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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

December 6, 2018 - 1:27 P.M. DAY 4
49 Donovan Street
Concord, New Hampshire

{Electronically filed with SEC 12/20/18}

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

PRESENT FOR SUBCOMMITTEE/SITE EVALUATION COMMITTEE:

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

ALSO PRESENT FOR THE SEC:

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

Pamela G. Monroe, SEC Administrator

(No Appearances Taken)

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

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1 an unreasonable adverse effect on water
2 quality?

3 MR. FITZGERALD: No.

4 MS. DUPREY: No.

5 MR. WAY: No.

6 MR. SCHMIDT: No.

7 MR. SHULOCK: No, but I did want to
8 raise the issue about the jet plow.

9 PRESIDING OFFICER WEATHERSBY: You
10 want to talk about that before we take a vote?

11 MR. SHULOCK: Yes.

12 PRESIDING OFFICER WEATHERSBY: Yes.
13 Okay.

14 MR. SHULOCK: So, the other day we
15 took a vote on whether DES should be able to
16 permit a second jet plow trial without coming
17 to us for permission. And I was opposed to
18 that because we could not respond in time as a
19 board to allow that second jet plow and the
20 actual -- or the second trial in the actual jet
21 plowing to occur within the same construction
22 season, meaning there would be a delay in the
23 actual construction of the Project. And I
24 didn't voice all of my concerns, so I wanted to

1 put a few more of those concerns on the record
2 to see if that might change anybody's mind
3 about giving DES that flexibility.

4 And the first place that I start is
5 one of the reasons we were created was to
6 make sure there were no undue delays in the
7 construction of these projects. So that's
8 where I start. And then, secondly, I look to
9 the fact that this is a reliability project.
10 The area that this project would serve is
11 currently in an unreliable state. I mean, it
12 was identified as being unreliable as far
13 back as 2012. It's failing the two major
14 criteria for determining the area's
15 reliability, that the area is reliable. I
16 think they said voltage and thermal criteria
17 are both not being met currently. We did
18 have some evidence that they have made some
19 of the other upgrades within the suite of
20 projects and that that has had a positive
21 effect. We've had some evidence that, you
22 know, there's an increase in use of
23 generation behind the meter which may have an
24 effect on growth of the need in the area.

1 But I think our best information is that --

2 MS. DUPREY: Can you speak up?

3 MR. SHULOCK: Yeah. I think our best
4 information is that the Seacoast Area is one of
5 the areas within New England that is
6 experiencing measurable growth. I believe Mr.
7 Quinlan testified that it's expected that very
8 soon that area will be utilizing 25 percent of
9 the electricity in their entire service area.

10 So I don't think that we should put
11 the Project in a situation where, if there is
12 a problem with the first trial, jet plow
13 trial, that they have to essentially wait a
14 whole year to do anything. And part of that
15 is because as an organization I don't think
16 that we can respond in time; whereas, if we
17 give DES the discretion about whether a
18 second jet plow trial should take place, they
19 could have a chance at completing that
20 construction within the same construction
21 season. And we have to remember that the
22 construction season is short because they
23 have to pay attention to different
24 populations of animals that live in the bay.

1 There are certain times when DES doesn't want
2 them to jet plow to protect fish. There are
3 certain times when they can't jet plow to
4 protect oysters. And so their opportunities
5 are actually quite limited, and I don't think
6 we should put them in a situation where they
7 can't complete in one season. I don't know
8 if that changes anybody's mind.

9 PRESIDING OFFICER WEATHERSBY: Does
10 anyone care to comment on Mr. Shulock's
11 concern?

12 MR. FITZGERALD: Sure. I appreciate
13 all of those issues raised here. As I said the
14 other day, and I don't know if I said it very
15 eloquently, but I think the issue of a jet plow
16 trial run has many potential outcomes. For
17 instance, they could go 100 feet and do some
18 monitoring and determine they have a problem.
19 If they do that and stop and they come back,
20 can they start up and complete the trial run?
21 I think there are a lot of things here that,
22 you know, are things we can't foresee. I
23 didn't necessarily foresee until I thought
24 about it the other day the possibility of a

1 second trial run. As I read Condition 60b, it
2 says installation of submarine cable in Little
3 Bay shall not proceed until authorized by NHDES
4 and the SEC. But it starts with saying, "If
5 the SEC determines that jet plowing should be
6 allowed..." So I guess that presumes that we
7 have to make that decision. And does that
8 decision have to be, yes, it's allowed one time
9 or -- obviously I'm part of the DES. But I
10 believe that the jet plow trial run could
11 result in numerous and varied outcomes, from a
12 range of completely successful to, you know,
13 completely unsuccessful. And how to allow that
14 to be resolved either by discontinuing the
15 trial run and starting it up again later or
16 even -- you know, although I don't envision a
17 second one, I think we sort of have to leave
18 that in DES's hands to say they're not -- to
19 fulfill that last statement in 60B, which is
20 the cable installation should not proceed until
21 DES approves it. Whatever happens between the
22 start of the trial run and the rest of it, you
23 know, unless we are going to reconvene the SEC,
24 reconvene this Commission, I think this is a

1 variable-outcome situation.

2 PRESIDING OFFICER WEATHERSBY: So,
3 just as a reminder of where we were with this
4 issue, we had a whole discussion about multiple
5 trial runs, single trial run. We did a straw
6 poll, which was six people in favor of a single
7 trial run. Mr. Shulock was not in favor of a
8 single trial run, limiting that, and today he
9 expanded on his reasons why and wanted to make
10 sure we considered those. So now we've heard
11 from Mr. Fitzgerald concerning this.

12 Ms. Duprey, you want to speak.

13 MS. DUPREY: Thank you, Madam Chair.
14 In listening to Mr. Shulock and Mr. Fitzgerald,
15 but in particular Mr. Shulock, I'm
16 reconsidering my position. I would start with
17 the premise that nobody wants there to be more
18 trial runs than absolutely necessary. Nobody.
19 Not DES. Certainly not the Applicant, where
20 it's very expensive. Not any of us, and no one
21 who's involved in this case. And I think that
22 DES is certainly watching over, and I trust
23 them to watch over, the water quality issues.
24 That's what their agency is largely about,

1 certainly the wetlands part of it. So I think
2 that in considering this, I would feel
3 comfortable having them resolve the issue as
4 necessary. I do think 60B talks in terms of "a
5 trial run," singular. So I don't know how they
6 perceive what their power is.

7 But when it was just mentioned that
8 there could be a lot of different outcomes to
9 a trial run, that some people might consider
10 the trial run as over, other people might
11 consider it's at a stage, but further stages
12 have to or could move forward, I don't want
13 us to find that there's some kind of legal
14 impasse or argument over where we are in the
15 trial run and people are going to court to
16 represent their various positions or coming
17 before agencies to represent their various
18 positions and more time is chewed up
19 preventing the matter from being resolved in
20 the same construction season. So, given
21 that, I'm going to reconsider my position.
22 Thank you.

23 PRESIDING OFFICER WEATHERSBY:

24 Director Muzzey.

1 DIR. MUZZEY: It's interesting to me
2 that during our many days of hearings for this
3 project, the assumption for everyone who
4 testified, asked questions and answered
5 questions, was based on the assumption that
6 there would be one trial run, and it would be
7 1,000 feet long. And that's been carefully
8 recorded in the record in any number of places.
9 I am assuming there's some degree of
10 flexibility within the trial run of 1,000 feet,
11 that there will be monitoring throughout that
12 process, that adjustments can be made. I think
13 we can specify that it be 1,000 feet if that
14 brings people confidence. But I have concerns
15 about suggesting a number of trial runs. Part
16 of my reasoning for thinking that this project
17 would not have an unreasonable adverse effect
18 to water quality is the assurances that we got
19 from the testimony we heard from a number of
20 people that this was a well-understood,
21 well-used technology in many parts of the
22 country. To suggest that there are problems to
23 the degree that multiple trial runs may be
24 needed, it makes me -- it would make me rethink

1 my finding of unreasonable adverse effect.

2 I'm also concerned because we have
3 no assurance that if a trial run of 1,000
4 feet was done and there were problems that
5 needed to be addressed, that those could be
6 resolved within the construction season. If
7 there are problems to that degree that they
8 can't resolve in a single trial run of 1,000
9 feet, there may be problems that take a lot
10 longer regardless of Site Evaluation
11 Committee review. We're talking about
12 multiple state and federal agencies that may
13 have jurisdiction. And there are many things
14 that are beyond the control of any one of
15 those agencies or the Applicant or the Site
16 Evaluation Committee that could make for a
17 time frame where, if multiple trial runs were
18 necessary -- and when I say that, multiple
19 trial runs beyond the one 1,000-foot trial
20 run -- that would endanger the schedule.

21 I would also want some additional
22 information about the possible environmental
23 effects of multiple trial runs, and I just
24 don't feel that's been vetted through the

1 existing record. So I can't endorse changing
2 this condition in a manner that would allow
3 for multiples.

4 PRESIDING OFFICER WEATHERSBY: Mr.
5 Schmidt.

6 MR. SCHMIDT: Mr. Shulock brings up a
7 good point about potentially extending or
8 losing a construction season with a negative or
9 difficult test run. And although I do
10 appreciate that, I do think we're working with
11 some experts in the field. Historically, in
12 other situations, a single trial run was
13 performed. I think we need to lean a little
14 bit on that experience of others. But also, I
15 agree with Director Muzzey that to date we've
16 talked about a single trial run. The
17 disruption to the bay, if any or not, that's
18 been the thought process. So I think my
19 position from the other day will stand.

20 PRESIDING OFFICER WEATHERSBY: I have
21 to say I agree with Mr. Schmidt and Director
22 Muzzey. This whole idea of a second or
23 multiple trial runs came up for the first time
24 in our discussions. Everything that I can

1 recall during testimony, all the exhibits,
2 cross-examination, was that it was a single
3 trial run. Environmental data is all about a
4 single trial run. Everyone was very confident
5 in a single trial run. I think that we don't
6 have enough information concerning the impacts
7 of a second trial run, and I think that in
8 1,000 feet they can get it right. They should
9 be coming in expecting everything is going to
10 work just the way they had modeled. They may
11 need some tweaking, but I don't sense that
12 there's any apprehension on the Applicant's
13 part for the need for multiple trial runs.
14 I'll stop there. But I'm going to continue my
15 vote for a single trial run.

16 Anyone else care to speak?

17 Mr. Way.

18 MR. WAY: This is a hard decision
19 because I'm agreeing with what I'm hearing on
20 both sides. As has been said, Mr. Shulock I
21 think makes a very compelling case, that at
22 least having the option for multiple runs or
23 more than one run might be something that can
24 be advantageous to the public. I think one

1 thing we all agree upon is having to come back
2 for the Committee for something like that is
3 just a needless delay in these sorts of
4 projects. However, you know, as was said by
5 Director Muzzey, up to this point the one
6 single run was what was before us. That's the
7 conditions that we discussed. That is the plan
8 that was put forth by the Applicant.

9 And the other thing, too, I also
10 agree this is something that I know I was
11 convinced upon that this is something that
12 is -- that can be done, that has been done
13 very successfully in the past. This is not
14 new technology, that this trial run is
15 something to work out some of the logistical
16 issues: The equipment, the operators, the
17 conditions in the bay. So I have the belief
18 that they can do this successfully in that
19 first run. And I think that's what we should
20 limit it to. So I think that would be my
21 decision, but I certainly respect what was
22 offered.

23 PRESIDING OFFICER WEATHERSBY: Mr.
24 Shulock.

1 MR. SHULOCK: Okay. So I agree with
2 a couple things. One, I haven't seen a lot of
3 angst on the part of the Applicant; and two, I
4 will -- I have a level of confidence in the
5 expert testimony that we heard that this will
6 be successful. My only point is that I don't
7 think we should straightjacket people with that
8 if there is some problem with that first test
9 run. And I think that we have as much
10 information about a second test run as we do
11 about a first test run, and all that
12 information is that everybody expects it to be
13 successful, right. So, you know, I don't think
14 the fact that we didn't discuss everything in
15 terms of the second test run is fatal because
16 the evidence would be the same for both. The
17 first test run was as much an unknown as the
18 second one would be. So I would still vote to
19 allow DES the discretion to permit a second
20 test run or some additional testing prior to
21 allowing, if needed, rather than coming to the
22 SEC for approval for that.

23 PRESIDING OFFICER WEATHERSBY: Any
24 other comments on this issue?

1 [No verbal response]

2 PRESIDING OFFICER WEATHERSBY:

3 Concerning the jet plow trial run, I'm going to
4 do a poll again as to whether you believe there
5 should be a single -- that the trial run should
6 be limited to a single trial run, and then
7 we'll go back to the water quality. But let's
8 revisit our poll concerning a single trial run.

