And so that differs from what you had in mind as
14 the three-pole structure; is that correct?

15 A That's what I understood previously.

16 Q And were you aware that this monopole would be
17 located within the Newington Center Historic
18 District?

19 A I was.

20 Q And what was your assessment of the effect of
21 this industrial scale tower to be located within
22 the historic landscape that we see?

23 A That the effect is adverse.

24 Q So I believe you wrote, I'm looking at page 54

1 of your Prefiled Testimony. At the very bottom
2 you have a section called "Overall." Can you
3 see that?

4 A 55?

5 Q Yes. Where you come to the section headed
6 Overall.

7 A I see it.

8 Q Would you please read the last two sentences
9 beginning with the 100-foot wide clearing?

10 A So there is on page 55 under the heading
11 Overall.

12 Q Thank you.

13 A And the 100-foot-wide clearing and increased
14 size of the three-pole 65-foot structure visible
15 at the west edge of Frink Farm disrupting the
16 entry experience into the Historic District.
17 For these unresolved reasons, Heritage
18 Landscapes finds the Town of Newington will
19 experience unreasonably adverse effects.

20 It's a part are a larger paragraph that
21 speaks to a series of resources. The sentence I
22 read was the Frink Farm and the Conclusion.

23 Q Is it implied or stated in what you read that
24 the Frink Farm will also experience an

1 unreasonable adverse effect?

2 A Well, we've indicated an unreasonable adverse
3 effect for the Town of Newington, and the Frink
4 Farm is along the corridor. So by implication,
5 yes.

6 Q Thank you. I'm looking now at page 14 of your
7 report, and you wrote, Heritage Landscapes, your
8 company, I believe?

9 A Yes.

10 Q And you speak there about avoidance. Can you
11 find that section, Heritage Landscapes reviewed?
12 Would you be willing to read that part?

13 A It's item 4, Avoidance --

14 Q Yes.

15 A -- Minimization and Mitigation --

16 Q Yes.

17 A -- is the title. Heritage Landscapes reviewed
18 the Applicant's efforts to, in quotes, "to
19 avoid, minimize or mitigate potential adverse
20 effects on historic sites and archeological
21 resources and the alternative measures
22 considered but rejected by the Applicant," end
23 quote, pursuant to Site 301.06 (d). Our review
24 of the Application materials determined that

1 avoidance was not considered and that the
2 following methods for minimization are noted.

3 Q And excuse me for interrupting.

4 Is it your professional opinion then that
5 avoidance should have been considered?

6 A We believe that the federal guidance in these
7 cases says begin with avoiding impact. When you
8 can't avoid, seek to minimize; when you can't
9 minimize, mitigate. So you begin in our opinion
10 always with avoidance.

11 Q Could the impact caused by the transition tower
12 be avoided if the line went underground through
13 the Pickering property?

14 A Yes.

15 Q It could be. Thank you. Yesterday during
16 testimony on aesthetics there was some
17 discussion about partially screening this tower
18 by planting trees or other vegetation in the hay
19 field or along the roadside. Do you have an
20 opinion about whether that would be a positive
21 step or whether that would further diminish the
22 integrity?

23 A It's an open field historically so planting
24 would change the historic land use pattern.

1 Judicious positioning of a few trees could
2 potentially partially screen the monopole, but
3 it's a very big pole.

4 Q Thank you. I'm going to bring up now an image
5 of the Alfred Pickering Farm. Was this also one
6 of the properties that you reviewed as a
7 historic resource?

8 A Yes.

9 Q And can you confirm that it is eligible for but
10 not listed on the State and National Register?

11 A That's what's listed in the Applicant's
12 materials. Yes.

13 Q And you were aware, isn't it true, that these
14 poles behind this house will be 65 feet high?

15 A I was aware. Yes.

16 Q And so if at some future time the landowners
17 wished to list this on the State or National
18 Register of Historic Places, would the placement
19 of that overhead line diminish the integrity in
20 a way that might make it difficult or impossible
21 to list it for the State or National Register?

22 A I wouldn't wish to make a judgment about the
23 eligibility for listing based on the poles, but
24 I will suggest that it diminishes the integrity

1 of the site to have the poles present.

2 Q Thank you. Last question.

3 Did you have any role in the negotiations
4 that produced the MOA or MOU between the
5 Applicant and the other entities involved?

6 A No role.

7 Q Thank you. No further questions.

8 PRESIDING OFFICER WEATHERSBY: Thank you.
9 Let's take a 15-minute break, be back at quarter
10 of 11. Thank you.

11 (Recess taken 10:28 - 10:48 a.m.)

12 PRESIDING OFFICER WEATHERSBY: Attorney
13 Boepple?

14 MS. BOEPPLE: Yes. Madam Chair, I was just
15 going to make a request at this point before the
16 Applicant has an opportunity to cross this
17 witness. There were about 23 or 24 exhibits
18 that just came in this morning from the
19 Applicant, and at least one of them from my
20 quick review is one that I might have wanted to
21 use during my questioning of this witness. We
22 have others that may and clearly do affect the
23 witness this afternoon, and it may actually be
24 more efficient use of people's time if we could

1 take a recess now to review those documents. It
2 may be that my co-counsel, Attorney Geiger,
3 could eliminate a lot of her questions once
4 she's reviewed those. So we'd make a request at
5 this point to just take a recess to give us an
6 opportunity to review those new exhibits.

7 PRESIDING OFFICER WEATHERSBY: How much
8 time do you think you'd need?

9 MS. BOEPPLE: Half hour?

10 PRESIDING OFFICER WEATHERSBY: Attorney
11 Needleman?

12 MR. NEEDLEMAN: I object to the request.
13 There are really two pieces here so let me pull
14 them apart.

15 It sounds like piece number one is parties
16 are asking for time to look at exhibits related
17 to witnesses that will be coming this afternoon.
18 They'll have plenty of time to look at that.
19 They don't need to deal with that at the moment
20 and certainly not something that would require a
21 recess.

22 And then when Ms. Boepple says there's an
23 exhibit that may have related to her questioning
24 of this witness, it goes back to an issue we've

1 already talked about several times in this
2 proceeding. No party has an obligation here to
3 provide exhibits in advance. Some have been
4 doing it, some haven't. We've talked about
5 this. We are in this conundrum where if we
6 provide our exhibits in advance, then we get
7 these sorts of requests. If we don't provide
8 our exhibits in advance, then people chastise us
9 because they didn't get to look at them. It
10 seems like one can't win either way, but the
11 bottom line is the procedure here is that
12 parties questioning can provide their exhibits
13 whenever they choice to do so, and I don't think
14 it would be fair to now penalize us for
15 providing our exhibits earlier and potentially
16 having the exhibits used in this examination
17 after it's been completed.

