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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

November 28, 2018 - 9:05 A.M. DAY 1
49 Donovan Street Morning Session ONLY
Concord, New Hampshire

{Electronically filed with SEC 12/13/18}

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

PRESENT FOR SUBCOMMITTEE/SITE EVALUATION COMMITTEE:

Patricia Weathersby (Presiding Officer)	Public Member
David Shulock, Esq.	Public Utilities Commission
Elizabeth Muzzey, Dir.	Div. of Historic Resources
Charles Schmidt, Admin.	Dept. of Transportation
Christopher Way, Dep. Dir.	Div. of Economic Dev.
Michael Fitzgerald, Dir.	Dept. of Env. Services
Susan Duprey	Public Member

ALSO PRESENT FOR THE SEC:

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

Pamela G. Monroe, SEC Administrator

(No Appearances Taken)

COURT REPORTER: Susan J. Robidas, LCR No. 44

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1 P R O C E E D I N G S

2 (Deliberations commenced at 9:05 a.m.)

3 PRESIDING OFFICER WEATHERSBY: Good
4 morning everyone. Today we're going to start
5 deliberations on the Seacoast Reliability
6 Project. Before we begin, we're going to take
7 hopefully a short break and have a meeting with
8 our counsel. So we'll be back in a short time.

9 (Recess was taken at 9:06 a.m.

10 and the hearing resumed at 9:58 a.m.)

11 PRESIDING OFFICER WEATHERSBY: Okay.
12 Good morning again. We are going to get
13 started. The first item that we'll take up is
14 the review of the state permits concerning the
15 Seacoast Reliability Project, which I will read
16 to you.

17 We'll start with New Hampshire DES
18 permits. We received a Wetlands Permit from
19 New Hampshire DES on February 28, 2018. New
20 Hampshire DES issued a final decision
21 containing a number of conditions. DES
22 identified project-specific conditions
23 related to monitoring, excluding Little Bay;
24 impacts on wildlife, fisheries, botanical

1 resources, fish habitat; coordination with
2 its waste management division. And there
3 were many conditions concerning Little Bay
4 crossing. It also required the Applicant to
5 pay \$349,834.26 to the Aquatic Resource
6 Mitigation Fund and execute a conservation
7 easement on 10 acres of land in Newington.
8 We also have further correspondence from DES
9 regarding this permit dated August 31, 2018.
10 It contains text corrections and some
11 modifications to permit conditions that it
12 agreed to. DES also amended its suggestion
13 regarding a jet plow trial run and proposed
14 that the Applicant undertake the trial run 21
15 days before the cable installation.

16 We then received correspondence
17 from DES on October 29, 2018, entitled
18 "Revised Final Decision," containing the
19 permit terms and conditions as amended by the
20 letter received from DES on August 31, 2018.
21 The Revised Final Decision and the Annotated
22 Revised Final Decision do not provide
23 information, but incorporate information that
24 was previously provided by DES into one

1 single document. Later on in these
2 proceedings we will decide how to handle
3 these last documents from New Hampshire DES.

4 There is also a Shoreland
5 Protection Permit issued from New Hampshire
6 DES. This was needed because the Applicant
7 intends to perform construction, trenching
8 and tree-cutting activities within the
9 250-foot shoreline buffer in order to bury
10 the transmission cables that will cross
11 Little Bay and to expand the existing
12 transmission line corridor as necessary.

13 On May 12th, 2016, DES Water
14 Division issued three Shoreline Impact
15 Permits for Gundalow Landing in Newington,
16 Main Street in Durham and Durham Point Road
17 in Durham. These permits also contained
18 numerous project-specific conditions. The
19 August 31 and October 30 correspondence from
20 DES also addressed those permits.

21 There was an Alteration of Terrain
22 Permit from DES, Section 401 Water Quality
23 Certificate. On February 28, 2018, DES
24 issued a final decision recommending approval

1 of the Alteration of Terrain Application,
2 subject to a number of project-specific
3 conditions. And as I understand it, since
4 construction of the Project will involve the
5 discharge of dredge or fill material into the
6 surface waters of the United States, it also
7 required Federal Clean Water Act, Section
8 404, Permit from the U.S. Army Corps of
9 Engineers. On February 28, 2018, DES issued
10 a final decision stating that the Army Corps
11 of Engineers indicated that the Section 404
12 General Permit, the New Hampshire
13 Programmatic General Permit, applies to this
14 project. DES further advised the
15 Subcommittee that it has determined that
16 compliance with the 401 Quality Water
17 Certification for the current Programmatic
18 General Permit and the conditions for the
19 Alteration of Terrain Permit and the Wetlands
20 Permit provide reasonable assurance that
21 construction and operation of the Project
22 will not violate surface-water quality
23 standards.

24 While not set forth as conditions

1 to the environmental permits, New Hampshire
2 DES has also recommended that the
3 Subcommittee consider having the Applicant
4 conduct a more thorough evaluation of the
5 horizontal directional drilling method for
6 installing cable under Little Bay and conduct
7 a jet plow trial run without the cable in
8 Little Bay.

9 Next state agency is New Hampshire
10 Division of Historical Resources. On
11 August 1, 2017, DHR submitted its final
12 report for this project. DHR confirms its
13 determination of no effect on archeological
14 sites and confirms its determination of
15 adverse effect on four above-ground historic
16 resources, those being: Alfred Pickering
17 Farm, Durham Point Historic District, Little
18 Bay Underwater Cable Terminal Houses and the
19 Newmarket and Bennett Road Farms Historic
20 District in Durham. DHR also advises the
21 Subcommittee that the U.S. Army Corps of
22 Engineers determined that the Project will
23 have an adverse effect on the Little Bay
24 Underwater Cable Terminal Houses Historic

1 District.

2 The Applicant entered into a
3 Memorandum of Understanding with DHR and a
4 Memorandum of Agreement with the U.S. Army
5 Corps of Engineers, where the Applicant
6 agreed to minimize the visual impact of the
7 Project on the Alfred Pickering Farm by using
8 a weathering steel H-frame structure and
9 publishing a publicly-oriented booklet that
10 will provide a brief history of agriculture
11 in Newington from its founding to the
12 present.

13 The Applicant agreed to minimize
14 the Project's impact on stone walls located
15 within Durham Point and the Newmarket and
16 Bennett Roads Farms Historic Districts by not
17 traversing the walls, traversing the walls
18 through existing breaches, traversing the
19 walls using timber matting, or placing work
20 pads on top of timber matting to elevate the
21 work pad above the walls. DHR then requested
22 certain conditions, should we decide to issue
23 the certificate, including compliance with
24 such memorandums.

1 We've also heard from the state
2 fire marshal. The Applicant filed an e-mail
3 from the Assistant Director/Deputy State
4 Marshal, dated February 9, 2015, where the
5 Department of Safety Office of the Fire
6 Marshal determined there's no need for it to
7 be involved in the planning of this project.

8 Department of Transportation. The
9 Applicant requested DOT authorize seven
10 aerial crossings over state highways;
11 requested DOT grant the Use and Occupancy
12 Agreements required for limited access
13 right-of-way crossings; an excavation permit
14 for the disturbance of pavement, shoulders
15 and slopes on the north side of Route 4 in
16 Durham and a Turnpike Encroachment Permit
17 application for a temporary encroachment
18 agreement in the area near Exit 1 off the
19 Spaulding Turnpike. DOT has not yet filed
20 its final decision/report/recommendation.
21 The last we have from DOT is a November 21,
22 2017 progress report. That report contains
23 two general comments and eight site-specific
24 comments regarding concerns or lack thereof

1 for certain road crossings.

2 The Public Utilities Commission.
3 On March 10, 2017, PUC issued an Order Nisi
4 granting the applications to construct and
5 maintain electric lines, neutral wire and
6 fiber optic cable over and across the Oyster
7 River and under Little Bay in the Town of
8 Durham, over Pickering Brook and under Little
9 Bay in the town of Newington with certain
10 conditions. That order became final on
11 April 10, 2018. Then, on January 29, 2018,
12 PUC advised the Subcommittee that the
13 Applicant revised the Project's design as it
14 relates to Little Bay public water crossing
15 that was previously approved by the PUC. But
16 it determined there was no need to revise its
17 order.

18 On June 14, 2018, the PUC issued
19 another order granting the Applicant's
20 petition for seven licenses to construct and
21 maintain electric lines, neutral wire, fiber
22 optic cable over and across public lands
23 owned by the State of New Hampshire in
24 Durham. That Order became effective on

1 July 14, 2018.

2 Last, on October 5, 2018, the PUC
3 determined that two additional crossings of
4 parcels located in Newington that are
5 maintained by DOT are within licensing
6 jurisdiction of DOT under New Hampshire
7 RSA 231:161.

8 There's been a question raised as
9 to whether the Applicant needs to advise the
10 PUC of its intent to use concrete mattresses
11 so that the PUC can confirm that its license
12 to cross Little Bay remains valid. Maybe we
13 could discuss that. It's my understanding
14 that the PUC license requires compliance with
15 the National Electric Safety Code, which
16 requires protective mechanical support, which
17 the Applicant did indicate that such support
18 would be used.

19 Would anyone on the Committee like
20 to comment further concerning this question
21 as to whether the Applicant needs to go back
22 to the PUC concerning its intent to use
23 concrete mattresses? Mr. Shulock?

24 MR. SHULOCK: I don't see any reason

1 for the Applicant to go back to the PUC if the
2 Applicant informed the PUC that it would be
3 using mechanical devices to protect the line.

4 PRESIDING OFFICER WEATHERSBY: Does
5 anyone else on the Committee feel differently
6 or would like to add anything?

7 [No verbal response]

8 PRESIDING OFFICER WEATHERSBY: Okay.
9 I'll move on then. Oh, Chris. I'm sorry. Mr.
10 Way.

11 MR. WAY: I just wanted to say that I
12 agree with Mr. Shulock. I don't think it has
13 to go back to the PUC for that matter.

14 PRESIDING OFFICER WEATHERSBY:
15 Director Muzzey.

16 DIR. MUZZEY: I would also note that
17 we will be talking about the concrete
18 mattresses probably under the other categories
19 we'll be considering. So at that time we'll
20 address the concrete mattresses as they relate
21 to some other criteria that we'll be looking
22 at. But I agree as well with the comments
23 about the licensing issue and the PUC.

24 PRESIDING OFFICER WEATHERSBY: So

1 there's also been another question raised
 2 concerning the PUC permits, licenses. There's
 3 a question as to whether Governor and Council
 4 approval is needed to install the Project in
 5 Little Bay through state waters. Would anyone
 6 care to comment on whether they believe
 7 Governor and Council approval is necessary?
 8 Mr. Way.

9 MR. WAY: The way I understand it,
 10 this is not an easement. But this is a
 11 license, and the license permits a crossing.
 12 This is not something, for example, that would
 13 be the disposition of state lands or
 14 modification of state lands. It's not
 15 something that I think would come up, for
 16 example, before the Council on Regional
 17 Development. That would then be the precursor
 18 to going to the G and C. It's a crossing. And
 19 my understanding is that, for utilities, this
 20 is a very common occurrence. But this isn't
 21 something I think would rise to the level of
 22 having to go to G and C. I think the license
 23 that is provided by PUC is sufficient for this
 24 matter.

1 PRESIDING OFFICER WEATHERSBY: Mr.
2 Schmidt.

3 MR. SCHMIDT: I just wanted to state
4 I agree with Mr. Way. This is a permission to
5 be under the bay, not a property right. So I
6 do believe the PUC license is appropriate.