9 Mr. Fitzgerald.

10 MR. FITZGERALD: The question is
11 should a second trial run be allowed?

12 PRESIDING OFFICER WEATHERSBY: No.
13 I'm sorry. The question is should we limit the
14 Applicant to a single trial run.

15 MR. FITZGERALD: No.

16 MS. DUPREY: No.

17 MR. WAY: Yes.

18 MR. SCHMIDT: Yes.

19 MR. SHULOCK: No.

20 DIR. MUZZEY: Yes.

21 PRESIDING OFFICER WEATHERSBY: Yes.

22 PRESIDING OFFICER WEATHERSBY: Okay.
23 We'll go back to our original question when we
24 started the day concerning, given everything

1 we've heard about the environmental impacts to
2 water, being of course Little Bay, but also
3 Knights Brook, vernal pools, all the other
4 wetlands, all the other wetlands and water
5 bodies we talked about last time we were here,
6 whether you believe this project will cause
7 undue adverse impact -- I'm sorry --
8 unreasonable adverse effect on water quality.

9 We'll start again with Mr.
10 Fitzgerald.

11 MR. FITZGERALD: No.

12 MS. DUPREY: No.

13 MR. WAY: No.

14 MR. SCHMIDT: No.

15 MR. SHULOCK: No.

16 DIR. MUZZEY: No.

17 PRESIDING OFFICER WEATHERSBY: No.

18 Okay. Let's move into the natural
19 environment. Mr. Fitzgerald, would you lead
20 us off with this discussion.

21 MR. FITZGERALD: Certainly. As with
22 the other topics under Water Quality, the
23 governing statute here is RSA 162-H:16 IV(c).
24 The site and facility will not have an

1 unreasonable adverse effect on aesthetics,
2 historic sites, air and water quality, the
3 natural environment and public health and
4 safety.

5 Under the Site Evaluation Committee
6 Rules, 301.03(d), each application shall
7 include information: 1) that identifies
8 identification all -- identification of all
9 other federal and state government agencies
10 having permitting or other regulatory
11 authority under federal or state law to
12 regulate any aspect of the construction or
13 operation of the proposed facility and
14 documentation that demonstrates compliance.
15 So this is Item 2: Documentation that
16 demonstrates compliance with the application
17 requirements of all such agencies. And then
18 Site Rule 301.07(a) is regarding air quality;
19 (b) is regarding water quality, and (c) is
20 specific to the natural environment. I'm not
21 going to read it because it's rather lengthy.
22 In general, it provides a description of how
23 the Applicant identified wildlife species,
24 rare plants, natural communities, exemplary

1 natural communities, et cetera, and how they
2 work with the agencies having jurisdiction;
3 identification of significant wildlife
4 species, rare plants, natural communities
5 that may be affected by the construction
6 operation; identification of critical
7 wildlife habitat and habitat resources that
8 may be affected; assessment of potential
9 impacts of the construction and operation on
10 these species, plants, communities, et
11 cetera; description of the measures, plans to
12 avoid, minimize or mitigate potential adverse
13 effects of the construction and operation;
14 and a description of the status of the
15 Applicant's discussions with the New
16 Hampshire Department of Fish & Game, New
17 Hampshire Natural Heritage Bureau, U.S. Fish
18 and Wildlife, and any other federal or state
19 agencies having permitting or other
20 regulatory authorities. So that's our
21 guiding statute and rule-specific
22 requirements.

23 PRESIDING OFFICER WEATHERSBY: Mr.
24 Fitzgerald, I'm going to interrupt you just a

1 second. That was rule 301.14, Subsection E, as
2 in Edward?

3 MR. FITZGERALD: No, I'm sorry. It's
4 301.07(c) 1 through 6.

5 PRESIDING OFFICER WEATHERSBY: So
6 301.07 is the Application requirements for the
7 effects on the environment.

8 MR. FITZGERALD: No, the Application
9 requirements is 301.03(d), I believe.

10 PRESIDING OFFICER WEATHERSBY: So
11 301.03 is contents of application, and
12 section --

13 MR. FITZGERALD: (d).

14 PRESIDING OFFICER WEATHERSBY: -- and
15 Section (d) concerns permits from federal and
16 state governments, et cetera. And then we go
17 to the next rule, the one you were talking
18 about, 301 --

19 MR. FITZGERALD: 301.07(a) is effects
20 on environment. Oh, I'm sorry. I'm sorry.
21 That is the section of what the Application is
22 to require. I have the wrong --

23 PRESIDING OFFICER WEATHERSBY: So
24 301.07(c) again is the Application --

1 MR. FITZGERALD: Yes, yes, I'm sorry.

2 PRESIDING OFFICER WEATHERSBY: --
3 information concerning effects on environment.
4 And then if you go down to 301.14(b) for what
5 we need to consider --

6 MR. FITZGERALD: 301.14, yes. I'm
7 sorry. My mistake. I copied the wrong page.
8 So that is the reference. And it says in
9 determining whether a -- I'm sorry.

10 Paragraph (e), in determining
11 whether construction and operation of a
12 proposed energy facility will have an
13 unreasonable adverse effect on the natural
14 environment, including wildlife species, rare
15 plants, rare natural communities, and other
16 exemplary natural communities, the Committee
17 shall consider the significance of the
18 affected resident -- is it necessary to read
19 this or -- we all have the reference;
20 correct?

21 PRESIDING OFFICER WEATHERSBY: I
22 don't think -- sorry. I don't think we need to
23 read the entire thing. It's rather lengthy.

24 MR. FITZGERALD: Yeah.

1 PRESIDING OFFICER WEATHERSBY: I
2 think that every Subcommittee Member has
3 familiarized themselves with that and knows
4 what we need to consider. I just wanted to
5 thank you for pointing out that that is the
6 rule that governs what we are to consider.

7 MR. FITZGERALD: Thank you for
8 correcting me.

9 Okay. So I've... okay. So,
10 relative to natural environment, those are
11 the requirements for us to consider. And
12 then the Applicant filed the report entitled,
13 "Rare, Threatened and Endangered Species and
14 Exemplary Natural Communities," and prefiled
15 testimony from their Environmental Panel.
16 And they identified nine rare, threatened and
17 endangered plant species and six elementary
18 natural communities that are recorded by the
19 New Hampshire National [sic] Heritage Bureau
20 that may occur in the vicinity of the
21 Project.

22 I also want to recall that, and I
23 won't go over them again, but there are
24 several proposed stipulated facts and

1 stipulated conditions that have been proposed
2 by the Applicant and the Counsel for the
3 Public that cover monitoring and Best
4 Management Practices, et cetera, with
5 these -- I referenced those all the other day
6 relative to the water quality discussion.
7 Very similar, so...

8 The Applicant has agreed to
9 implement Best Management Practices, and
10 these -- relative to plants. And again, I'm
11 not going to go into great detail. The
12 Chairwoman and I had a brief discussion
13 earlier, and I'm not going to go into all of
14 the individual species and impacts and so on.
15 I will go through the species that are
16 identified and have been identified as having
17 potential impacts. And again, in most cases
18 the responses are that those impacts will be,
19 A) extremely minimal; B) they are not
20 long-term and/or irreversible; and Best
21 Management Practices will be utilized to
22 avoid, to mitigate -- you know, utilization
23 of the, you know, bridges and not concrete
24 mattresses, but the wooden mattresses to

1 avoid impacting these habitats.

2 And then there's a significant
3 piece, obviously, of the Little Bay crossing
4 which we'll take that up separately.

5 So, for plants, we had identified
6 impacts on one state-listed plant species,
7 the crested sedge. Again, a number of
8 mitigation conditions have been imposed.
9 There's also a high salt marsh area that will
10 have some impacted areas, the salt marsh
11 system, sparsely vegetated intertidal system
12 and the subtidal system.

13 Relative to invertebrates, the
14 Applicant asserts that the state endangered
15 ringed boghunter dragonfly was mapped to
16 occur within the Project in Durham, and the
17 only area with potential suitable habitat for
18 these species was surveyed.

19 Relative to fish, impacted species,
20 potentially impacted species can include the
21 short-nose sturgeon, the Atlantic sturgeon,
22 the American eel, the banded sunfish, the
23 swamp darter.

24 And as minimization and avoidance

1 measures of the Project's impact on
2 freshwater fisheries, the Applicant has
3 agreed to utilize low impact tree-removal
4 methods, such as hand-cutting. And also,
5 they have agreed to install temporary bridges
6 at both LaRoche Brook -- at LaRoche Brook to
7 allow unimpeded stream passage.

8 Relative to reptiles, the Eastern
9 hog-nosed snake has been identified as a
10 state endangered species; the Northern black
11 racer is a state endangered -- state
12 threatened species. The Applicant will
13 conduct sites searches and removal of the
14 snakes if they're found to a safe, suitable
15 habitat close to their point of capture.
16 Construction areas that are cleared of snakes
17 will be fenced to prevent their re-entry, and
18 contractors will be trained to recognize
19 certain species.

20 Blanding's turtle is a state
21 endangered species. And Applicant concluded
22 that it should be assumed that both the
23 Blanding's turtle and the spotted turtle use
24 portions of the Project area, but that the

1 BMPs will be appropriate to ensure that
2 they're not impacted.

3 For birds, the osprey is a species
4 of special concern. Ospreys were recorded
5 nesting in the vicinity of the Project.
6 Site-specific surveys were not conducted;
7 however, they will survey prior to the
8 construction season.

9 The Applicant will conduct a survey
10 for active raptor nests prior to initiation
11 of work. They will establish appropriate
12 buffer distances for individual nests subject
13 to disturbance, and these individual buffers
14 will be negotiated with regulatory agencies.

15 The Applicants also have designed
16 the Project to meet requirements of the Avian
17 Line Interaction Committee's bird-safe
18 standards to minimize the possibility of
19 electrocuting all types of raptors.

20 The Golden-winged warbler is a
21 species of special concern. And the
22 Applicant asserts that the power line
23 corridors potentially provide very
24 good-quality habitat for the species.

1 Grasshopper sparrow is a state
2 threatened species. Henslow's sparrow was
3 identified as historically present near the
4 Project area in Newington. Least bittern is
5 a species of special concern. The Roseate,
6 R-O-S-E-A-T-E, tern -- this is not my area of
7 expertise, obviously -- is seen regularly in
8 coastal locations in Rye and New Castle.
9 There have been no inland reports of the
10 species. The Sedge wren was historically
11 present near the Project in Durham. No
12 survey was conducted, but it's unlikely that
13 they will be present because of erratic and
14 inconsistent distribution in New England, and
15 no records for it have been identified.

16 Moving on to mammals. The Northern
17 long-eared bat is a state and federally
18 threatened species. The Applicant conducted
19 ultrasonic acoustic surveys within the
20 proposed limits of work, and the surveys were
21 provided in a report entitled, "Northern
22 Long-eared Bat Acoustic Survey." The survey
23 indicates that the bats were likely present.
24 The survey demonstrates that big brown bats,

1 Eastern red bats, hoary bats, silver-haired
2 bats, little brown bats, and Eastern
3 small-footed bats were also presented. Some
4 of these are species of concern. They
5 conclude that the effect of construction and
6 operation on this species is so small as to
7 be inconsequential, and they have made
8 commitment to meet the U.S. Fish and Wildlife
9 final guidance for reducing these impacts and
10 covering limited tree removal.

11 Let's see. So that covers the land
12 and water-associated impacts of the -- the
13 potential impacts of the Project without
14 going into the Little Bay discussions. So I
15 figured I'd stop there and see if there were
16 any questions or issues that need to be
17 addressed before we move into the Little Bay
18 crossing.

19 PRESIDING OFFICER WEATHERSBY: I
20 would just point out that a number of folks,
21 including Counsel for the Public, had
22 encouraged preconstruction surveys of these
23 various species to be done. Some of the
24 surveys at this point are fairly outdated. And

1 I would note that the Applicant has agreed to
2 re-survey for at least bald eagles, the
3 eelgrass and at least another one. Let's see.

4 Condition 34. Certified wetlands
5 scientist or similarly qualified professional
6 shall walk the areas of proposed activity and
7 the wetland impact areas in particular prior
8 to construction to survey for any rare,
9 threatened or endangered species, and prior
10 to ground disturbance each day to check
11 timber mats for basking turtles and snakes.