18 MS. GEIGER: May I please add, Madam
19 Presiding Officer, that I was told at the
20 Prehearing Conference of this matter that the
21 preference was that parties were supposed to
22 mark and provide the exhibits that they intended
23 to use for the following day on the day before,
24 and with respect to the brief recess that's been

1 requested for the 23 or 24 documents we got this
2 morning after the hearing started, I noted last
3 night those documents were on the Applicant's
4 Exhibit List that I got last night, and when I
5 went to look for them I couldn't find them
6 because they didn't have them. So clearly those
7 documents had been identified and placed on the
8 exhibit list. They just hadn't been provided to
9 the parties.

10 I just wanted to note that for the record
11 because we're talking about a set of rules. I
12 clearly was under the understanding, perhaps it
13 was a misunderstanding on my part, that
14 documents are supposed to have been marked and
15 provided to the parties the day before.

16 MR. PATCH: Madam Chair, could I also be
17 heard? I think I've said this before. I think
18 it's been on the record. I support what Ms.
19 Geiger said. That's exactly what we were told
20 at the Prehearing Conference. I think even at
21 one point earlier in this proceeding when I
22 raised the issue I had exhibits through a number
23 like 223 and I think you had indicated you had
24 them through 248, and we were told that the

1 exhibits were supposed to be provided to
2 everybody at the same time. And so
3 unfortunately, I think getting exhibits as we
4 did today in the middle of the morning session
5 is emblematic of what has been happening
6 throughout this process and it's directly
7 contrary to what we were told at the Prehearing
8 Conference. So I support the request.

9 MR. NEEDLEMAN: I will just say again it's
10 not directly contrary. What's been happening is
11 consistent with the practice of this Committee
12 in other dockets. And I haven't heard a single
13 time when these parties have complained when
14 someone other than the Applicant has been doing
15 this. When CLF introduced the exhibit that they
16 used, the letter from the Attorney General from
17 2012, it's the first time that we saw it. That
18 was a significant exhibit. I didn't hear anyone
19 say anything about that.

20 MS. BOEPPLE: If I may just very briefly
21 respond to that, I think part of this is a scale
22 question. There's 24 exhibits this morning. I
23 think when they're done, one might be introduced
24 or two in the course of the cross-examination.

1 There's a difference there. This is a
2 relatively large volume, perhaps not large in
3 the grand scheme of things, but it's enough that
4 it requires a little bit of extra time to
5 review.

6 PRESIDING OFFICER WEATHERSBY: So the
7 request is for more, for a short recess. Is
8 there a reason that these exhibits cannot be
9 looked at over an hour lunch break?

10 MS. BOEPPLE: The only problem with that is
11 that to the extent that any of these exhibits,
12 and I don't know yet because I have not had a
13 chance to review them, is if they relate to this
14 particular witness who presumably will be
15 finished before lunch time.

16 PRESIDING OFFICER WEATHERSBY: So we're not
17 going to take a recess now. Attorney Needleman
18 is going to continue with his questioning. We
19 will not be finished with this witness before
20 the lunch break. If over the time of the lunch
21 break you find you would like to ask more
22 questions of the witness concerning the exhibits
23 that have just been filed, you may request and
24 we will review that request after lunch.

1 MS. BOEPPLE: Thank you, Chair.

2 MR. NEEDLEMAN: Madam Chair, if I could,
3 I'm sorry to belabor this, if I had introduced
4 these exhibits on the fly and not provided them
5 as has been done in all other cases, as has been
6 done in this case, that wouldn't have been an
7 issue. So now because I've served them in
8 advance, people now potentially have the
9 opportunity to come back and ask more questions.
10 It doesn't seem consistent with how the process
11 has gone either here or in other cases.

12 PRESIDING OFFICER WEATHERSBY: So I'm
13 reminded that any witness could be asked to be
14 recalled so I don't think this is very different
15 than that. Everyone has a right to request more
16 questions. Doesn't mean it's going to be
17 granted, but there's always a right to request.

18 MR. NEEDLEMAN: Okay. Thank you. May I
19 begin?

20 PRESIDING OFFICER WEATHERSBY: You may
21 begin.

22 MR. NEEDLEMAN: Thank you.

23 **CROSS-EXAMINATION**

24 **BY MR. NEEDLEMAN:**

1 Q Good morning, Ms. O'Donnell. I'm Barry
2 Needleman. I represent the Applicant in this
3 matter.

4 Little bit earlier when Mr. Patch was
5 asking you questions, he asked you about stone
6 walls in Durham, and you mentioned that you had
7 identified stone walls in that town with GIS
8 mapping. Do you recall that discussion with
9 him?

10 A I do.

11 Q Did you have an opportunity to review the Draft
12 MOU that the Applicant and Durham are working on
13 and how in particular it deals with stone walls?

14 A I did.

15 Q And given that you're familiar with that MOU and
16 how the two parties, the Applicant and Durham,
17 intend to try to deal with that issue, would
18 that address concerns that you would have about
19 stone walls?

20 A Not entirely.

21 Q Not entirely. So to the extent that you have
22 other concerns about stone walls in Durham, you
23 believe that Durham is not adequately protecting
24 those interests?

1 A I believe that they're not adequately protected
2 because they do not appear to be considered in
3 the MOU. On page 3 they list 7 walls and the
4 GIS shows 475 walls.

5 Q So you think that Durham in its negotiations
6 with the Applicant on the MOU has missed walls
7 that would otherwise be important to the town.

8 A I'm not sure I would state it that way so I
9 won't agree with your statement. I think that
10 there are a lot of stone walls in Durham, and it
11 shouldn't be reduced to under ten when there are
12 so many. They have established a process for
13 stone walls. But it is, there is an extensive
14 inventory of stone walls that are related to
15 this corridor.

16 Q Earlier this morning, Ms. Frink was asked asking
17 you some questions, and you'll recall that she
18 put the view sim up that was looking toward the
19 line across the Frink Farm field, and it showed
20 the monopole structure. Do you remember that?

21 A I do.

22 Q And she asked you, I think, if you were aware of
23 that structure had been switched from a
24 three-pole structure to a monopole. Do you

1 recall that?