7 PRESIDING OFFICER WEATHERSBY: Ms.
8 Duprey.

9 MS. DUPREY: I also agree with that.
10 That doesn't mean that the Applicant couldn't
11 have sought an easement. But it wasn't looking
12 for one. It was looking for a license, which
13 is routinely by PUC, which PUC has the
14 authority to grant. So I don't see a reason to
15 send them to the Governor and Council. Thank
16 you.

17 PRESIDING OFFICER WEATHERSBY: I
18 guess I would also point out that it's a
19 license that can be revoked. It's not
20 necessarily permanent. And even things like
21 the concrete mattresses, the cables themselves,
22 can be required to be removed. Probably
23 something we should take up in decommissioning
24 if and when that occurs and should be in the

1 plan. But I agree that it's a license and not
2 any grant of a property right which would
3 require going for further approval with
4 Governor and Council required by the statute.
5 So I think we can move on from there.

6 I think that's all of the permits
7 and licenses, so now we'll move more into the
8 meat of the evidence.

9 First topic we're going to take up
10 is the financial capability of the Applicant
11 to assure that construction and operation of
12 the Project is adequate, and then we'll move
13 into managerial and technical capability of
14 the Applicant to construct and maintain this
15 project. This is me again. You'll hear a
16 lot of my voice here for the next bit.

17 So, the relevant statutes and rules
18 we need to be thinking of are RSA 162-H:16,
19 which requires us to find that the Applicant
20 has adequate financial, technical and
21 managerial capability to assure construction
22 and operation of the facility in continuing
23 compliance with the terms and conditions of
24 the Certificate.

1 And then regarding our rules, Site
2 301.04, which requires the Applicant to
3 include certain kinds of financial
4 information, and then also further in the
5 statute, technical and managerial
6 information. And as it goes to our analysis,
7 the rule is 301.13. For financial
8 capability, when we determine whether or not
9 the Applicant has the financial capability to
10 construct and operate the Project, we are to
11 consider the Applicant's experience in
12 securing financing to construct and operate
13 energy facilities, similar to the proposed
14 facility; the experience and expertise of the
15 Applicant and its advisors; the Applicant's
16 statement of current and pro forma assets and
17 liabilities; and financial commitments the
18 Applicant has obtained or made in support of
19 the construction and operation of the
20 facility. And there is a stipulation by the
21 Applicant and Counsel for the Public that the
22 Applicant has experience in securing funding
23 for financing the construction and operation
24 and maintenance of similar transmission line

1 projects. Counsel for the Public generally
2 believes they have met these requirements,
3 and there's been no intervenors suggesting
4 that the Applicant does not have the
5 financial capability to construct and operate
6 the proposed facility. The Applicant, of
7 course, believes it has proved its financial
8 capability. It said it's based on its
9 financial strength and not of its parent,
10 Eversource, and Eversource's experience
11 financing, constructing and operating similar
12 projects.

13 The Applicant estimates that the
14 Seacoast Reliability Project is going to cost
15 \$84 million to construct, plus or minus
16 25 percent. In addition, the Applicant will
17 have smaller expenses, much smaller expenses
18 in promises to the towns, financial
19 guaranties for road damage, contractors,
20 police detail, et cetera. But I think we can
21 use \$84 million as its cost estimate. Of
22 course, if this Committee requires the
23 Applicant to do full HDD, or even partial
24 HDD, that will increase the cost of this

1 project significantly. If it's fully HDD
2 rather than jet plow, that will be an
3 additional \$132 million over the \$84 million,
4 so a total \$216 million.

5 The Applicant's primary witness
6 regarding financial capability was Aaron
7 Cullen. Mr. Cullen is the manager of Middle
8 Office and Credit for Eversource in
9 Connecticut. He adopted the testimony of
10 Michael Auseré, who was a vice-president of
11 Energy Planning and Economics.

12 The Applicant intends to finance
13 construction of the Project with its own cash
14 and some short-term borrowings from its
15 parent, Eversource. The short-term debt will
16 be refinanced with long-term debt issued in
17 the credit markets. The parent company,
18 Eversource, may also provide capital
19 contributions. Once the line is built, if
20 it's built, but once the line built, it's
21 expected that FERC will allow the Applicant
22 to establish transmission service rates to
23 recover its annual costs associated from the
24 Project from its ratepayers. Of course, if

1 we do require HDD, those costs -- there's a
2 risk that those costs may not be regionalized
3 but borne by New Hampshire ratepayers. We
4 can discuss that later on.

5 There are updated financial
6 statements, corporate structure charts, et
7 cetera, in the Applicant's Application.
8 There's balance sheets showing liabilities
9 and capitalization of three and a half
10 billion dollars, roughly, in 2015. That's
11 Exhibit 47. And Exhibit 49 is a December 31,
12 2015 balance sheet, assuming the Seacoast
13 Reliability Project is in effect and costs
14 78 million, about 3.6 billion. Exhibit 194,
15 assuming Seacoast Reliability Project is in
16 effect, it'll cost 84.3; it's pro forma total
17 liability and capitalization of 3.68 billion.
18 There is an organizational chart in the
19 record as well showing its structure. Its
20 parent, of course, is Eversource. And from
21 2012 to 2015, Eversource has invested
22 750 million in new energy infrastructure.
23 Its corporate credit rating is A, Baal, and
24 BBB+ from Standard & Poor's, Moody's and

1 Fitch rating services respectively.
2 Eversource was listed as No. 367 on the 2015
3 Fortune 500 list of the largest U.S.
4 companies with an equity market
5 capitalization of approximately 16 billion.
6 Its stock trades on the New York Stock
7 Exchange. The Applicant declares that it's
8 the highest-ranked U.S. utility holding
9 company by Standard and Poor's.

10 I should note that in the Merrimack
11 Valley project, not a binding precedent, but
12 this Committee -- or a different
13 Subcommittee, but the SEC found that
14 Eversource had the financial capability to
15 construct and operate that project, which of
16 course was much smaller. In the more recent
17 Northern Pass, no final decision was made on
18 this point, but the members were polled, and
19 the result was the Committee members believed
20 that Eversource had the financial capability
21 to construct and operate that much larger
22 project.

23 They do have insurance. PSNH and
24 its construction contractors will carry

1 adequate insurance to provide coverage
2 against liability and damage resulting from
3 construction or operation of the Project.
4 It's comparable to other projects of the same
5 size and character. All those premiums and
6 other costs of liability and property
7 insurance, et cetera, will be able to be
8 recovered under rates approved by FERC.

9 So that's kind of my summary on the
10 financial capability of the Applicant. Is
11 there any discussion concerning this?

12 Mr. Way.

13 MR. WAY: Thank you for the good
14 overview. I think you've said pretty much
15 everything. I think where I'm coming from, my
16 thought has been in the very last piece that
17 you mentioned about some of the previous
18 findings. The Merrimack Valley Reliability and
19 Northern Pass -- once again, even though that
20 maybe didn't go to fruition -- my recollection
21 was that the financial capability was not a
22 significant issue. When you look at the size
23 of a project like that, I think that finding
24 the financial capability was there I think is

1 convincing to me. So I think the financial
2 piece of this is relatively secure. I think
3 we'll have to keep that in mind as we talk
4 about maybe some of the other pieces that you
5 mentioned that might add significant costs that
6 may not be recoverable. But I think, from my
7 part, I think we have the financial capability
8 to meet this requirement.

9 PRESIDING OFFICER WEATHERSBY: Anyone
10 else who would like to speak? Ms. Duprey.

11 MS. DUPREY: Yes, Madam Chair. I
12 don't recall there being a lot of issue on the
13 financial capability and wondered if in your
14 review you found much in the cross-examination.
15 I didn't. And I just wanted to check with you
16 about that. I didn't find that this was an
17 area that there was a lot of dispute over. And
18 I know that Counsel for the Public has reached
19 a stipulation with the Applicant on it, which
20 is important as well.

21 PRESIDING OFFICER WEATHERSBY: This
22 wasn't an area of great controversy at all. No
23 intervenors raised it as an issue, so Counsel
24 for the Public has agreed that the financial

1 capability is there.

2 MS. DUPREY: Thank you.

3 PRESIDING OFFICER WEATHERSBY: Is
4 there anyone who disagrees with anything that
5 I've stated? And if not, should we adopt those
6 as findings of fact? Go ahead, Director
7 Muzzey.

8 DIR. MUZZEY: Question: Are you
9 looking at just now the financial capability or
10 the technical and the managerial as well?

11 PRESIDING OFFICER WEATHERSBY: Just
12 financial.

13 DIR. MUZZEY: Thank you. No
14 concerns.

15 PRESIDING OFFICER WEATHERSBY: Okay.
16 So we're going to do a poll as to how people
17 feel and whether the Applicant has the
18 financial -- get my words right -- financial
19 capability to construct and operate the
20 Seacoast Reliability Project. If you feel as
21 though they do, say "Yes"; if you feel as
22 though they do not, say "No."

23 Mr. Fitzgerald.

24 MR. FITZGERALD: Yes.

1 PRESIDING OFFICER WEATHERSBY: Ms.
2 Duprey.

3 MS. DUPREY: Yes.

4 PRESIDING OFFICER WEATHERSBY: Mr.
5 Way.

6 MR. WAY: Yes.

7 PRESIDING OFFICER WEATHERSBY: Mr.
8 Schmidt.

9 MR. SCHMIDT: Yes.

10 PRESIDING OFFICER WEATHERSBY: Mr.
11 Shulock.

12 MR. SHULOCK: Yes.

13 PRESIDING OFFICER WEATHERSBY:
14 Director Muzzey.

15 DIR. MUZZEY: Yes.

16 PRESIDING OFFICER WEATHERSBY: And I
17 believe so as well.

18 Okay. So I think we'll move on
19 then to technical and managerial. We tend to
20 take these together because they're kind of
21 meshed together, shall we say.

22 So, again, I'll start with what the
23 relevant statute and law is. The statute is
24 162-H:16 which I referenced before, where we

1 must find that they have -- the Applicant has
2 adequate financial, technical and managerial
3 capability to construct the Project. And
4 then there's Rule 301.04, which is what the
5 Applicant must provide us, what information
6 the Applicant must provide so we can make
7 these determinations, and then 301.13, which
8 is the criteria that we are to review.

9 Concerning technical capability, we
10 are to consider the Applicant's experience in
11 designing, constructing and operating energy
12 facilities similar to the proposed facility,
13 and the experience and expertise of any
14 contractors or consultants engaged or to be
15 engaged by the Applicant to provide technical
16 support for the construction and operation of
17 the proposed facility known at the time.

18 And concerning managerial
19 capability, we are to consider the
20 Applicant's experience in managing the
21 construction and operation of energy
22 facilities similar to the proposed facility
23 and the experience and expertise of any
24 contractors or consultants engaged or to be

1 engaged by the Applicant to provide
2 managerial support for the construction and
3 operation of the proposed facility, if known
4 at the time.

5 We do have some stipulations
6 between Counsel for the Public and the
7 Applicant on technical and managerial
8 capability. First one was No. 8 of the
9 Stipulation. The Applicant has constructed
10 and currently operates thousands of miles of
11 high-voltage transmission lines. Eversource
12 and its subsidiaries serve approximately
13 3.6 million customers across three states.
14 Specifically in New Hampshire, Eversource is
15 responsible for operating 780 circuit miles
16 of 115 kV, 8 miles of 230 kV, and 252 miles
17 of 345 kV transmission lines, and about 204
18 active transmission and distribution
19 substations.

