

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

December 3, 2018 - 1:00 p.m.
49 Donovan Street
Concord, New Hampshire

DELIBERATIONS

DAY 3

{Electronically filed with SEC 12-18-18}

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

PRESENT FOR SUBCOMMITTEE/SITE EVALUATION COMMITTEE:

Patricia Weathersby
(Presiding Officer)

Public Member

David Shulock, Esq.
Dir. Elizabeth Muzzey
Charles Schmidt, Admin.
Dep. Dir. Christopher Way
Dir. Michael Fitzgerald
Susan Duprey, Esq.

Public Utilities Comm.
Div. of Hist. Resources
Dept. of Transportation
Div. of Economic Dev.
Dept. of Env. Services
Public Member

ALSO PRESENT FOR THE SEC:

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

Counsel for SEC
Counsel for SEC

Pamela G. Monroe, SEC Administrator

(No Appearances Taken)

COURT REPORTER: Cynthia Foster, LCR No. 14

I N D E X

WATER QUALITY

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1 Number 2, documentation which demonstrates
2 compliance with the application requirements of
3 all such agencies.

4 And then under rule Site 301.07, effects on
5 environment, each Application shall include
6 information including the applications and
7 permits filed pursuant to 301.03(d) which I just
8 read. Information including the applications
9 and permits filed pursuant to Rule 301.03(d)
10 regarding issues of -- that was air. Issues of
11 water quality. Again.

12 And C, information regarding the natural
13 environment including, and then there are six
14 subsets which I'm not going to read. They're
15 rather lengthy. But again, that is Site
16 301.07(c)1 through 7 which are the specific
17 information required regarding the effects on
18 environment, and that includes rare plants, rare
19 natural communities, significant wildlife
20 species, critical wildlife habitat and
21 significant resources affected, assessment of
22 potential impacts of construction on significant
23 wildlife species, rare plants, rare natural
24 communities.

1 5, description of measures planned to
2 avoid, minimize or mitigate potential adverse
3 effects; and 6, description of the status of the
4 Applicant's discussions with the New Hampshire
5 Department of Fish & Game, New Hampshire Natural
6 Heritage Bureau, Fire & Wildlife and other
7 federal and state agencies.

8 Again, those are all the environmental
9 aspects, but these are, I believe those are the
10 statutes and rules that we're required to follow
11 up on.

12 And I thought that I would give an
13 overview, I would go over the state agency
14 permits that are required and provide a little
15 bit of information on the status of those, and
16 then dive into the -- many of those are
17 incorporated into one permit with New Hampshire
18 DES. So there's several permits: Alteration of
19 Terrain, there's Wetlands, Shoreland, et cetera.
20 Those are all incorporated into one final permit
21 from DES which was issued last February, and
22 there have been some revisions to that as well.

23 And then go into the specific water quality
24 issues, and Chris and I have divided this up. I

1 will outline the Application and the areas that
2 relative to water quality that we need to
3 consider. And Chris, there were significant
4 concerns raised by the Town of Durham's panel
5 and Chris has reviewed those. I will note that
6 their concerns, they were able to meet with DES,
7 their concerns were addressed by DES, and so a
8 lot of the issues have been at least presented
9 to DES and considered for possible inclusion in
10 the requirements.

11 Also I would note that there are
12 stipulations in Exhibit 193, commencing on page
13 6, 22 to 31. Proposed requirements. And there
14 are stipulated facts between the Counsel for the
15 Public and the Applicant.

16 I'd like to know the Committee's pleasure,
17 if it would be helpful to review those up front
18 possibly so that we have a context for things
19 that have been pretty well resolved between the
20 Applicant and Counsel for the Public. I think
21 that was helpful in going through historic sites
22 and aesthetics was to understand those things
23 that had already been stipulated. So does that
24 meet with the Committee's pleasure?

1 Okay. We'll start there. So again, the
2 stipulations are Exhibit 193, and there's also a
3 set of stipulated facts -- I'm not sure. I
4 didn't have a chance to prepare notes. I had a
5 printed document. But starting with Stipulated
6 Facts and Proposed Conditions document dated
7 August 15th, I'm not sure of the exhibit number
8 off the top of my head. I don't know if anybody
9 has that.

10 MR. IACOPINO: 184.

11 MR. FITZGERALD: 184. Exhibit 184. And
12 beginning on page 3, real page 3, not
13 electronic. There's a section entitled Water
14 Quality.

15 Starting with number 18, February 28th,
16 NHDES issued a decision on the parts of the
17 Application that relate to permitting to its
18 permitting or regulatory authority relative to a
19 Wetland permit, Alteration of Terrain, 401 Water
20 Quality Certificate and a Shoreland permit. New
21 Hampshire DES recommends approval of the
22 Application with the conditions that are
23 enclosed on the February 28th. We'll get into
24 that later. There's 72 conditions that are part

1 of that February 28th decision.

2 19. The Applicant has entered into a
3 signed MOU with the Darius Frink Farm for
4 Conservation Easement Improvements dated
5 September 27th, 2016. The Applicant agrees to
6 comply with all conditions of that MOU executed
7 with the Rockingham County Conservation
8 District.

9 20. Applicant has entered into a signed
10 MOU that includes Soil and Groundwater
11 Management Plan for underground construction on
12 the Darius Frink Farm in Newington. Applicant
13 agrees to comply with all conditions of the MOU
14 again.

15 21. The Applicant has developed a Draft
16 Revised Soil and Groundwater Management Plan for
17 the Newington area provided to the SEC on July
18 27, 2018, to manage groundwater during
19 construction and in the vicinity of Pease Air
20 Force base, former Pease Air Force base as it
21 may be potentially impacted by perfluorinated
22 compounds, PFCs.

23 22. Permanent direct wetland impacts are
24 below the NHDES threshold for mitigation, 10,000

1 square feet of permanent wetland impact.
2 Secondary impacts due to tree removal exceed
3 that number and result in the need for federal
4 compensatory wetland mitigation. In accordance
5 with applicable US Army Corps of Engineers
6 regulation and guidance, mitigation is
7 proposed -- am I going too fast?

8 COURT REPORTER: Little bit.

9 MR. FITZGERALD: I'm sorry.

10 COURT REPORTER: That's all right. Thank
11 you.

12 MR. FITZGERALD: Therefore, in accordance
13 with the applicable US Army Corps of Engineers
14 regulations and guidance, mitigation is proposed
15 for direct and secondary project impacts to
16 wetlands and impacts to stream buffers.
17 Mitigation ratios were applied to these
18 anticipated impacts in accordance with the New
19 England Army Corps of Engineer mitigation
20 guidance document and in coordination with the
21 USACE and NHDES.

22 23. Applicant has submitted a Revised
23 Environmental Monitoring Plan for Little Bay.
24 On September 15th, 2017, prior to construction

1 the Applicant will receive final approval from
2 DES on that plan and the plan will assess water
3 quality during construction, postconstruction,
4 topography and benthic invertebrates.

5 24. The Applicant has conducted sediment
6 testing that indicates all parameters tested are
7 below regulatory risk thresholds with the
8 exception of Arsenic which is a common naturally
9 occurring element in New Hampshire bedrock.

10 And 25. The Applicant has submitted a
11 Cable Removal Plan to NHDES dated June 30th,
12 2017. The Applicant will comply with all
13 proposed environmental avoidance, minimization
14 and mitigation measures as described in that
15 plan including potential debris mitigation and
16 remedial debris recovery and using pollution
17 prevention measures. All existing cable removed
18 from the seabed will be disposed of in
19 accordance with applicable laws.

20 So those are the stipulated facts included
21 in that Exhibit 184. And then moving on, does
22 anybody have any questions on those?

23 (No verbal response)

24 MR. FITZGERALD: Moving on, there's a set

1 of stipulated conditions in a document dated, I
2 believe that's Exhibit 193 dated 9/17. Wait a
3 minute. I'm not sure if that's the exhibit
4 number or not.

5 DIR. MUZZEY: It is.

6 MR. FITZGERALD: And condition number 8 is
7 that the Applicant shall file with the SEC a
8 copy of all Best Management Practices to be
9 utilized for the Project for all construction
10 activity to the extent they have not already
11 provided, including without limitation BMPs for
12 entering and exiting the right-of-way, sweeping
13 paved roads at access points, BMPs relating to
14 Applicant's Storm Water Pollution Prevention
15 Plan, BMPs for specific locations such as steep
16 slopes and near water bodies, and BMPs for
17 submarine and shoreland cable installation. And
18 during construction the Applicant shall adhere
19 to all BMPs consistent with all state and
20 federal permit requirements.

21 Then beginning on page 4, I'm not sure of
22 the electronic page, but the Environmental
23 conditions, proposed conditions are starting
24 with number 22, the Applicant shall comply with

1 all NHDES permit conditions issued in the Final
2 Decision, February 28th, 2018, as modified by
3 correspondence from DES August 31, 2018.

4 Chairwoman, Attorney Iacopino, do we need
5 to have any discussion with regard to -- there's
6 been substantial motions and correspondence with
7 regards to that DES, and I believe an order was
8 issued to that, for that August 31st DES
9 document. Do we need to have any discussion on
10 that or is that settled?

11 MR. IACOPINO: The Presiding Officer who is
12 in charge under the statute of making procedural
13 orders did in fact issue an order so I think the
14 Committee is bound by that order.

15 MR. FITZGERALD: Okay. All right. Anyone
16 need further information on that?

17 (No verbal response)

18 MR. FITZGERALD: Okay. Proposed
19 conditions, number 23. Further ordered that
20 pursuant to the Alteration of Terrain Permit
21 condition 8, Applicant shall complete and comply
22 with the requirements of a Storm Water Pollution
23 Prevention plan and the United States
24 Environmental Protection Agency National

1 Pollutant Discharge Elimination System
2 Construction General Permit before beginning
3 construction.

4 Number 24, the Applicant shall implement
5 measures to avoid and minimize to the extent
6 possible any potential water quality impacts
7 including sedimentation and erosion controls,
8 and the Applicant shall implement all applicable
9 Best Management Practices prior to commencing
10 construction of the Project.

11 25, and please feel free to stop me if you
12 have questions about any of this. The Applicant
13 shall use independent environmental monitors to
14 oversee the construction of the Project and to
15 work with contractors to implement appropriate
16 BMPs to avoid or minimize environmental impact.
17 Shall also use independent DES-approved
18 environmental monitors to oversee work in Little
19 Bay.

20 Number 26. Once construction begins, the
21 Applicant shall weekly file with the DES and a
22 copy to SEC a copy of all Weekly Compliance
23 Monitoring Reports by all construction and
24 environmental monitors. SEC shall post said

1 reports on its website. The SEC or any state
2 agency to which the SEC delegates authority
3 shall have continuing jurisdiction to address
4 any violations of these conditions.

5 We did have some discussion last week
6 relative to the fact that the state agencies
7 still retain all of their enforcement,
8 compliance and enforcement authorities and can
9 address any problems or issues that are brought
10 to their attention through their normal
11 enforcement measures.

12 So following remediation of any such
13 violation, the Applicant shall file with the
14 NHDES and copy to SEC a report of remediation
15 and the SEC shall post said reports.

16 27. Applicant shall restore any disturbed
17 soils, wetland and upland, to a stabilized
18 condition to prevent permanent erosion impacts.

19 28. The Applicant shall obtain DES
20 approval of a revised Soil and Groundwater
21 Management plan for the Newington area to manage
22 groundwater during construction within the
23 vicinity of the former Pease Air Force base that
24 is potentially impacted by PFCs and other

1 contaminants, a draft of which was provided to
2 the SEC on July 27, 2018. The Applicant shall
3 comply with all conditions of the Final Soil and
4 Groundwater Management Permit for the Town of
5 Newington.

6 29. Further ordered the Applicant shall
7 use the State's Aquatic Resource Mitigation
8 Calculator to determine the final amount of
9 mitigation money necessary to comply with the
10 in-lieu fee program and shall make sure that the
11 required Application to the ARM found prior to
12 the commencement of, shall make the required
13 payment to the ARM fund prior to commencement of
14 construction.

15 And last, number 30, ordered the Applicant
16 shall comply with all vegetation management BMPs
17 and TOY, time of year, restrictions established
18 by the New Hampshire Natural Heritage Bureau and
19 as described in Best Management Practices and
20 Construction Plan for Protected Wildlife and
21 Plants dated September 15th, 2017.

22 So that is a list of all of the Stipulated
23 Facts and Proposed Conditions relative to
24 perhaps a little larger than just water quality

1 but relative to the DES permits.

2 MS. DUPREY: I just wondered about 31. Is
3 that one that you're going to cite later?

4 MR. FITZGERALD: Did I miss one? Sorry.

5 MS. DUPREY: I can read it if you want.
6 Further ordered that the Applicant shall comply
7 with Best Management Practices and Time of Year
8 restrictions approved to by the New Hampshire
9 Fish & Game Department to avoid and minimize
10 potential impacts to rare, threatened and
11 endangered wildlife species and rare plants as
12 described in Best Management Practices and
13 Construction Plan for Protected Wildlife and
14 Plants dated September 15th, 2017.

15 MR. FITZGERALD: As I mentioned -- thank
16 you very much. As I mentioned, some of these
17 are going to natural environment so I'm
18 primarily dealing with water now but I did want
19 to address all of the things that have been
20 stipulated about the environmental conditions.
21 That's certainly relevant.

22 MR. SCHMIDT: I have a quick question. On
23 paragraph 8 it says that the BMPs will be
24 submitted to the SEC. Is that intended as an

1 approval process or will they be submitted to
2 DES for approval?

3 MR. FITZGERALD: The Applicant shall file
4 with the New Hampshire SEC a copy of all BMPs to
5 be utilized for all construction activity. And
6 then lists several BMPs. I think the intent
7 here is to overall cover the BMPs being
8 submitted to the SEC, but I think several of
9 them are addressed individually in conditions,
10 in other conditions as well. So I think all 8
11 is saying is these must be submitted. It just
12 seems to be an overall list. And then during
13 construction the Applicant shall adhere to the
14 BMPs consistent with all state and federal
15 permit requirements. I think it's just a very
16 general statement that there are a number of
17 BMPs. The applicant shall provide them all to
18 the SEC and they shall comply with them all and
19 then as needed specifically they're addressed in
20 other conditions. Certain ones.

21 MR. SCHMIDT: So is it the intent that DES
22 will approve all the BMPs?

23 MR. FITZGERALD: That's my understanding is
24 that they will be submitted to DES, those that,

1 you know, are relevant to the DES permit in the
2 72 conditions that DES imposes would be
3 submitted for approval to DES. I believe
4 there's been some concerns raised that all of
5 that is not final. There was some testimony and
6 it's my understanding that SEC can delegate that
7 authority to DES to approve those plans and make
8 sure that they are received and approve them on
9 behalf of the SEC so that will need to be
10 addressed in our conditions if they're not
11 finalized by the time we finish our
12 deliberations.

13 MR. SCHMIDT: Thank you.

14 MR. FITZGERALD: Any other questions with
15 regards to facts and conditions.

16 PRESIDING OFFICER WEATHERSBY: I have one
17 question concerning number 29. The ARM fund.

18 MR. FITZGERALD: Yes.

19 PRESIDING OFFICER WEATHERSBY: I know that
20 the Applicant has already agreed to provide
21 close to \$350 million to that fund.

22 MR. FITZGERALD: Thousand.

23 PRESIDING OFFICER WEATHERSBY: Thank you.
24 They almost had a heart attack.

1 MR. FITZGERALD: He's clutching his heart.

2 MR. SHULOCK: Everyone's awake now.

3 PRESIDING OFFICER WEATHERSBY: To the ARM
4 fund.

5 MR. FITZGERALD: Yes.

6 PRESIDING OFFICER WEATHERSBY: So it sounds
7 like this says they still need to calculate
8 based on what -- can you explain that in
9 relation to the Applicant's commitment if you
10 can or maybe this is something you were planning
11 to talk about later.

12 MR. FITZGERALD: Well, I don't have a lot
13 of expertise in this area, but my understanding
14 is that that would, that if any conditions
15 change, if any of the permit conditions change
16 or the amount of wetland or anything like that,
17 that that calculation may have to be revisited.
18 Is that --

19 MR. WAY: That's my understanding. It's a
20 little bit flexible depending on what's
21 encountered up and to during construction. That
22 might change the amount of the ARM fund, so, for
23 example, if there's more wetlands that were
24 encountered or something to occur on the DES

1 end, that might affect the amount that would
2 give them the ability to revise that amount as
3 well.

4 PRESIDING OFFICER WEATHERSBY: So what's
5 coming to my mind is concrete mattresses could
6 be more or less than what they're estimating,
7 they would then recalculate the impact and that
8 could cause that number to go up or down.

9 MR. FITZGERALD: I believe any impact to
10 wetlands that is substantially different than
11 what has been permitted or applied for would be.

12 PRESIDING OFFICER WEATHERSBY: Thank you
13 for the clarification.

14 MS. DUPREY: I can't remember which one of
15 these had a 10,000 square foot number for the
16 Army Corps.

17 MR. FITZGERALD: I believe the 10,000
18 square foot was possibly the DES limit for --

19 MS. DUPREY: Impact to?

20 MR. FITZGERALD: Yes. Impacts. I believe
21 that was in --

22 MS. DUPREY: 184.

23 MR. FITZGERALD: Yes.

24 MS. DUPREY: That seemed directed at the

1 concrete mattresses in large part. Is that
2 true?

3 MR. FITZGERALD: Well, I think it's, it's
4 number 22 on page 4 of that document. Real page
5 4. Permanent direct wetland impacts are below
6 the NHDES threshold for mitigation, 10,000
7 square feet. Secondary impacts are above and
8 therefore other requirements come into,
9 therefore in accordance with the Army Corps
10 regulations mitigation is proposed for direct
11 and secondary impacts, mitigation ratios were
12 applied to these anticipated impacts. So.

13 MS. DUPREY: Okay. So since the secondary
14 exceeded their minimum number, does that mean
15 that if the concrete mattresses get bigger than
16 the 8,000 square feet that are or whatever,
17 8,000-plus square feet that are projected today
18 that this mitigation will take care of that?

19 MR. FITZGERALD: Well, I think concrete
20 mattresses are a particular issue, and it's my
21 understanding that the DES permit permitted a
22 maximum amount of, I think it was on the order
23 of 8,600 and something square feet of concrete
24 mattresses. And that was at DES's

1 recommendation in order to ensure that they did
2 not have to come back and revise the permit in
3 order, in other words, they asked the Applicant
4 to tell them what their maximum estimate of, so
5 I think this number 22 applies to all wetlands,
6 not just the concrete mattresses. But my
7 understanding is that if the 8600 changes that
8 they would have to go back and revise their
9 permit. The original estimate I think was on
10 the order of 5,000 square feet and DES asked
11 them to give them sort of their high end worst
12 case estimate in order to avoid having to come
13 back and revise the permit for that situation.
14 So I think that's covered by two pieces.

15 MS. DUPREY: Thank you.

16 MR. FITZGERALD: Okay. So that, I will
17 start with discussion of the various state
18 permits, some of which are water quality
19 related, some of which are not, but for
20 instance, the Alteration of Terrain is intended
21 to protect groundwater so to some degree they're
22 all incorporated.