2 A I do.

3 Q And she asked you if you thought that that view
4 sim showing the monopole structure was an
5 adverse effect. You said it was. Do you recall
6 that?

7 A Yes.

8 Q Dawn, could you please put up Applicant's
9 Exhibit 185?

10 And I'm going to highlight the bottom of
11 this page to start. This is a June 8, 2018,
12 email from Mark Doperalski to Nadine Miller. Do
13 you know who Ms. Miller is?

14 A Yes.

15 Q And in this Mr. Doperalski, well, it speaks for
16 itself, but to summarize he's sending to Ms.
17 Miller a note indicating that that three-pole
18 structure has been changed to a monopole
19 structure. Do you see that?

20 A I do.

21 Q And then if we could go up, Dawn, so we can see
22 Ms. Miller's response?

23 And you'll see that this is Ms. Miller's
24 response to that, and she notes that based on

1 the updated plan, DHR continues to recommend a
2 finding of no adverse effect to the Newington
3 Historic District. Do you see that?

4 A I do.

5 Q So it sounds like you think DHR got this wrong;
6 is that right?

7 A I hold a different opinion.

8 Q Let me go to Counsel for the Public Exhibit 5-a.
9 This is your report which you filed in this
10 matter. And I'd like to direct your attention
11 to page 8, please. I'm looking down toward the
12 bottom, second paragraph, and you note that
13 through consultation with DHR there were two
14 areas of potential effect that were determined.
15 Do you see that?

16 A Yes.

17 Q Just so we're clear here, this is referring to
18 areas of potential effect that relate to
19 cultural resource review; is that correct?

20 A Historic resources, yes.

21 Q Thank you. And in particular, I think there are
22 two kinds of historical resources we're talking
23 about. There are the below ground archeological
24 resources which have one APE; is that right?

1 A Right.

2 Q And then there are the aboveground historic
3 resources which have a different APE; is that
4 correct?

5 A It doesn't actually say that here, that one is
6 archeological and the other is aboveground.
7 Just so I'm being clear.

8 Q Okay, but certainly that's what happened in this
9 case, right? There was an archeological APE and
10 then an aboveground historic APE; is that right?

11 A I don't think it was limited to the 60 to a 100
12 feet along the Project. That was only the
13 archeological. So it's not my understanding the
14 way you're saying it.

15 Q Do you understand what the archeological APE
16 here was?

17 A Yes. There is archeology extending beyond the
18 100 feet, however.

19 Q Understood, and the APE did not extend beyond
20 the corridor for archeological resources; is
21 that correct?

22 A Yes, agreed, yes.

23 Q So what you say then in the next paragraph is
24 that Heritage Landscapes finds the one-mile

1 corridor APE may be insufficient for identifying
2 the full range of historic sites potentially
3 impacted by the Project. Do you see that?

4 A I do.

5 Q So it was your opinion that this aboveground
6 historic APE was not necessarily large enough;
7 is that right?

8 A Yes.

9 Q Okay. And in your Prefiled Testimony on page 4,
10 lines 18 through 19, if you could go there,
11 please, you also offer an additional opinion.

12 You say here that the Applicant missed
13 historic sites and then you say, quote, "We
14 identified more historic sites than the
15 Applicant that we believe should have been
16 assessed for potential effects." Is that right?

17 A Yes. That's what we wrote.

18 Q So I want to start with the APE here, and Dawn,
19 you could bring up -- I don't have the exhibit
20 number.

21 MS. GAGNON: 225.

22 Q So this is Exhibit 225. This is a November 10,
23 2016, letter from NHDHR. Have you seen this
24 letter before?

1 A I have.

2 Q And in the second paragraph of this letter,
3 first sentence, it notes that on March 6th,
4 2015, the Applicant initiated Project review; is
5 that correct?

6 A I don't see the date of March 6th. Oh, there it
7 is. Okay.

8 Q Do you see that?

9 A Yes.

10 Q So in layperson's parlance, that's really the
11 point when the historic resource analysis with
12 the agency began. Is that fair to say?

13 A I don't know. It's when they initiated a review
14 together.

15 Q So you're not familiar with that terminology?

16 A No, I'm just saying all this says here is that
17 the Applicant initiated a review with the
18 division on this date. It may not have been the
19 initial date of looking at all aboveground
20 historic sites and resources.

21 Q And is it your understanding that that's
22 typically the first step in this type of process
23 with NHDHR?

24 A What you're saying is the meeting between the

1 Applicant and DHR is the first step. The first
2 step may have actually been the Applicant
3 familiarizing themselves with the resources. So
4 you're asking me to make a judgment about a
5 first step. I don't think it's typically the
6 meeting where you begin. You come to the
7 meeting with some knowledge.

8 Q Were you aware that when Ms. Bunker and Ms.
9 Widell testified they indicated that the setting
10 of the APE began about this point in the
11 process?

12 A I'm sure that's in their Technical Reporting.

13 Q And during the Technical Session on May 23rd, I
14 asked you if you knew how the APE was set in
15 this case, and I think you told me you weren't
16 sure. Is that right?

17 A I don't have my testimony of May 23 before me.
18 It was a combined discussion between the
19 Applicant and DHR.

20 Q Dawn, could you pull up Applicant's Exhibit 19,
21 please? Cherilyn Widell's Prefiled Testimony.
22 And I'll direct your attention to page 4, lines
23 27 and 28.

24 This is where Ms. Widell testified that the

1 Applicants met with DHR on April 10th, 2015,
2 which is about five weeks after the initiation
3 of that Project review we saw a moment ago, and
4 that's the point where the one mile APE was set.
5 Is that your understanding?

6 A That's what that says. Right here.

7 Q Dawn, if you could go to Applicant's Exhibit 53,
8 please, and I'm going to look at PDF page 46 of
9 this exhibit.

10 A This one's one page.

11 Q I'm sorry. Correct.

12 So on this page, this is a letter to Edna
13 Feighner at DHR, and this is dated February
14 17th, 2016; is that correct?

15 A That's what I see.

16 Q Okay. And so ten months after Eversource and
17 DHR agreed on the APE in this matter, Eversource
18 submitted something called a Project Area Form
19 to DHR. Is that right?

20 A That's what this says.

21 Q What is a Project Area Form?

22 A It's a detailed framework to list a resource and
23 indicate its qualities and the assessment based
24 on this Project.