20 And Stipulation No. 9, examples of
21 transmission projects completed by Eversource
22 include the Merrimack Valley Reliability
23 Project, the Y138 transmission line project,
24 the J125 transmission line project, the Y170

1 transmission line project, the Long Island
2 Replacement Cable project and the Falmouth to
3 Martha's Vineyard cable project.

4 And then Stipulation 10, the
5 Applicant and its selected contractors have
6 experience in designing, constructing,
7 operating and maintaining similar
8 transmission facilities throughout New
9 England.

10 Counsel for the Public, in its
11 brief, indicates that he believes PSNH has
12 met its burden. Counsel for the Public does
13 ask for a condition to ensure that the
14 Applicant follows Best Management Practices,
15 including independent monitoring and strong
16 enforcement powers.

17 The intervenors' position on this:
18 Durham Historic Association also requests
19 independent monitors for Best Management
20 Practices and asks that the monitor answer to
21 an entity other than the Applicant, and the
22 choice of the independent monitor responsible
23 for historic resources should be approved by
24 the SEC, the towns and New Hampshire DHR.

1 Mr. Fitch states his position that
2 the Applicant has hired consultants to assist
3 and advise with the jet plow, and that to him
4 suggests they don't have the technical
5 capability.

6 Dr. Miller questions why there's
7 still so many unanswered questions concerning
8 Little Bay, the mattresses, jet plow effects,
9 et cetera.

10 Jeff and Vivian Miller believe the
11 technical and managerial capabilities are
12 lacking because of 16 different reasons,
13 including that alternate routes were not
14 sufficiently explained; the project didn't
15 consider impact to Little Bay prior to the
16 ISO decision; number of incomplete testing
17 concerning Little Bay. There's a number of
18 them that are laid out. I won't read them
19 all unless someone would like me to. But
20 they're in Mr. and Mrs. Miller's testimony,
21 and they're summarized in their brief.

22 Durham and UNH assert that there's
23 a lingering question as to whether
24 the Applicant has the requisite technical and

1 managerial capabilities, given that jet
2 plowing has never been done in New Hampshire.

3 The Applicant, not surprisingly,
4 states that it has sufficient technical and
5 managerial capability to construct and
6 operate the Project in compliance with the
7 certificate. Its parent, Eversource,
8 operates one of the largest utility systems
9 with 3.6 million customers in New England.
10 And they're an Edison Award recipient for
11 transmission ownership and providing
12 services. They specifically point to the
13 recent completion of the 9.8 Merrimack Valley
14 Reliability Project as further and recent
15 proof of its capability to construct and
16 operate this project.

17 The Applicant has retained various
18 experts to assist with the Seacoast
19 Reliability Project. And as I said, under
20 the rules we are to consider the experience
21 and expertise of contractors or consultants
22 engaged by the Applicant to provide the
23 mechanical or technical support. They've
24 engaged Power Engineering to provide

1 technical support for the design and
2 construction of the Project. Power
3 Engineering has, according to the Applicant,
4 they've got extensive experience in design
5 and construction of high-voltage lines.
6 They, too, are an Edison award winner. They
7 also have substantial experience in design
8 and construction of underground transmission
9 lines.

10 Leidos Engineering, L-E-I-D-O-S, is
11 a contractor for upgrades and additions that
12 will be required for two substations. They
13 have extensive experience in engineering and
14 designing substations, including work on over
15 300 substation, distribution and transmission
16 lines projects.

17 LS Cable America, they're going to
18 be responsible for manufacturing and
19 installing the underwater portion of the
20 Project to cross Little Bay. They have
21 extensive experience installing and
22 maintaining underwater electric transmission
23 lines. I think we heard testimony about
24 installation of the 32 kilometer transmission

1 cable system in the waters between Block
2 Island and mainland Rhode Island as part of
3 the Block Island Wind Farm Project. And
4 another one, they were installing an
5 underwater cable system for the New York
6 Power Authority.

7 Once the Project is completed, it
8 will become part of the interconnected
9 transmission network operated by ISO-New
10 England. It's not believed that there will
11 be a lot of maintenance on the Project once
12 built. Routine maintenance, such as
13 replacing damaged insulator discs, damaged
14 wires; patrolling; typical, routine
15 maintenance; vegetation management.

16 For the cables under Little Bay,
17 the Applicant has represented that typically
18 little to no maintenance is required on
19 buried submarine cables. If a break occurs,
20 the cable would be cut, raised to the
21 surface, a section of the cable spliced in,
22 laid on the sea floor or diver-buried and
23 covered with articulated concrete mattresses.
24 We heard some testimony about all that from

1 the construction crew.

2 That's kind of my summary on
3 technical and managerial capability. Anyone
4 have any thoughts or comments concerning all
5 this? Mr. Schmidt.

6 MR. SCHMIDT: Yes. Can you just go
7 back to the second intervenor you listed? I
8 wasn't sure who that was. But also, they
9 indicated certain conditions.

10 PRESIDING OFFICER WEATHERSBY: Durham
11 Historic Association? So there's been a few
12 suggested conditions. CFP has asked for
13 conditions to ensure that the Applicant follows
14 Best Management Practices, including
15 independent monitoring and strong enforcement
16 powers. Durham Historic Association also wants
17 that. They asked that the monitor answer to
18 somebody other than the Applicant. I'm not
19 sure if they're thinking SEC or -- but they're
20 saying answer to someone other than the
21 Applicant, and that whoever is the independent
22 monitor, they'd like that person to be
23 selected -- I'm sorry. It can be selected by
24 Eversource, but it has to be approved by the

1 SEC, the towns affected and New Hampshire DHR.
2 So those were the conditions suggested by the
3 intervenors and Counsel for the Public.

4 MR. WAY: Can I ask a quick question
5 for clarification on that?

6 PRESIDING OFFICER WEATHERSBY: Yes.

7 MR. WAY: With that in front of you,
8 is that for historic resources alone, there be
9 an independent monitor for historic resources?

10 PRESIDING OFFICER WEATHERSBY: Yes.
11 The DHR -- sorry. Durham Historic Association
12 was that the independent monitor responsible
13 for historic resources be approved by the SEC,
14 the towns and New Hampshire DHR. Sorry I
15 wasn't clear.

16 MR. WAY: The one question I have is,
17 and maybe others can chime in on this, how that
18 works. When we assign things to the SEC to do
19 following these proceedings, and maybe we get
20 into a procedural legal issue. But if we're to
21 approve, if we're to choose, how does that
22 work?

23 MS. DUPREY: I'm not sure that we're
24 choosing --

1 MR. WAY: Well, in other words, if we
2 have to be involved in the selection process
3 for an independent monitor, if we're getting
4 something that comes back to us that requires a
5 decision on our part -- and maybe this all is
6 Pam, you know, it falls under her. But when we
7 say the SEC, after everything is done --

8 PRESIDING OFFICER WEATHERSBY: I
9 don't know if it would be Pam or whether the
10 Committee would have to meet. I guess we
11 could -- I don't know if we can delegate to the
12 Administrator. I mean, I think it's kind of
13 dangerous to have the SEC appointing monitors,
14 I think, personally. Maybe if they want us to
15 tell them who they are or get towns to sign off
16 or DHR -- whoever they choose will hopefully be
17 qualified. But if we want to check on it,
18 that's fine. I'm leery of having the SEC
19 choose or even approve an independent monitor.

20 But would that be Pam? If we
21 delegate, if we were to go that route, do we
22 delegate to Pam, or would we need to meet and
23 approve the monitor?

24 MR. IACOPINO: Yes, you do delegate

1 that authority to the Administrator or to any
2 state agency.

3 MS. DUPREY: Madam Chair, could you
4 just quickly recite the specific request again?
5 I'm sorry. I wasn't focused enough on it.

6 PRESIDING OFFICER WEATHERSBY: I may
7 be paraphrasing slightly. I'd have to go back
8 and sift the words that they really chose, but
9 as I understand it, Counsel for the Public
10 wants a condition that, for the construction
11 and operation of the Seacoast Reliability
12 Project, that the Applicant will follow Best
13 Management Practices, including independent
14 monitoring and strong enforcement of powers. I
15 think those are probably typical conditions
16 that we would put in anyway. And then Durham
17 Historic Association says, with regard to the
18 independent monitor responsible for historic
19 resources, that that person should be approved
20 by the SEC and also by the towns, presumably
21 Newington and Durham, and by New Hampshire
22 Division of Historic Resources. They want -- I
23 think they want to be sure that whoever is
24 being chosen as the independent monitor

1 responsible for historic resources, that person
2 is highly qualified.

3 MS. DUPREY: And independent. And
4 Attorney Iacopino, can we delegate that ability
5 to choose the monitor to DHR if we wanted to?

6 MR. IACOPINO: Yes.

7 MS. DUPREY: And someone said it is
8 common for us in our decisions to require
9 independent monitoring -- is that the case --
10 for construction, for Best Management Practices
11 in construction?

12 PRESIDING OFFICER WEATHERSBY: Yes.

13 MS. DUPREY: Okay.

14 PRESIDING OFFICER WEATHERSBY:

15 Director Muzzey.

16 DIR. MUZZEY: I have a number of
17 thoughts about this type of thing. I think
18 there's a difference between having a state
19 agency choose an independent monitor as opposed
20 to review and approve the choices made by the
21 Applicant. I hesitate to assign any state
22 agency the responsibility of going through the
23 process of choosing an independent monitor
24 because it's a lot of work. I don't think most

1 state agencies would be interested in taking on
2 that type of responsibility. However, the
3 responsibility of reviewing the process, the
4 criteria, as well as the way the independent
5 monitor will function and the monitor
6 qualifications, I think that's the type of
7 thing that state agencies are more used to
8 doing and have done in previous SEC
9 proceedings. So I think our words should be
10 very careful if we choose this type of
11 condition and very cognizant of the resources
12 available to state agencies to do this type of
13 work.

14 MR. WAY: And Director Muzzey, in
15 your experience, is this necessary? Is there a
16 value to it? Or can -- in your experience, is
17 it necessary?

18 DIR. MUZZEY: In my experience with
19 SEC proceedings, as well as with the regulatory
20 responsibilities of my agency, the New
21 Hampshire Division of Historical Resources,
22 there's not been emphasis on the idea of
23 independent monitoring to the degree that there
24 has been with this project. There seems to be,

1 unfortunately, a level of distrust between the
2 Applicant and local advocates for the resources
3 within their communities. And if having an
4 independent monitor serves to rebuild that
5 trust, I think there is value in it.

6 MR. FITZGERALD: May I ask a
7 question? When we say "independent monitor,"
8 to me "independent" means they don't -- they're
9 not beholding to the Applicant. Does that
10 include financially? I mean, I think
11 there's -- I'd at least like to understand the
12 difference between the Applicant hiring someone
13 to monitor its project or someone else hiring,
14 you know, someone else selecting a monitor that
15 the Applicant pays for. I don't know if I'm
16 clear here or not. But it seems to me that
17 independence has -- you know, how is a monitor
18 considered to be independent if they report to
19 the Applicant?

20 DIR. MUZZEY: I agree that that is
21 very difficult to define. And as I -- in
22 talking with Mr. Way, it has not been done
23 before. And so we would have to -- if we
24 choose to go this route, we would have to very

1 carefully define how that process would work
2 and --

3 MR. FITZGERALD: It seems to me that
4 to be independent, the monitor would have to be
5 selected by someone other than the Applicant.
6 You know, payment is another -- contracting and
7 payment is another situation. But I just think
8 we're getting into kind of some difficult
9 territory here if we start, you know, if we
10 decide that they have to be independent. What
11 truly is "independent"?