23 I did want to bring up three or four quick
24 issues that we ought to keep in our mind during

1 these deliberations that we don't necessarily
2 have to talk about right now, but I just wanted
3 you to bear them in mind as we go through the
4 deliberations.

5 I think last week we had some discussion
6 relative to the undergrounding the lines near
7 the Pickering Farm and whether or not that would
8 constitute a significant change to the Project
9 and whether if we were to order undergrounding
10 that that would actually constitute a different
11 Project and we would have to deny the
12 certificate for this Project first. In other
13 words, we were not going to consider that as an
14 alternative for this Project.

15 I think the same sort of logic applies for
16 the HDD versus jet plowing, but I wanted to get
17 a sense of the Committee, either now or when we
18 get to that section, but it seems to me that DES
19 did not put any particular conditions and they
20 had a supplemental recommendation that there be
21 an evaluation of HDD versus jet plow. That was
22 conducted, we received significant information,
23 reports and testimony on that, and it was
24 concluded that that was not a viable option.

1 However, it certainly seemed to me during
2 the testimony that I, when I heard that there
3 would be significant information that is not
4 before us now relative to impacts on either end,
5 you know, and we don't have any engineering
6 plans or any things other than a comparison
7 report to support HDD.

8 So I think the same situation would apply
9 as I mentioned with the Pickering Farm, but I'd
10 like you to think about, and we can discuss now
11 or later, but it seems to me that if that were
12 the case that we felt that more attention needed
13 to be paid to an HDD option that we'd be
14 basically considering a different Project and we
15 would need to deny this Application and tell
16 them to come back and do that.

17 MR. WAY: I guess I was just wondering what
18 the pleasure was going to be? Do we talk about
19 that now or do we talk about that later. And
20 the reason I bring that up is when you look at a
21 lot of the testimony, that comes up later in the
22 discussion. Part of it is based on the idea
23 that there's an alternative that might offset
24 some of the problems proposed or assumed to be

1 inherent in the jet plow process. So we can
2 talk about it now or we can talk about it later,
3 but at some point we have to address whether HDD
4 is still an alternative on the table or is it
5 something that we remove.

6 MR. FITZGERALD: I just want to reiterate
7 that the HDD versus jet plow study and the trial
8 run were only recommendations of DES. They were
9 not specific requirements. So to the extent, it
10 seems to me that that's information that is
11 supportive of the Application for this Project
12 but not necessarily information that would allow
13 us to look at different project.

14 PRESIDING OFFICER WEATHERSBY: So my
15 personal opinion is that right now it's
16 premature to rule HDD out in that I think we
17 should have a discussion about it and determine
18 whether or not we have enough facts in evidence
19 that would allow us to require HDD as an
20 alternative. Or if we don't, then we can rule
21 that out at that time. I think that probably we
22 want to explore that a little bit more than just
23 decide right now.

24 MR. FITZGERALD: Well, I just want to note

1 that at least in my mind, the discussion first
2 needs to be is HDD an alternative or a different
3 project, and then if we somehow decide that it's
4 a potential alternative, we can have a lot more
5 discussion.

6 PRESIDING OFFICER WEATHERSBY: So I think
7 we should have a discussion of whether it's an
8 alternative or different project and what the
9 facts are that would support that determination.
10 We can have that now if you want or we can talk
11 about it in connection with --

12 MR. FITZGERALD: At the pleasure of the
13 Chair.

14 PRESIDING OFFICER WEATHERSBY: Ms. Duprey?

15 MS. DUPREY: I think that the discussion of
16 HDD is important in the sense that it informs
17 our opinion about jet plowing possibly, and so
18 even if it is a different project, it still
19 seems to me it should be a valuable discussion
20 to have, and another reason I think it's a
21 variable discussion to have is so much of the
22 public seemed to be invested in HDD, and I think
23 that it's important to address it. Even if it
24 would be a separate project I still think it's

1 important for us to address it.

2 MR. FITZGERALD: I certainly do plan to
3 discuss the report and so on and so on, and I
4 believe that to be very appropriate, but --

5 PRESIDING OFFICER WEATHERSBY: So maybe as
6 we get into it we'll have a discussion about HDD
7 as an alternative, a different project as a
8 backup in case jet plow, if we do require a test
9 run and things aren't looking good, is it what
10 we fall back to, but I think you should have
11 that discussion. Maybe let's kind of get into
12 the -- I sense you have a process or a
13 chronology you're following.

14 MR. FITZGERALD: Yes.

15 PRESIDING OFFICER WEATHERSBY: Let's keep
16 to that and when we get to HDD we'll have that
17 discussion.

18 MR. FITZGERALD: Okay. Sounds good. As I
19 say, I was just bringing up key issues that I
20 want you to keep in mind as we go through the
21 process.

22 The second one I think we've pretty much
23 taken care of which was enforcement authority,
24 and we have general agreement that the agencies

1 had authority under statute and our rules to do
2 the appropriate compliance and enforcement of
3 their specific authorized permits. So unless
4 anybody has any questions on that, I think
5 that's pretty well resolved.

6 Also there was, has been throughout all of
7 this, all of the testimony there's been a lot of
8 discussion relative to required monitoring plans
9 and the approval of those monitoring plans, and
10 then I guess just to be clear whether these
11 monitoring plans contain the appropriate
12 requirements in order that if something goes
13 wrong and there's a problem to either halt the
14 project or to correct the issues. So that's
15 sort of an overriding issue that weaves through
16 a large number of the permits, and a lot of them
17 have monitoring plans and monitoring
18 requirements. So I'd just like you to keep that
19 in mind as to whether we believe that the
20 monitoring as proposed is appropriate and will
21 be protective in order to ensure the major
22 environmental impacts are avoided.

23 Okay. So the DES Wetlands Permit was filed
24 and, again, DES filed a final permit on February

1 28th, 2017, and then issued some relatively
2 minor revisions to that following further
3 discussions with the Applicant on August 30th.

4 So the February 28th Final Decision
5 contained a number of conditions relative to the
6 construction and the monitoring through wetlands
7 in Little Bay. Among those was included the
8 Applicant shall retain an independent
9 environmental monitor to ensure compliance with
10 permit conditions during and after construction
11 activities.

12 I'm going to go through these. There's a
13 ton of material here. I'm going to go through
14 these at a fairly high level. Feel free to stop
15 me and question anything so -- but I'm going to
16 try to keep moving. So Chris?

17 MR. WAY: Right now you're on Exhibit 183?

18 MR. FITZGERALD: I'm not on any particular
19 exhibit. I'm just going through the issues, you
20 know, that DES Final Decision was Applicant's
21 Exhibit 166. But, you know, I'm going through
22 sort of a consolidation of a wide variety of the
23 permits and those conditions. I'm basically
24 highlighting the things that I think need to be

1 addressed.

2 Next the Applicant shall notify DES
3 Wetlands in writing of the Independent
4 Environmental Monitor and also notify DES if
5 that changes during the Project.

6 DES established conditions relative to the
7 Project's impact on wildlife fisheries,
8 botanical resources and Essential Fish Habitat.
9 That included at least 60 days prior to the
10 start of construction the Applicant shall notify
11 and coordinate with the New Hampshire Natural
12 Heritage Bureau, Fish & Game, to the
13 satisfaction of both those agencies to establish
14 protocols for encounters with any rare,
15 threatened or endangered species during the
16 Project.

17 A New Hampshire certified wetlands
18 scientist or similar qualified professional
19 shall walk the area of the proposed activity and
20 the wetlands impact areas and survey for any
21 rare, threatened or endangered species prior to
22 ground disturbance each day to check timber mats
23 for basking turtles and snakes and relocate
24 those animals.

1 Sixty days prior to the start of
2 construction the Project-specific BMPs shall be
3 developed in coordination with NHB and NHFGD,
4 Heritage and Fish & Game, submitted to DES for
5 review and approval and implementation for the
6 following activities. A, construction mat use
7 in areas identified as sensitive. B,
8 ground-based construction techniques and use of
9 smaller, lighter or low ground pressure
10 equipment. C, fenced exclusion zones and
11 wildlife survey areas and D, on-site monitoring
12 for protection of resources.

13 Next, at least 60 days prior to the start
14 of construction the Applicant shall coordinate
15 with Heritage Fish & Game, NOAA, U.S. Fish &
16 Wildlife to produce a report which examines time
17 of year restrictions for all rare, threatened
18 and endangered or Essential Fish Habitat species
19 found to be associated with the Project and
20 which provides the best resource protection
21 timing requirements practicable as agreed to by
22 the agencies and to the agencies' satisfaction.

23 Again, this goes to the issue that I raised
24 at the beginning, if we feel that these

1 requirements are appropriate.

2 The report shall be submitted to NHDES for
3 review and approval and the Applicant shall
4 implement the approved timing restrictions.

5 Then 60 days prior to the start of the
6 construction of the submarine cable crossing,
7 the Applicant shall coordinate with NHDES Waste
8 Management Spill Response and Complaint
9 Investigation Section to identify a specific
10 staff contact representative for both DES and
11 the Applicant. The Applicant's representative
12 shall notify the DES contact upon each
13 commencement of work and upon completion of work
14 involving cable installation so the cable
15 installation does not impede DES oil spill
16 command emergency response capability and to
17 avoid interaction of an incident or its response
18 with active cable installation.

19 Ninety days prior to constructing the
20 dewatering activities in the vicinity of Pease
21 and the Darius Frink Farm property the Applicant
22 shall consult with Pease Development Authority,
23 NHDES Waste Management, USEPA to determine if
24 groundwater has been contaminated by PFCs to

1 levels which would require special treatment.
2 Should special treatment be necessary Applicant
3 shall submit a plan to DES.

4 With regards to the Little Bay crossings,
5 specific conditions include appointment of an
6 Independent Environmental Monitor for work in
7 Little Bay. Selection of the Independent
8 Environmental Monitor shall be approved by DES,
9 and the Monitor shall be empowered to order
10 corrective actions related to surface water
11 quality and to order temporary cessation of
12 construction activities until corrective action
13 had been implemented.

14 Eelgrass. There was significant testimony
15 and information relative to potential impacts to
16 eelgrass. The Applicant is ordered to assess
17 the impact of work associated with laying cable
18 on eelgrass. They shall conduct an eelgrass
19 survey in Little Bay the summer before
20 construction commences and one year after
21 construction is completed. At least 90 days
22 prior to the scheduled date for conducting
23 preconstruction survey the Applicant shall
24 submit a plan describing how the survey will be

1 conducted, the results, how the results will be
2 assessed, how and when the results will be
3 reported to DES, mitigation measures based on
4 eelgrass impacts, and when the data will be
5 input electronically into the DES monitoring
6 database. The Applicant shall then implement
7 the approved monitoring plan. To the maximum
8 extent the methodology shall be consistent with
9 recent surveys conducted for the Piscataqua
10 River Estuaries Program known as PREP.

11 I believe we had a significant amount of
12 testimony with regard and information with
13 regards to eel. I don't believe that the
14 current proposed route and proposed project has
15 significant impacts on eelgrass. There was some
16 testimony that there may be emerging areas of
17 eelgrass that are not well known as this time
18 but seems that these conditions certainly
19 address that.

20 Benthic habitat monitoring. At least 60
21 days prior to the start of construction
22 Applicant shall obtain DES and Fish & Game
23 approval of a Benthic Habitat Monitoring Plan to
24 determine if substrate conditions, topography

1 and grain size, in Little Bay estuary in the
2 vicinity of the proposed underground cables were
3 significantly altered during construction. Plan
4 shall include details regarding the method,
5 accuracy and extent of the bathymetric survey,
6 when the study will be conducted, locations for
7 sampling. Applicant shall then implement the
8 revised plan, the approved plan.

9 Benthic infaunal community plan. The
10 Applicant shall conduct a pre- and
11 post-construction monitoring of benthic infaunal
12 community in Little Bay estuary. Ninety days
13 prior to the scheduled date of construction
14 Applicant shall submit plan to DES describing
15 how and when and where the monitoring will be
16 conducted, how the results will determine
17 impacts, how and when they will be reported to
18 DES and when they will be implemented into the
19 DES Monitoring Database. Applicant is required
20 to implement the plan approved by DES. Results
21 of preconstruction monitoring will be submitted
22 to DES for approval no less than 30 days prior
23 to scheduled cable installation date and a
24 report comparing pre- and post-construction

1 shall be submitted to DES no more than 90 days
2 following construction.

3 Mixing Zone Plan. At least 60 days prior
4 to the start of construction the Applicant shall
5 submit a mixing zone request to DES Watershed
6 Management Bureau for approval that includes a
7 description and map showing the proposed mixing
8 zone, justification for proposed limits, and
9 demonstrating that the proposed mixing zone
10 complies with minimum criteria in DES
11 administrative rules Env-Wq 1707.02. The mixing
12 zone shall be established for jet plow and hand
13 jetting activities and the Applicant shall
14 determine if there are any new aquaculture
15 operations in Little Bay prior to submitting
16 that mixing zone request. The mixing zone shall
17 not include any existing aquaculture operations.

18 PRESIDING OFFICER WEATHERSBY: Mr.
19 Fitzgerald, I'm going to pause you a little bit
20 here.

21 MR. FITZGERALD: Sure.

22 PRESIDING OFFICER WEATHERSBY: We all have
23 the permit, and there's certainly very important
24 information in there, but I don't think in the

1 interest of time maybe we can just sort of
2 identify, you know, number 44, there's a Mixing
3 Zone Plan. If there's something critical about
4 that, we'll talk about it.

5 MR. FITZGERALD: Okay.

6 PRESIDING OFFICER WEATHERSBY: Just kind of
7 move -- if you're comfortable doing so.

8 MR. FITZGERALD: I am. I wanted to raise
9 the issues.

10 PRESIDING OFFICER WEATHERSBY: You're doing
11 a great job, and I don't want to throw off your
12 rhythm, but kind of move more quickly through
13 them and we all can read as well. There's a lot
14 of conditions.

15 MR. FITZGERALD: Okay. I wanted to explain
16 the requirements. There are additional
17 Shellfish Program monitoring and reporting
18 requirements including a plan to assess
19 shellfish tissue before and after the crossing
20 and designating the species to be tested and a
21 significant number of chemical parameters to be
22 tested for, to have tissue analysis for. And
23 that the permit requires compliance with all
24 state and federal laws relative to the Fish &

1 Game Department to collect and test shellfish.

2 The Applicant, if violations of surface
3 water quality standards occur, the Applicant,
4 let's see. DES sets forth additional conditions
5 relative to that which are the requirement of
6 the Spill Protection and Cleanup Plan, an
7 existing cable remedial response plan, including
8 specific means of controlling turbidity and
9 means of removal and transport of debris.

10 A requirement to notify Marine Patrol
11 regarding concrete mattresses.

12 Weather requirements. Specific weather
13 monitoring and governing when and how jet plow
14 work shall be conducted and what weather
15 conditions.

16 Wind. There's a limitation if sustained
17 wind speeds in excess of 15 miles per hour are
18 forecast so that requires the coordination with
19 DES to decide whether to go forward.

20 Cable depth and as-builts. There's a
21 requirement to provide documentation on the
22 specific, the final installation.

23 There are requirements for silt curtains to
24 specifically contain turbidity and silt during

1 the operation of the hand jetting and that
2 Water-Lift devices are required to assist hand
3 jetting. There's timing requirements.

4 Then there are conditions related to the
5 impacts on salt marshes, salt marsh vegetation,
6 and that salt marsh vegetation shall be removed
7 with at least 18 inches of soil intact and how
8 that's to be handled.

9 Preliminary plans of shoreline restoration
10 shall be submitted and approved by DES. Living
11 shoreland and salt marsh shall be monitored for
12 a minimum of five years.

13 As mentioned previously, Applicant has
14 agreed to pay \$349,834.26 into the ARM Fund
15 based on their calculation of impacts. And
16 there's also requirements for conservation
17 easements, draft deed for a conservation parcel
18 proposed in Newington. Must be approved and,
19 reviewed and approved by DES. Several
20 conditions relative to that Newington parcel.
21 Requirements for the filing of those
22 conservation easements and very specific
23 details.

24 It should be noted that DES was asked by

1 the Public Counsel to modify its wind condition
2 of 15 miles per hour up to 20 miles per hour
3 noting that there was some testimony that 15 was
4 basically what constitutes a light breeze and
5 DES refused to modify that condition.

6 So I also have, I think I mentioned all of
7 the Counsel for the Public's Requests and
8 Stipulated Facts and Conditions relative to this
9 permit so I don't think I'm going to go into
10 great detail on those, and there were also
11 comments from the Town of Durham relative to the
12 permit. And I'll go into more detail on those
13 during the detailed discussion of water impacts.

14 The Shoreline Protection permit does --
15 that's not particularly water although it is
16 intended to protect water. Do you want to just
17 recognize that there is a permit and DES has
18 imposed the appropriate conditions to that and
19 not go through the specific details of that?

20 MS. DUPREY: Could you say what permit that
21 was again?

22 MR. FITZGERALD: That was the Shoreland
23 Protection Permit, and that's incorporated into
24 the DES February 28th.

1 There is also an Alteration of Terrain
2 permit and a number of conditions associated
3 with AOT.

4 And then the next topic that I come to is
5 the DES additional recommendations which
6 included the requirement to provide a more
7 thorough evaluation of HDD method for installing
8 cable, and two, a trial jet plow run.

9 So unless anyone has any specific questions
10 or wants to raise any issues with those other
11 permits that DES has authority to issue and the
12 agreements relative to some of the other
13 conditions with Fish & Game and Natural Heritage
14 Bureau, Army Corps of Engineers, US Fish &
15 Wildlife, et cetera, I think that pretty much
16 covers the state environmental permits with the
17 exception of the DES recommendations on HDD
18 versus jet plow.

19 DIR. MUZZEY: I had a question. Could you
20 give me the date of your order in regards to the
21 DES permits? We referred to it just a little
22 while ago. Just trying to pull it up. Or if
23 anyone else has that.

24 MR. IACOPINO: I think it's the order on

1 the Motion to Strike dated November 20th.

2 DIR. MUZZEY: Thank you.

3 PRESIDING OFFICER WEATHERSBY: This would
4 probably be a good time to just point out that
5 the October filing with the Committee, from the
6 DES to the SEC, contained a number of clerical
7 corrections and then compiled the information
8 from the August, what they were calling their
9 Final Decision, and then the unchanged
10 information from the earlier decision made back
11 in April. There was nothing new in the October
12 filing, but it put it all kind of in one place.

13 MR. WAY: I have a hard copy of that. Do
14 you have the exhibit number of that October
15 filing?

16 MR. IACOPINO: Committee Exhibit 12c. 12d
17 is the annotated if you want to see the
18 redlined, but 12c is the document that has
19 February and August combined.

20 DIR. MUZZEY: So then as we refer to DES's
21 Final Decisions, we are looking at what was
22 published 10/29/18 then? Is that your
23 understanding?

24 PRESIDING OFFICER WEATHERSBY: If you want

1 to look at what DES is recommending as a whole,
2 we should look at the October 29th filing from
3 DES. It's up to the Committee to decide whether
4 the Final Decision was the February decision and
5 the August filing was suggestions or whether we
6 should include, treat the August filing as also
7 a decision by DES.