1 Q Okay. And Dawn, if we could now go to
2 Applicant's Exhibit 29?

3 I take it you've seen this document before?

4 A I've seen a number of Area Forms.

5 Q And this is the Project Area Form for this
6 Project; is that correct?

7 A Yes.

8 Q And I want to call your attention to the right
9 side to number 10, if I could. Dawn, if you
10 could blow that up.

11 And here it reiterates the one-mile APE; is
12 that correct.

13 A That's what it says.

14 Q And then on page 6 of this document, paragraph
15 2. If we could go there, Dawn.

16 It says that it provides the background
17 contextual information and analysis to assist in
18 the identification of historic sites within the
19 Area of Potential Effect. Do you see that?

20 A I do.

21 Q So am I correct that the purpose of this is you
22 define the Area of Potential Effect and then
23 within that area, you start to describe the
24 context of the area for the purpose of

1 identifying potential historic resources in the
2 area. Is that essentially what's being done
3 here?

4 A The statement that you've called out indicates
5 that. It also indicates about eligibility for
6 listing on the National Register under Section
7 106 of the National Preservation Act. It
8 doesn't cite any of the New Hampshire statutes
9 or the SEC rules here. It's relying on the 106
10 process.

11 Q And then, Dawn, if we could go a little bit
12 further down. That second paragraph down.
13 Right there.

14 So the first sentence says that the APE
15 defined the study area of this Project Area
16 Form. I think that's the question I was asking
17 you a moment ago. You agree with that, right?

18 A I agree that it was defined in that process,
19 yes.

20 Q Okay. Now, Dawn, if we could go to the next
21 Exhibit, I want to bring up a May 31st, 2016,
22 letter from DHR.

23 And the first sentence of this letter is
24 DHR expressing a concern with respect to

1 Applicant resource identification. Do you see
2 that?

3 A Yes.

4 Q It's DHR indicating that the above-referenced
5 Application has not fully identified
6 architectural aboveground resources in the
7 Project area, do you see that?

8 A Yes, I do.

9 Q So would it be fair to say that this is a good
10 example of DHR overseeing the Applicant's work
11 and when they have a concern bringing it to the
12 Applicant's attention?

13 A DHR and the Applicant are in communication
14 during the process. Yes. That shows this as an
15 example.

16 Q Thank you. And this letter, if you go further
17 down, it says pending final approval of the
18 Durham Point Historic Area Form at the NHDHR
19 Determination of Eligibility Committee meeting
20 on June 8th, the Applicant has concluded the
21 identification process. Do you see that?

22 A I do.

23 Q So let me just jump ahead for a moment. I want
24 to bring you to a November 10, 2016, DHR letter,

1 if we could, Dawn.

2 And I want to go to the second paragraph.
3 And the second sentence of this paragraph says
4 the identification of aboveground historic sites
5 was completed on June 8th, 2016. Do you see
6 that?

7 A Yes, I do.

8 Q So you agree with me that this is later
9 confirmation that in fact on June 8th as it was
10 referred to in the prior letter this internal
11 DHR committee met and confirmed that the
12 identification process was complete; is that
13 right?

14 A All I agree with is that you've shown me all
15 these things in a sequence and asked that I've
16 seen them. That's all I agree with.

17 Q Well, you agree that these are DHR statements --

18 A This is a statement between DHR and the
19 Applicant. That's what you've shown me.

20 Q All right. Thank you. Now, let me go back to
21 that May 31st letter for just a second.

22 So you'd agree with me that it's clear at
23 least from the perspective of DHR that at this
24 point in time the Applicant has completed the

1 identification process.

2 A In accord with the dialogue between DHR and the
3 Applicant, they believe it's concluded and all
4 the resources have been identified.

5 Q Now, my understanding is that the next step in
6 the process would be to determine effects and
7 how to address any adverse effects. Would you
8 agree with that?

9 A I'm not sure I see your point.

10 Q Well, let me give you a document. Maybe that
11 will help. So let's go to the November 10th,
12 2016, Progress Report, and I'll take you to page
13 2, second paragraph, first sentence.

14 This is DHR, again, Ms. Miller, saying the
15 next step in the review of aboveground historic
16 sites is to conduct an assessment of effects for
17 the above-referenced historic sites.

18 So, again, I would assume you'd agree that
19 was DHR's doing what comes next, right?

20 A Again, you're asking me to confirm what you're
21 showing me, and I confirm that.

22 Q Now, let me take you to -- well, one other
23 question on that one.

24 After that sentence, it goes on to talk

1 about DHR consulting with a range of other
2 parties; do you see that?

3 A Army Corps and Section 106 lead federal agency,
4 the Applicant and any Consulting Parties.

5 Q Um-hum. Okay.

6 A Unlisted.

7 Q So Dawn, if we could go to the next DHR letter
8 which was sent on November 17th, 2016, and so
9 one week later DHR in this letter dropped one
10 Newington property from the last letter and
11 added another.

12 A I'm familiar with that letter.

13 Q I'm sorry. You said you'd seen this letter?

14 A I have.

15 Q Okay. Thank you. Now I want to jump ahead to
16 August 1st, 2017, if I could.

17 We have another DHR letter and I want to
18 take you to the top of page 2 if I could, and
19 DHR here is saying that a number of historical
20 properties in districts were identified. Do you
21 see that?

22 A I do, and I'm familiar with that letter. I've
23 read it.

24 Q They say that the undertaking has the potential

1 to affect 11 properties that are listed or
2 determined eligible. Do you see that?

3 A Yes.

4 Q And then they actually provide this list down
5 here of those 11 properties, and with four of
6 them they showed an adverse effect. Is that
7 right?

8 A They do.

9 Q Now, a moment ago or a few minutes ago Ms.
10 Mackie was asking you questions, and she asked
11 you about the UNH Historic District. Do you
12 recall that?

13 A Yes.

14 Q And you said it was your view that there was an
15 adverse effect in that district, right?

16 A Yes.

17 Q And this letter indicates, the second one from
18 the bottom, that it's DHR's opinion that in that
19 district there is no adverse effect; is that
20 right?

21 A Correct.

22 Q So again, this would be an instance where you
23 think DHR got this wrong; is that right?

24 A We have a difference of opinion. I would not

1 agree with your statement.

2 Q On as you go, when you look at the full
3 paragraph in the middle of the page that begins
4 US Army Corps of Engineers, that notes that
5 there was one adverse effect at the Cable House.
6 Do you see that?

7 A This is an adverse effect for the Section 106
8 process. Not an adverse effect for the SEC
9 process.

10 Q Understood, but my question was do you see where
11 it notes that the Corps determined there was one
12 adverse effect at the Cable House?