12 PRESIDING OFFICER WEATHERSBY: I
13 think I may have misspoken earlier when I said
14 that this is routine, independent -- the
15 monitoring by an entity other than the
16 Applicant is routine. But using, you know,
17 Normandeu Associates, for example, for
18 environmental monitoring, you know, who's going
19 to sweep the line and all that stuff, you know,
20 that's someone engaged by the Applicant to
21 perform these tasks. I guess maybe they're not
22 independent, you know, independent, qualified,
23 et cetera. But I think in the past, at least
24 the projects I've worked on, it's been somebody

1 selected by the Applicant, paid for by the
2 Applicant, who works in concert with the state
3 agency -- you know, DES or DHR, DOT -- to
4 fulfill the requirements of the certificate. I
5 hope that helps.

6 Director Muzzey.

7 DIR. MUZZEY: And I also wanted to
8 note that within Counsel for the Public's
9 post-hearing brief there's a paragraph about,
10 notwithstanding the evidence of the Applicant's
11 ability to manage large, complex construction
12 projects, including evidence that the Applicant
13 has contracted with experienced contractors and
14 engineering consultants, there's always a risk
15 that the Applicant or its contractors will fail
16 to implement or follow Best Management
17 Practices during construction or maintenance
18 work. If the Subcommittee issues a certificate
19 to the Applicant, the Subcommittee should
20 include conditions to ensure the implementation
21 of appropriate Best Management Practices and
22 sufficient independent monitoring with strong
23 enforcement powers to ensure compliance and to
24 deter non-compliance.

1 So this is a request for
2 independent monitoring over all aspects of
3 construction and maintenance. This is a
4 long-term suggestion as it covers maintenance
5 as well. It covers all the areas that could
6 be affected, not just the wishes of the
7 Durham Historic Association to do historical
8 independent monitoring. And it also
9 addresses strong enforcement powers to deter
10 non-compliance. So that brings into, for me,
11 the question of who enforces and how. So
12 this is a rather large request that hits a
13 lot of areas and does raise some questions
14 that I don't know if the SEC has grappled
15 with in the past.

16 PRESIDING OFFICER WEATHERSBY: I'm
17 going to throw something out there. I don't
18 know if this is the time to be getting in the
19 weeds on this. It almost seems like when we
20 review impacts on historical resources that we
21 decide is an independent monitor -- what are
22 the dangers there, and is the independent
23 monitor necessary or not. Environmentally, you
24 know, there's a lot of environmental issues

1 here. Should we take up the conditions for
2 each type of impact at the time that that's
3 addressed, or do we want to try and solve this
4 now? I almost think it's -- not to just punt
5 it down the road, but I almost think it's
6 better to deal with then. Right now we're
7 deciding whether the Applicant has the
8 capability to construct -- managerial and
9 technical to construct and operate the
10 facility. If people feel as though they do
11 not, unless there is independent oversight,
12 that would be why we would want to deal with it
13 now. If people feel as though they have the
14 technical capability to construct and operate
15 and we want to talk about specific conditions
16 later, that would be the way to do it.

17 Mr. Way.

18 MR. WAY: Yeah, I'm a little torn. I
19 believe they have the managerial and technical
20 capability to do this. I'm sensitive, though,
21 to what's being said, the concern that maybe an
22 independent monitor is needed. But before I
23 buy into that, I think I would want a lot more
24 discussion because I think, you know,

1 particularly if it's just by the historic
2 association, let's look at them. That opens
3 the door for other independent monitors in
4 other different places. If we take Counsel for
5 the Public's request, Director Muzzey says that
6 that's a big issue, and it has a lot of
7 different weeds to it. And so I'd be fine with
8 putting that off until another point. But I'm
9 okay with the managerial and technical at this
10 point, and maybe we have a discussion later.

11 (Discussion off the record between
12 Presiding Officer and SEC Counsel.)

13 PRESIDING OFFICER WEATHERSBY: So I'm
14 reminded that the standard is whether they have
15 the technical and managerial capability to
16 construct and operate the proposed facility,
17 paraphrasing, in compliance with all the
18 conditions in the certificate. So this can be
19 addressed later on. Because, you know, if we
20 impose an independent monitor, you know, do
21 they have the technical and managerial
22 capability to work with an independent monitor?
23 I think my answer in my mind is yes.

24 So the issue is: Do they have the

1 technical and managerial capability to
2 construct and operate the proposed facility
3 in compliance and conformance with the
4 conditions that we may impose upon them?

5 MS. DUPREY: Even that seems
6 premature to me because that's encompassing the
7 conditions that we don't -- haven't set yet.

8 But I just wanted to go back to my
9 previous question to you, so that as I listen
10 to the testimony -- or I listen to our
11 deliberation, rather, I have this in mind,
12 because I'm hearing some concern about the
13 monitoring side of things. And I'm wondering
14 if what we've routinely done in the past is
15 require that someone build to Best Management
16 Practices, or is it that there's an
17 independent monitor overseeing it, and what
18 process have we used.

19 (Discussion off the record between
20 Presiding Officer and SEC Counsel.)

21 PRESIDING OFFICER WEATHERSBY: So I'm
22 told that it happens both ways. But I'm also
23 reminded that a number of Best Management
24 Practices have been agreed to between Counsel

1 for the Public and the Applicant in
2 Exhibit 193 --

3 MR. IACOPINO: Beginning at
4 Paragraph 8.

5 PRESIDING OFFICER WEATHERSBY:
6 Beginning at Paragraph 8. There's been a
7 number of them agreed to between the Applicant
8 and the Counsel for the Public.

9 MS. DUPREY: Right. And do we
10 normally require independent monitoring of
11 them?

12 PRESIDING OFFICER WEATHERSBY: I'm
13 not sure it's "normally," but I understand it
14 has been done. Attorney Iacopino has more
15 longevity --

16 MR. IACOPINO: Purely from a
17 historical viewpoint, independent monitors have
18 been required by condition generally in the
19 environmental area. I'm not sure I remember a
20 case where we had an independent monitor for
21 historic resources.

22 MS. DUPREY: Or for general
23 construction, I assume.

24 MR. IACOPINO: Yeah, I don't -- to

1 the extent -- I don't recall any such
2 conditions in the past with respect to the
3 general issues of construction.

4 MS. DUPREY: Okay. Thank you. Madam
5 Chair, I just wanted to note that in the
6 record, as I recall it, there was a lot of
7 cross-examination of -- and forgive me, I'm not
8 going to remember of the name of the cable
9 company right at this moment -- of their
10 capability to construct across the Little Bay,
11 jet plowing, laying the cable. And I just
12 thought we should touch on that before we get
13 to a point of making any kind of a decision.

14 And I just wanted to note for
15 myself that, while I did not find the
16 gentleman who was testifying for them to be a
17 particularly good witness or skilled witness,
18 I did think that the Company itself had a lot
19 of background in this. And I felt confident
20 in their ability, reading the materials that
21 were supplied to us about this company, while
22 noting that he didn't necessarily do as much
23 justice to the company as someone else may
24 have. Thank you.

1 PRESIDING OFFICER WEATHERSBY: So we
2 had two witnesses. I think we had Mr. Wall and
3 then we had Mr. Dodeman.

4 MS. DUPREY: Mr. Dodeman I thought
5 was very strong and inspired a lot of
6 confidence in his ability. I do note that both
7 of them had a great deal of experience in the
8 jet plowing field. But I thought it was
9 important to get out there that in
10 cross-examination there was skepticism about
11 their ability to do this. I didn't share it
12 after reviewing everything, but I just thought
13 it was important to note.

14 PRESIDING OFFICER WEATHERSBY: Mr.
15 Fitzgerald.

16 MR. FITZGERALD: I agree with that
17 statement, and I think the issue needs to be
18 discussed. But I wanted to go back to the
19 independent monitor. I wanted to clarify. Did
20 you say this was a request of the DHA, that
21 Counsel for the Public had at least indicated
22 that they agreed that the independent monitor
23 might be necessary, or did I get two things
24 mixed up there?

1 PRESIDING OFFICER WEATHERSBY: So,
2 Director Muzzey, could you read that language
3 again that Counsel for the Public is
4 specifically requesting?

5 DIR. MUZZEY: So in the post-hearing
6 brief for Counsel for the Public, bottom of
7 Page 8, "If the Subcommittee issues a
8 certificate to the Applicant, the Committee
9 should include conditions to ensure the
10 implementation of appropriate Best Management
11 Practices and sufficient independent monitoring
12 with strong enforcement powers to ensure
13 compliance and to deter non-compliance."

14 So, although in my interpretation
15 DHA had specific concerns in regard to
16 historical resources within the town of
17 Durham, the Counsel for the Public had a more
18 broad concern and request as it was described
19 in what I just read.

20 MR. FITZGERALD: So I would tend to
21 agree that, while this discussion is better had
22 in terms of the individual evaluations of water
23 quality and historic and stuff, it seems to me
24 that this seems to -- what we seem to be being

1 told here is there's a certain feeling that the
2 Company does not have the technical and
3 managerial capabilities, and therefore it's
4 asserted that an independent monitor is
5 necessary. I'm not sure that I agree with
6 that. But it seems to me that we ought to
7 determine whether they have -- whether we feel
8 they have the appropriate technical and
9 managerial capabilities. And I think there are
10 nuances with that, especially relative to Great
11 Bay -- Little Bay. But I'm not sure that
12 resolving this question -- the question of
13 whether they have the technical and managerial
14 capability I think comes first.

15 PRESIDING OFFICER WEATHERSBY: So I'm
16 going to point out that in the stipulated
17 proposed conditions by Eversource and Counsel
18 for the Public, Eversource does agree to use
19 independent environmental monitors for
20 environmental issues, including overseeing the
21 work at Little Bay. It's No. 25, Exhibit 193.
22 I can read it.

23 "Further Ordered that, the
24 Applicant shall use independent environmental

1 monitors to oversee the construction of the
2 Project and to work with contractors to
3 implement appropriate Best Management
4 Practices to avoid and minimize environmental
5 impact. The Applicant shall also use
6 independent DES-approved environmental
7 monitors to oversee work in Little Bay."

8 MR. FITZGERALD: Well, it's certainly
9 going to be one of my thoughts was that state
10 agency involvement should be limited to
11 approval, review and approval, as opposed to
12 selection and -- I certainly agree with
13 Director Muzzey on that issue. But I guess I
14 still have the concern that, you know, is this
15 necessary is a separate question from do they
16 have the technical capabilities.

17 PRESIDING OFFICER WEATHERSBY:
18 Director Muzzey.

19 DIR. MUZZEY: In my opinion, there
20 are two other factors which feed into this
21 discussion, and one of those is the nature of
22 the Project area itself. We have a project
23 that's traversing seven historic districts, as
24 well as a project that's crossing Little Bay,

1 which also has national significance from a
2 natural resource perspective. So where the
3 question of the Applicant's managerial
4 abilities may feed into this, it's also the
5 very, in my opinion, the very sensitive nature
6 of the area this project is traversing.