8 MS. DUPREY: And what are the implications
9 of that?

10 PRESIDING OFFICER WEATHERSBY: We should
11 meet with counsel to discuss that in the other
12 room. Is that something we should do right now?

13 MS. DUPREY: If we're going to make a
14 decision, yes. If we're not, then okay.

15 PRESIDING OFFICER WEATHERSBY: Let's take a
16 break and we'll have an attorney/client meeting
17 with our counsel.

18 (Recess taken 2:03 - 3:00 p.m.)

19 PRESIDING OFFICER WEATHERSBY: Okay. We
20 will resume our deliberations. Thank you,
21 Mr. Fitzgerald, for the summary of permit
22 conditions. We've been discussing DES
23 conditions and determining which of those
24 conditions we should adopt. DES has proposed

1 conditions in its February 28, 2017, August 31,
2 2018, and they were consolidated in its October
3 30th or 31st correspondence.

4 At this point the SEC is intending to adopt
5 conditions that are consistent with what DES has
6 proposed so we don't feel as there's a need to
7 go back to DES for approval. If during our
8 discussions it turns out we intend to adopt
9 other conditions, then that would change.

10 So we're going to move on then and
11 Mr. Fitzgerald, could you pick up our next water
12 quality topic, please?

13 MR. FITZGERALD: Okay. So the Applicant
14 provided an evaluation of HDD versus jet plow as
15 DES recommended. Do you want me to review that
16 at this point? How do you want to proceed?

17 PRESIDING OFFICER WEATHERSBY: Sure. Let's
18 have a discussion about HDD, what the Applicant
19 has provided, what other issues there are. I
20 think this is an important subject for many.

21 MR. FITZGERALD: All right. So DES in its
22 August 31st letter back to the SEC agreed to
23 allow the Applicant to conduct a jet plow trial
24 run and they also, DES had recommended that

1 there be an HDD versus jet plow evaluation
2 conducted. The Applicant filed a document
3 entitled A Comparison of Jet Plow and Horizontal
4 Direct Drilling Techniques and Impacts for 115
5 kV Cable Burial Under Little Bay, and they had
6 testimony from Kenneth Bowes, David Plante,
7 Nicholas Strater and Marc Dodeman, and testimony
8 from their Environmental Panel as well relative
9 to that report. They testified that --

10 MR. IACOPINO: Just of those of you looking
11 for it, it's Applicant's Exhibit 133.

12 MR. FITZGERALD: They evaluated two HDD
13 design configurations. One, full HDD, and two,
14 shore landing HDD. They note that HDD at the
15 shore would require an additional 30,000 square
16 feet of space on each shore of the Bay to
17 provide for all of the equipment necessary to
18 implement HDD under the bay and so there would
19 be significant impacts that we don't have
20 information on there. They also do not have the
21 property rights -- go ahead. I'm sorry. Yes.

22 They also indicate that they do not have
23 the property rights in both Durham and Newington
24 and that even for shore landing HDD the

1 Applicant would have to acquire property rights
2 for five properties in Durham and ten properties
3 in Newington.

4 The time, estimated time for a full HDD
5 installation is significantly longer than the
6 proposed Project. Time estimate is
7 approximately 28 months. And the estimated cost
8 is approximately \$132,000,000 in addition to the
9 current Project.

10 Also the Applicant asserts the subsurface
11 conditions across Little Bay increase the
12 likelihood of an unsuccessful drill attempt.
13 They analyzed the potential for frac-out or
14 what's known as inadvertent return and conclude
15 that the risk of inadvertent return is greater
16 in the middle of the bay for the full HDD option
17 and the risk of IR is greater near the HDD exits
18 for the shore landing and the risk of IR
19 associated with the shore landing appears to be
20 greater than with the full HDD.

21 They conclude there is risk of an IR and
22 the IR would release a bentonite clay-based
23 drilling fluid and depending on the time of year
24 and volume of the inadvertent return and we had

1 testimony that that IR could be very significant
2 depending on how long it took to be detected,
3 that it would be possible that bentonite plume
4 would reach and settle on live eelgrass.

5 HDD impacts to Little Bay, they are
6 expected to be relatively minor and temporary,
7 and they provided a chart in the report with a
8 significant detailed summary of the impacts of
9 jet plow, HDD and shore landing for a wide
10 variety of areas: Design, subsurface
11 conditions, duration, suspended solids,
12 shellfish, aquaculture, benthic community, et
13 cetera, and that is in 133. Exhibit 133. I
14 believe that's the HDD report that Mike
15 referenced.

16 And they conclude that the potential risks
17 and technical challenges for HDD are
18 significantly outweighed from its benefits. As
19 to the trial run, the Applicant has agreed to
20 condition conduct a trial run of a thousand
21 feet. Run near the eastern end of the western
22 tidal flat.

23 PRESIDING OFFICER WEATHERSBY: Let's hold
24 up on the trial run right now --

1 MR. FITZGERALD: I'm sorry?

2 PRESIDING OFFICER WEATHERSBY: -- and kick
3 around HDD a little more?

4 MR. FITZGERALD: All I have is they've
5 agreed to conduct the trial run.

6 PRESIDING OFFICER WEATHERSBY: Okay.

7 MR. FITZGERALD: So those are the two DES
8 permit recommendations. So I'm done. We can go
9 to HDD.

10 PRESIDING OFFICER WEATHERSBY: Mr. Way?

11 MR. WAY: Several months ago, I think it's
12 several months ago now when we decided that we
13 would consider HDD as compared to jet plowing, I
14 remember when we ruled on the expert that was
15 requested we said as the adjudicative hearings
16 went on, we'd get more information and good
17 testimony and we'd hear from both sides. And I
18 think both sides have really had an opportunity
19 to weight in on this, and I think we have a lot
20 of good information.

21 But I think there's two pieces to this now.
22 One, whether let's assume that we favored HDD.
23 Do we have sufficient information in which to
24 require something like that or make it a

1 condition. And I think obviously the other
2 piece is that do we favor HDD more than we would
3 favor jet plowing.

4 For my part, I think the jet plowing route
5 makes more sense for this case for a lot of the
6 reasons that was brought up by Mr. Fitzgerald.
7 I think the impacts, the time, obviously the
8 cost, whether those costs would be recoverable,
9 the extent of land impacts and whether the land
10 is secured, I think there's a lot of things, and
11 I even think back to maybe previous cases or
12 previous case where HDD was discussed, and it
13 was set of on the flip side. Where it was not,
14 you know, necessarily embraced. So that's one
15 piece where, I guess, that's where I'm coming
16 from in terms of which one I prefer.

17 But I think more to the point it doesn't
18 matter because I don't think we have sufficient
19 information in front of us in which we could
20 say, yes, go out and do HDD. I see a very good
21 report, and we have good testimony, but at the
22 end of the day we don't have permitting, we
23 don't have construction, we don't have the
24 impacts fully assessed and quantified. We have

1 sort of that general, here's what would be
2 involved.

3 So I don't think we would have the ability
4 to say, you know, we've considered this and we
5 think that HDD should be done in the Bay. We
6 can talk about what that would mean if we
7 thought that that was the option and we didn't
8 like jet plowing, but I don't think we can
9 require that as an option. I'm open to
10 thoughts.

11 PRESIDING OFFICER WEATHERSBY: Ms. Duprey?

12 MS. DUPREY: I'm not ready to talk about
13 jet plowing itself right now, but I do want to
14 comment on HDD, and I have to say one of the
15 things that's concerned me a bit in this case is
16 the vehemence that the public has struck with
17 respect to HDD over jet plowing, and that makes
18 me think that perhaps there was some kind of
19 campaign, educational campaign perhaps, and I
20 wonder if the public was really fully educated
21 about what the effects of HDD were because I was
22 struck by a number of these things.

23 One was the persistent noise that people
24 who live near the Project would be subjected to

1 over long periods of time. And it wasn't just
2 little noise. It was a lot of noise going on
3 and on.

4 Also the disruption of the equipment and
5 the larger size of the marshalling yards that
6 were necessary to make that Project a reality,
7 not to mention the fact related to the actual
8 process itself which was we had testimony that
9 this was one of the longest HDD runs, if not the
10 longest HDD run, anybody knew about. So if you
11 want to feel uncomfortable about a process, that
12 says it all to me. We're going to be the
13 experimenter?

14 Whereas in comparison with jet plowing
15 which is a regularly used methodology, and this
16 length is in keeping with where it's been used
17 other places, here we're in a experimental
18 range. That left me with a lot of disquiet
19 about this Bay.

20 I would add that I felt like the experts
21 for Counsel for the Public were satisfied with
22 jet plowing and did not make some big case for
23 HDD over jet plowing, and that was also
24 important to me because that was opposing expert

1 testimony and the only opposing -- I'm sorry,
2 no, Durham had expert testimony as well.

3 I guess in addition to that I think the
4 \$132,000,000 is not something to be taken
5 lightly as well. That's a significant sum of
6 money. It's more than the cost of the Project.
7 And so that was important to me as well.

8 But the sound, the longer than it's ever
9 been used before, and the size of marshalling
10 yards were, the property rights weren't lined up
11 were really important to me and I don't know if
12 the public was really aware of those things
13 because they were not discussed at our public
14 hearings so I don't know. Thank you.

15 PRESIDING OFFICER WEATHERSBY: Just picking
16 up on what you said, I think that Counsel for
17 the Public, I found it helpful they laid out a
18 table, I think it was CFP Exhibit 2 maybe,
19 comparing jet plow and HDD, full HDD in shore
20 lands, and that was instructive and laid out
21 some of those concerns that you have as well.
22 And the fact that Counsel for the Public's
23 expert really didn't advocate for HDD over jet
24 plow is interesting.

1 MR. FITZGERALD: So I think we have
2 scheduled or I've organized this in a way that
3 we can discuss the concerns that were raised by
4 the experts for Durham when we get into it.
5 Most of their concerns were related to water
6 quality issues in the Bay, and this is, I've
7 kind of set the outline with permits and
8 requirements and then I plan to get into that.

9 But I think that certainly the Counsel for
10 the Public's expert was pretty strong on this
11 issue, as Ms. Duprey pointed out, that jet
12 plowing is a well-proven, low impact, used
13 around the world for installing electric and
14 fiberoptic telecommunication cables. And he
15 then goes on to talk about jet plow trials as
16 close to the possible time of construction
17 assures that the trials will use the same
18 equipment and the trials conducted during the
19 same seasonal condition and vessel crews will
20 familiarize themselves with similar tidal
21 current and navigational conditions.

22 So he opines that the trials provide
23 significant backup and support to the fact that
24 jet plowing is more likely to be the best

1 option.

2 Then, so I think we can have a more lengthy
3 discussion of the water quality issues, the
4 modeling and so on at a slightly later point.
5 Hopefully we're getting to that quickly.

6 But it seems certain to me that the Durham
7 experts raised a number of issues, but I don't
8 know that any of them had a lot of experience in
9 this jet plowing area, and a lot of the issues
10 that they raised were of the sort of well, this
11 may happen or this could happen, et cetera, and
12 I don't want to bias that in any way. I just, I
13 think that as Ms. Duprey indicated that the CFP
14 consultant certainly seemed to concur that there
15 was a lot that made considering jet plow to be
16 the appropriate option.

17 PRESIDING OFFICER WEATHERSBY: Before we
18 get into water quality and Intervenors' input,
19 further discussion about HDD, pros, cons,
20 whether we feel we should go that route, can go
21 that route? Director Muzzy?

22 DIR. MUZZEY: Well, I agree with comments
23 that have been made to date that we certainly
24 found out much more about how HDD would work

1 potentially in this Project with the reporting
2 and the testimony that has been made in the
3 docket, but we also found out what we didn't
4 know, and Ms. Duprey addressed that, and we
5 don't have permit information for the HDD
6 option, and we don't have landowner permissions
7 all in place for the HDD option.

8 And so I feel that we, we're not in a
9 position where we could assert it's the better
10 alternative. I think we'll need to have that
11 discussion about the jet plow alternative and
12 see if that is an appropriate alternative for
13 this Project, and only in light of that not
14 being an appropriate alternative would we then
15 need to turn back to HDD and -- well, actually I
16 think there's probably not any turning back to
17 HDD. There would be a need to reject the
18 certificate at that point and then potentially
19 see if an additional Application was made.

20 PRESIDING OFFICER WEATHERSBY: Mr. Way?

21 MR. WAY: I think if you were to go that
22 route, much the way we were looking at
23 alternatives last week, I think your choices are
24 to deny the certificate or you suspend the

1 hearings because this has already been raised as
2 an issue, and the Applicant would have to go
3 back and develop an HDD plan.

4 I guess my point, once again, is we don't
5 have the ability to say we prefer you to go this
6 route as opposed to the jet plow route. There's
7 something else that happens if we were to say
8 that.

9 I guess also, too, I just wanted to not
10 qualify but add to my comments. In terms of
11 HDD, the technology of it, I really don't have
12 an issue. I think it would work out. It would
13 be different. It would have different impacts,
14 and part of the problem was when we heard the
15 testimony of both sides, particularly when I
16 heard the Counsel for the Public's experts,
17 there was a couple ways you could do this. You
18 could do HDD and you could do jet plowing and
19 they're both viable alternatives. As a matter
20 of fact, in a lot of ways I didn't get a sense
21 that they were strongly endorsing or really in
22 favor of one over the other. As a matter of
23 fact as I recall, I think I asked one of the
24 experts at the end that all things being equal,

1 would you do jet plowing or would you do HDD,
2 and as I recall I think they even agreed that
3 jet plowing would probably be the way to go.

4 So what I'm saying is when you've got
5 fairly weighted alternatives, both with
6 different impacts, our ability to implement one
7 over the other, our ability to try to recover
8 costs when there's another viable solution on
9 the table that's already been proposed I think
10 would be very challenging.

11 PRESIDING OFFICER WEATHERSBY: Mr. Shulock?

12 MR. SHULOCK: I'd just like to point out
13 the obvious. The DES has already permitted this
14 for jet plow. Right? So there is another
15 viable alternative. I think it's up to us to go
16 through our process and determine whether there
17 is any unreasonable adverse impact as required
18 by the statute. If there's not, then balance
19 that with the public interest. And if we can
20 get to an approval with jet plow, we should
21 seriously consider doing that.

22 PRESIDING OFFICER WEATHERSBY: Mr. Schmidt?

23 MR. SCHMIDT: I agree with the opinions to
24 date. I think that the design and the research

1 just hasn't been completed enough on the HDD to
2 enable us to make a decision. We've heard as an
3 example it could take 3 to 6 months or more.

4 It's just not enough information there that, the
5 design's not complete enough, the real estate
6 hasn't been secured and so on and so forth.

7 PRESIDING OFFICER WEATHERSBY: I don't
8 think we have enough information on this record
9 to require an HDD. We don't have the
10 environmental, we don't really understand the
11 environmental impacts to shore lands, to
12 wetlands, frac-out issues. We don't know the
13 geotechnical composition of what they'll be
14 boring through, how long it would take. Of
15 course, the amount of space that they need.
16 So I don't think we can require, I don't think
17 the record will support us requiring an HDD
18 method of crossing the Bay. So I think that we
19 do need to look at jet plow trial and whether
20 that's appropriate.

21 MR. FITZGERALD: I would concur with that.
22 I think it's important to remember that DES did
23 not request a condition of evaluating HDD. They
24 requested -- and as I say it was a request. It

1 was a recommendation, not a condition. But I
2 think basically what, as I understood it and I
3 wasn't present for the deliberations back in
4 last spring, but it seems to me that DES was
5 looking for more backup information to
6 understand the assertion that jet plowing was
7 the appropriate technology for this Project. I
8 don't think that they were asking us to consider
9 HDD as an alternative to this Project. That's
10 just my opinion from reading the information and
11 so on.

12 And I think that what the Applicant did was
13 to go back and produce a report that outlined
14 the costs/benefits of HDD versus jet plow in
15 this situation and came up with a conclusion
16 that jet plowing was appropriate for a number of
17 reasons and that it would be significantly less
18 costly and less time and less impact on both
19 sides of the Bay. And so I don't, we don't
20 have, as you said, the information, the HDD
21 versus jet plow was not a technical evaluation
22 of HDD. It was comparison of the two
23 technologies for the purposes of making sure
24 that the proper, that the Applicant had made an

1 appropriate decision to present to us as the
2 Project.

3 PRESIDING OFFICER WEATHERSBY: Ms. Duprey.

4 MS. DUPREY: Madam Chair, I just quickly
5 flipped through the briefs again in the
6 section -- I'm going to admit it was quick --
7 but I'm not really seeing a big argument for
8 HDD. Durham addresses it at the tail end of
9 their argument on Little Bay. Really the
10 arguments are about "don't do jet plow." It's
11 not about "use HDD" even though I certainly got
12 a different feeling as the hearings were going
13 on, but as I look at the briefs which are their
14 arguments to us about how we should look at
15 this, I'm just not seeing a lot there. So I
16 think that in combination with everything that
17 we've said here now for me lays the HDD issue
18 with respect to this particular case to rest.
19 Thank you.

20 PRESIDING OFFICER WEATHERSBY: I think we
21 did have, especially some with the Durham
22 residents, many of them, especially the Millers
23 who would be affected, they were advocating HDD
24 despite the noise and interruption. They think

1 it would be better for Little Bay. And then in
2 the public comments we heard were certainly very
3 protective of Little Bay and some of them wanted
4 HDD. So I think there were some advocates
5 certainly for HDD. We could go back and say
6 well, we don't have enough information, go get
7 more information, but in my mind, let's look at
8 jet plowing and whether that's a viable method
9 because you can go, you know, there's two ways
10 to -- probably more than two. There's three
11 ways that I can think of at least to cross that
12 Bay, under, through and over, and we're not
13 considering overhead lines either.

14 But all things considered, the fact that
15 the majority of the experts in this case feel as
16 though jet plowing can work without adverse
17 environmental impacts, certainly not
18 longstanding impacts, to me says we should
19 explore that because it certainly is quicker,
20 less expensive. We don't, we don't have all the
21 information, they don't have the land rights.
22 There's so many reasons sort of not to pursue
23 HDD at pond. So let's take a look at the jet
24 plow and its impacts and see if that is

1 something that can work for this Project without
2 having an unreasonable adverse impacts on the
3 environment.

4 Does anyone else want to talk any more
5 about HDD?

6 (No verbal response)

7 PRESIDING OFFICER WEATHERSBY: If
8 everyone's kind of in agreement, we'll put that
9 aside for now and move on.

10 So let's move on to jet plow and its
11 impacts and how the Applicant hopes to minimize
12 and monitor those.

13 MR. FITZGERALD: Okay. And a reminder that
14 this is impact on water quality so it's the
15 entire Project, not just the jet plow. But we
16 are required to consider the determinations of
17 DES in its permit, the Army Corps of Engineers
18 and other federal or state agencies which have
19 been previously discussed so I don't think we
20 need to go into those any further.