12 DIR. MUZZEY: Could you let us know
13 what your --

14 PRESIDING OFFICER WEATHERSBY: Sorry.
15 I was reading from Committee Exhibit 12A No.
16 34.

17 DIR. MUZZEY: Thank you.

18 PRESIDING OFFICER WEATHERSBY: This
19 is the DES February 28th letter.

20 It might be helpful, too. I know
21 bald eagles were of special concern to a
22 number of people. Maybe have a discussion
23 about specific protections that will be in
24 place for bald eagles.

1 Mr. Way.

2 MR. WAY: As I recall, I know there
3 was some concern about aerial surveys had not
4 been done of bald eagle nests. As I recall
5 from the Applicant's briefs, it was determined
6 that that did not need to be done. I think
7 Counsel for the Public had that as a condition
8 request. And I apologize if it wasn't Counsel
9 for the Public. But as I recall, Counsel for
10 the Public had that as a condition request that
11 aerial surveys be conducted. I'm not
12 necessarily sold that that should be done, but
13 I did want to raise that because I know that
14 that was a request that was brought before us
15 not for -- you know, for consideration.

16 MR. FITZGERALD: I believe there were
17 conditions, suggested conditions for bald
18 eagles. I'm not sure if they were in the DES
19 permit or in the conditions suggested by --
20 agreed to by the CFP and the Applicant.

21 MR. SCHMIDT: I also believe the
22 Applicant has agreed to a pre-construction
23 survey of the active nest area. So I'm not
24 with the experts. I'm not sure what could be

1 gained with an aerial view. But the experts
2 are given -- conducting the survey.

3 PRESIDING OFFICER WEATHERSBY: As I
4 recall this, Applicant's expert testified that,
5 given the time of year the activity would be
6 happening in the area of the nest, that there
7 wouldn't be any roosting at that time. Perhaps
8 more specifically, the Applicant did submit a
9 plan to Fish & Game to address bald eagles and
10 the nest that was brought to their attention.
11 I'm just trying to find that plan. But I know
12 that Fish & Game has concurred with the
13 Applicant's recommendation concerning the bald
14 eagle. If you give me a minute, I should be
15 able to find what was submitted.

16 MR. FITZGERALD: Is that in the
17 proposed conditions, stipulated proposed
18 conditions? I believe that's where it's at.
19 Does anyone know what document that was?

20 DIR. MUZZEY: That's Exhibit 194 --
21 193. I'm sorry.

22 MR. FITZGERALD: Yes.

23 MR. SCHMIDT: Also, Applicant's
24 Exhibit 203, there's a statement or a letter

1 from New Hampshire Fish & Game. In that
2 there's a statement that they do not expect
3 impacts to the nesting bald eagles, provided
4 the Project occurs from September to December.

5 MR. WAY: What exhibit is that?

6 MR. SCHMIDT: Applicant Exhibit 203.

7 MR. WAY: I'm not sure what that...

8 MR. SCHMIDT: This is Page 2 of a
9 letter dated October 16, 2018 to Sarah Allen.

10 PRESIDING OFFICER WEATHERSBY:

11 Applicant's Exhibit 203 is the letter from Fish
12 & Game.

13 MR. SCHMIDT: Yes.

14 DIR. MUZZEY: And this letter from
15 the Fish & Game specifically addresses the
16 potential effects to bald eagle nests and
17 sturgeon. So it's not the whole realm of
18 natural environmental resources, but those two
19 types in particular.

20 MR. WAY: I just need to make sure
21 I'm looking at the right thing here. I have
22 two Applicant Exhibit 203s for some reason
23 here. One was a GeoInsight presentation listed
24 on the thumb drive as 203, and then here's the

1 other one that's 203.

2 MS. MONROE: They're both marked as
3 203 also, so we'll have to square that away.

4 MR. SCHMIDT: So this one is the
5 paragraph that is underlined beginning
6 "submarine cable installation" on Page 2.

7 MR. WAY: Okay. Got it.

8 PRESIDING OFFICER WEATHERSBY: So in
9 the letter from Fish & Game, they're
10 recommending a couple things: One, that the
11 super canopy pine trees not be cut, and if tree
12 cutting is necessary, that Fish & Game be
13 contacted for input relative to the important
14 trees and minimization of impacts. Also
15 recommended following industry standard for
16 raptor-safe Best Management Practices to reduce
17 the potential for avian electrocution. So they
18 may be conditions that have been recommended by
19 Fish & Game that we should consider. Those
20 certainly seem reasonable to me.

21 MR. FITZGERALD: And I believe those
22 were -- I referenced the avian electrocution
23 guidelines, or protection from electrocution.
24 Yeah, project lines have been designed to Avian

1 Line Interaction Committee's bird-safe
2 standards.

3 PRESIDING OFFICER WEATHERSBY: I'm
4 sorry, Mr. Fitzgerald. What are you reading
5 from?

6 MR. FITZGERALD: This was in
7 Applicant's Exhibit 57, Lines 24 and 25, that
8 the Project has been designed to Avian Line
9 Interaction Committee's bird-safe standards.
10 That doesn't cover the construction activities,
11 just the line itself.

12 MR. WAY: What page are you on?

13 MR. FITZGERALD: It's Applicant's
14 Exhibit 57 at Pages 24 and 25.

15 MR. IACOPINO: Everybody remember to
16 speak up. People in the back are having a hard
17 time hearing you.

18 MR. SHULOCK: Can you repeat that
19 exhibit number?

20 MR. FITZGERALD: Applicant's 57.
21 Pages 24 and 25 is the reference. I believe
22 those are actual pages, not electronic.

23 MR. WAY: So, back to my original
24 question about the need for aerial surveys.

1 I'm not seeing anything in any of the exhibits
2 that incorporate aerial surveys or suggests
3 that there is a need for aerial surveys prior
4 to construction.

5 PRESIDING OFFICER WEATHERSBY: So I'm
6 going to direct your attention to Applicant's
7 brief, PDF Page 167. So it's Applicant's
8 post-hearing brief, PDF Page 167; it's actual
9 Page 162. It's the section of the brief where
10 the Applicant is addressing Counsel for the
11 Public's suggested conditions. And in
12 Condition No. 2 concerning pre-construction
13 aerial surveys for active raptor and bald eagle
14 nests, the Applicant agrees that a combination
15 of aerial and ground surveys is an effective
16 monitoring method for pre-construction raptor
17 nests. And it goes on later that Eversource
18 will conduct ground surveys in the right-of-way
19 to determine the presence of raptors that nest
20 within the tree canopy, and also agrees to
21 conduct pre-construction aerial surveys for
22 active raptor and bald eagle nests which may
23 not be visible from within the right-of-way
24 corridor.

1 MR. WAY: Sounds good.

2 MR. FITZGERALD: Madam Chair, also,
3 bald eagles were actually considered as part of
4 the Little Bay crossing which I had not gotten
5 to yet.

6 It's noted that the Little Bay --
7 that Great Bay hosts more than 500 migrating
8 Canadian geese and black ducks and a hundred
9 other diving and dabbling ducks and shore
10 birds. It goes on. The American bald
11 eagles, which are a state threatened, and
12 osprey, state special concern, are
13 fish-eating birds of prey that breed in Great
14 Bay. The Applicant asserts that the
15 construction will not disturb the eagles
16 during the February to July nesting season,
17 and that most work will be shielded by trees
18 and will be outside the 600-foot buffer that
19 has been recommended by U.S. Fish and
20 Wildlife in its 2007 National Bald Eagle
21 Management Guidelines. The Project has
22 asserted that it will not be in violation of
23 the Bald and Golden Eagle Protection Act. No
24 bald eagles will be harassed or injured.

1 As to mitigation and avoidance
2 measures, the Applicant has agreed to conduct
3 a preconstruction survey of active nests by
4 surveying the right-of-way. Fish & Game has
5 recommended avoiding cutting of super canopy
6 pine trees that are used as a perch for bald
7 eagles and recommends to contact the
8 Department for its input if tree-cutting will
9 have to be conducted within the vicinity of
10 the bald eagle nest. And then the Department
11 recommended the Applicant follow industry
12 standards for raptor-safe Best Management
13 Practices. So I guess the discussion -- the
14 concern that I have is that, having looked at
15 the DES permit which incorporates a number of
16 Fish & Game, just a quick look, I didn't see
17 anything there. I may have not gotten
18 through it all. But second, I don't see
19 anything in the stipulated conditions either,
20 other than that very general No. 8 that
21 covers the Applicant agrees to all Best
22 Management Practices.

23 So I guess the question is if it's
24 presumed that the bald eagle Best Management

1 Practices are covered under that
2 sufficiently.

3 DIR. MUZZEY: Fish & Game's letter in
4 Applicant 203 references a letter dated
5 September 6, 2018 from Normandeau Associates
6 and the Best Management Practices that are
7 noted in that letter. And I'm having a little
8 bit of a tough time finding that letter. Does
9 anybody know what exhibit that is? It was a
10 letter dated September 6, 2018 from Normandeau
11 Associates to Fish & Game.

12 (SEC Members reviewing documents.)

13 PRESIDING OFFICER WEATHERSBY: Maybe
14 you're referring to the Applicant was to or has
15 developed a plan concerning the eagles and the
16 raptors. I'm trying to find it. It may be
17 that that was sent to Fish & Game. I'm trying
18 to find the exact name of that plan that has
19 been created. If we could find that, we can
20 probably find what they've presented to Fish &
21 Game.

22 DIR. MUZZEY: Applicant Exhibit 124,
23 we have a plan with a date on it of
24 September 15, 2017. But that's a year prior to

1 this other exchange. And perhaps we don't have
2 the original letter. I'm not sure, but... I
3 don't want send people on a wild goose chase if
4 you can't find that. We should continue on
5 with our deliberations.

6 MR. FITZGERALD: So I would note that
7 the DES permit, although I don't find a
8 specific reference to bald eagles, Condition
9 No. 32 does reference at least 60 days prior to
10 the start of construction, the Applicant shall
11 notify and coordinate with New Hampshire
12 Natural Heritage Bureau and New Hampshire Fish
13 & Game, to the satisfaction of those agencies,
14 to establish protocols for encounters with any
15 rare, threatened or endangered species during
16 the Project and shall submit the agreed
17 protocols to NHDES. Applicant shall then
18 implement the approved protocols as a condition
19 of this approval.

20 MR. IACOPINO: If you look at
21 Exhibit 189, go to electronic Page 14. That is
22 a letter dated September 6, 2018 to Fish & Game
23 from Sarah Allen, Program Manager for
24 Normandeau. And I believe it discusses bald

1 eagle, sturgeon updates and specific avoidance
2 and minimization measures.

3 MR. FITZGERALD: I'm sorry. You said
4 Exhibit 189?

5 PRESIDING OFFICER WEATHERSBY: 189
6 and starts on Page 14. Page 15 concerns the
7 bald eagles.

8 DIR. MUZZEY: Thank you. That's what
9 I was looking for. One of the reasons I was
10 looking for it is because we know that fairly
11 recently there was a newly recorded bald
12 eagle's nest very near the SRP right-of-way.
13 So my concern was whether or not we had updated
14 information from Fish & Game that post-dated
15 that discovery. And given that the discovery
16 was in July of 2018, in Applicant Exhibit 208
17 we do have a letter from Fish & Game that
18 post-dates that new discovery and comes to an
19 agreement as to how the eagles should be
20 protected. So that reassures me.

21 I also wanted to mention, because
22 it does seem to be a theme with this
23 proceeding, if we take a look at the
24 conditions in the permit from Environmental

1 Services and we take a look at PDF Page 9,
2 Condition 29, we also see the continuing role
3 of an independent environmental monitor in
4 regard to the natural environment. The
5 monitor's task is to assure compliance with
6 the many permit conditions that protect the
7 natural environment both during and after
8 construction activities, one year
9 post-construction corridor monitoring after a
10 full growing season. And then there are more
11 details that follow that as well. So we do
12 know that there are many conditions that are
13 attached to the construction and operation of
14 this proposed project. And the presence of
15 an independent environmental monitor does
16 reassure me that compliance will be carefully
17 and independently monitored and reported to
18 the appropriate agencies.

19 MR. FITZGERALD: I'd also reference
20 the DES permit at electronic Page 21. These
21 are lists of findings. No. 20, which is the
22 Applicant has coordinated -- this is a finding,
23 not a condition. Applicant has coordinated
24 directly with New Hampshire Fish & Game

1 Department regarding impacts to sensitive
2 species and habitats from the proposed project,
3 and the Applicant will directly coordinate with
4 NH Fish & Game prior to and during construction
5 to minimize other potential impacts to
6 sensitive species and habitats. Additional
7 coordination, review and approval as required
8 by NHDES permit conditions are intended to
9 address the requirements of ENV-Wt 302.04(a)7.