7 Another factor which I think feeds
8 into this, particularly as it relates to
9 historical resources, is within the
10 proceeding itself we saw a number of mapping
11 issues that were resulting from the use of
12 dated data sources, a lack of integration of
13 report findings among the consultant team --
14 the current consultant teams working on the
15 project. And that lead to a host of
16 confusion among intervenors, as well as the
17 Applicant and their testimony and questions
18 from this Committee. So, for me, those are
19 the two factors which may also be
20 contributing to the need for an independent
21 monitor. And I'm sure as we get into each of
22 the subject matters we can address specific
23 conditions that are responsive. But it's the
24 nature of the Project area, as well as the

1 some of the confusion that existed in regard
2 to mapping during this proceeding.

3 PRESIDING OFFICER WEATHERSBY: Ms.
4 Duprey.

5 MS. DUPREY: On a slightly different
6 topic, but related to construction, I would
7 just raise the fact that several of the
8 intervenors, in my recollection, raised
9 questions about the, I'm going to use the word
10 "capability," they might use the word
11 "trustworthiness" of the Applicant to do the
12 work that is necessary around their particular
13 properties. And while, again, I have
14 confidence in the Applicant to do what they're
15 authorized to do by our permit, were we to
16 grant one, I do want to raise the fact that
17 there was a lack of confidence expressed by a
18 number of intervenors in their briefs and in
19 their cross-examination. And I just think it
20 bears our notation of that concern. And
21 perhaps if other people have comments they want
22 to make -- but particularly with the Millers
23 with their driveway, Ms. Heald with various
24 matters related to her property, whether she

1 will in fact have water and what the conditions
2 of having water would be, moving her plants --
3 there are other issues around that, that we
4 don't need to get into. But I just think it's
5 important since we are talking about their
6 technical ability, I think were they here and
7 speaking, they would say they question their
8 technical ability to do this right, let me put
9 it that way.

10 PRESIDING OFFICER WEATHERSBY: So are
11 you then suggesting an independent monitor or
12 monitors --

13 MS. DUPREY: No, not suggesting
14 anything. Just want to be sure that as we
15 summarize the totality of the comments that
16 were made to us, which you did an excellent job
17 of, I just think it's worth noting that not
18 everyone shares my comfort that the Applicant
19 has the ability to construct this project, and
20 I just think it should be part of our
21 deliberation.

22 PRESIDING OFFICER WEATHERSBY: Mr.
23 Way.

24 MR. WAY: I think those are good

1 comments. You know, as I look at this, we're
2 looking at three things: We're looking at
3 technical ability, then we're looking at maybe
4 faith and trust that what is going to be --
5 what is said will be done will be done. So
6 when you look at a lot of the comments from the
7 intervenors, they may not have the faith that
8 the vegetation that would be replanted will be
9 sufficient to address the views. There may not
10 be the faith that the road will be rebuilt to a
11 spec as good or better than the road that was
12 disturbed. So I think we have to make sure
13 that we're separating things out, particularly,
14 you know, if there's areas of trust. I keep
15 thinking about what Director Muzzey said, you
16 know, that there's a little bit of distrust.
17 There has to be something behind that beyond
18 just concern. And so when I look at the
19 technical capability and I look at some of the
20 testimony that came up of, well, what exactly
21 are the concerns with their technical
22 capability versus what is your faith that
23 they'll be able to implement it, they were two
24 different things. I don't have an issue --

1 well, I shouldn't say I don't have an issue.
2 But I'm fairly comfortable with the technical
3 capability of the Company. I looked at the
4 subcontractors. I think personally,
5 particularly in tune to LS Cable and they're
6 able to do the crossing, I was interested in
7 their prior experience. Obviously they had
8 some experience in Rhode Island. Less
9 concerned about the fact that they haven't done
10 it here in New Hampshire. I think their
11 experience in other areas is adequate to the
12 task.

13 I think in terms of the
14 Construction Panel, I feel comfortable. I
15 find Mr. Bowes to be persuasive in his
16 ability to describe the construction. So I
17 think from a technical capability, I feel
18 comfortable.

19 In terms of faith and trust, I
20 think that's part of our job maybe to look at
21 some of the conditions that help to put that
22 in place. I'm hesitant to go the independent
23 monitor route just because we're addressing
24 this trust. I'd like to think that we can

1 somehow put something in place in the BMPs
 2 that might be in the conditions that helps to
 3 restore that trust. But I think we have to
 4 acknowledge that and that that is a concern
 5 from the intervenors. But I'd like to think
 6 we can sort of suss that out with the
 7 process.

8 PRESIDING OFFICER WEATHERSBY: I
 9 think, too, that there is a level of distrust.
 10 And there are a number -- the Applicant needs
 11 to be accountable in some way to deliver on
 12 everything they're delivering, they said they
 13 would deliver on -- you know, Frink Farm having
 14 soils put back that will match so that the
 15 grass or the hay will be the same to reflect
 16 that landscape. And we can go on with a number
 17 of hundred of examples. So I personally think
 18 independent monitors are appropriate for
 19 environmental issues such as that and for all
 20 of the issues regarding Little Bay and the
 21 wetlands. These are some really important
 22 resources. Probably for historic as well. But
 23 as far as whether a tree they planted didn't
 24 grow, they didn't give me enough water, those

1 sort of things I think don't need to involve an
2 independent monitor.

3 Eversource has a complaint process.
4 They've got somebody manning the phone that's
5 going to address these issues that come in.
6 They're keeping people informed as to when
7 they're in the area, making sure there's
8 access to people's houses. I think there's
9 an alternative process for sort of the access
10 and vegetation type of issues. But I think
11 that some of the others they're almost at a
12 different level. Not to minimize by any
13 means someone not being able to get in
14 driveway. That's a huge inconvenience.
15 There could be an emergency issue. So I
16 don't mean to minimize that. But there are
17 other effects that have much broader, I
18 guess, implications.

19 MR. WAY: And I guess maybe I
20 didn't -- I wasn't as clear as I wanted to be.
21 But in terms of the environmental monitor, I do
22 agree with that. I think it's just when you
23 branch out into all the other areas. I'm not
24 sold on the historic piece yet, but obviously

1 can be convinced. But I do agree with the
2 condition, and I think both sides agree to that
3 as well. So I just want to make that
4 clarification.

5 MR. FITZGERALD: Madam Chair.

6 PRESIDING OFFICER WEATHERSBY: Mr.
7 Fitzgerald.

8 MR. FITZGERALD: I'd like to assert
9 that I heard nothing during the proceedings
10 that would suggest that the Company doesn't
11 have the strongest intent to operate in good
12 faith and address issues that arise during
13 construction, nor was anything brought to my
14 attention that suggested that previously they
15 had not done so. You know, I think any project
16 of this size there are issues. I think there's
17 something inherent in individuals trying to
18 deal with a large corporate entity that is
19 doing a massive project and trying to navigate
20 a government process such as this, that there's
21 a natural level of, you know, distrust
22 sometimes. But I want to be careful that we --
23 you know, I heard a number of issues raised.
24 But constantly during whatever it's called,

1 re-cross, I heard rebuttal to those issues and
2 testimony that the Company had tried to connect
3 with people, tried to make good-faith efforts.
4 I will say I'm not sure that their
5 communication and outreach was the best in
6 terms of, you know, actually meeting and
7 dealing with people as opposed to e-mails and
8 so on. But it seems to me that they -- again,
9 I'd like to have some discussion on Little Bay,
10 that they have the technical and managerial
11 capability here. And we can have a discussion
12 on the sides, you know, on independent
13 monitoring and so on and what role it might
14 play. But it also seems to me we ought to
15 recognize there are enforcement procedures and
16 that, if someone has a problem, A, they have a
17 dispute resolution process; B, someone can
18 always come to the SEC and file a complaint,
19 you know, if something hasn't been done
20 properly and so on and have it investigated.
21 And, you know, I mean, I know that's happened
22 on prior projects. There have been buildings
23 built where they weren't supposed to be built
24 and so on. So I think we have to understand

1 that, you know, that's the reason for
2 enforcement, for compliance and enforcement
3 efforts, is that we don't -- we can never
4 guarantee that everything will be done
5 perfectly. But if it's not, there is a
6 procedure to ensure that it is done in
7 compliance. So I think we need to keep that in
8 mind.

9 PRESIDING OFFICER WEATHERSBY: Ms.
10 Duprey.

11 MS. DUPREY: I think that's a great
12 point. And I would just add that I was
13 reviewing the dispute resolution process, which
14 is Applicant's Exhibit 268, just now. And I
15 don't know that we could do this, but one thing
16 we might be able to do would be to add a
17 Paragraph 5 under B that allows people to come
18 in and complain about the tree died or the tree
19 didn't get planted, whatever the promise was
20 that the Applicant made that didn't happen,
21 that that might help to take care of things in
22 a different way than a lot of independent
23 monitors. So, just a thought. Not anything we
24 need to discuss now. I don't know if we have

1 the power to do that. That's something perhaps
2 our counsel could consider over the course of
3 deliberations. But it's just a thought.

4 MR. IACOPINO: There have been other
5 instances where the Site Evaluation Committee
6 has required the Applicant to appoint an
7 ombudsman for just those types of concerns.

8 MS. DUPREY: Create another way of
9 handling it. Okay. Thanks.

10 PRESIDING OFFICER WEATHERSBY:
11 Attorney Iacopino, could you remind us of the
12 enforcement mechanisms that are in our rules if
13 someone has an issue.

14 MR. IACOPINO: Sure. Enforcement is
15 obviously covered in the statute. But our rule
16 is a little more specific. "Whenever the
17 Committee or the Administrator as designee
18 determines on its own or in response to a
19 complaint that any term or condition of an
20 issued certificate is being violated, it shall
21 give written notice to the person holding the
22 certificate of the specific violation and order
23 the person to immediately terminate the
24 violation." And then there's a process that

1 goes on after that if there's not compliance,
2 or ultimately there would be a hearing before a
3 subcommittee of the Site Evaluation Committee
4 and a determination made if there's in fact a
5 violation; and if there is, what should be done
6 about it. And if there is still intransigence
7 on the part of the certificate holder, they can
8 be fined in the superior -- the case can be
9 brought to the superior court and they can be
10 fined I think up to \$10,000 per day. So there
11 is an enforcement mechanism, and it can be
12 generated as a result of a complaint from
13 anybody.

14 MR. FITZGERALD: And do individual
15 agencies have enforcement with proceeding --
16 capabilities relative to their permits and --

17 MR. IACOPINO: If it's in their
18 permit. When you adopt the permit, you're
19 adopting the conditions of that permit, and
20 they may have enforcement capabilities therein.
21 Typically they're not entitled to enforce the
22 certificate, but you can delegate to them to
23 require -- you can delegate to a state agency
24 to require an Applicant to do certain things.

1 And if there is then a violation, the state
2 agency reports to the Committee. If they can't
3 resolve it with the Applicant, they report it
4 to the Committee for enforcement.

5 MR. FITZGERALD: Well, I guess that's
6 what I'm asking. Suppose there was a shoreland
7 or wetlands violation that was discovered by
8 someone, reported it to the DES. Would --

9 MR. IACOPINO: Experience is that DES
10 talks to the Applicant and it gets resolved.
11 That's the experience. And if it doesn't --

12 MR. FITZGERALD: I mean, there's --

13 (Court Reporter interrupts.)

14 MR. IACOPINO: And if it doesn't,
15 then it would be reported to the Site
16 Evaluation Committee and it could begin an
17 enforcement process.

18 MR. FITZGERALD: You know, we have
19 several mechanisms, you know, administrative or
20 by consent, you know, and so on. So would
21 those routine -- it seems to me what I'm
22 hearing is the Committee's only ability is to
23 say the violation occurred and impose --

24 (Court Reporter interrupts.)