21 The Project is proposed to impact
22 approximately 600,000 square feet of, have a
23 temporary impact of 600,000 square feet which
24 they have a pretty significant discussion of

1 mitigation. The Project will also require the,
2 as proposed, will require the installation of
3 concrete mattresses, 8 feet by 20 feet by nine
4 inches tall, and these mattresses will be placed
5 as required when the project is not able to
6 reach the required depth, and those are required
7 per the National Electric Safety Code to ensure
8 that the cable does not float up or come out of
9 its installation. And the project will also
10 have a temporary vernal impact, temporary impact
11 of about 7,000 square feet on vernal pools near
12 the Flynn Pit.

13 Secondary impact wetlands will be caused by
14 vegetation conversion of forested or
15 forest-covered wetlands and upland clearing, and
16 the Applicant asserts that these permanent and
17 temporary impacts were avoided through the
18 design process and that it will minimize the
19 Project's impact by, one, avoiding placing 26
20 structures within or partially within wetland
21 areas; two, removing approximately 51 existing
22 structures from wetland areas; three,
23 co-locating the exhibiting distribution line on
24 new transmission lines.

1 The Project also will have some potential
2 for erosion and sedimentation to water bodies at
3 the landings on either end within the wetlands,
4 and those are all to be proposed to be dealt
5 with using Best Management Practices Manual for
6 utility maintenance in and adjacent to wetlands
7 and water bodies in New Hampshire and applicable
8 BMPs will be enforced.

9 The Applicant has also submitted a Soil and
10 Groundwater Management Plan, and it calls for
11 on-site surface water discharge that would
12 require the use of a water treatment system, and
13 also that depending on contaminants that are
14 found, certain other requirements may be implied
15 and especially, particularly, the potential for
16 offsite disposal if PFCs or other chemicals are
17 found in up limits that would require the
18 material to be disposed of, the water to be
19 disposed off offsite.

20 At the Darius Frink Farm, there's an
21 indication that PFCs were not present in soils
22 tested, that PFCs concentrations in groundwater
23 were encountered were lower than state standards
24 and PFCs concentration in surface water did

1 exceed the ambient New Hampshire groundwater
2 water quality standard. DES does not have a
3 surface water quality standard for PFCs at this
4 point in time. They're working on that right
5 now.

6 But the plan is based on the assumption
7 that groundwater that will be encountered in
8 nutrients and Portsmouth is potentially impacted
9 by PFCs, and it will tested and managed
10 appropriately.

11 Sediment in Little Bay. The Applicant has
12 identified that there will be direct disturbance
13 of the sediment from the cable installation,
14 deposition of sediments suspended during jet
15 plowing and disposed beyond the footprint of the
16 trenches, that there will be an increase in
17 suspended sediments above ambient conditions
18 during jet plowing, and they filed a report
19 entitled Modeling Sediment Dispersion for Cable
20 Burial.

21 That report indicated that they simulated
22 jet plowing and diver burial process along the
23 cable route, and they came up with a number of
24 conclusions relative to the amount, length and

1 duration of the impact. I won't go into those
2 in great detail, but they do state that the
3 excess concentration will decrease to zero
4 within approximately one hour following the
5 stopping of jet plowing, and hand jetting is
6 estimated to be potentially four hours per day
7 between nine and 18 days for covering both the
8 west and east ends of the Project.

9 The settling dispersion model that was run
10 did not address the effect of wind in Little Bay
11 because it assumed that that effect will be
12 insignificant due to the large tidal currents
13 that already occur in the Bay.

14 Relative to other contaminants, sampling
15 and testing showed metals were present. Their
16 concentrations, and this is in sediment,
17 concentrations were below NOAA screening
18 criteria for sediment concentrations indicative
19 of biological effects with the previously
20 mentioned exception of arsenic.

21 Arsenic did exceed the NOAA screening
22 criteria but were below the effect range
23 criterion. Arsenic levels fell within the range
24 of concentrations found in Little Bay by USEPA

1 previously between 2000 and 2010, and bioassay
2 testing indicated no adverse effects for such
3 levels. Concentrations of polycyclic aromatic
4 hydrocarbons were low or below limits. PCBs
5 were low or below detection limits. Pesticides
6 were below detection limits. Dioxins and furans
7 were present in low concentrations in many
8 samples. Neither New Hampshire nor US have
9 developed guidelines for dioxins and furans, but
10 they were below the guidelines prepared by the
11 Canadian Council for Ministers of the
12 Environment.

13 Again, PFCs were below detection limits in
14 all samples and below the proposed European
15 Predicted No Effect Concentration. The
16 conclusion is that all analyses except arsenic
17 uniformly occurred at levels below
18 concentrations that were identified to be
19 problematic.

20 Applicant addressed the concerns raised
21 that a significant amount of nitrogen will be
22 released, and the Applicant's experts testified
23 that such amount will be very, very small as
24 compared to the current present amount. I

1 believe there were some large numbers that were
2 offered at one period of time, but I think that
3 they were potentially -- when I reviewed those
4 calculations, it seems to me that the amount of
5 nitrogen that was potentially being released was
6 extraordinarily small compared to the amount
7 that's currently there.

8 As with a number of things that I'm going
9 through in the next few minutes, I think it has
10 been proposed by Intervenors that there are
11 significant levels of contaminants that could be
12 present, and that the impacts will be, could be
13 extremely large, and I don't think that we had a
14 lot of information to support those assertions.
15 And both the CFP and the Applicant's experts did
16 not concur with those issues that had been
17 raised relative to nitrogen and the amount of
18 turbidity and sediment that would be released in
19 the Project.

20 Again, Mr. Way has information on the
21 Applicant's objections, and so I'll wait to deal
22 with that until we get to that.

23 The latest plans that have been submitted
24 indicate the Applicant will conduct a field

1 survey for measuring turbidity during cable
2 installation in order to verify that DES
3 turbidity criterion, and the Applicant as
4 mentioned under the permitting discussion has
5 agreed to establish a mixing zone during
6 construction and to test that for a period of
7 one week following completion of the
8 construction.

9 Monitoring will be required and will take
10 place at the edge of the mixing zone. There's a
11 significant discussion of that. Mobile
12 monitoring will be initiated one hour prior to
13 the startup of jet plow and will continue for
14 two hours after jet plow. There's a significant
15 discussion of the mobile monitoring data that
16 will be required. Applicant has agreed to
17 provide that monitoring data to regulatory
18 agencies within 48 hours of the completion of
19 the jet plow crossing.

20 Again, I would remind the Committee that
21 there is a jet plow trial run that is proposed
22 to verify all of the DES permit requirements,
23 address all of the potential impacts and is
24 intended to verify the assumptions regarding

1 currents, turbidity, movement, the modeling, et
2 cetera.

3 So again, there have been a number of
4 stipulations proposed which we discussed
5 previously that are intended to, stipulated
6 conditions that are intended to put appropriate
7 protections in place to ensure that the
8 turbidity and sediment issues in the nitrogen
9 concerns are monitored and addressed.

10 And so I think that takes care of the major
11 issues that have been raised relative to water
12 quality. It's a very high level overview, and I
13 would be happy to take the Committee's
14 recommendations as to how to further go into
15 this if necessary or second, if the Committee
16 wishes to hear from Mr. Way about the concerns
17 raised by the Intervenors and particularly the
18 Durham expert panel.

19 PRESIDING OFFICER WEATHERSBY: Let's hear
20 from Mr. Way unless somebody has some questions
21 or wants to discuss anything that Mr. Fitzgerald
22 has summarized for us. Ms. Duprey?

23 MS. DUPREY: I just want to say that I
24 would like to reserve our ability to discuss

1 things that Mr. Fitzgerald just went over after
2 hearing from Mr. Way.

3 PRESIDING OFFICER WEATHERSBY: Absolutely.

4 MR. WAY: Thank you. With regards to
5 Intervenors, we heard a considerable amount of
6 testimony and it got pretty in depth in a lot of
7 cases, no pun intended, I guess, on water
8 quality.

9 I think also, too, as Mr. Fitzgerald
10 mentioned with regards to the Counsel for the
11 Public, it struck me how much was actually
12 addressed and such things, for example, the need
13 for absorbent booms on the barges that might
14 happen during jet plowing and coming to an
15 agreement there.

16 MR. FITZGERALD: Chris, if I can just -- I
17 think it's important also to consider the fact
18 that as I think I mentioned this previously, but
19 that the Durham Intervenors and the CFP experts
20 had the opportunity -- I'm not sure, I know the
21 Durham Intervenors, but I think they had the
22 opportunity to meet with DES and discuss their
23 concerns and have them considered by DES in
24 their permits.

1 MR. WAY: Yes, actually, and I'm going to
2 get into that in a moment.

3 So I think from the Counsel for the Public,
4 I was fairly comfortable that much of their
5 concerns were addressed either through agreement
6 with the Applicant or through the DES conditions
7 looking at the spreadsheet.

8 With regards to the Town of Durham, and I
9 thought that they had some compelling testimony,
10 and, once again, I think that they put in a lot
11 of thought and detail. I think you also have to
12 keep in mind what DES has put forth, the idea
13 that the Town/UNH experts had the opportunity to
14 sit with DES to me is a big issue or a big
15 benefit. That and as a matter of fact I think
16 it's Exhibit 208, and Dawn, I don't even know if
17 you have that available, if you can put that up
18 because that might come up.

19 This is a spreadsheet that Applicant's 208,
20 that shows some of the conditions that were
21 proposed by Durham and which ones were accepted
22 by DES or which ones were rejected by DES or
23 which ones were in part accepted or modified
24 from DES. And I know they had at least one

1 meeting where it was just UNH and I believe the
2 Conservation Law Foundation was in on that
3 meeting as well, and they met with DES. So
4 their concerns were very much heard. I agree
5 the idea that the testimony, Prefiled Testimony
6 was out there, DES was copied on it, so a lot of
7 the concerns, the good concerns I think that UNH
8 had DES was very well aware of and I think DES
9 incorporated into their decision.

10 So I think as we go through this and we
11 address some of these issues, keep in mind that
12 DES had already considered most of these, well,
13 has considered all of these and put into plates
14 what they thought was appropriate and we can
15 decide whether we agree with that but I want you
16 to keep that in mind.

17 So the witnesses or the experts for Durham,
18 Famely, Jones, Schultz, and Dacey, certainly
19 spoke about the Project and I think not as much
20 from saying this is what's going to occur should
21 jet plowing happen, but these are the things
22 that have, the burden of proof has not been
23 shown what might occur. And so there was, in
24 their mind there was a big gap that the

1 Applicant didn't do enough work to say worst
2 case might not happen. They weren't able to
3 maybe demonstrate that there would be more
4 impacts than what they initially proposed. So
5 there wasn't a lot of proof to say that
6 something bad would happen, but they were saying
7 that it was unclear whether it would or whether
8 it wouldn't. I think part of their point, too,
9 was that when you look at things like
10 environmental monitoring plans that that's
11 something that is delegated to DES. Delegate or
12 not, that's maybe a different topic, but I think
13 you can delegate to DES and that something that
14 happens before construction, but it's not
15 something we have before us now. So even if you
16 accept some of the things that maybe addressed
17 UNH concerns they might still believe that it's
18 something that has to be verified throughout a
19 monitoring plan which they would say is not
20 before this Committee right now. But once
21 again, I think you then have to decide well, if
22 delegation to DES does that suffice to address
23 that piece.

24 Some of the things that they talked about,

1 and you're going to forgive me as I read or I
2 look at some of the things as I go because it
3 does get into it. They focused on the adequacy
4 of the sediment characterization reports
5 stemming from 12 cores scheduled across the bay.
6 They maintain that the sediment report
7 characterizes composite samples of the top two
8 feet of each sampling, but they believe that
9 there needs to be further evidence to
10 demonstrate how sediment will move from this
11 step. In short, the sampling is not
12 representative of the Project. Difficult to
13 ascertain the accuracy of the Applicant's
14 assertions, assumptions and predictions.

15 I'm going to try to move on. Even a little
16 more of a clip.

17 I think some of the things that
18 Mr. Fitzgerald has talked about they mentioned.
19 In terms of the nitrogen loading, certainly a
20 concern in the Bay. I think eutrophication
21 whereas excess nitrogen could cause algae
22 growth, plant growth, which in more
23 decomposition that could impact eelgrass
24 populations was a concern. I think part of the

1 issue, too, was that in the Bay you have a
2 number of tributaries that come in from other
3 sources and other rivers and you have nonpoint
4 sources that are coming in. Wastewater
5 treatment that is delivering material into the
6 Bay. So I think the nitrogen factor becomes
7 more of an issue. That was true of Conservation
8 Law Foundation as well and I think Counsel for
9 the Public raised that.

10 I think the concern about some of the metal
11 contamination, arsenic and mercury, that might
12 be present, and I think also too they maintain
13 that some of the background testing is not
14 necessarily adequate so that you might not be
15 getting a full picture of what you're looking at
16 or what you can predict. As I recall dioxins
17 and PCBs fall into that mix as well. And so in
18 their mind it's hard to sort of model what the
19 impact might be if you don't have an absolute
20 good background.

21 How the sediment particles are going to
22 settle out was an issue with them as well and
23 that maybe some of the modeling doesn't account
24 for what will happen in terms of the plumes. I

1 think also, too, parts of that is the fact that
2 they maintain that the Bay is more silt than
3 clay whereas some previous discussions have
4 suggested that it's more of a clay background.
5 The point being that you're going to have
6 settling out that's going to occur and maybe at
7 a rate more than predicted. And I think also,
8 too, with regards to the sediment I think at one
9 point they even say, you know, what is expected
10 to happen with regards to dispersion of soil is
11 like two years of activity in the Bay. I'm not
12 sure that was very persuasive to me, but I
13 understand.

14 And I think also, too, their point when you
15 look at the impact of wind that the Durham
16 experts would suggest that wind impacts are not
17 necessarily comparable to what a jet plow could
18 be putting forth, even with some of the
19 restrictions that are being put on by DES.

20 They would like to see things like
21 elutriate testing be incorporated. Elutriate
22 testing, and I won't pretend to be an expert on
23 this, but how contaminants are going to move in
24 the water column and how you're going to model

1 for that. I think they would like something
2 with a little bit more comprehensive.

3 With regards to shellfish, I think they
4 believe that there should be more direct testing
5 right in the aquaculture beds so that it's not,
6 it's a direct impact. I think they'd also like
7 to see more pathogen testing and the pathogen
8 issue obviously being a concern because of the
9 wastewater treatment facilities that are somehow
10 finding their way into the Bay that their
11 concern would be that there needs to be more
12 investigation of bacteria and viruses that might
13 find their way to shellfish which then might
14 find their way into the public's hands.

15 I think also, too, with regards to cable
16 removal they opine that the Applicant's
17 assessment of soil dispersion and what might
18 happen as a result of those cables being removed
19 is probably lacking with regards to information.
20 Bear with me.

21 I think also, too, there's questions about
22 the impact to water quality with regards to the
23 extent of jet plowing, how much time it's going
24 to take to do the jet plowing, and how the soil

1 is going to be dispersed from that point, even
2 past the mixing zone.

3 I think as I mentioned earlier they had a
4 lot of concerns, and when I reread the
5 testimony, I was left with a lot of the
6 impression that it was yes, the concern may be
7 met by DES, but we don't know. Because once
8 again, we're not necessarily sure what the
9 monitoring plan is going to have.

10 I think when you look at 208, I think one
11 of the take-aways is that there was a lot of
12 listening to the UNH team, I think incorporation
13 of many of the things that they were looking
14 for, and if nothing else, I agree with the
15 Applicant when they said that at least there was
16 a due consideration of their concerns. That
17 that certainly is a big take-away.

18 And I think you can even see the notes of
19 the UNH team, I think in Exhibit 204. I don't
20 know if you need to pull that up, Dawn. I don't
21 think so. But there are notes of that meeting
22 as well. So this was not done in a vacuum.
23 These concerns. There was pretty well, pretty
24 well publicized.

1 I thought it might be good to also mention,
2 if you don't mind, Michael, just a few other
3 Intervenors that struck me. Jeff Baker from Fat
4 Dog, you know, in terms of water quality. I
5 mean clearly he has a stake in this as well.
6 He's worried about temporary closure that might
7 be due to the bacterial contamination that could
8 occur, closure of his beds. Obviously, we'll
9 talk about this maybe later but suspension of
10 sales due to the sediment accumulation, and the
11 poor product quality that might result. I think
12 these, he said he was, loss of crop brought
13 about by legacy pollutants, and I think that's
14 referring more to some of these things that are
15 there you just don't know, and I think that was
16 one of the things that came up is there may be
17 some unknowns here that we're not accounting
18 for.

19 He's concerned about the immediate
20 mortality brought about by the sediment
21 disposal, basically covering his crops, and then
22 some, once again some overwintering disposal of
23 sediment that might cause anorexia which I think
24 would also be mortality of his crops.

1 We also heard from Jeff and Vivian Miller.
2 They argue it will have a negative impact on the
3 water quality of Little Bay. I don't think
4 there was anything to go beyond that but they so
5 noted.

6 Ms. Heald was concerned about the quality
7 and volume of available water during
8 construction and the impact to her nursery. She
9 may be without water during construction because
10 the easement runs through her well. Applicant
11 planning storing heavy equipment over the well.
12 The Applicant has said that they will make sure
13 she has water through that time, but obviously
14 there's concerns about long-term impacts on her
15 well.

16 So then we had the Conservation Law
17 Foundation. Conservation Law Foundation I think
18 echoed a lot of the concerns that was issued by
19 UNH and the Town of Durham.

20 So I guess that's sort of the summary of
21 what we heard and I think if you, once again, I
22 think if we were to look to my two cents is that
23 I think what DES put in place was fairly
24 responsive. It was considerate of what had been

1 put before them, and then I think we just have
2 to decide well, does that suffice. Do we have
3 to go through each condition? We can do that,
4 too, or but I think we're sort of at that place.

5 MR. FITZGERALD: So thank you, Chris, I
6 think that was really helpful. Just to put some
7 things in context, we did hear statements, I
8 believe Mr. Irwin from CLF indicated that this
9 Project would result in long-term permanent and
10 irreparable harm. We heard a lot of comment
11 regarding how important Great Bay is, that it's
12 a nationally designated estuary and that it has
13 a very fragile ecosystem. But a lot of those
14 comments were presented as generalities without
15 a lot of followup as to what the impact would
16 be, and I think there were two or three things
17 that were mentioned that deserve a little bit of
18 consideration.

19 One was that it was mentioned that this
20 Project could potentially release 300 times as
21 much nitrogen during the course of the Project
22 as the Town of Durham does in one day. I didn't
23 hear any followup calculations or information to
24 address that specifically, but it seems to me

1 that there's a difference in a short-term impact
2 knowing that that impact will not be
3 continuously adding as opposed to the nitrogen
4 that comes from the use of fertilizers and all,
5 of course, obviously, wastewater treatment
6 systems discharging in, and I think we
7 understand these towns have had to make
8 significant efforts with regards to upgrading
9 wastewater treatment and so on and so it
10 probably, I don't know the right word to put
11 this, but it may be a little bit offensive to
12 them to know that those somewhat onerous
13 conditions are put upon them, but their effluent
14 contributions to the Bay are not going away.
15 They're going to be there for a long time and
16 they have been reduced dramatically. The Bay is
17 improving in quality. This may be a short-term
18 blip, but it doesn't seem to rise to the level
19 at least from the information that I've seen
20 presented of long-term irreparable impacts. It
21 may be a little bit in reverse of the direction
22 that all those around the Bay and all those who
23 treasure it and so on want to see.