13 A That's exactly what it says here.

14 Q And they go on to say that mitigation measures
15 will be codified in a Memorandum of Agreement in
16 a condition with the Corps permit. Do you see
17 that?

18 A I do.

19 Q Then on page 2 of this letter, the second to
20 last paragraph, if you could go there, Dawn.

21 It says that DHR/SHPO, SHPO is State
22 Historic Preservation Officer; is that correct?

23 A Yes.

24 Q Is also working with the Applicant, the

1 communities and the Consulting Parties to
2 identify minimization and mitigation measures
3 with respect to these adversely affected areas
4 that are at the top of the page. Is that right?

5 A Yes. These are adverse effects to, as you
6 stated a minute ago, listed or determined
7 eligible properties.

8 Q Now, at the top of page 3 of this letter, DHR
9 concludes by saying if the Site Evaluation
10 Committee approves the Project, DHR would like
11 to see the following conditions included. Do
12 you see that?

13 A Yes.

14 Q Were you aware that the Applicant would agree
15 with all of those conditions?

16 A It doesn't say here that the Applicant agrees.
17 It says that there are conditions.

18 Q Understood, but what I'm asking you separately
19 from that is are you aware that the Applicant
20 would agree with all of those conditions?

21 A Not necessarily. I don't know that I saw
22 anything that specifically said the Applicant
23 agrees with those conditions.

24 Q Next document I want to take you to is something

1 that Ms. Boepple showed you before which is the
2 MOU between Eversource and the New Hampshire
3 State Historic Preservation Officer covering
4 this Project, and on page 2 of this document, in
5 the "now therefore" section, it says that the
6 New Hampshire SHPO and Eversource agree the MOU
7 resolves the various effects that we saw earlier
8 in the August 1st letter. Do you see that?

9 A Right. I read that yesterday.

10 Q And then it actually goes on within the body of
11 the MOU to list the four adversely affected
12 properties; is that right?

13 A In accord with the DHR list of four, yes.

14 Q And Appendix A, I think as you noted previously,
15 is the Army Corps MOA which is also attached to
16 this document, right?

17 A Correct.

18 Q And that's the document that we also saw in the
19 August 1st letter resolving the Corps's concern
20 at the Cable House; is that right?

21 A In accord with Section 106.

22 Q And so this MOU represents the conclusion of the
23 DHR and the Corps review process in this matter;
24 is that right?

1 A The MOU's still in draft in the MOA as fast as I
2 understand so I'm not sure it represents a
3 conclusion until it's finalized.

4 Q Well, when it's finalized would you say it
5 represents the conclusion?

6 A Yes.

7 Q Okay. And you'd agree with me that this record
8 shows that from the inception of this Project up
9 through the point that the MOU is signed that
10 the Applicant worked in close conjunction with
11 DHR and the Corps on these issues.

12 A Principally addressing Section 106 and applying
13 it throughout.

14 Q A little bit earlier today, Ms. Boepple put a
15 portion of your report up that, I think it was
16 page 4, and it listed the materials that you
17 reviewed to do your work. Do you recall that?

18 A I do.

19 Q And feel free to turn to page 4, but when I
20 looked at that I noticed that among the
21 materials you reviewed you didn't include
22 discovery information and discovery responses
23 that were shared among the parties in this case;
24 is that right?

1 A We probably could have, but basically we were
2 looking at the baseline materials and listing
3 those.

4 Q So I want to go to page 18 of your report. And
5 bear with me. I'm just trying to find the
6 sentence I'm looking for. Okay.

7 In the first sentence, you say and you're
8 referring, I think, to the LandWorks analysis
9 here, that they omitted historic sites that have
10 been determined eligible for either state or
11 National Register listing. Is that right?
12 That's what you said?

13 A Yes, I believe so. I have it here.

14 Q Okay. So I want to pull up Counsel for the
15 Public -- well, before I do, you filed your
16 report in July of 2017, am I correct?

17 A Yes.

18 Q If I could pull up Counsel for the Public Data
19 Request in Response CFP 1-7 which the Committee
20 saw yesterday.

21 And these were provided or Counsel for the
22 Public served these questions and they were
23 answered in the end of 2016, and my
24 understanding is based on what you said earlier

1 and your list of reviewed document that these
2 were not something that you looked at before you
3 wrote your report; is that right?

4 A They weren't baseline documents. We did see
5 these Data Request responses, yes.

6 Q Do you know when you saw them?

7 A Before the end of July.

8 Q So I'm curious then since it says here that for
9 those sites to be eligible for listing,
10 Preservation Company provided LandWorks with the
11 list of resources that included setting as a
12 defining feature.

13 Given that that statement was made and you
14 think you may have reviewed these, why would you
15 have said in your report that they were omitted?

16 A They are not in the LandWorks report. There is
17 very little concordance between the LandWorks
18 and Preservation Company work. The one-mile APE
19 for historic preservation, the three-mile visual
20 and scenic APE, and the definition in New
21 Hampshire law that indicates that scenic
22 resources can also be historic resources with
23 scenic qualities, while they may have been given
24 a list, the reporting out from LandWorks has not

1 included a series of historic resources in their
2 work.

3 So the issue of collaboration is more than
4 passing a list and indicating that those
5 resources are either already inscribed on State
6 and National Registers or they've been
7 determined eligible by the Preservation Company.
8 There didn't seem to be a collaborative process
9 and outputs that would indicate in the scenic
10 realm historic resources that were important
11 scenic also that would have been an outcome. So
12 there's no obvious outcome to the exchange of
13 lists.

14 Q So it sounds to me like you're saying you think
15 there's stuff missing here or stuff that's part
16 of the process that you didn't understand
17 between LandWorks and Preservation Company,
18 right?

19 A I think the output indicates a lack of
20 integration of the listed elements in the
21 LandWorks efforts.

22 Q So are you aware that Mr. Raphael appeared at a
23 Technical Session in this matter?

24 A Yes. I believe I read his materials after his

1 Technical Session.

2 Q Well, would have been no materials, right?

3 Because Technical Sessions aren't transcribed.

4 A Sorry.

5 Q And so --

6 A We read his report.

7 Q You read his report. So you understand the
8 purpose of a Technical Session is for people to
9 understand the way a witness did their work and
10 to request additional information if they think
11 that's necessary; is that your understanding?

12 A Yes.

13 Q And you were aware or maybe you're not that he
14 was questioned extensively at that Technical
15 Session? Do you know that?