1 MR. FITZGERALD: Seek a -- impose
2 some sort of fine. I think I heard you just
3 refer to a certain amount per day or something
4 like that.

5 MR. IACOPINO: I'm sorry. I didn't
6 mean to limit it to that. You can also suspend
7 the certificate.

8 MR. FITZGERALD: Right. But I'm just
9 saying does the agency have the ability to
10 enforce its own permit in the way that it
11 normally would?

12 MR. IACOPINO: I can't give advice to
13 the state agencies in terms of what they should
14 do. But I would recommend state agencies
15 always follow their own policies.

16 MS. DUPREY: I don't think that he's
17 asking for advice. I think the question is:
18 Does the state agency have the power to enforce
19 its permit, or is that vested in the SEC?

20 MR. IACOPINO: Ultimately it's vested
21 in the SEC. If you look at the statute, RSA
22 162-H:12 provides enforcement authority to the
23 Site Evaluation Committee. But enforcement of
24 the certificate is not something that the Site

1 Evaluation Committee can delegate.

2 MR. FITZGERALD: Mike, I'm looking at
3 RSA 162-H:12 Paragraph V -- IV.

4 "Notwithstanding any other provision of this
5 chapter, each of the other state agencies
6 having permitting or other regulatory authority
7 shall retain all of its powers and duties of
8 enforcement." I think that --

9 MR. IACOPINO: Right. That's
10 correct. But they can't suspend the
11 certificate --

12 MR. FITZGERALD: No.

13 MR. IACOPINO: All right. So we're
14 on the same page.

15 MR. FITZGERALD: Yeah. My question
16 was we can address a shoreline violation that
17 wasn't restored correctly through our normal
18 enforcement procedures.

19 MR. IACOPINO: Right, but you can't
20 suspend the certificate or --

21 MR. FITZGERALD: Right. Right,
22 that's... that's very clarifying. And I think
23 that, as I said, I really think we need in this
24 discussion on monitoring, we need to consider

1 the fact that there is reason for compliance
2 and enforcement efforts by the agencies. So...

3 MR. IACOPINO: I'm sorry. I
4 misunderstood what you were asking.

5 MR. FITZGERALD: Yeah, thank you.
6 And I misunderstood what you were answering.

7 PRESIDING OFFICER WEATHERSBY: I
8 think we need to resolve this one way or
9 another. The issue before us is whether the
10 Applicant has adequate technical and managerial
11 capability to assure the construction and
12 operation of the facility and continuing
13 compliance with the terms and conditions of the
14 certificate. If we are to impose whatever
15 terms and conditions you can think of, do you
16 think that the Applicant has the managerial and
17 technical capability to comply. We could vote
18 on that now. Or we can try to work out some
19 certificate conditions regarding monitoring and
20 then poll everyone. I mean, I think if we
21 assume any conditions we can think of,
22 including an independent monitor, do people
23 have concerns about the Applicant's
24 financial -- sorry -- managerial and technical

1 capability to construct this project, construct
2 and maintain this project?

3 Mr. Fitzgerald.

4 MR. FITZGERALD: So, for me, the
5 question is completely resolved in terms of
6 their capabilities, other than the Little Bay
7 crossing. And I tend to agree with Mr. Way.
8 We can look at LS Cable's capabilities and so
9 on. And I felt pretty comfortable. It wasn't
10 clear to me, and I don't know if anyone -- has
11 Eversource ever -- Eversource is the ultimate
12 manager of this project. They're hiring the
13 subcontractor. The subcontractor seems to have
14 the requisite qualifications. But was there
15 any information provided in the Application
16 that Eversource itself had previously managed
17 this type of a project? Whether it's in New
18 Hampshire or not, I don't think that's
19 relevant.

20 PRESIDING OFFICER WEATHERSBY:

21 Concerning submarine --

22 MR. FITZGERALD: Submarine cable
23 installation.

24 PRESIDING OFFICER WEATHERSBY: There

1 was the one that went from the Cape to Martha's
2 Vineyard.

3 MR. FITZGERALD: That was an
4 Eversource project.

5 PRESIDING OFFICER WEATHERSBY:
6 Eversource project.

7 MR. FITZGERALD: Okay. So that's --

8 PRESIDING OFFICER WEATHERSBY: I
9 think one in Long Island.

10 MR. FITZGERALD: Okay. That's what I
11 was just -- for me, the only issue was is
12 Eversource experienced in managing any
13 submarine contractor -- submarine
14 subcontractor. And so my opinion is that they
15 have the technical and managerial capabilities.

16 PRESIDING OFFICER WEATHERSBY: Mr.
17 Schmidt.

18 MR. SCHMIDT: Yeah, I believe they
19 have the technical and managerial. I think in
20 the areas where they may have less
21 experience --

22 (Court Reporter interrupts.)

23 MR. SCHMIDT: I think they have the
24 ability to hire the experts, like LK [sic]

1 Cables. So I do think they have the technical
2 and the managerial as stipulated in our rules.
3 So I agree.

4 (Court Reporter interrupts.)

5 MR. SCHMIDT: Sorry about that.

6 PRESIDING OFFICER WEATHERSBY: Do we
7 want to do a poll and see how people feel about
8 this? Or we can come back. We can do kind of
9 a straw poll and come back later if we want to.

10 Mr. Way.

11 MR. WAY: I was going to suggest, as
12 I mentioned earlier, I think you can do -- and
13 it's a straw poll we're talking about here.
14 There's nothing binding. You can do a straw
15 poll on technical finding, you know, the
16 technical piece, recognizing that -- and I
17 think it's true for just about everything we
18 decide upon. The conditions that we put later
19 on down the line are going to loop back and
20 have an impact and we're going to have to
21 revisit it possibility. So I would say go with
22 the straw poll and see how -- because this
23 piece will come up later.

24 PRESIDING OFFICER WEATHERSBY: You

1 raise an important point, that we can always
2 come back and change our minds if something in
3 our deliberation says, you know, there's a
4 piece missing. We can revisit it. So this is
5 non-binding. It's not over until it's over and
6 a final decision is made.

7 So, for now, I will ask you whether
8 you feel it's -- are we comfortable doing
9 them together, technical and managerial?
10 Okay. Seeing nodding heads. I will ask you
11 whether you feel the Applicant has the
12 technical and managerial capability to
13 construct and operate the Seacoast
14 Reliability Project in conformance with the
15 conditions and terms of the certificate.

16 Mr. Fitzgerald.

17 MR. FITZGERALD: I am very confident
18 that they have capabilities.

19 PRESIDING OFFICER WEATHERSBY: Ms.
20 Duprey.

21 MS. DUPREY: Yes.

22 PRESIDING OFFICER WEATHERSBY: Mr.
23 Way.

24 MR. WAY: Yes.

1 PRESIDING OFFICER WEATHERSBY: Mr.
2 Schmidt.

3 MR. SCHMIDT: Yes.

4 PRESIDING OFFICER WEATHERSBY: Mr.
5 Shulock.

6 MR. SHULOCK: Yes.

7 PRESIDING OFFICER WEATHERSBY:
8 Director Muzzey.

9 DIR. MUZZEY: Yes.

10 PRESIDING OFFICER WEATHERSBY: And I
11 do as well.

12 Okay. Does anybody need a break
13 between topics here, stretch your legs?

14 DIR. MUZZEY: Sure.

15 PRESIDING OFFICER WEATHERSBY: A
16 five-minute break, ten-minute break?

17 (Recess was taken at 11:29 a.m.

18 and the hearing resumed at 11:44 a.m.)

19 PRESIDING OFFICER WEATHERSBY: We
20 will resume our deliberations. We are going to
21 take things slightly out of order where we're
22 going with rules. And the next topic we're
23 going to be discussing is the impact of the
24 Project on aesthetics. Who would like to lead

1 off? Mr. Shulock.

2 MR. SHULOCK: Okay. Under RSA
3 162-H:16 IV(c), before we can issue a
4 certificate, we have to make a finding that the
5 site and facility will not have an unreasonable
6 adverse effect on aesthetics, historic sites,
7 air and water quality, natural environment and
8 public health and safety. So the first thing
9 we're going to look at is aesthetics. And the
10 general finding that we have to make is that
11 the Project will not have an unreasonable
12 adverse effect on aesthetics. So this is a
13 broad topic, actually, and so Chuck Schmidt and
14 I have divided it up. First, I'm going to look
15 at the statutory factors that we have to
16 consider under the rules, review some of the
17 basic definitions and talk about some of the
18 issues that the parties have brought up. Then
19 Chuck's going to talk about the visual impact
20 assessments. He's going to summarize the
21 evidence and the positions of the parties, and
22 then we can start our discussion.

23 So when we make that finding of
24 unreasonable adverse effect, the statute

1 requires us to consider several different --
2 seven different factors. And I'm going to
3 read them off. It's a lot of reading, but I
4 think it's important to do because everybody
5 needs to understand that whatever our
6 discussions are today, whether we're listing
7 these explicitly or not, we are at least
8 implicitly making these findings when we
9 review the aesthetics.

10 The first is the existing character
11 of the area of potential visual impact;
12 second is the significance of affected scenic
13 resources and their distance from the
14 proposed facility; third, the extent, nature
15 and duration of public uses of affected
16 scenic resources; fourth, the scope and scale
17 of the change in the landscape visible from
18 affected scenic sources; fifth, the
19 evaluation of the overall daytime and
20 nighttime visual impacts of the facility as
21 described in the visual impact assessment
22 submitted by the Applicant and other relevant
23 evidence submitted pursuant to Site 202.24;
24 sixth, the extent to which the proposed

1 facility would be a dominant and prominent
2 feature within a natural or cultural
3 landscape of high scenic quality or as viewed
4 from scenic resources of high value or
5 sensitivity; and seven, the effectiveness of
6 the measures proposed by the Applicant to
7 avoid, minimize or mitigate unreasonable
8 adverse effects on aesthetics, and the extent
9 to which such measures represent best
10 practical measures.

11 Then we have some definitions that
12 come from our rules. So, Rule 102.45 defines
13 "scenic resources" as "resources to which the
14 public has a legal right of access that are:
15 A, designated pursuant to applicable
16 statutory authority by national, state or
17 municipal authorities for their scenic
18 quality; B, conservation lands or easement
19 areas that possess a scenic quality; C,
20 lakes, ponds, rivers, parks, scenic drives
21 and rides, and other tourism destinations
22 that possess a scenic quality; D,
23 recreational trails, parks, or areas
24 established, protected or maintained in whole

1 or in part with public funds; E, historic
2 sites that possess a scenic quality; or F,
3 town and village centers that possess a
4 scenic quality. And again, what precedes all
5 of that is that these are resources to which
6 the public has a legal right of access."

7 Rule 102.44 defines "scenic
8 quality" as "a reasonable person's perception
9 of the intrinsic beauty of landforms, water
10 features or vegetation in the landscape, as
11 well as any visible human additions or
12 alterations to the landscape."

13 Rule 102.23 defines "historic
14 sites" as "historic property" as defined in
15 statute, namely, "any building, structure,
16 object, district, area or site that is
17 significant in the history, architecture,
18 archeology or culture of this state, its
19 communities or the nation." This definition
20 includes any prehistoric or historic
21 district, site, buildings, structure or
22 object included in or eligible for inclusions
23 in the National Register of Historic Places
24 maintained by the Secretary of the Interior.

1 Rule 102.10 defines "area of
2 potential visual impact" as "a geographic
3 area from which a proposed facility would be
4 visible and would result in potential visual
5 impacts, subject to the areal limitations
6 specified in Site 301.05(b)(4)."