24 And I think similarly, we heard concrete

1 mattresses, that they would be consuming space
2 for eelgrass. I did a brief calculation of my
3 own. I don't offer this as anything but when I
4 looked at the amount of eelgrass and the amount
5 of permitted requirement, the permitted amount
6 of concrete mattresses, we heard, first we heard
7 a lot of testimony that this would not be
8 imposed on eelgrass beds and second, my
9 calculation was that it would represent less
10 than .01 percent of eelgrass beds, existing
11 eelgrass beds in Great Bay. Not regarding the
12 fact that's if it were falling on eelgrass and
13 it's not. There was some testimony that it
14 might be falling on, that the concrete
15 mattresses might be placed on eelgrass,
16 potential recovering eelgrass beds. Historic
17 eelgrass beds. Thank you. And so but again,
18 that impact seems to be infinitesimally small.

19 Total suspended solids, again, I did some
20 rough calculations. I believe that we heard
21 some testimony indicating that there was 7 to 9
22 tons of erosion sediment coming into the Bay and
23 I think it was annually from erosion around the
24 Bay just due to storms and other ice scouring

1 and other things. That number equated to about
2 9,000 tons annual, and this Project would, based
3 on the information that I heard during the
4 testimony, would present an addition of about
5 one and a half tons.

6 Again, I don't offer these as expert
7 testimony or anything. I just, you know, we
8 seemed to hear some testimony that certainly
9 expressed great alarm over the amounts of
10 nitrogen, TSS, the amounts of eelgrass and so on
11 that would be potentially impacted. And based
12 on the testimony and the information that I
13 received and the rough calculations that I did,
14 those impacts, while I would not neglect them in
15 any way or say that they are trivial or so on,
16 they don't seem to rise to the level of being
17 long-term permanent irreparable harm that would
18 be caused by this project, and especially given
19 the monitoring, the plans for sedimentation
20 control, so on.

21 MR. WAY: If I can?

22 MR. FITZGERALD: Sure.

23 MR. WAY: We had talked about eelgrass, and
24 one statement that I saw in Conservation Law

1 Foundation's brief sort of clarified I think
2 where I was challenged to the opposition of the
3 jet plowing, and it states importantly the fact
4 that eelgrass does not currently exist in upper
5 Little Bay does not mean that it will not exist
6 there in the future.

7 So that sort of summarizes. It's very hard
8 to account for all of these unknowns. You know,
9 particularly, I think there's a transient nature
10 to the impacts here. You know, if we're
11 stirring up nitrogen, I don't think we're
12 talking about a permanent impact that's going
13 to, that's going to completely discourage the
14 eelgrass population which may not even be
15 present. Same thing for the concrete
16 mattresses. So and I think in terms of the
17 sediment disposal, like you said, 1.5 tons is
18 being dispersed compared to all the movement
19 that occurs does make you wonder just how
20 permanent are some of these impacts that are
21 being raised as major issues.

22 MR. FITZGERALD: So the only other thing I
23 wanted to mention is that we will have
24 discussion on natural environment so there's

1 sort of a cross-cutting set of issues with
2 regards to impacts on shellfish and so on. I
3 had planned to have most of that discussion
4 under natural environment. So I wasn't getting
5 into the impacts on all the wildlife and flora,
6 fauna and various creatures that inhabit Little
7 Bay.

8 So that concludes my introduction of the
9 topic. And thank you, Chris, for your
10 evaluation.

11 PRESIDING OFFICER WEATHERSBY: Director
12 Muzzey?

13 DIR. MUZZEY: I'm wondering if we could
14 have a short discussion about the idea of the
15 Independent Environmental Monitor. I believe
16 one is called for for two different DES permits,
17 and I know in our discussion of historic sites
18 it was, an Independent Environmental Monitor or
19 historic sites monitor was a less common tool
20 used in that resource area. But in the
21 environmental permitting area, is this something
22 that people are familiar with, does it seem,
23 does there seem to be a clear path as to how an
24 independent monitor would be hired and that

1 person's independence assured to the degree that
2 the public would be comfortable with the person
3 as well as that person's authority to stop
4 construction as needed and address issues and
5 given enough time to address issues.

6 MR. FITZGERALD: So that's a question I
7 raised at the beginning of this and I feel
8 pretty satisfied. The Project does require what
9 are titled Independent Environmental Monitors in
10 a couple of areas. I forget specifically.

11 The question in my mind is, and I think we
12 had this same discussion although we didn't
13 choose to go that route with historical and
14 aesthetic. The question is what means
15 independence? Is independence asserted by the
16 fact that, you know, if the Applicant hires
17 them, are they independent? They are required,
18 the Applicant is required to name an independent
19 monitor. They are required to submit that
20 information to DES and to have that approved by
21 DES.

22 I think if we are to consider what would be
23 truly Independent Environmental Monitors we
24 would need to think about an area that I'm a

1 little hesitant to go into which is the
2 Committee or some agency being delegated to make
3 that selection on behalf of the Committee and
4 just require the Applicant to pay for it, and
5 I'm not sure a lot of agencies want to get into
6 that, you know, potentially selecting a monitor
7 as long as an appropriate one is presented by
8 the Applicant. So that's an open discussion
9 area for me.

10 PRESIDING OFFICER WEATHERSBY: Ms. Duprey?

11 MS. DUPREY: Just following up on Director
12 Muzzey's question and your answer to it, am I
13 right in understanding that this method where
14 the Applicant chooses the monitor and pays for
15 it but probably gives the name for DES for
16 approval, is that sort of standard operating
17 procedure for DES?

18 MR. FITZGERALD: I'm in the air division,
19 and we don't typically have an issue like this
20 unless we have a concern that there's a
21 compliance history or failure to comply that we
22 would -- I'm not aware of a situation where
23 we've done this, but I could not speak for the
24 water division as to how they normally handle

1 this, but I think it is somewhat unusual for us
2 to hire project monitors.

3 MR. WAY: I don't have a problem with an
4 Independent Environmental Monitor. I just want
5 us to be clear why we're asking for one or why
6 we think one might be appropriate or why others
7 might think it might be appropriate because as
8 you said, Mr. Fitzgerald, I'm not aware in a lot
9 of other similar permits that it's done unless
10 there's a compliance issue that has been raised
11 that requires a secondary party to have
12 oversight.

13 I'm trying to think, in this case, is it
14 once again, does it get back to a level of
15 trust. Is that really what we're talking about
16 here? Is it trust? Or do we accept that if we
17 have a permit in place that has appropriate
18 conditions and if we have an Applicant that has
19 met the other measures and gets a certificate,
20 do we then have a process in place which
21 satisfies the concerns. So the question is why
22 do we need an Environmental Monitor.

23 PRESIDING OFFICER WEATHERSBY: So I think
24 we definitely need one here.

1 MR. WAY: Let me say an Independent
2 Environmental Monitor.

3 PRESIDING OFFICER WEATHERSBY: I think an
4 independent monitor. There's so much that the
5 Applicant is being asked to monitor. You know,
6 sediment dispersal and mixing zone composition
7 and wind speeds and all of that concerning the
8 cable crossing, and we need to be sure that
9 what, that not only is it modeled but also that
10 the actual results conform to that model. And I
11 think we need someone who is trained in this
12 area and that's independent to say hey, this is
13 an exceedance, and I think the issues concerning
14 Little Bay are so critical that I know I would
15 be much more comfortable with an independent
16 monitor. The Applicant has agreed to an
17 independent monitor. There's a stipulation
18 between Counsel for the Public, and I think DES
19 is requiring an independent monitor. So I think
20 we can kind of put that issue to bed and assume
21 that an independent monitor, unless we want to
22 go back to DES.

23 MR. WAY: And like I said, I'm okay with
24 that. I just want us to know why we're doing it

1 and why we're requiring it and I think your
2 approach is the good answer and I think in part,
3 too, because it makes us feel comfortable as the
4 body that might be approving this.

5 PRESIDING OFFICER WEATHERSBY: Exactly. I
6 would be uncomfortable without one, and I'm not
7 even sure I would approve it. Just to be clear,
8 the Independent Environmental Monitor, this is
9 stipulation 25, if we choose to adopt it,
10 they're going to oversee the construction of the
11 Project, whole thing, and work with contractors
12 to implement appropriate Best Management
13 Practices to avoid or minimize environmental
14 impact. The Applicant shall also use an
15 Independent DES-approved Environmental Monitor
16 to oversee work in Little Bay.

17 MR. FITZGERALD: If I could just, it seems
18 to me, yeah, I think there's general agreement
19 that an Independent Environmental Monitor. I
20 guess what I was hearing during a lot of the
21 testimony was concern as Chris mentioned that
22 the Applicant could not be trusted and that
23 there needed to be an Environmental Monitor
24 completely separate from the Applicant.

1 Now, in my viewpoint, if the Applicant were
2 to be the monitor, if employees of the Applicant
3 were to be the monitor, I think that would be a
4 great concern. Just from a general standpoint.
5 Not because I have any information that suggests
6 that. But the question in my mind is if the
7 Applicant hires another party and that party is
8 not part of the corporate, under the corporate
9 umbrella of Eversource or anything else and they
10 are charged and DES has approved them and in
11 addition they have a set of plans and a set of
12 requirements that they would have to go by.
13 It's not just hiring a monitor and saying go out
14 and monitor. There's a set of conditions that
15 relate to plans, and the monitor would have to
16 review the plans, ensure that the plans were
17 being adhered to, et cetera. And I just, I
18 guess to me, it comes down to does it have to be
19 financially independent of the Applicant because
20 if it's, if we're doing it for trust issues, if
21 we're doing it because an Independent
22 Environmental Monitor is appropriate due to the
23 serious of Little Bay, I think that's another
24 question.

1 MR. SHULOCK: I have a slightly different
2 take on independent monitors. I think agencies
3 would like to monitor the work that goes on in
4 sensitive resources, but they don't have the
5 staff to do it, and the independent monitor
6 provides that agency with the ability to have
7 eyes on the Project while the work is going on
8 and report back to the agency.

9 And then independence, in my opinion, is a
10 matter of first of professionalism and ethics on
11 the part of that expert. Secondly, it's a
12 contractual issue. Payment is probably less
13 important because I mean ultimately unless the
14 state agency is doing the work on its own dime,
15 the Applicant will have to pay.

16 PRESIDING OFFICER WEATHERSBY: Director
17 Muzzey?

18 DIR. MUZZEY: I also think there's
19 particular value in having the independent
20 monitor for the Little Bay work given that
21 although jet plows have been, jet plow
22 technology has been used in many other places,
23 it hasn't yet been used here in New Hampshire,
24 and I have a sense, sort of following up on what

1 you just said, that it will assist the
2 Department of Environmental Services as well to
3 have that extra set of eyes. This is the first
4 time through for the agency. They have
5 carefully considered the Application, they've
6 placed many, many conditions on this Project,
7 particularly as it relates to Little Bay. And
8 so in this particular case, perhaps not
9 necessarily precedent setting for the future,
10 but for this particular case an Independent
11 Environmental Monitor seems like a wise
12 approach.

13 MR. SCHMIDT: I think on large construction
14 projects similar to this it's commonplace to
15 have an independent monitor. I think the point
16 that you pointed out that the wide variety of
17 issues that are before us on this Project are
18 all the more important to do that. I don't
19 think they have to be an independent silo from
20 Eversource as far as I don't think they should
21 be an employee, but I think funding and so on it
22 can be a relationship directly with Eversource.
23 I do like the idea of having DES approve the
24 ultimate contractor. Other than that, I think

1 it's a needed piece to this contract.

2 PRESIDING OFFICER WEATHERSBY: Another
3 possibility if folks are uncomfortable, which I
4 am not, but in addition to DES approval of the
5 person, we could ask that that person be
6 approved by Counsel for the Public or the SEC or
7 some other body. Personally, I don't think
8 that's necessary if DES approves the person, but
9 if folks want to go that route we could put in
10 an extra level.

11 MR. WAY: I think for my part DES approval
12 would suffice.

13 MR. SCHMIDT: I agree. I'm not sure if, I
14 think we want the expertise of DES approval.

15 PRESIDING OFFICER WEATHERSBY: Sounds like
16 there's some agreement on an independent monitor
17 for environmental issues. Pretty much as
18 stipulated to in the Condition number 25 of the
19 Stipulated Conditions between Counsel for the
20 Public and the Applicant.

21 MS. DUPREY: Madam Chair, I'd just like to
22 add to the discussion by stating that I think
23 that it would also perhaps get the public some
24 comfort as well to have an independent monitor,

1 that that is another worthy reason for requiring
2 one.

3 PRESIDING OFFICER WEATHERSBY: Where do we
4 want to go next? Ms. Duprey?

5 MS. DUPREY: So I had wanted to talk about
6 a few issues. Maybe other folks don't feel the
7 need to. I wanted to talk about oysters for a
8 minute. I don't know if that's something that
9 we're going to take up later so that it would be
10 out of order. So I wanted to make a few
11 comments about nitrogen. And the cable removal.

12 PRESIDING OFFICER WEATHERSBY: We are
13 talking about oysters later in some detail.

14 MR. FITZGERALD: I was going to suggest
15 that oysters be considered under natural
16 environment.

17 PRESIDING OFFICER WEATHERSBY: Let's talk
18 about nitrogen because I think that is a subject
19 worthy of more conversation as well.

20 MS. DUPREY: One of the things that I
21 wanted to specifically say about nitrogen was as
22 I listened to all the expert testimony on this
23 topic, it began to occur to me, and I'm not a
24 marine person. I don't have any knowledge about

1 sedimentation in bays and whatnot and of
2 estuarial bays, but it began to occur to me that
3 the sediment being stirred up is not an uncommon
4 thing, that this goes on regularly which also
5 just segues to DES. Even though DES hasn't had
6 a jet trial project in front of it, it's
7 certainly had other projects where sedimentation
8 is stirred up. So I don't think we should
9 really question DES's expertise in this area.
10 It's just a different format of it happening,
11 but they've I think through the permit have put
12 a number of conditions in place to oversee that.

13 But at the end of I believe it was the ESS
14 testimony which was Counsel for the Public, I
15 asked a number of questions about nitrogen and
16 specifically I was trying to get at isn't
17 nitrogen being stirred up always an issue
18 because nitrogen is what's pumped into every
19 body of water through wastewater treatment
20 plants and other means but that's one of the
21 most common means of nitrogen getting into the
22 sediment it. So therefore, if it's in the
23 sediment in your jet plowing and jet plowing is
24 something that occurs regularly why isn't this a

1 big issue everywhere, and they said that it
2 wasn't. That it was a big issue here, that
3 people had made it a big issue here, but in
4 their experience in working on these projects
5 that they had not heard very much about
6 nitrogen. And I just wanted to point that out
7 because I thought that that was an indicator
8 that what seems to have been a huge concern here
9 and has every bit as much of a reason to be a
10 concern in other places, you know, hasn't been
11 raised as one. I just thought that was an
12 interesting point.

13 I did also want to say that with respect to
14 the cable removal toxicity that, again, we're
15 relying on DES's expertise with respect to their
16 concern about how much toxicity there might be
17 as a result of pulling up old cable, cutting it,
18 and whatnot. And I feel like I have to rely on
19 that expertise and I do in accepting the permit
20 conditions that they've put forward.

21 There were also questions raised about the
22 timing of the trial, the jet plow trial. Is
23 that, another time appropriate to talk about
24 that? Or is this the right time?

1 PRESIDING OFFICER WEATHERSBY: Do we want
2 to talk more about nitrogen or cable removal
3 plan? Maybe we'll just -- anyone want to talk
4 more about nitrogen?

5 MR. FITZGERALD: I would just say with
6 regards to nitrogen that I agree with Ms. Duprey
7 that there is continual current and storms and
8 so on that can raise amounts of sediment and
9 nitrogen and be released. I think our job is to
10 determine whether this Project will have an
11 unreasonable adverse impact as opposed to those
12 continuing, ongoing continuing, and I will note
13 that the PREP report notes that the Bay is
14 becoming healthier in general. That significant
15 efforts have been made but that this Project
16 impact would be fairly small and temporary in
17 nature.

18 And so, you know, I think when you consider
19 everything that's going on, continuing additions
20 of nitrogen, again, as I said, the towns that
21 have had to makes these tremendous efforts to
22 reduce nitrogen, I can understand their reason
23 for taking some offense at allowing a Project
24 that would introduce some, but my overall

1 conclusion is that it's pretty small and
2 compared to the natural processes that are
3 occurring and the existing amounts.

4 PRESIDING OFFICER WEATHERSBY: Mr. Way?

5 MR. WAY: Yes. I agree with everything
6 that was said. I think, you know, the idea that
7 this would be a setback in terms of the efforts
8 to reduce nitrogen in the bay, it's certainly a
9 valid concern. I'm sympathetic to it. But I
10 think the amount of nitrogen we're talking is
11 not going to increase in the Bay. It's just how
12 it's going to be dispersed. And I keep coming
13 back once again to what I perceive to be maybe
14 the temporary nature of this dispersal. And the
15 idea being that it could also come from the
16 cable removal as well stirring up the sediment.
17 I think its going to be temporary but certainly
18 something to keep an eye on.

19 PRESIDING OFFICER WEATHERSBY: So I
20 disagree a little bit with what's been said. I
21 think that the jet plowing is fairly different
22 than the disturbances that are naturally
23 occurring or may occur by an anchor or a wave or
24 a wind or whatever. I think that, you know,

1 going down four feet is different than what is
2 naturally occurring and more significant.

3 I understand completely why CLF, Town of
4 Durham, other towns and other interested parties
5 that have been working so hard to try to restore
6 this Bay are frustrated and angry that the
7 Applicant will be introducing -- they're not
8 introducing new nitrogen, but they are stirring,
9 perhaps stirring up nitrogen and that may get
10 dispersed, and they have a right to be
11 frustrated about that. But that's not what
12 this, what I need to look at in making my
13 determination. I feel as though I need to look
14 at what is the actual impact of that nitrogen.
15 And it is fairly small, and it is fairly limited
16 in duration. So while they feel as though
17 they've been working so hard and why should
18 someone else start to undo some of our efforts,
19 I mean, the impact I think is relatively small.
20 So I certainly couldn't deny it on that basis.

21 MR. FITZGERALD: If I could also, I think
22 it's important to understand this is part of the
23 reason for the trial run. That the trial run
24 would monitor for nitrogen. That there was a

1 lot of testimony relative to nitrogen in
2 interstitial water between the grains of
3 sediment that's going to be exposed and so on.
4 A lot of uncertainty was raised but the trial
5 run will tell us whether nitrogen in excess of,
6 you know, amounts that would be of concern to
7 DES, that will provide us with some valuable
8 information.

9 PRESIDING OFFICER WEATHERSBY: Based on
10 that, it can't exceed certain levels, that they
11 would have to slow it down or stop or wait for a
12 different day so that the process is fairly
13 tight in not allowing significant damage,
14 significant nitrogen release or other
15 contaminants. Ms. Duprey?