16 A I had some report out from Counsel for the
17 Public.

18 Q And you didn't attend that Tech Session, did
19 you?

20 A I was not asked to attend.

21 Q You could have attended, correct?

22 A I was not asked to attend.

23 Q And you're aware that in New Hampshire at
24 Technical Sessions experts can actually question

1 other experts, did you know that?

2 A Yes.

3 Q So you actually could have had the opportunity
4 to question Mr. Raphael at the Technical
5 Session, correct?

6 A The scenic consultants for the Counsel for the
7 Public were in attendance.

8 Q But what I'm really getting at is subject to you
9 having some concern that you've raised here
10 about the way in which Mr. Raphael did his work,
11 you had the opportunity as part of this process
12 to get at your concerns and understand them
13 better, and it sounds like you didn't take
14 advantage of that opportunity. Is that fair to
15 say?

16 A I think that the opportunity relates to my scope
17 of work and the Counsel for the Public's
18 requests for our presence, and you are asking
19 the question in a way that would indicate that I
20 could have influenced LandWorks' efforts. What
21 you're actually saying is I could have
22 understood the gap between LandWorks and the
23 historic preservation work of Preservation
24 Company and Widell. So I think your question is

1 intended in some way to discredit our work
2 because we weren't present to speak to
3 LandWorks, but that doesn't mean that being
4 present would relate or equate with any
5 influence on their final outcomes. The work
6 still remains somewhat uncoordinated in terms of
7 the products provided by the Applicant.

8 Q I think you're reading a lot into my question.
9 All I was asking you was did you have the
10 opportunity to better understand things that you
11 may not have understood, and you said a moment
12 ago that with respect to a gap, it's a perceived
13 gap that you have that you could have had an
14 opportunity to better understand. That was my
15 question.

16 A Fine.

17 Q Okay. Dawn, could we bring up the next exhibit,
18 please? I want to start at the bottom of page
19 2. What's the number, Dawn?

20 MS. GAGNON: 265.

21 Q 265. Just scroll down a little bit more. All
22 right. So right there.

23 So this is a July 6th, 2017, email from
24 Mark Doperalski at Eversource to Tanya, and I'm

1 going to apologize, Krajcik I think is how it's
2 pronounced, at DHR; do you see that?

3 A Yes.

4 Q And in this email Mr. Doperalski is asking Ms.
5 Krajcik for the DHR list of properties
6 determined eligible in this list of towns. Do
7 you see that?

8 A Yes.

9 Q And Ms. Krajcik then responds, and if we could
10 scroll up so we could see that?

11 So there's Ms. Krajcik's response and she
12 says here you go to Mr. Doperalski and attaches
13 a list to this email.

14 And then Dawn, if you could just scroll
15 down to the list that was attached?

16 And this is that list that came from DHR to
17 Mr. Doperalski based on his request, and in this
18 list was an additional effort by Eversource to
19 address those determined eligible sites in the
20 visual APE.

21 And my question to you, I have a couple
22 questions actually. One is have you ever worked
23 for a state historic agency before?

24 A As their employee? No.

1 Q Okay. Then in the context of the work you've
2 done as a historic resource consultant, have you
3 ever had an occasion to request this type of
4 information from state agencies before?

5 A Yes.

6 Q For example, when?

7 A When we were working on the Taconic State
8 Parkway. We were looking for not only listed
9 but eligible properties along the corridor.
10 There are a number of projects where this would
11 apply. I chose the Taconic because it's a
12 105-mile corridor. It's through four townships
13 in New York on the east side of the Hudson.

14 Q Have you done it in other circumstances?

15 A Yes. We often understand context of what's in
16 the area of place where we're working.

17 Q So in your personal experience when you're
18 working on your own projects and trying to do an
19 initial assessment rather than to criticize
20 someone else's or critique someone else's
21 assessment, do you frequently interact with
22 whoever state historic agency may be to get
23 information?

24 A Yes, or go to a GIS site or other sources that

1 the information may be available at.

2 Q I want to look at page 8 of your report for a
3 minute.

4 A This is beyond the four towns though.

5 Q Yes. Dawn, can we go to page 8, please?

6 Now, we saw this earlier. I'll give Dawn a
7 second to get there. And let's go to the
8 bottom, please, Area of Potential Effect.

9 And again, this is the place where you
10 offered the opinion that you thought that the
11 APE that was set here was too small. Do you
12 recall that?

13 A Yes.

14 Q And you sought earlier as we walked through all
15 the documents in this case that DHR from
16 inception through the entire analysis of the
17 case agreed with the one-mile APE. Is that
18 right?

19 A According to all the documents you've shown,
20 yes.

21 Q So it would be your contention then that DHR got
22 this wrong with respect to setting the --

23 A You continue to phrase it as DHR got it wrong,
24 and I always answer we have a difference of

1 opinion.

2 Q Okay. Let me take you to your report at page 9,
3 second paragraph. I'm sorry, Dawn. It's her
4 report at page 9. I'm making Dawn work hard.
5 Second paragraph, please.

6 So here you say that the APE should go out
7 to three miles, and you say this is due to the
8 Project's scale both in terms of individual
9 structure heights extending above tree line and
10 the geographic extent of modifications to the
11 existing landscape. Do you see that?

12 A Yes.

13 Q Now, Dawn, if you could take us to Counsel for
14 the Public Exhibit 4-a at page 4.

15 Counsel for the Public's visual expert was
16 Mr. Lawrence. Did you have the opportunity to
17 review the report that he prepared?

18 A We did review Mr. Lawrence's report.

19 Q And this comes from page 4 of his report, and
20 Mr. Lawrence here is indicating that Project
21 visibility is limited, and he's actually then
22 agreeing with the italicized quote that comes
23 from the LandWorks report also generally
24 agreeing that Project visibility is limited; do

1 you see that?

2 A If trees are counted, yes, I see that.

3 Q So it seems to me that you also disagree with
4 both Mr. Lawrence and Mr. Raphael regarding this
5 issue; is that fair to say?

6 A It's our understanding that we should be using a
7 bare-earth model instead of counting trees
8 because trees are ephemeral and wind storm can
9 take them out, and if we think about the trees
10 as our visual protection, it limits our ability
11 to understand potential effect.