7 Site 301.05(b)(4) further requires
8 a computer-based visibility analysis to
9 determine the area of potential visual impact
10 for proposed transmission lines that: One,
11 will be located in a new transmission
12 corridor or in an existing transmission
13 corridor, if either or both the width of the
14 corridor or height of the towers, poles or
15 other supporting structures will be increased
16 to extend the minimum of a 10-mile radius;
17 and, two, will be longer than 1 mile, to
18 extend to a 2-mile radius if located in any
19 urban center.

20 So I tried to put together a list
21 of some of the issues the parties have raised
22 with regard to this assessment. But of
23 course it's very important if I've missed any
24 that people point them out. And, you know,

1 some of them we may need to discuss, some of
2 them we may not.

3 The first is the visual impact
4 analysis that was done by LandWorks was
5 heavily criticized by Counsel for the Public
6 and the intervenors as essentially being too
7 stringent and being designed to exclude sites
8 for review rather than to include sites for
9 review, almost to the point where it's a
10 violation of our rules. So we have to
11 consider whether or not that impact analysis,
12 whether by itself or in conjunction with
13 other evidence that's been placed on the
14 record, provides us with enough information
15 to make the assessments that we need to make
16 today. And that would include several
17 subissues, such as whether the Applicant has
18 adequately identified historic sites with
19 scenic qualities for our review; whether Mr.
20 Raphael appropriately used a bare earth
21 analysis; whether all sites with public
22 access have been reviewed. I think it was
23 Newington that made the argument that
24 properties in common use should have been

1 reviewed because the public has a right to
2 enter upon those lands under certain
3 conditions. I think we might also want to
4 look at impact on specific scenic resources.

5 We might want to look at whether we
6 base our decision on the incremental
7 difference between the appearance of the
8 current utility easement which contains poles
9 and a certain number of wires at a certain
10 height and the incremental distance to the
11 larger poles and wires, or whether we should
12 review those, the larger poles and wires, in
13 and of themselves.

14 And then, of course, if we were to
15 accept the conditions recommended by the
16 Counsel for the Public and Mr. Lawrence with
17 regard to the 13 sites that Mr. Lawrence
18 identified, what the appropriate level of
19 review will be and who should do it for
20 vegetation management plans and whether they
21 mitigate adverse effects.

22 So that's my part. I'll turn it
23 over to Chuck, who's going to talk about the
24 visual impact assessments and summarize the

1 evidence.

2 MR. FITZGERALD: Dave, could you just
3 clarify what was the issue about sites that
4 have some public access or co-access or
5 something, common use --

6 MR. SHULOCK: Current use.

7 MR. FITZGERALD: Oh, current use.

8 MR. SHULOCK: I believe it was
9 Newington, but there may be argument that the
10 Applicant hadn't reviewed some scenic resources
11 that were essentially private property that
12 were assessed for current use.

13 MR. FITZGERALD: Okay.

14 MR. SHULOCK: Because as part of
15 getting that current use, they had to allow
16 public access under certain circumstances.

17 MR. FITZGERALD: I misheard you. I
18 thought you said under common uses.

19 MR. SHULOCK: Right. And then I
20 think Counsel for the Public's historic
21 resource witness implied that even visual
22 access might be enough if you stood at the
23 boundary of the property and you could look
24 into the historic site, that was the level of

1 access that we might want to consider.

2 MS. DUPREY: I didn't fully hear your
3 last -- you talked about what is appropriate.
4 Appropriate about what? The mitigation --

5 MR. SHULOCK: Right. So --

6 MS. DUPREY: -- or what's the
7 appropriate mitigation? Is that what you --

8 MR. SHULOCK: So, Mr. Lawrence and
9 Counsel for the Public identified 13 additional
10 scenic resource sites. There's some dispute
11 over whether they actually fall under the
12 category. But the Applicant and Counsel for
13 the Public have agreed to the preparation of
14 vegetation management plans that would
15 mitigate, in their opinion, whatever adverse
16 effects might arise at those areas. But those
17 plans are not prepared yet, and somebody has to
18 review those plans. And we have to develop a
19 level of comfort and a condition that would
20 assure that they meet our findings.

21 MS. DUPREY: All right. Thank you.

22 MR. SCHMIDT: Good morning. I'll
23 touch on the effects of the aesthetics. And as
24 Mr. Shulock indicated, I'll continue with the

1 intervenors' comments.

2 So, Site 301.05, Effects on
3 Aesthetics, requires each application to
4 include visual assessment of the proposed
5 energy facility prepared in a manner
6 consistent with generally accepted
7 professional standards, with the eye of
8 avoiding, minimizing or mitigating potential
9 adverse effects of the proposed facility.

10 Visual impact assessment shall
11 contain the following components, and I'm
12 going paraphrase: A description and map
13 depicting the locations is one; two, a
14 description of how the Applicant identified
15 and evaluated the scenic quality of the
16 landscape and potential visual impacts;
17 three, a narrative and graphic description
18 explaining the physiographic, historical and
19 cultural features of the landscape
20 surrounding the proposed facility to provide
21 the context for evaluating any visual
22 impacts; this particular project, as Mr.
23 Shulock mentioned, under Category 4,
24 computer-base visibility analysis to

1 determine the area of potential visual impact
2 which, for proposed -- and this project is
3 for D, electric transmission lines longer
4 than one mile if located within any rural
5 area shall extend to a 10-mile radius, and
6 that's No. 2, a radius of 10 miles if the
7 line would be located in a new transmission
8 corridor or in an existing transmission
9 corridor if either or both the width of the
10 corridor or height of the towers, poles or
11 other supporting structures would be
12 increased; and then also five, an
13 identification and description of all scenic
14 resources within the area of potential visual
15 impact is needed; and six, a characterization
16 of the potential visual impacts of the
17 proposed facility. And there are several.
18 I'll just quickly go through them. The
19 expectation of the typical viewer; the effect
20 on future use and enjoyment of the scenic
21 resource; the extent of the proposed
22 facility, including all structures and
23 disturbed areas; the distance of the proposed
24 facility from the scenic resource; the

1 horizontal breadth or visual arc of the
2 visible elements of the facility; the scale,
3 elevation and nature of the proposed facility
4 relative to the surrounding topography; the
5 duration and direction of the typical view of
6 the elements; and the presence of intervening
7 topography between the scenic resource and
8 elements.

9 Also required is a photo simulation
10 from -- and those are taken from
11 representative key observation points, from
12 other scenic resources for which the
13 potential visual impacts are characterized as
14 "high," and to the extent feasible, from a
15 sample of private property observation points
16 within the area of potential visual impact,
17 to illustrate the potential change in the
18 landscape that would result from construction
19 of the proposed facility and associated
20 infrastructure, including land clearing and
21 grading.

22 With that, I'll proceed to the
23 various individuals. The Applicant retained
24 the services of LandWorks for a visual

1 assessment study. LandWorks, and Raphael,
2 his opinion is that the Applicant has met the
3 criteria for evaluating the aesthetic
4 component, and they have minimized and/or
5 avoided aesthetic impacts. The study area
6 runs parallel to the transmission line
7 corridor and contains 361 square miles
8 through 20 towns.

9 Mr. Raphael identified 181
10 identified potential scenic resources.
11 LandWorks analysis reduced this to 30 scenic
12 resources that have the potential for
13 visibility; 9 of those are considered very
14 visually sensitive. The primary project
15 visibility from scenic resources is limited
16 to several local roads and a few local and
17 regional viewpoints. He feels the average
18 viewing distance of all resources with
19 potential visibility will be 0.9 or more
20 miles and 1.75 or more miles for the nine
21 sensitive resources. The nine were evaluated
22 for cultural designation and scenic quality.
23 Of the 30 scenic resources identified as
24 having potential visibility, as I said, nine

1 have a visual sensitivity rating of moderate
2 to high or high and therefore move forward in
3 his next step. These areas in particular
4 include: Great Bay National Wildlife Refuge,
5 Little Bay Road, Cedar Point/Black River Road
6 from Route 4, Scammell Bridge from Route 4,
7 Wagon Hill Farm, Fox Point, the UNH campus,
8 Garrison Hill Park and tower, and Stratham
9 Hill Park.

10 The next step he utilized to
11 determine the visual effect the Project may
12 have on the nine areas. This rating used
13 scale and special presence; and that is, the
14 Project had a dominant element in the view;
15 the prominence of the location; does the
16 Project stand out and draw attention;
17 compatibility; is the Project consistent or
18 inconsistent with the built or natural
19 elements currently visible in the landscape.

20 Three scores for each resource were
21 then combined to determine the overall visual
22 effect. Only one of the nine sensitive
23 resources resulted in an overall rating of
24 moderate-high; that was Little Bay Road.

1 Photo simulations were prepared for
2 resources rated with a moderate to high
3 sensitivity, which had the potential to be
4 significantly affected by the visual change.
5 The Applicant's photo simulations represent
6 one or more of the following features: A
7 point within an area of the resource
8 identified by the viewshed and has the
9 highest range of structures potentially
10 visible, a point where the highest amount of
11 use is anticipated from the resource, or a
12 point where access to the resource is most
13 easily or likely achieved.

14 The Applicant submitted an
15 amendment to his original filing on
16 October 7, 2016, and Mr. Raphael commented on
17 that. Those included design changes to the
18 overhead configuration in Durham and
19 Newington, basically eliminating proposed
20 Structure 92 near Fox Point Road. And the
21 areas between sections -- Structures 16 and
22 18 were redesigned to eliminate
23 Structure 117.

24 Raphael's conclusion included --

1 repeated his initial analysis that they have
2 not changed with the revisions to the
3 overhead configuration.

4 The next change in that amendment
5 was undergrounding at Newington and Gundalow
6 Landing Road. Raphael's conclusion was the
7 original VA LandWorks report found no
8 substantive issues with this particular site,
9 and therefore nothing changed.

10 Undergrounding. And the third
11 change was undergrounding in the Newington
12 District Court -- Historic District. The
13 Project will continue undergrounding the
14 cable within the existing right-of-way across
15 the Frink Farm and the Newington Center
16 Historic District, crossing Nimble Hill Road.

17 Raphael's conclusion: This
18 represents a net gain in visual quality over
19 the previously proposed overhead route. The
20 undergrounding of the section through the
21 historic district for approximately .51 miles
22 represents substantial avoidance and
23 minimization measures.

24 On the side, I felt some of the viewshed

1 simulations were not conclusive, and I'm not
2 comfortable with the adequate attempts that
3 were made to meet all of the vantage point
4 simulations. So keep that in mind as we move
5 ahead.

6 Now, Counsel for the Public,
7 Mr. Lawrence -- hired Lawrence. He's a CFP
8 expert witness and a landscape architect and
9 has experience with a wide variety of
10 projects, including energy siting facilities
11 in New England. He was hired to review
12 LandWorks' report. His findings include:
13 The Project would not be widely visible due
14 to the topography and forest cover across
15 much of the Project route. The Project will
16 be highly visible at road crossings and
17 across portions of the UNH campus, and this
18 project would dramatically change the visual
19 character and increase [sic] the aesthetic
20 quality of those areas. Mr. Lawrence
21 disagreed with LandWorks' assertion that a
22 transmission line has the same visual impact
23 as a distribution line. The combination of
24 significantly taller structures and

1 substantial tree removal to the full width of
2 the right-of-way would dramatically change
3 the visual character and decrease the
4 aesthetic quality claims Mr. Lawrence. Mr.
5 Lawrence also said some of the 13 areas
6 identified -- identified 13 areas of visual
7 impact identified in his report, and they
8 constitute a scenic resource under the
9 Committee's rules. To qualify as a scenic
10 resource, there must be a public legal right
11 of access, and the resource must meet one or
12 more of the criteria set in Site 102.45.