16 MS. DUPREY: I totally agree with what
17 you've said, especially with why people are
18 concerned about this. I would just also add
19 though that while it's not the same, because
20 this will go on over a period of days, that when
21 we put in bridge abutments and even docks and
22 breakwaters, that those are also going down deep
23 into the sediment and stirring it up. Again,
24 it's not the same as going across the Bay

1 MR. SCHMIDT: Existing Cable Removal Plan.

2 MR. IACOPINO: 106.

3 MR. FITZGERALD: Okay. Well, I guess one
4 thing is this has to be put in context because
5 there's excavation for the cable and then
6 there's cable removal. So I didn't spend a lot
7 of time reviewing the cable removal plan. I
8 wanted to refer, I believe, in CFP had made some
9 comments about it, and I don't know that I have
10 those marked.

11 MR. WAY: If it's helpful, DES has the
12 Condition number 49 in their October spreadsheet
13 addressing the existing cable removal remedial
14 response plan where they find it adequate, and
15 obviously the concern is what happens if these
16 things disintegrate upon pulling them up which
17 could very well happen that these things are so
18 old and if they disintegrate, then what happens
19 to all the lead, the potential lead, the pieces,
20 what does it do to the water column as well.
21 And so it's a critical plan to have in place.

22 MR. FITZGERALD: So again, I would suggest
23 it's a condition that requires DES to approve
24 the plan and to account for the environmental

1 impacts. I'm not sure it -- was the questioning
2 that the cable removal plan did not adequately
3 address environmental impacts? Because I mean,
4 the cable removal plan has a section, you know,
5 there's some analysis and so on, but it's also
6 covered by the overall project plans and BMPs
7 and stipulations that state that sediment shall
8 be controlled, that there shall be analysis for
9 contaminants of concern.

10 I think the only issue that I saw raised
11 relative to cable removal were that it's
12 possible that the cable will break, that there
13 will be, this is very old cable. That it won't
14 come up in one pull. That it could, sections
15 could break off. So DES was tagged with the
16 responsibility for ensuring that it was removed
17 in accordance with our requirements that it was,
18 that it was all places were accounted for. You
19 know, they would possibly have to send divers
20 down to get pieces if they didn't, you know,
21 they'd broken off or using other retrieval
22 techniques and ensure as much old cable was
23 removed as possible and that the same monitoring
24 and environmental requirements would apply

1 regarding sediments.

2 PRESIDING OFFICER WEATHERSBY: Director
3 Muzzey?

4 DIR. MUZZEY: It seems the cable, the need
5 for a cable removal plan and the uncertainty
6 that the public feels about it is like a lot of
7 things with this Project. The Applicant has a
8 good idea of where the cables are. It's
9 important to note that not all the cables will
10 need to be cleared so we're not talking about
11 the entire Bay area. There are specific places
12 where clearance is needed. It's the type of
13 activity that the Applicant cannot be sure
14 about. They cannot be sure as to whether they
15 will find the cables. They cannot be sure of
16 the condition of the cables and whether or not
17 they can be successfully retrieved back to the
18 surface without breakage or some of the cable
19 sections being lost. It's just not that type of
20 activity that you can be sure of those things.

21 So a plan is in place, our Department of
22 Environmental Services has approved the plan,
23 and it's the type of activity where the
24 Applicant needs to depend on a plan instead of a

1 specific scope of work. And I think that has
2 raised concern with the public. Obviously, the
3 public would prefer a specific scope of work
4 that said exactly what would happen, where and
5 what the exact results will be, and that's not
6 possible in this case, and we are left with
7 seeing whether the plan is an adequate document
8 and whether it addresses all the possible
9 environmental issues.

10 DES has been our reviewer in this case,
11 given their expertise, and they certainly feel
12 it is. They have not felt that way about other
13 plans, and they have asked for changes so we
14 know that DES is not shy about asking for
15 changes and plans, and they have grounded
16 reasons for doing so if needed.

17 So although I can understand the wish for
18 more certainty about this on behalf of some of
19 the comments we have heard, I'm comfortable with
20 the plan being adequate to address this type of
21 activity.

22 PRESIDING OFFICER WEATHERSBY: I've been
23 hunting for the part of their testimony where
24 they, Counsel for the Public addressed this and

1 had a concern, and I think it was that asking us
2 to add Condition 49 which DES had done. So I
3 can't find it, but that's my recollection about
4 their comment concerning the cable removal plan.

5 MR. WAY: As I recall from the Town of
6 Durham they also had concerns about that as
7 well, and I think, I think their concern was the
8 potential for lead which I think we heard from a
9 couple of other sources as well, and if you look
10 at the plan that was put in place and what's
11 been done in testing around the cables to date,
12 I think, well, I know they tested for lead, and
13 I think they were, the levels were below
14 significance, but they also tested for PCBs and
15 asbestos as well, two other things I think that
16 were raised as issues as I recall in testimony.

17 PRESIDING OFFICER WEATHERSBY: All right.
18 The condition I was thinking of was actually
19 suggested by Durham. They have a number of
20 suggestions for us in Town of Durham UNH Exhibit
21 3. But concerning the cable removal plan it was
22 to add Condition 49 concerning what happens if
23 there's a break in the cable.

24 Do you want to talk anymore about the cable

1 removal plan?

2 MR. WAY: I would also expect, too, that as
3 we go through this process, the whole process
4 itself I would imagine is going to be is
5 somewhat flexible and responsive. That if
6 you're pulling up cable and all of a sudden it's
7 disintegrating, then other things occur. You
8 have an Independent Environmental Monitor that
9 can certainly either stop or put other
10 conditions or request other conditions as well,
11 but it's not going to be something where they're
12 just going to charge across the Bay and whatever
13 happens happens. I think we're going to see
14 some good information that comes from the jet
15 plow trial run, and then I think we also have to
16 believe that as we go through this process
17 you're going to have people that are going to be
18 responsive to what they see in front of them for
19 conditions.

20 MR. SCHMIDT: I think Applicant Exhibit 106
21 as we talked about a little earlier gets very
22 detailed on what would happen. If the cable
23 breaks, they'll send a dive team down. In one
24 case they say they'll send an ROV down to look

1 for loose debris. So I think they've addressed
2 the concerns. As you stated earlier, some of it
3 won't be identified until we actually have a
4 break, and then we'll -- but I think the ground
5 work is in place to address those, the issues.

6 MR. FITZGERALD: So Condition 49 certainly
7 does require a plan. The plan shall apply in
8 the event existing cable is deteriorated, that
9 it disintegrates upon removal resulting in loose
10 debris in the water column. Plan shall identify
11 remedial actions to contain the cable debris,
12 actions required to remove the debris. Shall
13 also include specific means of controlling
14 turbidity. That in no instance will any debris
15 remain in the substrate. And the Applicant
16 shall implement the removal plan if cable
17 failure occurs. Impacts ordinarily anticipated
18 from intact cable removal or cut section would
19 be limited to the turbidity from sediment
20 disturbance accounted for in the Application.
21 So and that plan was submitted to DES and
22 approved by DES. So I think we're good.

23 PRESIDING OFFICER WEATHERSBY: There's a
24 comment with regard to Town of Durham's

1 suggestions to the Committee in its Supplemental
2 Testimony. Exhibit 3. July 20, 2018. They
3 have a number of suggestions from their experts
4 concerning water quality. However, that was
5 prior to, or since July 20, 2018, they've had an
6 opportunity to raise any of these concerns with
7 DES, and we've seen the DES has incorporated a
8 number of their suggestions into the final
9 permit. So I originally thought let's go
10 through these and see if there's something we
11 can use, but I think we've cross-referenced
12 everything, everything had been considered by
13 DES.

14 Director Muzzey?

15 DIR. MUZZEY: One of the conversations,
16 well, one of the pieces of testimony that I
17 remember talking with the Town of Durham/UNH's
18 experts on this subject involves something that
19 I don't know a lot about so I hesitate to talk
20 about it too in-depth. But it was revolving
21 around the question as to whether additional
22 testing could add some certainty to this
23 process. You know, much like the cable removal
24 plan, there are other aspects of the work that

1 will be done that we can't be sure of until we
2 get into it. There's heavy reliance on plans
3 and responses. If things exceed certain limits,
4 that type of thing. And there was some
5 conversation about RIM Tier III toxicity
6 testing. We know that Tier 1 and Tier II
7 testing was done, but Tier III has not yet been
8 done so the question is whether we could add
9 some certainty to this process, some
10 predictability if that testing was done, and I'm
11 looking at TD 3, PDF page 4 at the bottom. And
12 then continuing on to page 5 lays out the ground
13 work as to why these experts feel that may be
14 important. And then if we go to the Applicant's
15 chart that shows what happened when Durham's
16 experts went and talked with the Department of
17 Environmental Services.

18 MR. WAY: If I could, I was drawn to that
19 condition as well because my understanding it
20 helps to further characterize the mixing zone.

21 DIR. MUZZEY: Yes.

22 MR. WAY: Because something, obviously
23 what's going on in the mixing zone and what
24 happens outside of the mixing zone is there's no

1 excesses, but within the mixing zone there's
2 obviously some variation. So when I saw that, I
3 thought that seemed reasonable to me, but then I
4 looked at 208 and I looked at Condition number 5
5 and DES did not accept that condition.

6 DIR. MUZZEY: Yes.

7 MR. WAY: Like you, I don't know enough
8 about that to second guess what DES offered.

9 DIR. MUZZEY: That was my question as well.
10 On PDF page 2 at the top, number 5, the
11 Applicant shall perform RIM Tier III water
12 column tests to evaluate potential toxicity of
13 the dissolved and suspended portions of the
14 sediments expected to be mobilized during SRP
15 construction, and then there are more details as
16 to how and why that would be helpful. And --

17 MR. SCHMIDT: What exhibit are you on
18 again?

19 DIR. MUZZEY: I'm on Applicant's Exhibit
20 208. This is the big chart that shows what the
21 Durham experts were recommending, and then what
22 DES's responses were when they met with those
23 experts.

24 So during testimony, during the hearing, it

1 seemed in talking with the Durham experts that
2 this type of testing would not necessarily be
3 overly expensive or taking a large amount of
4 time that would interfere with the Project
5 schedule and create undue delay, but we do see
6 in the third column of this chart in 208 that
7 DES did not incorporate this condition. We
8 don't have any additional explanatory material
9 as to why DES did not accept this condition
10 which at this point in our deliberations I would
11 find tremendously helpful. Has anyone else
12 found any material in the record that addresses
13 that? During our hearing they described it as a
14 real-world check that would take some of the
15 theoretical information and clarify impact,
16 according to my notes.

17 MR. WAY: I think maybe some of the concern
18 as well is that the Applicant will be putting
19 together a Mixing Zone Plan which is something
20 that DES would like to see. Maybe the issue is
21 sort of like the environmental monitoring plan.
22 It isn't before us. It's something that will
23 come at some point before construction. DES
24 would be delegated to approve that plan prior to

1 construction, and I would imagine that in that
2 plan they found that there wasn't a need for
3 that RIM Tier III testing. I don't know though.

4 I'm also looking at the notes from the UNH
5 team when they were, this is at Exhibit 204.

6 DIR. MUZZEY: Can you read those notes?

7 MR. WAY: Somewhat I can because it's like
8 my writing, but I'm looking for something that
9 refers to the testing and unless I'm reading it
10 incorrectly, I'm not seeing it. But it may very
11 well be they're just not calling it out by the
12 name we're using right here.

13 PRESIDING OFFICER WEATHERSBY: It may be
14 that the condition concerning the Mixing Zone
15 Plan includes this but not specifically. This
16 is one method of helping to determine the mixing
17 zone. But if you look at Condition 44
18 concerning the mixing zone, they have submit the
19 mixing zone request to DES 60 days before
20 construction. That plan must include a
21 description and map showing the proposed mixing
22 zone in Little Bay and justification for the
23 proposed limits of the mixing zone and
24 documentation demonstrating the proposed mixing

1 zone complies with the minimum criteria and
2 administrative rules.

3 I get the sense that they weren't trying to
4 dictate exactly how that Mixing Zone Plan should
5 be done, but that it needs to show justification
6 for whatever it proposes.

7 DIR. MUZZEY: So is your assumption that
8 then that Tier III testing isn't necessarily
9 excluded. It may be one way that the Applicant
10 gets to an approved mixing plan, but there may
11 be other ways as well.

12 PRESIDING OFFICER WEATHERSBY: Yes.

13 MR. WAY: Although that I think if that
14 were true that on Exhibit 208 under that
15 condition there would be at least a partial
16 recognition of the request. So my impression is
17 that it probably is not something that was
18 embraced. In terms of the DES October
19 spreadsheet, isn't there a redline version out
20 there?

21 MR. IACOPINO: Yes. 12d. Committee
22 Exhibit 12d is what they called the Annotated
23 Final Decision which is a redline. 12c is the
24 combination document.

1 MR. WAY: Okay. You said 12d is the
2 redline?

3 MR. IACOPINO: 12d is the redline, yes.

4 PRESIDING OFFICER WEATHERSBY: I think
5 we'll take a short break and people can look
6 into this if you'd like. Maybe ten minutes.
7 We're going to take a break for ten minutes.

8 (Recess taken 4:57 - 5:06 p.m.)

9 PRESIDING OFFICER WEATHERSBY: Okay. When
10 we left off, we were talking about RIM Tier III
11 testing. Does anyone have any further comments
12 concerning that proposed condition?

13 DIR. MUZZEY: Well, during the break I had
14 the opportunity to review what was discussed
15 during our hearings and this is with Mr. Famely,
16 and it was on Day 13, page 188 of the testimony
17 and continuing from there. So he does note that
18 they probably had reviewed the testimony as well
19 as his recommendations and they did not ask for
20 the type of Tier III testing we've been
21 discussing. So we really don't have a lot of
22 information to go on besides the fact that they
23 probably reviewed those recommendations and did
24 not feel they were appropriate for this Project.

1 Being a historian I don't want to second
2 guess the work of the Environmental Services so
3 rereading this, I'm left with the idea that we
4 need to depend on our reviewers at the
5 Department of Environmental Services to
6 recommend the best approach.

7 PRESIDING OFFICER WEATHERSBY: Point of
8 clarification when you say they had the
9 information, are you referring to NHDES?

10 DIR. MUZZEY: Yes. That was Mr. Famely's
11 assumption.

12 PRESIDING OFFICER WEATHERSBY: Mr. Way?

13 MR. WAY: I agree with that as well. I had
14 a little bit of opportunity to look a little
15 more. And as I said earlier, none of this was
16 done in a vacuum and DES I think was pretty
17 aware of the concerns. I didn't find it in the
18 notes in Exhibit 204, and yes, I pretty much
19 could read them, and I didn't see it there. So
20 I think I'm going to err on the side of trusting
21 DES that they've got this one covered with
22 regards to the testing regimen for the mixing
23 zone.

24 MR. FITZGERALD: If I could. Also in

1 looking at the Exhibit 208 chart presented by
2 GeoInsight and that requirement number 5 on page
3 2, I believe, electronic page 2, requirements
4 listed, and then the comment in the next column
5 is N/A which I assume means not applicable, and
6 then NHDES did not incorporate. So it would
7 seem to me that this was a significant concern
8 of GeoInsight there would be some discussion in
9 that second column. Mike? Page 2. Exhibit
10 208. Electronic page 2.

11 MR. WAY: I actually think column 2 was
12 more the DES response and the comments would be
13 over on the right-hand side and I would have
14 expected more comment than simply DES did not
15 incorporate the condition. That would have been
16 a good place to maybe make the case.

17 MR. FITZGERALD: What does the N/A in
18 column 2 imply or is it --

19 PRESIDING OFFICER WEATHERSBY: The heading
20 on that column is condition issued by NHDES.

21 MR. FITZGERALD: So they're saying that
22 there is none there.

23 PRESIDING OFFICER WEATHERSBY: That's my
24 understanding.

1 MR. WAY: At every point where they didn't
2 incorporate the condition, an N/A is found in
3 the second column.

4 DIR. MUZZEY: It's one of three places
5 where that happens.

6 MR. FITZGERALD: Okay.

7 PRESIDING OFFICER WEATHERSBY: So correct
8 me if I'm wrong, but I'm sensing reluctance on
9 the part of at least most Committee members to
10 incorporate this condition but instead leave it
11 to NHDES to determine what they will require in
12 the plan. I see nodding heads. Is there anyone
13 who disagrees with this or wants to talk about
14 it further?

15 (No verbal response)

16 PRESIDING OFFICER WEATHERSBY: Okay. Let's
17 move on then.

18 Let's talk about the need for a jet plow
19 trial run. Ms. Duprey?

20 MS. DUPREY: I thought it was a good idea
21 until I started reading or listening to
22 Conservation Law Foundation who, I believe it
23 was them, did not think it was a good idea to
24 have a trial run. That having a trial run was

1 just going to stir up more sediments and DES
2 never did require one. So I'm up in the air
3 about it. I don't know what to say.

4 PRESIDING OFFICER WEATHERSBY: I think it's
5 a great idea. I think that there's a fair
6 amount of uncertainty as to what's going to get
7 stirred up and concentrations. How the
8 equipment is going to work, how long it's going
9 to take. There's a number of uncertainties
10 about the whole process, and I think a lot of
11 good information will be gained from a jet plow
12 trial run.

13 I think Counsel for the Public's experts
14 agreed that that would, trial run would be
15 beneficial. DES had suggested it. They're not
16 going to require it, but if it had no merit they
17 wouldn't have suggested it. Applicant is
18 certainly willing to do it. The risk is more
19 sediment is stirred up, but to me the data that
20 is gained by doing the trial run allows them
21 then to adjust their construction techniques and
22 monitoring on everything so when it goes longer
23 that that information is incorporated and
24 adjustments could be made.

1 The same thing is happening when they do
2 the first cable, they're using that data to help
3 them reduce impacts to the second cable and so
4 on and so on so I think starting with the small
5 trial run, thousand feet is not so small but
6 it's not the whole length, and using that
7 information to adapt the methods and means would
8 be certainly beneficial.

9 MR. WAY: I agree with everything you just
10 said. I think it would also be a good means to
11 instill confidence in the process. That
12 hopefully that it won't be having the impacts
13 that everyone thinks, well, not everyone but
14 some think might happen.

15 The only area of concern I have is that
16 when DES is going to be looking at the results.
17 I seem to remember that they went from needing
18 90 days down to like 14, 15, which seemed pretty
19 tight to me. Once again, I don't think I'm
20 going to second guess them on that because
21 obviously they've made an internal decision that
22 they can have the quick turnaround on this, and
23 I'll trust them with that because this trial run
24 is going to provide valuable information. I

1 think it would allow the company maybe to get,
2 for lack of a better phrase, get the kinks out
3 of the system before they do the real thing.
4 And with the same exact equipment with the same
5 operators, at the same time of year, I think
6 there's a lot of benefit to doing that, and I
7 think you can get some good information.

8 MR. FITZGERALD: I raised some question
9 about this during the various testimonies and
10 one of my concerns was that this was a thousand
11 feet, the crossing was 6000 so it represented
12 almost, you know, 20 percent of the entire
13 project, but rethinking that, I realized later
14 that the project is three crossings so it's
15 almost 20,000 feet so a thousand foot is five or
16 six percent of the entire Project. My first
17 thought was well why not 500 feet or what are we
18 going to learn that wouldn't require such a
19 significant piece of it.