10 PRESIDING OFFICER WEATHERSBY: Okay.
11 So it sounds like there's a lot of safeguards
12 in place for the bald eagles in particular,
13 that most of the work will be outside the
14 660-foot protective buffer recommended by the
15 National Bald Eagle Management Guidelines. The
16 only exception to that, both overhead and bay
17 construction, is the relocation of the cable
18 house goes approximately 10 feet into that
19 buffer. But we made time-of-year restrictions
20 for that.

21 So, concerning the ball eagles, in
22 my opinion, they were fairly well protected.
23 I would just add that extra layer, which is
24 adding Fish & Game's recommendations of its

1 October 16, 2018 letter, that if -- basically
2 trying not to cut super canopy pine trees.
3 But if it does require tree-cutting, that
4 Fish & Game be contacted for input concerning
5 the trees and minimization of impacts and
6 that the Applicant follow raptor-safe Best
7 Management Practices which may or may not
8 have already been covered.

9 Does anyone feel differently or
10 want to talk any more about bald eagles?

11 DIR. MUZZEY: So is it your
12 understanding that the raptor and bald eagles
13 Best Management Practices includes the
14 combination of aerial and ground surveys that
15 Eversource has agreed to conduct in its
16 post-hearing memo?

17 PRESIDING OFFICER WEATHERSBY: I
18 don't know specifically.

19 DIR. MUZZEY: Have we closed that
20 loop? That's what I'm --

21 PRESIDING OFFICER WEATHERSBY: I
22 think the Applicant -- so, for conditions
23 concerning the bald eagles, we can add as
24 conditions the suggestions of Fish & Game as

1 referenced in their October 16, 2018 letter,
2 the conditions that the Applicant has agreed to
3 in their brief, and also, of course, the DES
4 permit requirements.

5 DIR. MUZZEY: Thank you. That seems
6 thorough.

7 MR. WAY: I agree with that as well.

8 MR. SCHMIDT: I agree as well.

9 PRESIDING OFFICER WEATHERSBY: Would
10 anyone like to talk further about any plants,
11 invertebrates, fish, reptiles, birds or mammals
12 without getting into the impacts of Little Bay
13 crossing which we're going to take up? Would
14 anyone like to comment further or discuss any
15 of this further?

16 MR. SCHMIDT: Did you say you wanted
17 to keep Little Bay crossing separate?

18 PRESIDING OFFICER WEATHERSBY: We're
19 going to get into that in a little more detail.

20 Yeah, I would make the comment,
21 when Mr. Fitzgerald was talking about -- I
22 know we're getting into the Little Bay
23 area -- but the salt marsh and the salt marsh
24 system, the subtidal system, et cetera, that

1 there is a salt marsh restoration plan that's
2 been put forward. And DES -- getting into
3 that? Okay. Sounds like a good segue.

4 MR. FITZGERALD: Okay. I just also
5 want to note that CFP Exhibit 1 has -- it's
6 been indicated to me that it has a list of
7 conditions that the CFP's environmental experts
8 suggested. I don't know whether we had
9 testimony or not or whether those were all
10 incorporated into the CFP's recommended
11 stipulated conditions. I would suspect so, but
12 I don't know. My reference is Counsel for the
13 Public Exhibit 1, Pages 6 to 8.

14 MR. WAY: And your question is?

15 MR. FITZGERALD: Well, just that this
16 is a list that Counsel for the Public's experts
17 submitted recommended conditions. So I guess
18 my question is do we --

19 MR. IACOPINO: I have a list of those
20 if you want me to go through them.

21 MR. FITZGERALD: A list of what?

22 MR. IACOPINO: The conditions that
23 Counsel for the Public proposed.

24 MR. FITZGERALD: Yes. Well, I've

1 referenced some of them from this, the
2 stipulated conditions. But if there's
3 particular ones that would be helpful here, I
4 think that -- I don't know that I had all of
5 them. I looked at the ones related to
6 environment and water quality.

7 MR. IACOPINO: I would just draw your
8 attention to Page 68 of Counsel for the
9 Public's brief, where they request that
10 pre-construction surveys should be conducted
11 for all rare, threatened and endangered species
12 that are in the right-of-way or may have
13 habitat within the right-of-way. And they
14 complain that many of the Applicant's
15 consultants original surveys are now more than
16 two years old. The Applicant objects to that.
17 They also asked for -- we just dealt with the
18 raptors.

19 So the next one is also at Page 68.
20 Counsel for the Public asked, to the extent
21 construction activities are proposed for
22 winter areas where rare, threatened or
23 endangered snake or turtle hibernacula may be
24 present, the Applicant should be required to

1 have environmental monitors perform sweeps --

2 (Court Reporter interrupts.)

3 MR. IACOPINO: -- remove identified
4 rare, threatened or endangered species and
5 install exclusion fencing. And Applicant
6 objects in part to that. And then -- those are
7 the only the two that I got above and beyond
8 the raptors --

9 (Court Reporter interrupts.)

10 MR. IACOPINO: -- re-surveying and
11 sweeps.

12 DIR. MUZZEY: Mr. Fitzgerald, going
13 back to your question regarding the prefiled
14 testimony in Counsel for the Public's
15 Exhibit 1. It's dated, as we would expect,
16 July 31st, 2017. And since that time within
17 the proceeding, I think a lot of the concerns
18 listed on Pages 6 through 8 have been
19 considered by the agencies involved, and what
20 we are left with are the concerns that Attorney
21 Iacopino just listed: Whether pre-construction
22 surveys should be updated; the aerial survey,
23 which we know has been committed to for bald
24 eagles and raptors; and then the concerns for

1 winter areas where snakes or turtles may be
2 present.

3 So I think I would agree with
4 Attorney Iacopino. We're left with those
5 first and third considerations as to whether
6 or not additional conditions may be needed.
7 And in the Applicant's post-hearing memo,
8 November 21, 2018, pages PDF -- well, paper
9 Pages 162 and 63, the Applicant does address
10 those concerns that continued for Counsel for
11 the Public. And if we take a look at 1 and
12 3, we see that the Applicant does have a
13 slightly different opinion regarding the
14 snake and turtle sweeps and the
15 pre-construction surveys, although they have
16 agreed to the raptor and bald eagle requests
17 by Counsel for the Public.

18 MR. WAY: What page are you on?

19 DIR. MUZZEY: I have a paper copy.
20 So I'm looking at paper Page 162 and 163.

21 MR. WAY: Okay.

22 PRESIDING OFFICER WEATHERSBY: With
23 regard to the sweeps, DES, what they're calling
24 the "Revised Final Decision" -- it's Committee

1 Exhibit 12D, Condition 34, I've referred to it
2 before -- but it requires a New Hampshire
3 certified wetlands scientist or similarly
4 qualified professional to walk the areas of the
5 proposed activity and the wetland impact areas
6 in particular prior to construction to survey
7 for any rare, threatened or endangered species,
8 and then prior to ground disturbance each day
9 to check timber mats for basking turtles and
10 snakes. So I take that as they're going to --
11 anywhere there's going to be construction,
12 they're going to walk that area and look for
13 any rare, threatened or endangered species, and
14 then prior to ground disturbance each day check
15 for basking turtles and snakes. To me, that's
16 not limited to wetland impact areas. It's
17 qualified professionals are going to walk the
18 areas of proposed activity.

19 DIR. MUZZEY: We heard testimony as
20 well during the hearings as to how that would
21 work, and it did seem to be a process that was
22 well known within the field and one that, as
23 further described in testimony, seemed to be a
24 thorough attention to the matter.

1 PRESIDING OFFICER WEATHERSBY: I am a
2 little confused. I think I may need Mr.
3 Fitzgerald's help. I seem to recall that when
4 folks are walking the corridor looking for
5 endangered turtles, et cetera, that's a "sweep"
6 and not a "survey." Here they're being
7 required to "survey" under Condition 34.

8 MR. FITZGERALD: Right. My
9 understanding reading the documents is that a
10 "survey" is intended to identify whether
11 species are present or not and that a "sweep"
12 is prior to construction, to go out and look
13 specifically for those ones that have been
14 identified and, you know, as with snakes and
15 turtles and other things, to remove them from
16 the paths of actual construction to a safer
17 location either within or outside the
18 right-of-way.

19 PRESIDING OFFICER WEATHERSBY: So it
20 seems as though Condition 34, they're actually
21 being asked to survey for rare, threatened
22 endangered species prior to construction. So
23 some I guess would say that has been satisfied
24 by doing it in the past. Maybe perhaps that's

1 what Counsel for the Public -- I know they want
2 more recent surveys. I have a hard time
3 believing this is a new requirement, to be
4 satisfied by something in the past.

5 DIR. MUZZEY: Given the wording you
6 just suggested awhile ago while addressing
7 raptors and eagles and the adoption of
8 commitments in this post-hearing memo I think
9 would cover both the concepts of "survey" and
10 "sweep" in combination with the DES conditions.

11 PRESIDING OFFICER WEATHERSBY: It
12 does go back to the issue, though, of whether a
13 survey that's already been completed can be
14 used to satisfy this Condition 34, even if it's
15 four years old.

16 DIR. MUZZEY: We could rely on the
17 Department of Environmental Services to make
18 that determination. I have to believe
19 somewhere in the rules, the very comprehensive
20 rules that exist at Environment Services, that
21 there would be a requirement as to how recent
22 surveys have occurred. I'm comfortable with
23 relying on their expertise in this matter.

24 PRESIDING OFFICER WEATHERSBY: I

1 think to be sure, we can always say the
2 Applicant shall inquire if they're relying on a
3 survey more than one year old or something,
4 relying on a previously done survey and they
5 shall verify with DES if that survey is
6 acceptable to meet Condition 34.

7 MR. SCHMIDT: I would agree with
8 that. That covers in case there was not
9 specific in the rules.

10 PRESIDING OFFICER WEATHERSBY: So,
11 adding a clarification or further condition
12 that if the survey -- if they're relying on a
13 completed survey, the Applicant shall consult
14 with DES to see if that survey is acceptable to
15 DES, or whether DES will require a new survey.
16 That's what -- people think that's a good idea?
17 Anyone disagree or want to talk about it
18 further?

19 MR. IACOPINO: I have a question.
20 You're talking about just for rare, threatened
21 or endangered species; correct?

22 PRESIDING OFFICER WEATHERSBY: Yes.
23 Anything else about plants,
24 invertebrates, fish, reptiles, birds,

1 mammals, not including impacts to Little Bay
2 cable crossing on such organisms? Anything
3 else you want to talk about?

4 [No verbal response]

5 PRESIDING OFFICER WEATHERSBY: Okay.

6 Let's move on to the impacts of Little Bay
7 Crossing.

8 MR. FITZGERALD: Okay. The first
9 identified impact is the salt marsh. And the
10 Applicant has identified 1456 square feet of
11 salt marsh that will be temporarily impacted.
12 The Applicant has developed and filed a salt
13 marsh protection and restoration plan, and that
14 plan requires all construction restoration will
15 be performed under the supervision of an
16 engineer and an environmental monitor. So,
17 excavation of the marsh will be limited to only
18 that area necessary for burying the cable.
19 Again, the Applicant has agreed to use mats and
20 specific construction practices, and so they've
21 put necessary monitoring and BMP requirements
22 in as well.

23 Anyone have any questions with
24 regards to salt marsh?

1 [No verbal response]

2 MR. FITZGERALD: Microalgae [sic].

3 The Applicant asserts that a rocky substrate
4 will be replaced at the completion of the
5 Project of the cable installation. Same
6 species of microalgae will re-colonize normally
7 after construction is complete. This is where
8 consideration of concrete mattresses comes into
9 play. And the concrete mattresses have been
10 proposed to be placed where the cable cannot be
11 placed to a depth of three and a half feet.
12 Again, it is indicated that the same species of
13 microalgae that are present on areas where the
14 concrete mattresses will be laid will
15 re-colonize on the concrete mattresses.