12 Q Are you aware that the SEC did a comprehensive
13 amendment of its rules around 2014, 2015?

14 A I think it was just, if I recall the document
15 it's dated December 2015?

16 Q I would suspect you're correct.

17 A The rules.

18 Q So it sounds like you are aware of it. And are
19 you aware that the SEC has decided three cases
20 under those rules, the Merrimack Valley
21 Reliability Project, the Antrim Wind Project and
22 of course Northern Pass which you were involved
23 in. Did you know that?

24 A Yes. I'm aware of that.

1 Q And in Northern Pass you were Counsel for the
2 Public's historic expert; is that right?

3 A Correct.

4 Q And in that case you also argued for a broader
5 APE than what was agreed upon between the
6 Applicant and DHR. Is that right?

7 A We did.

8 Q And did you have any opportunity during the
9 course of the work that you did here or in any
10 other case to review the Merrimack Valley
11 Reliability Project materials?

12 A I did not.

13 Q How about the Antrim Wind project?

14 A I did not.

15 Q So are you aware that the historic APEs in those
16 cases was set in a manner similar to these?

17 A If I didn't review them, I wouldn't be aware of
18 how the APE was --

19 Q I thought somebody might have told you, you
20 might have talked about it, but I understand.
21 Thank you.

22 So it sounds to me like the clear
23 implication of the position you're taking here
24 is that not only, and I'll use my phrasing and

1 you can disagree with it, not only did DHR get
2 the APE wrong here, but it sounds like you would
3 argue they got it wrong in those other cases,
4 too.

5 A I would prefer not to answer your question as
6 stated. What I would prefer to state is that
7 the clarity in our review is that the DHR with
8 its limited resources and staff has become
9 accustomed to over the years following and
10 applying Section 106 process. Our reading of
11 New Hampshire law and of the SEC's rules
12 indicates that the decision should be based
13 locally on the benefits and values of the State
14 of New Hampshire as opposed to the Section 106
15 proceedings. So our opinion is that clearly
16 when one looks at New Hampshire law and the SEC
17 rules you find a broader array of resources are
18 included as valued by the people of New
19 Hampshire and its communities.

20 Q Well, Ms. O'Donnell, are you aware of any case
21 in New Hampshire where DHR or an Applicant
22 interpreted the historic APE the way you
23 interpret it here?

24 A Well, in each case in the two projects we worked

1 on, the scenic APE and the historic APE are not
2 necessarily completely overlapped. So I guess
3 the question when the New Hampshire law says
4 scenic resources may also be historic, it seems
5 to us that the APE should be set the same.

6 Q Let me try my question again because maybe you
7 didn't understand it or I certainly didn't --

8 A Go right ahead.

9 Q Okay. So you have set the APE here based on
10 your understanding of the New Hampshire law and
11 I'm not contesting --

12 A We haven't set any APEs. We simply said we
13 think there are some things missing from the
14 assessment.

15 Q Understood. And so my question to you is based
16 on your understanding of New Hampshire law,
17 however you choose to define it, are you aware
18 of any cases where New Hampshire DHR or an
19 Applicant has used the approach you used to set
20 an APE?

21 A DHR, as I've just stated, defaults to the
22 Section 106 process and uses the APE that they
23 set with the Applicant. What I was trying to
24 state is that scenic and historic under the New

1 Hampshire guidance appears to me to need the
2 same envelope and that hasn't been the case in
3 the Seacoast work.

4 Q Let me try to -- I appreciate what you're
5 saying. Let me try to get at it a slightly
6 different way here. There's clearly a
7 disagreement between you and DHR about how to
8 set the APE here. Let me ask the question this
9 way.

10 Who do you think is better suited to
11 interpret the New Hampshire regulations and
12 define the APE here, you or DHR?

13 A I think that's not a very nice question.

14 Q Yes, I can understand why you would say that,
15 but I think it is a fair question.

16 A I think the point is that DHR defaults to
17 Section 106 and chooses its work scope, they're
18 perfectly professional, they try to do a good
19 job. We were asked on behalf of the Counsel for
20 the Public to look at New Hampshire law and the
21 SEC rules. We think that gives a slightly
22 different framework to the assessment.

23 Q Let me switch away from the APE and ask you
24 about resource identification.

1 In your Prefiled Testimony at page 4, lines
2 18 and 19.

3 A The Original Testimony?

4 Q Yes. Page 4, lines 18 and 19, and we saw this
5 before as well. You said that you identified
6 more sites here than the Applicant. I take it
7 that what you mean is I think back to when you
8 were speaking with Ms. Boepple a little while
9 ago and you were describing your broader
10 interpretation of the definition of historic
11 sites, and so is that one reason why you
12 identified more sites?

13 A By types? Yes.

14 Q And then if we go to your Supplemental
15 Testimony, and I want to look at that testimony
16 on page 2, lines 23 to 27, and it starts off by
17 saying DHR appears not to have considered many
18 potentially historic resources in these
19 communities. Do you see that?

20 A Yes. Potentially important historic resources.

21 Q And then you on page, well, let's go to your
22 report on page 21, if I could.

23 This is where I think you elaborate a
24 little bit on the discussion you were having

1 with Ms. Boepple before. And you lay out for us
2 your interpretation of the rules and what you
3 think should be included as historic resources
4 and --

5 A This is specifically under Graveyards.

6 Q Let's go to page, Dawn, 21, I think. And what's
7 the top heading?

8 A Right.

9 Q So this is, if you could get that other list,
10 that's what I had in mind.

11 MS. GAGNON: Okay.

12 Q So this is where you describe your more
13 expansive understanding of what you think
14 historic resources are; is that right?

15 A Correct.

16 Q Now on page 23, I don't want to go through all
17 these. We don't have time for that, but I want
18 to start maybe on page 23 if we could. And the
19 bottom half of the page, Dawn.

20 So one of these categories that you think
21 is encompassed by this definition is Current Use
22 Properties, correct?

23 A Yes.

24 Q And --

1 A Not mapped. There's no mapping of current use
2 available.

3 Q And so really to sort of cut to the chase, I
4 guess, the heart of the argument here is that
5 these are the types of properties that you think
6 need to be evaluated in these kinds of
7 assessments, and they weren't evaluated and so
8 that's part of the reason why you're saying that
9 the review is too narrow; is that correct?

10 A We specifically stated that the Preservation
11 Company and Widell focus on historic
12 architecture and really only some of the
13 criteria for listing. They looked at typology,
14 specifically architectural integrity. So they
15 didn't consider broader resources, land use.
16 While they have some districts, they tend to
17 focus on them property by property and focus,
18 again, on the architecture.