20 But I would concur that I think that the
21 trial run is almost like a tuneup for the
22 operator. It gives them a chance to run, get
23 all the equipment and run it and so uncertainty
24 the question of time I'm not as concerned about

1 because we had testimony that it was possible to
2 deliver the results and report in the time frame
3 required and I think that the time frame is open
4 because DES has to approve and so if they,
5 either if the information isn't delivered to
6 them in a timely manner or they see something
7 that is inappropriate that needs to be resolved,
8 that time frame is going to be expanded. So
9 it's not a hard and fact 21-day. It's a certain
10 amount of time to provide the information to
11 DES. I think we had sufficient testimony that
12 suggested that that could be done and that DES
13 could review it in that time frame, but if DES
14 doesn't agree that the trial run meets its
15 criteria and the reason that it asked for a
16 trial run, they would say no, don't get ahead
17 until you answer these questions.

18 MR. SCHMIDT: I think there's a lot more to
19 be gained to having it even like we've discussed
20 the construction operation itself. The
21 operators being the same and so on. But also we
22 heard how the speed of the propeller will be,
23 can be adjusted and I think this trial run would
24 just give that much more information before they

1 dive right into the overall crossing.

2 MR. WAY: I was also going to mention, too,
3 because we talked about the Conservation Law
4 Foundation and they were having some issues with
5 the concept of a trial run, but I think their
6 problem as I recall mostly centered on the fact
7 that the run and the data gathered would happen
8 after we've issued a certificate, and we
9 wouldn't have that information before us. So I
10 didn't get the sense that they were really
11 opposed to the trial run. I may be wrong. But
12 I know that that was one of their objections was
13 that there would be some data available and it
14 would not be available to any of us. It would
15 be available to DES.

16 MS. DUPREY: That was definitely an issue,
17 but it wasn't the only issue. It was another
18 disturbance of the Bay. I'm not suggesting
19 against the trial runs. The Applicant agreed to
20 it. I just find it surprising that DES did not
21 require it. It's had plenty of bites at that
22 apple, hasn't taken one yet. And with CLF
23 objecting the way that it did, it's just a
24 remark more than anything else.

1 MR. FITZGERALD: I would see DES's lack of
2 making this a requirement to be more a comment
3 that this is something that we suggest. I think
4 it would help with the public confidence in the
5 Project. It would help to confirm the
6 assumptions that are made in modeling and
7 nitrogen release and sediment dispersion and
8 other impacts and so on. It would give an
9 opportunity to determine whether all of the many
10 "ifs" that have been raised by Intervenors, you
11 know, and especially comments that we just don't
12 know and we can't tell, well, to me a trial run
13 is yes and we've analyzed it and we've
14 determined that it tells you the Project
15 assumptions are appropriate and the planning and
16 the requirements or something has shown up that
17 we didn't anticipate and they're not appropriate
18 and we need to make an adjustment. I think it's
19 a very positive thing.

20 MR. SHULOCK: I have a question about who
21 would make that adjustment. Would it be DES
22 placing additional requirements on the process
23 or would the contractor be making those
24 adjustments voluntarily and then immediately

1 proceeding to the full run?

2 MR. FITZGERALD: My assumption would be
3 that DES would receive the information and the
4 report on the trial run, would review it. If
5 they had concerns, they would address them with
6 the contractor. If they felt adjustments needed
7 to be made to permit conditions that they could
8 do that at that time. But if it were just, you
9 know, the contractor agrees to run it at a
10 slower speed or do, make adjustments to the
11 propeller or how they locate, I mean I think
12 there's a wide range of what could happen from
13 everything zero, everything planned is fine, up
14 to there's major unanswered questions that, you
15 know, major things that were raised by
16 Intervenors have been determined to potentially
17 be true and we need to back up. So I see a
18 pretty broad range of possibilities.

19 But I think by delegating the approval of
20 the trial run plan to DES and conditioning that
21 DES make a determination as to whether the
22 Project can continue as, with the conditions or
23 revised conditions would handle that. I don't
24 think that's in our area of expertise if they

1 came back to us.

2 PRESIDING OFFICER WEATHERSBY: Director
3 Muzzey?

4 DIR. MUZZEY: I'm looking at Committee
5 Exhibit 12c on page 17, item 60b, Jet Plow Trial
6 Run, which is the summary of the condition that
7 would govern how the trial run would work.

8 MR. FITZGERALD: Would you repeat that?

9 DIR. MUZZEY: 12c, top of page 17 which is
10 both PDF and paper 17.

11 MR. FITZGERALD: Oh, it's the October DES.
12 Yes.

13 DIR. MUZZEY: Okay.

14 MR. FITZGERALD: What are you looking at?

15 DIR. MUZZEY: I was just confirming the
16 details of how DES was looking at how the jet
17 plow trial would work. Just confirming the time
18 frames. At least 90 days prior to the trial,
19 the Applicant will submit a jet plow trial run
20 to DES for approval and then it will implement
21 the plan. Then the time frame of at least 14
22 days prior to the scheduled start of submarine
23 cable installation of Little Bay the Applicant
24 shall submit a jet plow trial run summary report

1 to both the Site Evaluation Committee and NHDES
2 and it will address six bullets. And as
3 Mr. Fitzgerald noted, installation of submarine
4 cable in Little Bay shall not proceed until
5 authorized by New Hampshire DES and the Site
6 Evaluation Committee. So we are both given a
7 role in reviewing the report and authorizing
8 further work.

9 MR. FITZGERALD: Does that mean that we
10 have to meet again?

11 PRESIDING OFFICER WEATHERSBY: We may want
12 to take out that the SEC has that approve, not
13 just for the inconvenience of meeting again, but
14 if we're trusting DES, we should trust DES. I'm
15 not sure that we would know what to do with that
16 plan.

17 DIR. MUZZEY: Do we want the Applicant to
18 submit a summary report to the SEC and NHDES in
19 order to keep it on file and potentially provide
20 greater public access to it.

21 PRESIDING OFFICER WEATHERSBY: I think that
22 would be a good idea. I think what comes to the
23 SEC would put on the website so everyone could
24 access it.

1 DIR. MUZZEY: And then we'll delegate the
2 authority to authorize the installation of the
3 cable to DES.

4 PRESIDING OFFICER WEATHERSBY: Yes. That's
5 my understanding.

6 MR. FITZGERALD: Attorney Iacopino?

7 MR. IACOPINO: Yes.

8 MR. FITZGERALD: When something is
9 referenced like that and it says authorized by
10 DES and SEC, is that the normal way of --
11 because if DES approves it with our delegation
12 or our normal delegation, that's a tacit
13 approval by the SEC, isn't it?

14 MR. IACOPINO: Yes, and I read this as DES
15 just being solicitous to this agency. Normally
16 when we do delegate things, especially if it's
17 in a specialty area like this, we delegate it
18 for the state agency to make the necessary
19 approvals and an informational copy goes to us.

20 MR. FITZGERALD: Thank you.

21 MR. IACOPINO: And Iryna reminds me that
22 this is not a condition. It's a suggestion. So
23 that there should be no question of having to go
24 back to DES to take the SEC out of this. So

1 just, I'm not sure even if that was a condition
2 that that would be a problem anyway, but
3 nonetheless, it's not a consideration here today
4 because the jet plow trial run is not a
5 condition, it's a suggestion, and if you all
6 decide to approve it you can do it without the
7 SEC having to approve the results of the jet
8 trial jet plow.

9 MR. FITZGERALD: This starts out, this
10 paragraph starts out and says SEC determines
11 that jet plowing should be allowed, so I guess
12 my question would be that, seems to be something
13 circular here.

14 MR. IACOPINO: It also says and if a jet
15 plow trial run should be conducted. So it's in
16 there and also at the beginning of this document
17 I'm at 12c as well, at the beginning of the
18 document, the second paragraph, Jet Plow Trial
19 Run.

20 DIR. MUZZEY: What page are you on?

21 MR. IACOPINO: Page 1. Also describes that
22 this was a recommendation and starts off in the
23 event that, third paragraph, in the event the
24 SEC determines so it's a recommendation.

1 MR. FITZGERALD: The requirement to do a
2 jet plow trial run is in the proposed stipulated
3 conditions.

4 MR. IACOPINO: It is, but it's got that
5 prefatory language to it. All the "if"
6 language. If the Committee decides this is
7 what.

8 MR. FITZGERALD: So we need to make an
9 affirmative declaration that jet plowing is the
10 right condition. Because referencing this
11 condition in the DES permit references an "if."

12 MR. IACOPINO: Right. You would have to
13 make an independent finding that one of the
14 conditions you were going to impose is that the
15 Applicant perform a jet plow trial run and
16 obviously in accordance with whatever conditions
17 of that that you approve, and what I'm hearing
18 you all say is you just approve what DES is
19 recommending.

20 MR. FITZGERALD: So we could just reword
21 this 60b to say that jet plowing should be
22 alluded and a jet plow trial run should be
23 conducted?

24 MR. IACOPINO: Sure. Or I think more to

1 the point of the question is you could simply
2 take the requirement that authorization from the
3 SEC out and just leave it as par of the
4 delegation to DES.

5 MR. FITZGERALD: Delegating whether to do a
6 jet plow trial run or not?

7 MR. IACOPINO: The last line of 60b says
8 installation of submarine cable in Little Bay
9 shall not proceed until authorized by NHDES and
10 the SEC. You could take out the SEC. I
11 recommend that you do have them file a copy of
12 it with you though.

13 MR. FITZGERALD: Yes.

14 MR. SHULOCK: Can I test this by taking it
15 to the extreme for a second? So one of the
16 things that they would be looking at is whether
17 the results suggest a cable installation by jet
18 plowing is likely to meet New Hampshire surface
19 water quality standards. What if DES determines
20 that under no circumstances will they meet New
21 Hampshire water quality standards after they've
22 done all this testing. Are we delegating to DES
23 the ability to say this is it, that's the end of
24 the project, you can't do it?

1 MR. IACOPINO: Can't do it with a jet plow.
2 Actually, most wetlands permits start off with
3 the condition that you shall not violate water
4 standard qualities. I'm just going back in this
5 one to see if that's the first -- because the
6 standards are not, standards are standards.

7 MR. FITZGERALD: With regards to David's
8 hypothetical situation, I think that as I said
9 before there's a whole range of answers, but
10 isn't one of them no, you haven't demonstrated
11 to us. Please come back to us and tell us how
12 you're going to refine your, you know, make
13 changes to address this, and then either issue
14 revised permit conditions or say you've got to
15 go back and do another trial run. You've got to
16 fix this and do another trial run to assure that
17 we have addressed the problem. Is that within
18 DES's authority?

19 MR. SCHMIDT: I think if we word it that
20 upon successful trial run, and approved by DES
21 that will enable that, right? I think you're
22 right. We need to have a comfort level that
23 it's going to be successful.

24 MR. FITZGERALD: I guess I'm concerned that

1 an unsuccessful trial run, whatever that means,
2 results in project termination, and I don't see
3 that as being --

4 MR. WAY: And I think that's a really good
5 point. I know I didn't think about that is what
6 happens if it fails. The problem with giving
7 the option of doing the same thing until you get
8 it right, I'm sure if you're on the Bay and
9 you're already concerned about the impacts of
10 one trial run that you're probably not too
11 interested in seeing multiples to get there.

12 I don't think there's a, we're not putting
13 in place a Plan B. We're not saying well, if
14 this doesn't work, off to HDD you go. That's
15 not in the cards. I don't think that's in the
16 cards. So I don't know how we put limits on
17 that, but --

18 PRESIDING OFFICER WEATHERSBY: So we're not
19 saying they have to meet the, that during the
20 trial run they have to meet the water quality
21 standards. They're saying when you look at your
22 data, will your results suggest that cable
23 installation by jet plowing is likely to meet
24 the surface water quality standards. So given

1 what you plan to tweak, and you're going to slow
2 it down, and you're only going to go when
3 there's no wind and all the other changes you
4 want to make. They need to demonstrate that
5 based on everything they've learned they can
6 meet those water quality standards. If they
7 can't, if they can't tweak this at all and meet
8 those standards, then they can't cross Little
9 Bay. I mean, but what we're not saying is that
10 you need to meet it on your trial run.

11 MR. WAY: It's sort of fair to say that at
12 this point in the game if they're crossing the
13 Bay they fail the test so egregiously that they
14 couldn't do it without doing another test run, I
15 think there's more concerns coming from that. I
16 would imagine as you said that when they get
17 data from the test run, they'll be able to tweak
18 their approach. I'd like to think that's what
19 will happen. But at the end of the day I think
20 DES has that ability or should have that ability
21 to say no, no confidence, or we think you can
22 move forward.

23 MR. SHULOCK: And would we want to stick in
24 there and you can do another trial run just to

1 give the DES the flexibility and the Applicant
2 the flexibility that they need or maybe?

3 MR. FITZGERALD: I'd make that pretty
4 general and say something to the effect of until
5 DES receives information that satisfies, you
6 know, these bullets, because we are saying they
7 can't proceed without DES approval. So if
8 there's some back and forth and that back and
9 forth is some adjustments and even revised
10 permit conditions or something or maybe DES says
11 this has opened a giant can of worms here and we
12 think you need to do another trial run, but I
13 think we need to give that latitude to be what
14 DES feels it needs in order to authorize the
15 Little Bay crossing.

16 I have one further question, and I don't
17 know if, I wasn't able to attend any of the
18 Project hearings and presentations and so on, is
19 the crossing of Little Bay going to occur at the
20 same time, I mean, the Project starts in
21 Madbury. Does it proceed sequentially? So if
22 they go to Madbury and Durham and get to Little
23 Bay and then do a trial run, I'm unsure of the
24 sequence there.

1 PRESIDING OFFICER WEATHERSBY: There's all
2 Time of Year restrictions for all the different
3 activities.

4 MR. FITZGERALD: Right.

5 PRESIDING OFFICER WEATHERSBY: It's my
6 understanding this is happening in
7 September/October time frame. So fall. Is that
8 everybody else's recollection?

9 MR. SCHMIDT: We were told they would be
10 working in multiple areas at one time.

11 MR. FITZGERALD: Okay. Seems to me you'd
12 want to do the trial run in the Little Bay thing
13 right up front because if you find that is not
14 going to work, Madbury to Durham Point is of
15 little value.

16 MR. WAY: When they say prior to
17 construction, are they talking about
18 construction of the Project or just that one
19 piece of the Project?

20 MR. SCHMIDT: I haven't seen a construction
21 schedule, but I would imagine they wouldn't
22 invest on all of the approach of other work
23 without some sort of --

24 MR. FITZGERALD: Seems to be pretty

1 inappropriate. This is by far the biggest
2 concern of the Project.

3 PRESIDING OFFICER WEATHERSBY: Director
4 Muzzey?

5 DIR. MUZZEY: This says at least 14 days
6 prior to the scheduled start of submarine cable
7 installation. So it's up to the Applicant to
8 manage the Project appropriately and take
9 whatever risks they feel are appropriate to
10 begin their project in the best way.

11 I have concerns about leaving this too far
12 open and with the suggestion of well, keep
13 trying the trial until you get it right. I
14 think the trial is meant to address the six
15 bullets that we see here. And then we haven't
16 talked at all about allowing additional trial
17 runs, and I have concerns about doing that and
18 I'm wondering whether it would be prudent to
19 somehow address that.

20 I mean, my assumption is that the trial run
21 will happen, will inform how things should be
22 done during the actual cable installation. If
23 they then proceed with the cable installation,
24 and there are water quality issues that they do

1 not meet the conditions of their permit, the
2 Project will need to stop and address those in
3 an appropriate manner.

4 MR. FITZGERALD: I think there's some
5 self-limiting situations here because the trial
6 run has to occur before the construction.
7 Construction has to occur at a certain period of
8 time. The trial run has to be approved and so
9 on. And one of the reasons for moving that time
10 frame down from 90 days was so that mobilize
11 once, you brought your equipment in, you did
12 your trial run and so on. I think the Applicant
13 would certainly have to evaluate at some point
14 is another trial run, do we have to wait another
15 trial run to get another trial run in before we
16 start construction or can we do it now.

17 I mean, I think there are whole host of
18 things. Whether another trial run, I think it
19 should be worded in a way to say that until DES
20 receives, until DES receives information that
21 satisfies these conditions or however we put it.
22 So whether that's another trial run or whatever,
23 I mean, if there's five trial runs, at some
24 point the Applicant is going to say wait a

1 minute, this is out of control.

2 MR. WAY: I guess I would say to that, that
3 would be at the expense of people and those that
4 use the Bay. And I would, one, I don't think
5 that's going to be necessary. I mean, all we've
6 heard to date in terms of the technical
7 capability, I think it means nothing if we think
8 they're going to have to do like five trial
9 runs. I would expect that they'll have this
10 covered to the extent that they can satisfy DES.

11 If we get to the point where it's so
12 egregious that it doesn't satisfy DES, I think
13 we have another issue on our hands, but I guess
14 I'm not too comfortable with giving that, you
15 know, I'm okay satisfying DES with information.
16 I'm not sure I'm okay by doing it with more than
17 one trial run.

18 PRESIDING OFFICER WEATHERSBY: I have to
19 say that I agree completely with Mr. Way. I
20 think one trial run is what should be allowed.
21 If the data comes back so far off that they
22 cannot show that it's likely they can meet the
23 water quality standards that just to me calls
24 into question all of their technical and

1 managerial capabilities and everything that has
2 been presented to us. It doesn't have to be
3 perfect, but they need to show with some
4 tweaking here and there in their methods that
5 they can meet those standards and all their
6 plans that have been carefully developed by
7 experts.

8 So I don't think it's fair to this process,
9 fair to the environment or to the users of the
10 Bay to allow more than one trial run.

11 MR. FITZGERALD: The last bullet says "if
12 any sediment suspension reduction measures are
13 needed to help ensure surface water or quality
14 standards will be met." By no means I'm
15 advocating for multiple trial runs, but I think
16 the Applicant has to conclude whether they're
17 appropriate. There has to be a prudence
18 determination of the PUC at some point on this
19 Project and whether what they did was
20 appropriate. I have no problem with saying only
21 one trial run, but the question in my mind is,
22 you have a trial run, you have some questionable
23 results, the Applicant comes back and says well,
24 I think if I do this, the results will be

1 different, and then DES only has the authority
2 to either say yes or no.

3 PRESIDING OFFICER WEATHERSBY: Say yes to
4 go, you know, how far out is it, I guess. And
5 that will be DES's determination whether it's so
6 far out that they say no or they say, you know,
7 you're getting close we'll, start answer. Of
8 course, there's monitoring along the whole way
9 during the live run. The data is used to make
10 sure that they stay within their plans in the
11 water quality standards.

12 MR. FITZGERALD: My personal opinion is
13 that any additional trial runs would probably be
14 out of the question for the Applicant. It means
15 remobilizing, et cetera, et cetera. I assume
16 that they're going to seek to do a trial run,
17 get any issues resolved and move ahead. So I
18 have no problem with limiting it, but my, like I
19 said, if you're in this gray area at the end and
20 DES says well, we don't know, and that is the
21 end of the project.