16 MR. WAY: Mr. Fitzgerald, not to
17 correct, overly correct, but when you say
18 "microalgae" I think you mean macro --

19 MR. FITZGERALD: Macro, yeah.

20 MR. WAY: I just want to make sure
21 there.

22 MR. FITZGERALD: Excuse me.

23 MR. WAY: Thank you.

24 MR. FITZGERALD: It's a long night.

1 Thank you.

2 So next, eelgrass is a
3 consideration. We have a significant amount
4 of testimony regarding the importance of
5 eelgrass in Great Bay. And it has been
6 impacted in the past and is at this point
7 redeveloping in areas of Great Bay and
8 returning. So that's an important issue.
9 And the Applicant agrees that it is highly
10 unlikely that the Project will cover any
11 established beds of eelgrass and that
12 water-quality monitoring has demonstrated
13 that the plume of deposition of suspended
14 sediments will not reach any established
15 eelgrass beds. The Applicant has agreed to
16 survey for eelgrass and, if it's detected, to
17 work with the regulatory agencies to develop
18 appropriate mitigation. Again, there are
19 BMPs in place, and DES has required the
20 Applicant to conduct an eelgrass survey the
21 summer before construction and approximately
22 one year after work is completed. DES had
23 not received that plan as of the August 31st
24 letter that we received from DES. So we

1 might want to make sure that that's -- you
2 know, that is required to be submitted.

3 Any questions about eelgrass?

4 DIR. MUZZEY: I would just note,
5 since I'm the one who seems to be continuing to
6 bring this up, but that we also have an
7 independent environmental monitor working on
8 these issues that you have mentioned. The
9 monitor's empowered to order corrective actions
10 and/or the temporary cessation of construction
11 activities, which, again, provides some
12 independent reassurance in regard to all these
13 many conditions.

14 MR. FITZGERALD: Thank you.

15 PRESIDING OFFICER WEATHERSBY: And
16 forgive me if you mentioned this, but I also
17 seem to recall that, regarding water quality,
18 when we were talking about eelgrass, that the
19 modeling that was done indicated that the plume
20 sediment wouldn't reach any existing,
21 established eelgrass bed.

22 MR. FITZGERALD: That's correct.
23 Yes. Also, obviously the trial run will
24 confirm that that modeling is appropriate and

1 can be relied upon. So... or not.

2 With regards to shellfish,
3 obviously we heard a lot about oysters.
4 There's also softshell clams and razor
5 clams. It's estimated that softshell and
6 razor clams will be to some extent impacted
7 by sediments, but that due to the very
8 limited nature of the amount of sediment,
9 that they are expected they will survive.

10 Concrete mattresses could have
11 impacts on shellfish that are in the sediment
12 that will be covered. Applicant has
13 estimated that artificial material may
14 provide suitable substrate for microalgae and
15 oysters actually to grow. So it's -- they
16 could -- they would certainly come back as
17 well. Nearest mapped natural oyster reef is
18 located offshore of the southeastern point of
19 Adams point.

20 We had a lot of testimony with
21 regards to oyster farms, but this is
22 referencing the natural occurrence. And the
23 Applicant has asserted that if it is
24 associated with the Project, may cause

1 mortality to oysters if it's approximately a
2 half-inch thick. But the testimony suggested
3 that deposition closest to the oyster bed
4 will be on the order of 200ths of an inch,
5 and therefore the Project should have no
6 discernible effect on the natural oyster
7 beds. There will be plume flow towards Joe
8 King Oyster Cooperative and Fat Dog. The
9 modeling estimates that suspended
10 concentrations will be 10 to 20 milligrams
11 per liter; thus, there will be no impact on
12 oysters at these farms because the
13 concentrations are within the natural
14 sediment exposure.

15 So the Applicant also argued that
16 the plume associated with the Project will
17 not have a negative impact on the oyster
18 farms because research has demonstrated that
19 eastern oysters exhibited no discernible
20 response to a three-week exposure to
21 concentrations as high as 700 milligrams per
22 liter, significantly higher orders of
23 magnitude higher than what are anticipated.

24 So Applicant has also argued that

1 impacts to farmed oysters through increased
2 exposure that will be disturbed as a result
3 of jet plow will be negligible because they
4 expect that the thickness of the sediment
5 deposited will be less than a tenth of a
6 millimeter thickness contour.

7 So I think we had a significant
8 amount of testimony and information presented
9 with regard to shellfish. Again, there have
10 been procedures put in place, conditions
11 relative to the DES Shellfish Program
12 coordination. As we heard, certain parts of
13 the bay have been closed. And DES, you know,
14 would coordinate with this work to ensure
15 there were no impacts on oyster farms or
16 shellfish.

17 So I guess with that, is there any
18 questions with regards to potential impacts
19 on shellfish?

20 MR. SCHMIDT: I'd like to talk a
21 little bit about some of the testimony we heard
22 at the Newington evening meeting and that the
23 Town of Durham has raised regarding pathogens
24 in the silt and the possibility of stirring

1 them up.

2 DES hasn't submitted a requirement
3 for testing or monitoring. The Town of
4 Durham has asked for it to be tested for
5 microbial pathogens. I just wanted to open
6 that up to the group to see what the general
7 thought on that was. The individual who
8 testified in Newington introduced himself as
9 a doctor, a medical doctor with expertise in
10 that particular field, as well as combat
11 exposures. But he did seem knowledgeable
12 about this as well. Just want to get a sense
13 of the group.

14 DIR. MUZZEY: In my notes I also
15 have, and you may have said this, that the
16 oyster farmer from Fat Dog also requested that
17 type of testing be done as well.

18 MR. SCHMIDT: Right. That's correct.
19 I happen to have it in my notes as well.

20 MS. DUPREY: I know nothing about
21 this whatsoever, but I was interested in the
22 fact that DES seems to pay pretty close
23 attention to what goes on with oysters in the
24 bay. We had testimony provided to us saying

1 they were closing down certain beds, I think
2 for a period of two years. I can't remember
3 the period. But for whatever reason, two years
4 sticks out in my mind. I think it was in the
5 northern end of the bay. And so it seemed to
6 me that, given the fact that they're actually
7 active in terms of saying that certain oyster
8 beds in particular areas can't be used, that
9 this must be something that they are regularly
10 involved with. So that, I guess, provided me
11 with a level of comfort with what was in their
12 permit with respect to this. So that's all I
13 had to say.

14 MR. SCHMIDT: My understanding, that
15 particular issue was raised at the evening
16 meeting. My understanding is there's a
17 different type of testing for things like red
18 tide and so on that causes the closure than
19 this particular element.

20 MS. DUPREY: So you're saying it's
21 not a focus of what DES normally looks at?

22 MR. SCHMIDT: That was my
23 understanding from the testimony.

24 MR. SHULOCK: I just wanted to point

1 out that the final permit does require tissue
2 sampling of the oysters for deleterious
3 substances. And they're listed. I don't see
4 these substances listed: Chemotherapeutics. I
5 don't know what those are. Metals, lipid
6 content, something called PAHs.

7 MR. FITZGERALD: Polyaromatic
8 hydrocarbons.

9 MR. SHULOCK: Pesticides and
10 polychlorinated biphenyls, PCBs. But I don't
11 see these particular organisms being tested
12 for.

13 MR. WAY: I think that was my
14 understanding, too. There's quite a bit that's
15 being required by the shellfish program.
16 Pretty substantial. But I don't think it's the
17 pathogen testing that others have been asking
18 for, and I think part of that stems from an
19 earlier conversation we had that the bay is an
20 emptying point for treated effluent coming from
21 the treatment plants, a lot of non-point
22 sources that are coming in, and that there's
23 the potential for having pathogens in the
24 column. I guess the questions that I have in

1 my mind is my understanding is that the type of
2 pathogens we're looking at probably wouldn't
3 have posed a significant risk in the column
4 because of the lifespan and how far they
5 travel. But I don't know enough to make a
6 comment one way or the other. I do think that
7 DES has a pretty good handle on this. I think
8 others testified they have a confidence in the
9 shellfish program. So I think I would defer to
10 DES on this one. But I understand why it's
11 being asked.

12 MR. SCHMIDT: So do you think it's
13 covered in any existing shellfish monitoring?
14 Is that your understanding? Is that what you
15 were --

16 MR. WAY: Pathogen testing?

17 MR. SCHMIDT: Yeah.

18 MR. WAY: I don't think so. I think
19 what DES has said is that they have not -- they
20 do not think that it's an issue. But obviously
21 DES is giving a lot of effort towards several
22 other testing parameters mentioned by Mr.
23 Shulock.

24 PRESIDING OFFICER WEATHERSBY: Does

1 anyone have an inkling as to what would be
2 required if testing for the requested pathogens
3 was required? You know, if they're testing for
4 all these other things, can they just run
5 another sample through? You know, how onerous
6 would this -- were we to require additional
7 testing, how onerous it might be. I don't
8 recall testimony on that, and I don't know if
9 anyone has any life experience or can add
10 anything to my question.

11 MR. SCHMIDT: I don't think it was
12 covered in testimony and I don't have any
13 experience. Excuse me, Mr. Way.

14 MR. WAY: I was going to say I have
15 some, but I'm not sure I'd want to hazard a
16 guess. I did look through the testimony to try
17 to get a sense about what that would take, and
18 I didn't really -- I didn't see much other than
19 one side wanted it and the other side said it
20 wasn't necessary. And so I think that's where
21 we're at.

22 MR. FITZGERALD: The DES permit,
23 Condition 46, required the shellfish program
24 monitoring and reporting requirements. And I'm

1 on electronic Page 13. It's Committee
2 Exhibit 12C. It requires at least two weeks
3 prior to the start of jet plow, Applicant shall
4 notify the shellfish program of the dates and
5 times of all the activities, and it indicates
6 so that NHDES may assess possible changes in
7 water column for fecal coliform concentrations
8 that may warrant temporary closure. I think
9 it's my recollection that some of the testimony
10 indicated that there were concerns, and I
11 believe it was one of the UNH professors, that
12 there were possibly pathogens present that --
13 fecal coliform is an indicator of human waste.
14 And obviously, you know, it may be present in
15 wastewater treatment systems that discharge
16 into the rivers and the bays and therefore may
17 be present in sediments. And if it is, it
18 will -- there are particular protocols that the
19 shellfish program have.

20 It's my recollection that one of
21 the UNH experts testified that there were
22 other pathogens that were similar, but were
23 not necessarily identified as fecal coliform
24 is. So I believe the shellfish program,

1 although I can't put my finger on it, you
2 know, may have considered that. But the
3 requirement here, they had the opportunity to
4 meet and speak with the Durham experts. And
5 they state in this requirement that the blue
6 mussels and American oysters shall be the
7 species to be tested. And they go on to
8 discuss the locations where testing shall
9 occur at constituents, which was mentioned
10 previously by Mr. Shulock, one of which is
11 fecal coliform. And they also specified that
12 the test methods and protocols shall be
13 consistent with methods and protocols
14 specified in the National Shellfish
15 Sanitation Program Guide for Control of
16 Mollusk and Shellfish, 2015 Revision.

17 So, it seems to me that DES
18 certainly had an opportunity to consider this
19 to determine whether it was necessary or not,
20 and that although it may have been something
21 of great concern to the experts, that they
22 were relying on these national guidelines and
23 whether -- I don't know if this is new
24 information. We didn't get a lot of

1 background on that, as far as I recall.

2 PRESIDING OFFICER WEATHERSBY: Mr.
3 Way.

4 MR. WAY: The point I had made the
5 other day about the DES and the experts from
6 UNH, to your point, Mr. Fitzgerald, that once
7 again, this wasn't done in a vacuum. And they
8 did have an opportunity to meet with DES about
9 the Application. And I'm looking at Exhibit
10 204, which once again are the notes of that
11 meeting. And my thought was when I went back
12 to this, that pathogen testing would have risen
13 to a level of that discussion. I don't see it
14 having come up in that discussion.

15 Conservation Law Foundation was
16 also in that meeting as well. And yes, the
17 handwriting is somewhat cryptic. But I'm not
18 seeing it there. So once again, I think as
19 things came up, DES considered this. And I
20 think, once again, the shellfish program has
21 a good handle. So I'll leave it there.

22 PRESIDING OFFICER WEATHERSBY: So
23 while we're talking about pathogens, I guess
24 I'll direct your attention to Transcript

1 Hearing Day 13. I believe it's the morning.
2 Page 193, but really it goes down 194 and 195.
3 This is when Mr. Jones was -- Mr. Jones and Mr.
4 Dacey were testifying. The issue about
5 pathogens came up and testing for them came up
6 about -- there was a discussion about the fecal
7 coliform. And Mr. Jones's opinion was that
8 testing did not include other pathogens, virus
9 contamination. That's not anything that would
10 be included in a routine microbiological
11 testing, and he proposes the condition that as
12 part of the shellfish monitoring program
13 microbial pathogens testing be done.