19 So what we're saying is that heritage of
20 New Hampshire as defined in New Hampshire law
21 encompasses a broader envelope of that heritage.

22 Q And one of the things in your view it
23 encompasses is these current use properties,
24 right?

1 A One of them is current use. Another is
2 officially conserved lands, either privately or
3 publicly. Another is public waters.

4 Q Dawn, let me go back if we could to the May 31,
5 2016, letter. And I apologize. What's the
6 exhibit number?

7 MS. GAGNON: 224.

8 Q 224. Let's pull up the Text in the middle.

9 So we saw earlier that what DHR said here
10 was that in its view, resource identification
11 was complete, and it sounds like what you're
12 saying is your view is it really wasn't complete
13 because these broader definitions weren't
14 applied; is that right?

15 A That is exactly what we indicate in our report.

16 Q Well, here's the thing I don't understand. If
17 you read the sentence further, it says the
18 Applicant has concluded the identification
19 process according to New Hampshire RSA 162-H:7,
20 IV. Do you see that?

21 A I do.

22 Q Do you know what New Hampshire RSA 162-H is?

23 A Why don't you tell me.

24 Q Well, it's the statute that governs this whole

1 siting process. Were you aware of that?

2 A I think I've looked at it, but I don't know it
3 by number.

4 Q So this is not just DHR saying that they think
5 the identification process is complete. It's
6 DHR saying they think it's complete in
7 accordance with this siting statute. Is that
8 fair to say?

9 A That's what they're saying here.

10 Q And -- let me pull this up for a minute. I want
11 to go to 162-H:7,IV and look at it for a minute.

12 It says each Application shall contain
13 sufficient information to satisfy the
14 Application requirements of each state agency
15 having jurisdiction under state and federal law.

16 So when DHR cites this statute in respect
17 to resource identification, isn't that an
18 unequivocal statement from DHR that they believe
19 that resources have been properly identified
20 under this statute? I mean, can you read that
21 any other way?

22 A I think you can read it another way. This is
23 specifically about siting of facilities, and I
24 guess what you're saying is because DHR has

1 indicated it feels that the identification is
2 complete that, therefore, it's fully compliant
3 with this. I believe that DHR works in the best
4 interest of the state. The brief we were asked
5 to undertake for the Counsel for the Public was
6 specifically to include cultural landscapes and
7 a broader capture of resources beyond
8 architecture. That's what we did.

9 Q So you would agree with me that when you look at
10 things like the definition of historic sites
11 under the SEC regs, and you look at all the
12 other resource definitions that you use, if DHR
13 is saying that an identification process is
14 complete for purposes of 162-H, they must have
15 had all that in mind.

16 A I don't agree.

17 Q So you think DHR missed something here as well.

18 A I think DHR is accustomed to working in the
19 Section 106 process. They are looking at the
20 federal bar of listed and eligible properties at
21 state level. I believe we have come to
22 understand working on Northern Pass and on this
23 process that DHR has limited resources, that the
24 people of New Hampshire have a reticence to list

1 their properties but that they value more than
2 those things than are listed.

3 Q You said a moment ago that you believe DHR is
4 accustomed to working in the 106 process, and I
5 wouldn't contest that. But are you implying
6 that they're not accustomed to also working in
7 the state siting process?

8 A No, not at all. I think that they use the 106
9 process as the default. The first definition in
10 New Hampshire law is also listed properties, but
11 it goes on to elaborate on a broader set of
12 resources of heritage in communities that may be
13 important to the people of New Hampshire.

14 Q Let me take you back --

15 A These are hard to get ahold of because they're
16 not listed, but the people of New Hampshire also
17 have a reticence to list, although they put them
18 in their lives in various ways. New Hampshire
19 has decided to set aside important forests and
20 important open lands. They've decided to give
21 people with large agricultural parcels current
22 use taxation. This is an expression of values,
23 and those values are expressed by the peoples of
24 New Hampshire and their communities. It's not

1 simply a listing on the National Register that
2 defines the heritage of a place.

3 Q I want to take you back to the Antrim and MVRP
4 dockets for a moment. DHR in those dockets to
5 the best of my knowledge didn't include things
6 like current use properties. Were you aware of
7 that?

8 A No.

9 Q I think, in fact, other than the work you did in
10 Northern Pass, I'm not aware of any cases where
11 current use properties were considered. Do you
12 know of any?

13 A Not in a legal process like this one. No.

14 Q So it would certainly be fair to say then that
15 your view of resource identification as it
16 relates to this issue is unique, right?

17 A No. I wouldn't think so. I mean, if you
18 construe this broadly, if you go beyond the
19 State of New Hampshire, the processes of
20 defining sites is variable because we set aside
21 things at the national, state and local level.
22 We indicate that they're important to us and put
23 them in specific categories in order to protect
24 them, and those are expressions of values.

1 Q So we've looked at the whole record here now in
2 the course of dealings between Eversource, DHR,
3 and the Corps. Ms. O'Donnell, don't you think
4 that if an Applicant works in good faith with
5 regulatory agencies, they address all the
6 concerns of the regulatory agencies and they
7 reach a mutually agreeable resolution of those
8 concerns, don't you think the Applicant would be
9 entitled to rely on that?

10 A I'm not going to offer an opinion to your
11 question. Thank you.

12 Q Well, I'd appreciate it if you would. Why not?

13 A I think I've explained where our work was
14 grounded and what it addresses, and I think the
15 way you've stated the question it's simply about
16 me complying with the way you stated it and I
17 would withdraw from doing so.

18 Q All right. Thank you, Ms. O'Donnell. I
19 appreciate your time.

20 PRESIDING OFFICER WEATHERSBY: We are going
21 to break for lunch. I'm going to take a little
22 bit longer break so that folks can have time to
23 look at all the exhibits so be back at one
24 o'clock.

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(Lunch recess taken at 11:52
a.m. and concludes the **Day 15
Morning Session**. The hearing
continues under separate cover
in the transcript noted as **Day
15 Morning Session ONLY**.)

C E R T I F I C A T E

I, Cynthia Foster, Registered Professional Reporter and Licensed Court Reporter, duly authorized to practice Shorthand Court Reporting in the State of New Hampshire, hereby certify that the foregoing pages are a true and accurate transcription of my stenographic notes of the hearing for use in the matter indicated on the title sheet, as to which a transcript was duly ordered;

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this transcript was produced, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

Dated at West Lebanon, New Hampshire, this 30th day of October, 2018.

Cynthia Foster, LCR