13 Road crossings, designated scenic roads
14 or scenic byways he felt should qualify as
15 scenic resources. Certain buildings on the
16 UNH campus he felt also should qualify as
17 scenic resources.

18 As noted, Lawrence identified 13 key
19 observation points at road crossings on the
20 campus, and each one he compared the existing
21 conditions to the proposed project conditions
22 in developing illustrative photos and maps.

23 Regarding Lawrence -- regarding
24 LandWorks visual assessment report,

1 Lawrence's opinion is that it utilizes an
2 overly complicated methodology and appears to
3 under-represent scenic resources and
4 minimizes the visual impact of the scenic
5 resources identified.

6 The Applicant appears to propose to use
7 natural revegetation to replace existing
8 visual screens at road crossings where the
9 right-of-way will be cleared for
10 construction. Mr. Lawrence recommends
11 employing planting of height-appropriate
12 species to shield those areas. Lawrence's
13 opinion is that the Project will change the
14 visual character and decrease the aesthetic
15 quality of the right-of-way.

16 The Town of Newington's comments
17 included they feel the Project does include
18 unreasonable adverse effects on the
19 aesthetics and historic sites. They request
20 that if the certificate is issued by the SEC,
21 the Town requests a condition be included
22 that requires that Eversource bury the
23 transmission line in the current distribution
24 line easement in all of the portions of the

1 residential and historic districts in
2 Newington in which the transmission line will
3 be located. The Town's position is --

4 (Court Reporter interrupts.)

5 MR. SCHMIDT: The Town's position is
6 emphasized in the post-hearing supplemental
7 brief. The Applicant has failed to meet its
8 burden of proving all of the applicable
9 statutory and regulatory criteria.

10 I will say the Applicant has
11 attempted to negotiate with other property
12 owners in the historic district and was
13 not -- it's my understanding that the
14 property owner was not interested in pursuing
15 that.

16 The Frink Farm, the Darius Frink
17 Farm's listing on the National Register
18 explicitly links aesthetic quality. Their
19 opinion is the aesthetic quality will be
20 damaged by the intrusion of the 75-foot-tall
21 steel monopole tower measuring 8 feet in
22 diameter at its base adjacent to their field.

23 She also quotes -- Ms. Frink quotes
24 the National Historic Preservation Act. And

1 in that there's a statement, "diminish the
2 integrity of the property," that the Project
3 is considered to have adverse effect --
4 excuse me. "Integrity is the ability of a
5 property to convey its significance based on
6 its location, design, setting and
7 materials..."

8 I do also want to note the New
9 Hampshire State Historic Preservation Officer
10 identified no adverse effect to the Frink
11 Farm.

12 The Frink Farm fully states -- the
13 Frink Family states full and complete
14 opposition to the Seacoast Reliability
15 Project.

16 Regarding the monopole, I do also
17 want to point out in Applicant Exhibit 250,
18 and in e-mail at Exhibit 252, the Frink Farm
19 summary outreach, Eversource has
20 re-engineered the transition structure design
21 to offer 75-foot, single monopole instead of
22 a 65-foot, three-pole transition structure.
23 And the response from the Frink Trust was
24 that they were satisfied with that redesign.

1 Durham Residents. The Project will
2 have an adverse effect to the community. The
3 process used to determine the aesthetic
4 impacts by the Applicant was overly
5 complicated. The Applicant's historic
6 consultants did not consult with the Durham
7 Historic Association for local knowledge.
8 The Applicant failed to adequately analyze
9 the impact on stone walls.

10 Fitch. The Applicant has not been able
11 to show by a preponderance of evidence that
12 the Project will not have an unreasonable
13 adverse effect on aesthetics.

14 Miller asserted that the bare earth
15 visibility analysis was not used.

16 The Durham Historic Association
17 indicates Mr. Raphael stated that he relied
18 on the Applicant's historic consultants who
19 listed only historic resources listed -- are
20 eligible for listing on the National
21 Register. Many historic and cultural
22 resources possessing scenic quality that
23 would have qualified under the SEC rules were
24 never identified or analyzed by Mr. Raphael.

1 The elimination of 21 culturally designated
2 scenic resources appears based on an overly
3 complicated rating and scoring method that
4 counters the purpose of the SEC rules.

5 The Applicant has not met its burden of
6 proof in regard to recreational trails as
7 described in SEC Rule Site 102.45(d), which
8 defines "recreational trails" as "scenic
9 resources." The Applicant's consultant did
10 not assess the trails where the proposed
11 Project crosses three historic districts and
12 several conservation areas between the
13 Durham-Madbury line on Durham Point Road.

14 The Historic Association feels the
15 Newmarket Road utility crossing and the
16 Durham Point Road utility crossing qualifies
17 as key observation points. The degree of
18 change of the crossings at Durham Point Road
19 and Route 108/Newmarket Road/King's Highway
20 have not been adequately analyzed or
21 mitigated by the Applicant.

22 DHA is very concerned about artifacts in
23 the path of the transmission line "getting
24 crushed." And I may add I am somewhat

1 concerned that the Applicant did not research
2 or reach out to local people with knowledge
3 of the historic features in their towns to
4 further identify sites.

5 The Town of Durham and UNH. The Town
6 and UNH is of the opinion that the Applicant
7 did not meet its burden of showing the
8 Project would have [sic] unreasonable effect.
9 The method used to identify the historic
10 sites was complicated and therefore
11 overlooked many valuable sites. Mr. Raphael
12 failed to identify key observation points
13 where the Project would be prominently
14 visible.

15 That's all I have.

16 So, a couple of the key points. It
17 appears that the Raphael report is maybe
18 lacking. But also, I see signs where the
19 Applicant has reached out to certain areas to
20 get to seek additional information. So, with
21 that I'll turn it back over to Mr. Shulock.

22 MR. SHULOCK: I guess the question is
23 how long do we want to go?

24 PRESIDING OFFICER WEATHERSBY: What's

1 your preference?

2 MR. SHULOCK: I don't care.

3 PRESIDING OFFICER WEATHERSBY: Is it
4 easier to take a break now and --

5 MR. SHULOCK: It's a logical breaking
6 point.

7 (Court Reporter interrupts.)

8 PRESIDING OFFICER WEATHERSBY: So
9 we're going to take a break now.

10 Ms. Duprey.

11 MS. DUPREY: Could we just talk for a
12 minute about how we're going to tackle all of
13 this? Because it might be worth figuring that
14 out if we can before our break. My question
15 being that it would be easy to hop around to
16 all different things and not really burrow into
17 each topic and try to get it resolved and then
18 move on. And I think a number of our areas --
19 mine is going to have the same kind of thing.
20 And I'm just wondering if we might want to set
21 some maybe broad areas, like perhaps we talk
22 about the visual assessment itself and try to
23 tackle how we feel about that because that
24 underlies a lot of other things. I don't know.

1 Since it wasn't my topic area, I didn't give it
2 that kind of consideration. But I didn't know
3 if you two might have some suggestion as to how
4 we best do the thorough job that we're going to
5 need to do to go through this. Thank you.

6 MR. SHULOCK: I think that's
7 reasonable. I thought we might approach it as
8 I listed those five or six different issues,
9 and I thought we might go one by one through
10 those, the first of which is there's the
11 underlying question of whether the assessment
12 is adequate; but even if it's not adequate,
13 whether there's enough information in the
14 record for us to proceed and make a decision
15 based on those seven criteria that we need to
16 consider. And then the issues go on from
17 there, including if any of us feel the need to
18 look at any of the individual places to see
19 whether there's a significant adverse effect at
20 any one location that might affect our review
21 of the entire project and whether that adverse
22 effect is appropriately mitigated.

23 MS. DUPREY: Okay. So we'll bring up
24 a particular property if we feel like we want

1 to discuss it more; otherwise, we won't.

2 MR. SHULOCK: Well, we can do it that
3 way, or we can group them in different ways.
4 So, for instance, the areas identified by
5 Counsel for the Public. I think there are 13
6 of those. Most of those are road crossings,
7 and there's a mitigation plan for that. So we
8 might address those as a group.

9 MS. DUPREY: Okay. And when we talk
10 about the historic sites, we're talking about
11 historic sites with a scenic quality. Is that
12 the --

13 MR. SHULOCK: And public access.

14 MS. DUPREY: And public access.

15 MR. SHULOCK: But we may need to talk
16 about what does "public access" mean.

17 MS. DUPREY: Okay. Yes.

18 MR. SHULOCK: Does that sound like a
19 good enough start?

20 MS. DUPREY: Yeah, it does. Thank
21 you.

22 PRESIDING OFFICER WEATHERSBY: So
23 what I heard you say in the list that I made as
24 you were talking is we'll talk generally about

1 the visual impact analysis first and bring up
2 issues such as did they adequately identify
3 scenic resource. So that's the historic
4 properties --

5 MR. SHULOCK: As a subset.

6 PRESIDING OFFICER WEATHERSBY: -- as
7 a subset. Did they appropriately use the bare
8 earth analysis, and so I guess that goes into
9 the area of potential visual impact. Whether
10 all the sites with public access were
11 considered, so I guess that goes back up to
12 scenic resources. Impact on specific
13 properties that we want to consider; we may use
14 photo simulations at that point. Then there
15 are other issues, like incremental change
16 versus --

17 (Court Reporter interrupts.)

18 PRESIDING OFFICER WEATHERSBY: Then
19 conditions we may want to impose if we are
20 inclined to grant a certificate.

21 MR. SHULOCK: I think that was all
22 that I had. If others have additional
23 concerns, we certainly have to address those.
24 And it's not that those are concerns, I want to

1 make clear. It's just those are --

2 PRESIDING OFFICER WEATHERSBY: Issues
3 . Things like road crossings, these were key
4 observation points that would fall under the
5 scenic resource identification I guess. That's
6 a pretty broad topic. Methodology. We might
7 want to talk about the methodology used in the
8 visual impact, the screening. The high, lows
9 and moderates, we probably should address that
10 methodology. I'm sure we'll think of others as
11 we go along, but that sounds like a good road
12 map when we get back from lunch.

13 Do we feel like we want an hour?
14 Do you want less time? Let's go off the
15 record for this.

16 (Discussion off the record)

17 PRESIDING OFFICER WEATHERSBY: Back
18 on the record. We'll break for an hour and be
19 back at 1:20 and resume our deliberations
20 concerning visual impact. Thank you.

21 (Lunch recess taken at 12:20 p.m. and
22 concludes Day 1 Morning Session. The
23 hearing continues under separate cover
24 in the transcript noted as Day 1

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Afternoon Session.)

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C E R T I F I C A T E

I, Susan J. Robidas, a Licensed
Shorthand Court Reporter and Notary Public
of the State of New Hampshire, do hereby
certify that the foregoing is a true and
accurate transcript of my stenographic
notes of these proceedings taken at the
place and on the date hereinbefore set
forth, to the best of my skill and ability
under the conditions present at the time.

I further certify that I am neither
attorney or counsel for, nor related to or
employed by any of the parties to the
action; 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.

Susan J. Robidas, LCR/RPR
Licensed Shorthand Court Reporter
Registered Professional Reporter
N.H. LCR No. 44 (RSA 310-A:173)

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