14 MS. DUPREY: I couldn't get a feeling
15 for what all that means. Could you summarize
16 it?

17 PRESIDING OFFICER WEATHERSBY: I
18 think that he has a concern that the testing
19 that's done on the water for the usual
20 contaminants that are part of the wastewater
21 going into the river and into the bay, that the
22 routine testing of those for those substances,
23 such as fecal coliform, don't include testing
24 for pathogens. And he would like -- and

1 nowhere else in the shellfish testing program
2 are those being asked for. He would like to
3 add the microbial pathogen testing. He's not
4 very specific other than viruses. Mr. Jones's
5 point was that he thought that should be added.
6 I'm not sure how to judge that statement, but
7 that seems to be his position.

8 DIR. MUZZEY: And looking at that
9 same day of testimony, beginning at the bottom
10 of Page 14, probably with a different person
11 asking Dr. Jones questions, he talks about that
12 as well and mentions that the Great Bay Estuary
13 receives water from seven different rivers that
14 have wastewater treatment facilities. And he
15 talks about the various contaminants that come
16 out of those, as well as impervious surfaces of
17 urban areas, and characterizes them as
18 "bacteria, viruses, parasitic pathogens of
19 humans that end up in the sediment and then
20 become part of the shellfish system as they do
21 their work as filter feeders." And at that
22 point, interestingly he characterizing it both
23 as a public health concern, as well as more of
24 a natural environment concern for the oyster's

1 health, but the public concern being as people
2 eat those oysters.

3 MR. WAY: As I read this transcript,
4 I think just last week as I was preparing, it
5 doesn't give me any added information on why
6 pathogen testing is needed, really. It sort of
7 said something of what I think was a generally
8 stated concern is that you have treatment
9 plants nearby. And treatment plants have
10 pathogens in the effluent, e. Coli in the
11 effluent, and that could be in the sediment.
12 But I don't think there was much more to offer
13 than that.

14 When I looked at this transcript,
15 and in particular to the Chair's statement,
16 at the end of this transcript it didn't
17 really give me information. It just said the
18 obvious. And there's no real proof that this
19 is going to be an issue. It seems to be a
20 "what if" at this point without a lot of
21 substantive of why we might require that if
22 DES has already chosen not to require that.
23 So if I'm going to be second-guessing DES in
24 the shellfish program, I think I would need a

1 little bit more than it would be a good idea
2 because it could conceivably be an issue.

3 MR. SCHMIDT: I think this area is
4 unique being so close to the bay. And that's
5 primarily my concern. It's not, so to speak,
6 organic matter, fecal matter released. It's
7 what other chemicals could have spilled into
8 the bay. And I'm not sure -- not that DES is
9 remiss. I'm just not sure if they're testing
10 for things like that. I get the sense it's off
11 their radar. And I don't think it's remiss or
12 anything. It's just a relatively new concern.
13 We've seen folks being exposed to things that
14 we see 20 years later some of the symptoms.
15 And that's my concern is some of the uses of
16 the bay previously.

17 MR. WAY: And so to make sure,
18 because I think this is a good discussion for
19 us to have, so when we look at the list of
20 testing parameters, Mr. Shulock, where did you
21 have that before?

22 MR. SHULOCK: 12D. It's the final
23 permit. It's Committee Exhibit 12D I think or
24 12A.

1 MR. FITZGERALD: It's actually 12C.

2 DIR. MUZZEY: One is annotated and
3 one is not. One of the reasons why we have so
4 many letters.

5 MR. SHULOCK: I was looking at 12A.

6 MR. WAY: All right.

7 MR. SHULOCK: And it's Condition 46,
8 the constituents that they test for, starting
9 on electronic Page 48, constituents for tissue
10 analysis.

11 MR. SCHMIDT: Where did you say it
12 began? I'm sorry. What page?

13 MR. SHULOCK: Electronic Page 14.

14 MR. WAY: I'm looking at the
15 pesticides, PCBs --

16 MR. SHULOCK: PAHs --

17 MR. WAY: Heavy metals.

18 MR. SHULOCK: -- chemotherapeutics
19 and deleterious substances. I mean, I wouldn't
20 know whether any of these were used at Pease
21 Air Force Base or not or if any are missing
22 from the list.

23 MR. SCHMIDT: Right. And likewise,
24 I'm not an expert on the details. Certainly

1 these seem to cover a pretty solid foundation.
2 It goes from PCBs to -- well, that's one of the
3 few I recognize.

4 PRESIDING OFFICER WEATHERSBY: I
5 think the assertion is that pathogens are
6 missing from this list. And I got the sense
7 they're not coming from the former Air Force
8 base, but it's more things that get flushed
9 down the toilet and end up in the water. And I
10 am concerned about that. I don't know if it's
11 a legitimate concern. But obviously, I mean,
12 there's people who are eating these oysters
13 that are filtering all this, and I want to err
14 on the side of safety.

15 Ms. Duprey.

16 MS. DUPREY: I was looking at the
17 transcript again, and I'm looking at Page 131.
18 I actually questioned Dr. Jones about the gaps
19 that he saw in the testing. I really hit him
20 right with it. And he basically said we're
21 identifying gaps in what DES permitted. He
22 was, I think, quite clear in his testimony that
23 he had brought this to DES. I said to him, Why
24 didn't you work with these people all the time?

1 Why didn't you phone them up? If this is so
2 imperative, if this is so important, why
3 wouldn't you get on the phone and call them up?
4 And he said, I work with them and talk with
5 them all the time. I have a continuing
6 conversation about this. So this is not a case
7 of something came up at the last minute and it
8 didn't get ruled upon or it didn't get reviewed
9 by DES. This is a case of our job is to find
10 the gaps. You know, I don't deny that that's,
11 you know, basically what their expert testimony
12 relates to, but that DES didn't agree. So I
13 don't want people to eat unsafe oysters. I
14 don't think anybody wants to risk that
15 happening. At the same time, I don't feel like
16 we should be asking for testing that the expert
17 in the field, which I think we can clearly say
18 DES is the expert in the field, didn't find was
19 necessary to this, with a person who as the
20 expert didn't feel he needed to pick up the
21 phone and call his contact at DES because he
22 talks about this all the time. So it just
23 seems to me that there's a disagreement between
24 the two experts. And the question comes down

1 to: Do we want to step over DES and order
2 something that they didn't order because it's a
3 risk, in which case we would sort of be saying
4 we put more trust in the testimony of Dr.
5 Jones, or do we leave it with the agency? I
6 guess for me I'm going to leave it with the
7 agency.

8 MR. FITZGERALD: Madam Chair, also,
9 if I could, looking back at my notes of the
10 testimony when the Durham environmental experts
11 were questioned by the Applicant, I have notes
12 here that they were asked, Were all your
13 concerns regarding pathogens raised in
14 testimony communicated to DES? And I believe
15 their answer was yes. So, you know, it seems
16 to me they had a significant opportunity to
17 present this information and that DES chose not
18 to incorporate that requirement. And it's
19 not -- I don't think that Little Bay is unique.
20 You know, you have effluent from a number of
21 communities that is being discharged into
22 rivers. It's going into the bay. The bay has
23 obviously been impacted by nitrogen and other
24 things and so on. But this is not a new -- you

1 know, DES deals with wastewater going into
2 water bodies all the time. And I would suggest
3 that they have significant experience.

4 And with regard to Mr. Schmidt's
5 concerns, I will just assert that the Pease
6 Air Force Base is probably one of the most
7 highly studied sites in the country, in terms
8 of it's a Super Fund site, in terms of its
9 environment and conditions and clean-up.
10 It's been being worked on since the base
11 closed over 20 years ago. And the
12 characterization and information related to
13 that site is overseen and documented by EPA
14 and DES and the Department of Defense. So
15 the constituents, probably the only new issue
16 that they're dealing with, and there's some
17 concerns have been raised, is PFAS compounds,
18 which are a relatively new development. But
19 the rest of these requirements are related to
20 historical activities. And, you know, DES
21 knows, to the best it can be determined,
22 obviously, the history of the base and all of
23 the activities, and it's been characterized
24 and studied for more than 20 years. So I

1 believe DES has a sufficient volume of
2 information to determine what constituents
3 are present there and should be monitored
4 for.

5 PRESIDING OFFICER WEATHERSBY: Mr.
6 Way.

7 MR. WAY: I think sort of the last
8 thing I'll say on this topic, actually, when I
9 started out looking at this and considering the
10 condition, I was favorable to the condition
11 because it made sense to me, okay. You know, I
12 mean, pathogens could come from wastewater
13 treatment, from other sources. It's something
14 that could be taken up. So when I was looking
15 at, once again, the transcripts, the DES
16 permit, all these things, I was looking for
17 something that would give me something to
18 really take it across the finish line. And,
19 you know, so when I look at transcripts, you
20 know, back on Day 13 from the witness panel of
21 Jones, you know, they, meaning the pathogens,
22 remain viable. And if they're stirred up back
23 into the water column --

24 (Court Reporter interrupts.)

1 MR. WAY: They remain viable. And if
2 they're stirred up back into the water column,
3 oysters and other bi-valve shellfish, they're
4 filter feeders. They take them up. They bring
5 them into their tissue. They're now alive.
6 And people potentially eat them. They can get
7 sick. So there's no time element out there.
8 There's no -- there's nothing that shows under
9 what conditions and for how long something that
10 would show that that's indeed going to be a
11 problem in the soil sampling. And I guess that
12 was what didn't do it for me, in terms of
13 bringing this to a condition I would ask for.

14 PRESIDING OFFICER WEATHERSBY: I
15 think you meant to say "water sampling" just
16 now.

17 MR. WAY: What did I say?

18 PRESIDING OFFICER WEATHERSBY: You
19 said "soil sampling" for the sediment.

20 MR. WAY: Thank you.

21 PRESIDING OFFICER WEATHERSBY: One
22 thing as I reviewed all this, everyone here has
23 a concern. We don't want to make people sick.
24 We want to make sure everything's tested that

1 needs to be tested. Listening to you all
2 talking about how rigorous DES is and that it
3 was brought to their attention and yet it's
4 still not included, that's somewhat persuasive
5 for me. And as I review it, what kind of
6 brings it over the line for me as I reviewed it
7 is Mr. Jones does indicate that the FDA also is
8 involved here. And they require the state
9 shellfish program to evaluate the waters where
10 they allow commercial or recreational
11 shellfishing. This is in Day 13, Afternoon,
12 Page 17. This is when he went on and talked
13 about how they use the dye with the Portsmouth
14 wastewater treatment. I don't know if you
15 remember all that. So the FDA tells the state,
16 you know, these are things you need to test
17 for. And yet, despite all this, it doesn't
18 seem as though it's a concern to -- enough of a
19 concern to FDA or DES to require pathogen
20 testing.

21 So as much I want to err on the
22 side of safety, it seems as though this has
23 been analyzed and considered, and yet still
24 not being required. So I'm not sure that I

1 can substitute my judgment and require
2 something that may be very onerous. I'm not
3 sure when governmental bodies that are in
4 charge of public health are not so requiring.

5 MR. FITZGERALD: Also like to
6 indicate that CFP's environmental consultants
7 indicated they felt that the Applicant had
8 adequately characterized the potential
9 environmental impacts with the work associated
10 with the installation of the submarine cable
11 and did not bring this issue to light any
12 further as well.

13 PRESIDING OFFICER WEATHERSBY: Anyone
14 want to talk further about pathogens? Okay.

15 Why don't we take a short break and
16 come back and we'll finish up on Little Bay
17 impacts. About ten minutes.

18 (Recess was taken at 3:34 p.m.

19 and the hearing resumed at 3:48 p.m..)

20 PRESIDING OFFICER WEATHERSBY: We'll
21 resume our discussion concerning the natural
22 environment. We had been discussing shellfish,
23 including oysters and testing. Is there
24 anything else we want to talk about shellfish,

1 or shall we move on to benthic infauna,
2 lobsters and horseshoe crabs? Anything else on
3 shellfish?

4 [No verbal response]

5 PRESIDING OFFICER WEATHERSBY: Let's
6 move on then, Mr. Fitzgerald.

7 MR. FITZGERALD: Okay. Our next
8 creatures are benthic infauna, lobsters and
9 horseshoe crabs. The Applicant indicates
10 benthic infauna will be displaced into the
11 water column and that the benthic infauna may
12 be exposed to magnetic fields associated in the
13 Project. And then the Applicant has agreed to
14 conduct benthic infauna community monitoring --

15 (Court Reporter interrupts.)

16 MR. FITZGERALD: And the DES informed
17 the Subcommittee that they expected the
18 Applicant to file a revised benthic infauna
19 community monitoring plan on August 28th. I
20 did not research as to whether or not that had
21 been submitted yet.

22 Then the Applicant has indicated
23 that the population of lobsters and horseshoe
24 crabs are not available for Little Bay.