22 MR. SHULOCK: So I fully expect that the
23 Applicant is going to put in its best
24 engineering effort to bring the trial run in

1 within water quality standards or just need to
2 make a couple tweaks to that process, right?
3 And will most likely be able to demonstrate how
4 with a few tweaks they can do the trial run.

5 My concern is they will have invested tens
6 of millions of dollars by that point and that if
7 they have the opportunity to make another
8 adjustment that can make that Project possible
9 for them, I think we should allow that. A
10 thousand feet is one 20th of the Project, 2000
11 feet is one-tenth. It looks like these trial
12 runs would have to be spaced about two weeks
13 apart to allow for the testing and the DES
14 review. So within a month they could proceed
15 and do the Project.

16 DIR. MUZZEY: Three weeks.

17 MR. SHULOCK: Three weeks. So six weeks.
18 And it's up to them whether they actually do it
19 or not, but we would not have foreclosed that
20 opportunity.

21 PRESIDING OFFICER WEATHERSBY: So another
22 possibility is that if NHDES cannot or will not
23 make a determination as to whether to allow the
24 live run to go forward, is the Applicant, it can

1 be approved by DES or the SEC. They can come
2 back here with information from DES and the
3 Applicant and we can, this Committee can make
4 that determination as to whether, how close are
5 they. It's sort of a failsafe in case.

6 MR. FITZGERALD: Can I change my mind?

7 MR. SHULOCK: I appreciate that process,
8 but I think the timing of that would probably
9 take them out of the construction season for
10 that year because they have to do it within a
11 certain period of time to protect the oyster
12 beds.

13 MR. FITZGERALD: I want to go back to,
14 first of all, this is not a requirement, it's a
15 recommendation. And therefore, the Applicant
16 has agreed to it. That to me says they presume
17 that there's value to be gained from this and
18 that it's worth doing and that they take the
19 risk that a trial run will not be successful for
20 some reason or another. So as I say, my normal
21 thought process was, you know, how much latitude
22 are we going to give DES and so on, but it seems
23 given the fact that the Applicant agreed to it
24 as a reasonable measure, there's a risk inherent

1 with that.

2 MR. SCHMIDT: I agree. We also have to
3 remember we have a contractor that's an expert
4 on it. So we have to trust that contractor or a
5 contractor that's done this as many times, and
6 it is a risk. Like you said, you know, the
7 Applicant has taken and said that they would do
8 a trial run. If it doesn't succeed, it's at
9 their loss basically. And then they would have
10 to revisit it at that time.

11 PRESIDING OFFICER WEATHERSBY: There's a,
12 if I could direct everyone's attention to this
13 paragraph 60b in Exhibit 12c, the clause I think
14 we should talk about concerning jet plow. It's
15 in the first main paragraph entitled Jet Plow
16 Trial Run. It's the last full line in there.

17 The Applicant shall unless otherwise
18 authorized by NHDES comply with the following,
19 and then there's all the conditions concerning
20 sediment suspension, modeling, et cetera.

21 So under this condition as I read it, DES
22 is given itself or suggesting that it should
23 have the ability to change those bullet points.
24 So in some ways it addresses some of concerns

1 that have been raised, but it raises in my mind
2 other concerns. I think we should be really
3 clear on what authority we're giving to New
4 Hampshire DES.

5 DIR. MUZZEY: Do we have any sense of what
6 DES would otherwise authorize and what that may
7 be referring to? If the SEC determines that jet
8 plowing should be allowed, and that a jet plow
9 trial run without cable should be conducted
10 prior to installation of the cable, the
11 Applicant shall unless otherwise authorized by
12 DES comply with the following.

13 MR. WAY: In my mind that suggests with
14 all, what is it, the six or seven bullets, six
15 bullets down below that DES has the ability to
16 modify those bullets and the requirements.

17 MR. FITZGERALD: I think you have to
18 remember the open circled bullets are not
19 conditions. They are that the Applicant shall
20 submit a jet plow trial run report that
21 addresses the following. They don't impose any
22 conditions. They just say the report has to
23 address this. So the two conditions are the
24 Applicant shall submit a jet plow trial run

1 plan, and at least 14 days prior the Applicant
2 shall submit a jet plow trial run summary
3 report. It's not six more conditions.

4 PRESIDING OFFICER WEATHERSBY: I think I
5 agree that the, I think what DES probably
6 intended was that it could alter those time
7 frames in the two solid bullets. I have a
8 different interpretation. I think it does go
9 beyond that and allows them to alter the
10 content, what they're requiring in the report
11 and the open bullets. Maybe we could ask does
12 Counsel have a legal interpretation of that
13 phrase that you'd care to share in public?

14 MR. IACOPINO: I agree just reading the
15 plain language, I would think that DES could
16 otherwise authorize changes in any of the bullet
17 points there.

18 MR. WAY: Would it be tied just to the
19 bullet points or to the whole process?

20 MR. IACOPINO: Yes, it's specific to unless
21 otherwise authorized by New Hampshire DES comply
22 with the following. So yes, I would say that it
23 is limited to what's in the, actually 8 bullets
24 points, two solid ones and six open bullets

1 points.

2 PRESIDING OFFICER WEATHERSBY: So what I'm
3 sensing is that this Committee is not wishing to
4 allow DES to modify the open bullet points but
5 will allow them to modify the solid bullets
6 concerning timing?

7 MR. WAY: Just the time frame is what
8 you're talking about?

9 MR. FITZGERALD: I have a significant
10 issue. The open bullet points are only things
11 that the report is supposed to address. They
12 are not requirements.

13 PRESIDING OFFICER WEATHERSBY: So we have a
14 legal opinion by counsel that DES can modify
15 what is required in the report.

16 MR. FITZGERALD: We certainly can. I'm
17 just saying --

18 PRESIDING OFFICER WEATHERSBY: I don't want
19 to debate this.

20 MR. FITZGERALD: No, I agree with that.
21 I'm just saying they aren't conditions to the,
22 the only thing that, I mean, DES has to address
23 those first two bullets. Like the DES could
24 allow more than 14 days or whatever and they

1 could say the report should address something
2 else. I've got no problem with that, but --

3 PRESIDING OFFICER WEATHERSBY: So how do
4 folks feel about DES being able to modify the
5 type frames? You want to --

6 DIR. MUZZEY: Aren't those time frames in
7 other conditions, suggested conditions elsewhere
8 in our proceeding?

9 MR. FITZGERALD: Probably in MOAs and MOUs.

10 DIR. MUZZEY: I'm not sure about the 90
11 days prior to the trial the Applicant shall
12 submit a jet plow trial plan. That may only be
13 here. But it seems like we've been talking
14 about 14 days prior to the scheduled start of
15 submarine cable a report goes to DES.

16 MR. WAY: Are we talking about extenuating
17 circumstances. So at least 14 days prior to the
18 start, scheduled start, maybe something happens
19 that indicates that that time frame may be 15
20 days or 17 days, and DES needs the ability to
21 say okay, we can take it that amount of time.

22 MS. DUPREY: It says at least 14. So that
23 would cover that. It would have to go the other
24 direction.

1 MR. WAY: And I doubt it's going to go in
2 the other direction.

3 PRESIDING OFFICER WEATHERSBY: So we heard
4 considerable testimony and a lot of people
5 pushed on this issue of can you get the data
6 that fast and turn it around, and we were
7 assured time and again that that would work.
8 I'm kind of inclined to just strike that clause.

9 MR. WAY: I agree.

10 PRESIDING OFFICER WEATHERSBY: Unless
11 otherwise authorized by DES. Because this is
12 what's been agreed to by the Applicant. What
13 we've been talking about. Cross-examination is
14 what's been presented to us. That's my feeling.

15 MR. WAY: I agree.

16 MR. SCHMIDT: I agree as well.

17 PRESIDING OFFICER WEATHERSBY: All right.
18 So it sounds like we are in favor of a trial
19 run. Mr. Way.

20 MR. WAY: I'm trying to remember. Did we
21 decide, I think we decided to make the results
22 public?

23 PRESIDING OFFICER WEATHERSBY: This plan
24 needs to be filed with the SEC.

1 MR. WAY: On this website and be public
2 because I think that was one of the requested
3 conditions from Durham.

4 DIR. MUZZEY: Just to be, just to look at
5 the first bullet where there's first the plan
6 submitted, as this is worded in front of us,
7 only DES gets the plan for approval. What comes
8 back to both SEC and DES is the summary report
9 following the trial.

10 MR. FITZGERALD: Right.

11 PRESIDING OFFICER WEATHERSBY: I think
12 that's typical that we don't approve each of the
13 monitoring plans, et cetera, the plans outlining
14 the methods.

15 Maybe we can add that they provide us a
16 copy and maybe we want to do that with all the
17 plans, but that we certainly get the summary
18 report of the results of the trial run and that
19 would be made public.

20 DIR. MUZZEY: I think your suggestion of
21 perhaps we need to make all of the environmental
22 plans public, that would be a great thing to
23 hold on to and make sure that we talk about
24 because there was considerable public concern

1 about those plans, and one way of hopefully
2 addressing those concerns would be to make sure
3 that they are public.

4 PRESIDING OFFICER WEATHERSBY: No time like
5 the present. Is that a condition that people
6 generally want to say?

7 MS. DUPREY: I don't have a problem with
8 it, but they are public in the agency. All the
9 stuff is public.

10 PRESIDING OFFICER WEATHERSBY: But it's
11 nice to have it in one place.

12 MS. DUPREY: I'm not saying it's not
13 easier. I just want to be careful about the way
14 that this makes it sound. They are public.

15 DIR. MUZZEY: Yes, they are, although I
16 think it's more a matter of convenience versus,
17 accessibility versus whether or not we're going
18 to argue about whether or not they're public.

19 MR. FITZGERALD: I think we had a lot of
20 public testimony that they felt that they were
21 not, they had difficulty navigating this process
22 and having all the information in one place
23 would be at least a step towards that.

24 PRESIDING OFFICER WEATHERSBY: So I'm

1 hearing some consensus on the requirement that
2 plans that are developed if not already provided
3 to the SEC as part of its process, if they are
4 to be developed after the certificate is issued,
5 if a certificate is issued, will be, a copy will
6 be provided to the SEC. Is that a consensus on
7 that? Nodding heads. Anybody feel differently
8 or want to talk about it some more?

9 (No verbal response)

10 PRESIDING OFFICER WEATHERSBY: Okay. Let's
11 go back to the trial run. I'm sensing a
12 consensus that we would like to have a trial
13 run. That the condition of the trial run will
14 be as laid out in 60b except for that clause
15 about DES authorization. In the trial run
16 should be, the first, let's, is there a
17 consensus about a trial run? And the consensus
18 about taking out that cause about DES
19 authorization to change the terms.

20 MR. SCHMIDT: Yes.

21 PRESIDING OFFICER WEATHERSBY: Director
22 Muzzey?

23 DIR. MUZZEY: My only concern is we don't
24 have the plan yet, the jet plow trial plan yet,

1 and if in reviewing that the DES would like to
2 make the recommendation that additional
3 information be part of the summary report, I
4 would hate to tie their hands and not allow them
5 to make those changes in order to facilitate a
6 more comprehensive and useful report.

7 PRESIDING OFFICER WEATHERSBY: So the
8 report gets provided to the SEC and DES. DES
9 wants changes to that, it would be revised and
10 it would again be provided to DES and SEC as I
11 understand it.

12 MS. DUPREY: I don't think that this
13 language allows really for expansion of the
14 report. I think it allows for diminution or
15 change because it says you're going to comply
16 with the below unless otherwise authorized by
17 DES. I don't see where it authorizes DES to
18 impose new conditions.

19 PRESIDING OFFICER WEATHERSBY: Correct me
20 if I'm wrong, Director Muzzey, but I took your
21 comment to be like I would, DES says I want a
22 more thorough explanation of exactly how you're
23 reading this and I want to see more, I want to
24 see all your data, not just a summary of your

1 data, something like that. Is that what you
2 intended or was it more modification?

3 DIR. MUZZEY: Well, if you like at the six
4 open bullets, how well the model predicts the
5 sediment plume, how well the Water Quality
6 Monitoring Plan works, including the
7 communications between the monitors, and what,
8 if any, modifications to the plan are needed,
9 water quality results with the mixing zone at
10 the boundary, how measures taken to reduce
11 sediment suspension due to jet plowing impact
12 water quality. If results suggest the cable
13 installation by jet plowing is likely to meet
14 water quality standards, and if any additional
15 sediment suspension reduction measures are
16 needed.

17 I'm just wondering if there's some other
18 piece of information that may be useful or that
19 type of thing. And that's, I'm not sure what
20 those would be, but something might come up in
21 the plan.

22 MR. WAY: Well, also, too, I think you look
23 at the bullets, the bullets don't really tell
24 you how detailed you're supposed to be. It

1 doesn't tell you to what extent. I mean, the
2 answers could be very surface level, and DES
3 might want the ability to say no, we're going to
4 need more of an explanation than this. I don't
5 know if I'm at a change-my-mind place, too, but
6 yeah, I don't know.

7 PRESIDING OFFICER WEATHERSBY: I think we
8 agreed that DES can't modify the requirements of
9 the plan, but they can ask for more information
10 on those bullet points. So that would be sort
11 of an amended plan that would then get filed
12 again with the SEC and DES.

13 MR. FITZGERALD: Wouldn't the DES approval
14 of the plan and so on, isn't that tacitly
15 understood by the last sentence that says shall
16 not proceed until authorized by DES? If DES
17 doesn't give its authorization, they haven't
18 approved the plan, they haven't approved the
19 report, whatever, so --

20 PRESIDING OFFICER WEATHERSBY: I think
21 maybe some of this goes back to I just want to
22 be sure we're on the same page about multiple
23 trial runs. Whether it's one trial run or we
24 want to authorize more than one trial run. I

1 think I've made it clear how I feel, but is
2 there anyone who wants to have them have more
3 than one trial run? Do you want to talk about
4 this some more? Mr. Schmidt?

5 MR. SCHMIDT: I was one of the ones
6 advocating for multiple but after hearing the
7 discussion I'm satisfied with one.

8 MR. FITZGERALD: I'm satisfied with one.

9 MR. SHULOCK: I would prefer the
10 opportunity for a second. I would still prefer
11 that they have the opportunity to conduct a
12 second.

13 DIR. MUZZEY: I'm satisfied with one.

14 MR. WAY: One.

15 PRESIDING OFFICER WEATHERSBY: Sounds like
16 the majority of the Committee would like there
17 to be limited to one trial run. So therefore
18 that kind of goes back to the amended plan. It
19 wouldn't be amended to include additional trial
20 run data from the second trial run.

21 MR. FITZGERALD: Can I just ask if that
22 means that, again, I'm taking a position on the
23 risk assumed and so on, but if DES were to come
24 back to the Committee and say, write a letter

1 and say we viewed this report and so on and we
2 think the following information and that another
3 trial run would be appropriate here, whatever,
4 is there a vehicle for the Committee to consider
5 the communication from DES like that? And I
6 think that would satisfy Mr. Shulock's concern.

7 MR. IACOPINO: It would be an amendment of
8 the certificate. You'd have to have a hearing.

9 MR. FITZGERALD: Right, but to do another
10 trial run is a huge undertaking anyway, but it
11 would seem like, it doesn't have to be this, it
12 could be another assigned Subcommittee.

13 MR. IACOPINO: Just as a practical matter,
14 it probably will be. But yeah, it could be a
15 Subcommittee would make that determination. And
16 I think the Administrator would make the
17 determination whether that amendment comes in
18 this docket or whether it becomes a new docket.

19 MR. WAY: As a practical matter, that's not
20 the same construction season.

21 MR. FITZGERALD: All I'm concerned about is
22 that one trial run, if for some reason something
23 comes out it's not that one trial run is not
24 just automatically the end. DES could come back

1 and make the case that --

2 PRESIDING OFFICER WEATHERSBY: I think it
3 would be the Applicant.

4 MR. IACOPINO: So could the Applicant.

5 MR. FITZGERALD: Right.

6 PRESIDING OFFICER WEATHERSBY: The
7 Applicant could come back and ask for an
8 amendment.

9 MR. FITZGERALD: I think they would do it
10 jointly, but --

11 PRESIDING OFFICER WEATHERSBY: All right.
12 Is there any, sounds like we're on the same page
13 concerning the jet plow trial run. Condition
14 60b. Anything else we want to talk about the
15 jet plow trial run?

16 MR. IACOPINO: Can I just ask a question
17 just so we're clear in terms of how it's
18 written. My understanding is that with respect
19 to Condition 60b, we want this change to reflect
20 that "unless otherwise authorized by NHDES" will
21 be eliminated from that language in the first
22 paragraph.

23 Secondly, that there will be an indication
24 in here that there will be a second trial run,

1 and there's also going to be a delegation to DES
2 to authorize proceeding assuming that the report
3 complies with what they want, and a copy of the
4 report is to go to SEC, but SEC isn't going to
5 make that determination. So I'm going to have
6 to sort of wordsmith the condition a little bit
7 here.

8 PRESIDING OFFICER WEATHERSBY: That's my
9 understanding. Anyone feel differently?

10 (No verbal response)

11 PRESIDING OFFICER WEATHERSBY: I think
12 you've got it. All right. I guess we can
13 conclude our water quality topics. There were a
14 number of plans. The Benthic habitat monitoring
15 plan, the infaunal community plan, the mixing
16 zone plans, water quality monitoring adaptive
17 management plan, the DES shellfish program
18 monitoring reporting requirements, plan to
19 assess shellfish tissue before and after Little
20 Bay crossing. Spill prevention and cleanup
21 plan. Of course, we talked about the cable
22 removal plan. Anybody have anything they want
23 to talk about those or we've had -- the plans
24 are in the record, those that have been already

1 done. Those that have not been completed will
2 be provided to DES for approval. The shellfish
3 things we probably want to talk about when we
4 talk about the natural communities. Mr. Way?

5 MR. WAY: I just going to suggest that we
6 sort of I wouldn't say put aside shellfish, but
7 we haven't really talked in detail about
8 potential impacts, and we should discuss that,
9 but my suggestion would be that we discuss that
10 when we get into the natural environment issues.

11 MR. FITZGERALD: As I mentioned earlier, I
12 think there's a number of cross-cutting issues
13 that are water quality and natural environment
14 habitat related. So I would think it would be
15 prudent for us to hold any final opinions on
16 water quality until we get through natural
17 environment.

18 PRESIDING OFFICER WEATHERSBY: I certainly
19 agree, and I think there's some nodding heads.
20 I think there's a sense of whether we're going,
21 but it would be helpful to see how the impacts
22 of water quality affect the oysters and the
23 sturgeons and all the other creatures that call
24 the Bay home.

1 MR. FITZGERALD: There's a lot to consider
2 there.

3 PRESIDING OFFICER WEATHERSBY: Probably a
4 good time to wrap things up for tonight. When
5 we come back on Thursday, we'll start in with
6 the natural environment and the communities and
7 finish up with water quality and environmental
8 issues.

9 We're adjourned for the day.

10 (Hearing recessed at 6:09 p.m.)

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C E R T I F I C A T E

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

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

Dated at North Sutton, New Hampshire, this 14th day of December, 2018.

Cynthia Foster, LCR