1 Lobsters could be impacted. They burrow into
2 the substrate during the day and could be
3 impacted by the jet plowing. It's concluded,
4 however, that entrainment will unlikely have
5 a significant effect on the population
6 because the volume of water required to jet
7 plow will be very small compared to the
8 volume at Upper Little Bay.

9 Horseshoe crabs are located along
10 the path of the jet plow and could be
11 displaced -- will be displaced. So the
12 Applicant has indicated that it's unlikely
13 that adult individuals that will be displaced
14 that are buried under a thin layer of
15 sediment will experience more than a very
16 minor impact.

17 The Applicant has indicated that
18 installation of the cables will temporarily
19 affect bathymetry along 100-foot-wide swath
20 crossing of Little Bay, may cause excess
21 deposition adjacent to cables, and that DES
22 has required the Applicant to obtain approval
23 of the benthic habitat monitoring plan 60
24 days prior to the start of construction.

1 So unless there are any questions,
2 I think that covers the benthic infauna and
3 lobsters and crabs.

4 PRESIDING OFFICER WEATHERSBY: There
5 is a request by Counsel for the Public that we
6 should take up concerning testing. Let me find
7 that.

8 MR. FITZGERALD: This is the
9 bathymetric survey issue? The Applicant has
10 agreed to conduct a bathymetric survey
11 immediately following cable installation and a
12 second survey in the spring. If that
13 determines significant changes, the Applicant
14 has agreed it will meet with the agencies and
15 discuss what mitigation may be necessary.

16 DIR. MUZZEY: Excuse me, Mr.
17 Fitzgerald. Where are you reading from, or do
18 you have an exhibit number for us?

19 A. Appendix -- Applicant's Exhibit 129. This is
20 discussed on Page 11 I believe.

21 MR. WAY: Page 11 electronic or --

22 MR. FITZGERALD: No, I believe that's
23 the actual Page 11, bathymetric monitoring.

24 PRESIDING OFFICER WEATHERSBY: In

1 Counsel for the Public's Exhibit 3, this issue
2 was teed up as well. He indicates -- this is
3 Counsel for the Public's expert. He indicates
4 the Applicant proposes to use either the single
5 beam or multi-beam system to obtain bathymetric
6 data following cable installation. The expert
7 believes the use of a multi-beam system will
8 provide a more comprehensive assessment of
9 bottom elevations without interpretation of
10 elevations between survey lines and therefore
11 is more appropriate than a single beam. This
12 is post-construction assessment.

13 MR. FITZGERALD: The Applicant, in
14 129, also indicated that they agreed to conduct
15 that survey using either a single beam or
16 multi-beam. So I don't -- it doesn't seem to
17 me that they object to the multi-beam
18 requirement.

19 (SEC Members reviewing documents.)

20 MR. WAY: Madam Chair, could you read
21 that condition request again?

22 PRESIDING OFFICER WEATHERSBY: So
23 this is a suggestion that's in Counsel for the
24 Public Exhibit 3, PDF Page 6, halfway down the

1 page, starts at Line 14.

2 MR. IACOPINO: Dawn, what exhibit is
3 that that you have up there?

4 MS. GAGNON: 129.

5 MR. IACOPINO: 129?

6 PRESIDING OFFICER WEATHERSBY: I'm
7 concerned that we haven't really heard
8 testimony on single beam versus multi-beam,
9 other than Counsel for the Public's expert had
10 suggested it. It may be a better way to go,
11 but the record's not very deep.

12 Mr. Way.

13 MR. WAY: I agree, except for that
14 one statement. I'm searching through to see
15 what I can find where someone's done a
16 comparison of benefits of multi-beam versus a
17 single one. Unless I'm missing it, I'd like to
18 take a couple more minutes to look.

19 PRESIDING OFFICER WEATHERSBY: We
20 could always defer to DES to make its decision,
21 and we can ask the Applicant to consult with
22 DES concerning the appropriate method of --

23 MR. FITZGERALD: I was just going to
24 suggest -- I mean, it's stated right here that

1 the Applicant has agreed to use either single
2 or multi -- that we just have a condition that
3 DES shall consult with the Applicant and the
4 CFP to determine which is the more appropriate
5 methodology. But I don't think the Applicant
6 has a -- you know, they've agreed to use either
7 method, so...

8 DIR. MUZZEY: Yeah, I'm comfortable
9 with leaving that in the hands of Environmental
10 Services to determine what's most appropriate.
11 And we do know that the Applicant will be in
12 conversations with them regarding this, not
13 only perhaps with the methodology, but also
14 what to do if there are changes at the bottom
15 of Little Bay that need to be addressed after
16 years of monitoring.

17 MR. FITZGERALD: And there is a
18 requirement to submit a revised benthic habitat
19 monitoring plan. So perhaps we just condition
20 that that plan, that in approving that plan,
21 that DES shall consider the Counsel for the
22 Public's desire on this issue.

23 DIR. MUZZEY: I would be more
24 comfortable with just, rather than having DES

1 consider that, having the Applicant consider it
2 rather than placing that charge on DES.

3 MR. FITZGERALD: Well, I'm saying the
4 Applicant has to submit that plan to DES for
5 approval. So, however we condition it, it
6 would be that either DES would require them to
7 do it or --

8 PRESIDING OFFICER WEATHERSBY: How
9 about this: If the bathymetric survey
10 following cable installation is going to use
11 anything other than a multi-beam sonar system
12 to match the sediment surface, it shall get
13 approval from DES to do so?

14 DIR. MUZZEY: Sounds great.

15 PRESIDING OFFICER WEATHERSBY: Any
16 further discussion on this?

17 [No verbal response]

18 PRESIDING OFFICER WEATHERSBY: Let's
19 move on.

20 MR. FITZGERALD: Fish. Applicant has
21 indicated that the impact on fish will be
22 temporary and could include, again, alteration
23 of the benthic habitat, increased level of
24 suspended sediments, and mortality of early

1 life stages entrainment in the jet plow's
2 system. So Applicant indicated that early fish
3 life stages associated with entrainment will be
4 insignificant, considering that only
5 approximately .17 to .27 percent of the total
6 volume in Upper Little Bay will be withdrawn.
7 The cables may emit magnetic fields, and the
8 Applicant has provided information that
9 indicates research on this issue, that magnetic
10 fields emitted from low-voltage AC cables are
11 unlikely to be detected by most fish.
12 Applicant filed a report entitled, "Essential
13 Fish Habitat Assessment" and "Rare, Threatened
14 and Endangered Species and Exemplary Natural
15 Community Report," and "Natural Resource Impact
16 Assessment."

17 The Essential Fish Habitat
18 Assessment described habitat requirements and
19 provided a chart, which was in Applicant's
20 Exhibit 131, with a summary of various
21 species, the life stages, where they're found
22 in the water column, the area in which they
23 may be impacted, and whether the impact is
24 temporary or permanent. And the Applicant

1 has asserted that essential fish habitat will
2 be temporarily reduced in areal extent during
3 installation of the cables. Again, they've
4 provided another chart for diadromous
5 species. I'm not a wildlife biology, nor do
6 I play one on TV.

7 The Applicant argues that the
8 construction's impact on these species may be
9 minimized by restricting underwater
10 construction activities, time-of-year
11 restrictions, and has provided a chart that
12 indicates the types of species and the
13 time-of-year impact, whether the -- what the
14 time-of-year impacts would be so that those
15 could be considered in the Best Management
16 plans.

17 American eel, juvenile alewife,
18 blueback herring, American shad and rainbow
19 smelt may also be impacted by construction.
20 Again, this would be by encountering the
21 plume from the jet plow. Fish are moving
22 constantly through that area, so studies
23 conducted for other species may indicate that
24 there won't be significant impact here and

1 that most likely the fish will swim away from
2 the area. They'll be disturbed by
3 construction activity, noise, the sediment
4 plume itself and so on.

5 The Applicant has also agreed to
6 conduct underground cable installation
7 between September 1 and December 31 as
8 mitigation and minimization measures relative
9 to impact on fish.

10 Birds. I think we've all already
11 jumped ahead relative to bald eagle and other
12 potentially impacted birds. We caught that
13 before we crossed the bay.

14 So, with that, that concludes our
15 discussion or the impacts on natural
16 environment, and I'm open to any questions or
17 further discussion.

18 Again, I would also just indicate
19 the CFP's expert did conclude that, for the
20 most part, the Applicant has adequately
21 characterized the potential environmental
22 impacts of the work associated with the
23 installation of the submarine cable in Great
24 Bay. We had some previous discussion about

1 the Town of Durham's concerns. We didn't get
2 into everything that their experts raised.
3 Chris reviewed that -- Mr. Way -- excuse
4 me -- reviewed that section, and we talked
5 about it to some degree during our discussion
6 on water quality. So I'm not sure that
7 there's a lot more to be discussed there.
8 But I just wanted to mention that that had
9 been reviewed and discussed also.

10 PRESIDING OFFICER WEATHERSBY: Did
11 anyone have any further comments or questions
12 concerning the impacts of Little Bay cable
13 crossing or really anything else having to do
14 with the natural environment?

15 MR. IACOPINO: Madam Chair, I'm just
16 going to point out for the Committee, whether
17 you want to consider it or not is up to you,
18 but there was a request from the Town of Durham
19 to establish a process for the submission of
20 public comments in a hearing before the
21 Committee on all plans that are to be produced
22 and to be developed regarding Little Bay. That
23 is objected to by the Applicant. So there was
24 that request for a condition which falls within

1 this area as it deals with Little Bay.

2 And in addition, and you may have
3 already dealt with this also, another request
4 from Durham is that before a certificate is
5 issued, that the Applicant hire an
6 independent expert to look into HDD and
7 establish a process for a hearing and
8 comments on the results of this review, to
9 which the Applicant objected as well.

10 PRESIDING OFFICER WEATHERSBY: I
11 think we dealt with the HDD one.

12 Concerning the public input, do we
13 not have a condition that when plans are
14 submitted to DES, that a copy is filed with
15 the SEC? I thought we had kicked around
16 certainly that concept, at which point it
17 would be public on both DES and on the SEC
18 web site on this project, and people would
19 have a chance to contact DES if they had
20 concerns.

21 MR. IACOPINO: I think there is
22 already. We already discussed that, and I
23 think I have that on my list for conditions.
24 However, this request involves a subsequent

1 hearing as well to establish a process for the
2 submission of public comments and a hearing
3 before the Committee on plans pertaining to
4 Little Bay. In other words, these plans that
5 aren't complete yet, they need to be. I'm
6 saying there's a request for that condition
7 there. It's up to you if you want to consider
8 it.

9 PRESIDING OFFICER WEATHERSBY:

10 Director Muzzey.

11 DIR. MUZZEY: We are fortunate with
12 this project to have so many concerned
13 residents who live in the project area. And
14 they certainly have voiced important concerns
15 and made suggestions that have been adopted
16 throughout this long proceeding. I do know
17 that we have the authority to delegate to DES
18 the review of the plans that remain to be
19 submitted, as well as to specify any
20 methodologies that they will be recommending in
21 those plans potentially if they feel that
22 changes are needed. I am concerned that we may
23 have issues with undue delay if we continue to
24 provide public hearing opportunities and that

1 type of thing at this point in the Project,
2 although I do understand the frustration. And
3 I have appreciated the comments to date at this
4 point. I'm comfortable with assigning to DES
5 the responsibility to review those plans,
6 reflect on any public comments they receive,
7 and then approve them or suggest changes as
8 needed.

9 PRESIDING OFFICER WEATHERSBY: Does
10 anyone feel differently than Director Muzzey or
11 care to comment on this further?

12 MR. SHULOCK: I agree with her.

13 MR. FITZGERALD: Again, Condition 8
14 in the proposed stipulated conditions orders
15 that prior to any construction activity, the
16 Applicant shall file with the SEC a copy of all
17 BMPs to be utilized and lists a number of them.
18 And I would note that further down in the
19 conditions, Condition No. 26 orders that
20 once -- these are proposed conditions. I'm
21 sorry. Once construction begins, the Applicant
22 shall weekly file with NHDES, with a copy to
23 SEC, a copy of all weekly compliance monitoring
24 reports by all construction and environmental

1 monitors, and the SEC shall post said reports
2 on its web site. The SEC or any state agency
3 to which the SEC delegates authority shall have
4 continuing jurisdiction to address violations.
5 We could discuss that. But it seems to me --
6 and I leave it up to the Committee whether it's
7 appropriate for the SEC to receive a copy of
8 all these plans. I don't -- I assume they
9 would be submitted as part of the docket, even
10 though the docket may be closed and a
11 certificate is issued. Although I don't know
12 that. But would it be appropriate to have
13 those plans, when we receive them, posted?

14 PRESIDING OFFICER WEATHERSBY: Yes,
15 we will be posting all the plans we receive,
16 and we will be receiving copies of all the
17 plans.

18 MR. FITZGERALD: Even after the close
19 of the docket?

20 PRESIDING OFFICER WEATHERSBY: Oh,
21 yes. Yeah, continually.

22 MR. FITZGERALD: Okay.

23 PRESIDING OFFICER WEATHERSBY: And
24 the question is when the plan is proposed, do

1 we have a hearing to consider whether it's an
2 adequate plan. I agree with Director Muzzey
3 that that probably isn't the best course of
4 action, both for delay and for reasons of
5 expertise. I think the decision should be left
6 to New Hampshire DES. And there is an
7 opportunity at DES to comment on those plans,
8 and I'm sure DES will take into account any
9 comments it receives. But I have to kind of
10 trust that process.

11 MR. FITZGERALD: Go ahead.

12 DIR. MUZZEY: I can't recall if you
13 mentioned this aspect of stipulated proposed
14 Condition 26. But with the weekly compliance
15 monitoring reports coming in to DES, with a
16 copy to the SEC, and then the SEC shall post
17 these reports on its web site -- so we have the
18 plans. We have weekly monitoring reports.
19 That's a good deal of public information that
20 hopefully the interested public will continue
21 to monitor as well.

22 PRESIDING OFFICER WEATHERSBY: Any
23 other comments concerning natural environment?

24 [No verbal response]

1 PRESIDING OFFICER WEATHERSBY: So I'm
2 going to poll everyone -- and again, you can
3 change your mind down the road -- on whether
4 you believe this project will have an
5 unreasonable adverse effect on the natural
6 environment, given all of the time-of-year
7 restriction plans, et cetera, et cetera, DES
8 oversight that we've been discussing are all
9 part of the record.

10 Mr. Fitzgerald.

11 MR. FITZGERALD: And the question is?

12 PRESIDING OFFICER WEATHERSBY: Do you
13 believe the Seacoast Reliability Project will
14 have an unreasonable adverse effect on the
15 natural environment?

16 MR. FITZGERALD: No.

17 MS. DUPREY: No.

18 MR. WAY: No.

19 MR. SCHMIDT: No.

20 MR. SHULOCK: No.

21 DIR. MUZZEY: No.

22 PRESIDING OFFICER WEATHERSBY: No.
23 Okay. Let's move on then.

24 Next subject is Public Health and

1 Safety. Mr. Shulock.

2 MR. SHULOCK: So again we're under
3 RSA 162-H:16 IV(c). We have to make a
4 determination whether the proposed facility
5 will have an unreasonable adverse effect on
6 public health and safety. Our considerations
7 are listed in Site 301.14(f), Sections 1 and 4,
8 which I'm not going to read verbatim. I'm just
9 going to summarize the requirements in there.

10 So what we have to consider is
11 information submitted pursuant 301.08 --
12 that's the application requirements -- and
13 other relevant evidence submitted pursuant to
14 Site 202.24. That's just generally the
15 evidence that the parties put before us to
16 consider; 2) the potential unreasonable
17 adverse effects of construction and operation
18 of the Project on public health and safety;
19 3) the proximity and use of buildings,
20 property lines and public roads; 4) the risks
21 of collapse of towers, poles and other
22 supporting structures; 5) potential impacts
23 on public health and safety, electric and
24 magnetic fields generated by the proposed

1 facility; and 6) the effectiveness of
2 measures taken or plans to avoid, minimize or
3 mitigate the potential adverse effects.

4 So the application requirements,
5 not surprisingly, require the Applicant to
6 give us information on those considerations
7 plus some additional ones. One is the
8 assessment of operational sound associated
9 with the facility with certain decibel
10 requirements; a decommissioning plan; a plan
11 for fire safety, prepared in consultation
12 with a fire safety expert; a plan for
13 emergency response to the proposed facility;
14 and then again, measures taken or a plan to
15 avoid, minimize, mitigate public health and
16 safety impacts.

17 So, the first one I'm going to
18 summarize is the evidence on electric and
19 magnetic field. And as a general
20 introduction, I think this is an area where
21 the Applicant has provided the vast majority
22 of the evidence. We don't have a lot of
23 positive evidence to contradict what the
24 Applicant has provided. Certainly some of

1 the intervenors in this case have raised some
2 issues, including the individual intervenors.
3 And I would note that it appears that most of
4 the concerns of the Counsel for the Public,
5 Durham, UNH and Newington have been resolved
6 by a stipulated agreement for conditions for
7 us to consider. So, hopefully this won't be
8 a complicated area for decision.

9 So, with regard to electric and
10 magnetic fields, the intervenors -- Donna
11 Heald McCosker, Matthew and Amanda Fitch, and
12 Vivian and Jeff Miller -- have all raised
13 concerns about the effects of electromagnetic
14 fields on their health. And Vivian and Jeff
15 Miller have raised concerns regarding their
16 television reception.

17 So the evidence that we have on
18 that is that the Applicant modeled the levels
19 of electromagnetic fields pre- and
20 post-construction at numerous locations along
21 the route of the Project. Those expected
22 levels from the modeling are listed on
23 Pages 104 to 107 of the original Application,
24 and Pages 25 to 27 of the Amended

1 Application. And they can also be found in a
2 report titled, "Electric and Magnetic Fields
3 Summary," which is Applicant's Exhibit 61.

4 In addition, the Applicant retained
5 an expert, Dr. William Bailey of Exponent,
6 Inc., to assess the literature on the impact
7 of electric and magnetic fields on human
8 health. Dr. Bailey opined that, to a degree
9 of scientific certainty, the EMF associated
10 with the operation of the Project will not be
11 harmful to human health and therefore will
12 not result in an unreasonable effect on
13 public health and safety. He based that
14 opinion on the Applicant's modeling and on
15 his assessment of the scientific literature
16 on the subject, which together he believed
17 show that the expected EMF levels are
18 significantly below basic restrictions for
19 public and environmental exposure to EMF
20 fields set forth in the International
21 Committee on Electric and Magnetic Safety,
22 and by the International Commission on Non-
23 Ionizing Radiation Protection. It was
24 significant to Dr. Bailey that the World

1 Health Organization has found that current
2 evidence does not confirm the existence of
3 any health consequences for exposure to
4 low-level magnetic field -- electromagnetic
5 fields and that the International Committee
6 on Electromagnetic Safety believed that the
7 evidence of a causal relationship between
8 low-level EMF fields and childhood leukemia
9 was too weak to form a basis for setting
10 health standards.

11 Dr. Bailey summarized all of that
12 research in a report which was submitted as
13 Applicant's Exhibit 60, and that's titled,
14 "Current Status of Research on Extremely
15 Low-Frequency Electric and Magnetic Fields
16 and Health, Seacoast Reliability Project."

17 With regard to radio and television
18 interception and interference, the Applicant
19 represented that the proposed line has been
20 designed in a manner consistent with the IEEE
21 "Radio Noise Design Guide for High-Voltage
22 Transmission Lines", that the Project will
23 comply with applicable Federal Communications
24 Commission's rules and regulations. And they

1 state that while some interference with AM
2 radio may occur, FM radio and television
3 interception or interference generally
4 doesn't occur at voltages lower than 345 kV.
5 Eversource does not expect that FM and
6 television interception and interference are
7 likely to result from the Project. If it
8 does occur, Eversource represents that the
9 source of the interference can be located and
10 remedied. That's Mr. Jarvis's testimony.

11 The Applicant and Counsel for the
12 Public have stipulated to a number of facts
13 in this regard. They're found in
14 Exhibit 184, Page 4, Paragraphs 26 to 28.
15 And the Applicant and Counsel for the Public
16 have proposed conditions relating to EMF
17 verification, and those are found in Exhibit
18 193, Conditions 34 and 35.

19 Would the Chair like to go through
20 those conditions?

21 PRESIDING OFFICER WEATHERSBY: Why
22 don't you read them off so everyone can hear
23 what the proposed conditions are.

24 MR. SHULOCK: Okay. So, Condition 34

1 is that the Applicant, in consultation with the
2 New Hampshire Public Utilities Commission's
3 Safety Division, shall measure actual
4 electromagnetic fields associated with the
5 operation of the Project, both before and after
6 construction of the Project, during projected
7 peak load, and shall file with the SEC the
8 results of the electromagnetic fields
9 measurements.

10 Conditions 35. If the results of
11 the electromagnetic fields measurements
12 exceed the guidelines of the International
13 Committee on Electromagnetic Safety, or the
14 International Commission on Non-Ionizing
15 Radiation Protection, the Applicant shall
16 file with the SEC a mitigation plan designed
17 to reduce the levels so that they are lower
18 than the ICES or the ICNIRP guidelines.

19 MR. WAY: Could I ask a question, Mr.
20 Shulock? So this is back to the earlier
21 question raised by Mr. Fitzgerald. We've
22 talked at this point about public availability
23 of all the plans. I'm assuming this plan would
24 be part of that as well?

1 And Madam Chair, when they say
2 "shall file with the SEC the results of the
3 fields measurements," is that something we're
4 posting and is available to the public?

5 PRESIDING OFFICER WEATHERSBY: Yes.

6 MR. WAY: Very good. Thank you.

7 MR. SHULOCK: I believe that
8 summarizes all the evidence on EMF.

9 So, any other comments?

10 PRESIDING OFFICER WEATHERSBY: Anyone
11 like to comment concerning electromagnetic
12 fields radiation?

13 [No verbal response]

14 MR. SHULOCK: Oh, there is another
15 thing. Looks like the Applicant has agreed
16 with the Fitches to do before and after tests
17 on their property. I don't know if they've
18 agreed with any other property owner.

19 DIR. MUZZEY: And as I recall, the
20 Fitch property is adjacent to the Project on
21 two sides of the property, and so they were
22 characterized as the property "most potentially
23 affected" by this type of concern.

24 MR. SHULOCK: So the second criteria

1 is risk of collapse of towers, poles or other
2 supporting structures, and the proximity and
3 use of buildings, property lines and public
4 roads.

5 So the Applicant asserted that it
6 proactively mitigated the risk associated
7 with structural failure of the Project by
8 using good engineering design. The Applicant
9 designed the Project to comply with its own
10 high design standards and with the National
11 Electric Safety Code, specifically standards
12 that address physical loading due to extreme
13 weather events. These standards include the
14 NESC -- National Electric Safety Code Heavy
15 Loading, NESC Extreme Wind requirements, NESC
16 Extreme Ice with Concurrent Wind
17 requirements, and Eversource's Heavy Ice
18 requirements. Eversource also stated that it
19 will also follow recommendations of the
20 American Society of Civil Engineers Manual
21 and Report on Engineering Practice No. 74,
22 Guidelines for Electrical Transmission Line
23 Structural Loadings. Applicant claims that
24 if a structure fails, then the relaying

1 systems will detect faults and de-energize
2 the line. The Applicant's employees will
3 respond promptly to address the reason for
4 any failure and conduct any necessary
5 repairs.

6 According to the Applicant, poles
7 and wires must be thought of as systems
8 because poles and wires are attached to each
9 other and act upon each other. Wires that
10 are connected to the structures prevent the
11 total collapse of structures. In a
12 catastrophic failure, a failed structure will
13 buckle within its original footprint or be
14 pulled in along the line of the wire, with
15 the point of deformation located above ground
16 line. Poles would seldomly fall about the
17 base and result in a radial zone of impact.
18 Eversource represented that it is highly
19 probable that any and all elements of
20 collapsed towers will remain within the
21 bounds of the right-of-way.

22 The Applicant will mitigate risks
23 associated with tower collapse by
24 implementing inspection and maintenance

1 programs that are currently in place for all
2 other PSNH projects. There are number of
3 conditions proposed by Eversource and Counsel
4 for the Public that relates to construction
5 safety. These include Exhibit 193 at
6 Paragraph 2 relating to construction in
7 accordance with Eversource policies, NESC
8 requirements and national and regional
9 reliability standards. They relate to the
10 filing of a copy of the Best Management
11 Practices with the SEC, and they relate to
12 notification of affected host towns and the
13 SEC Administrator of significant anticipated
14 changes or events that may impact the public
15 environmental compliance, or terms and
16 conditions of the certificate, public
17 transportation or public safety.

18 So, does anybody have questions or
19 comments?

20 PRESIDING OFFICER WEATHERSBY: Ms.
21 Duprey.

22 MS. DUPREY: It seems to me that the
23 method for the description of how a tower might
24 collapse is very similar to a

1 telecommunications tower, the method of
2 construction being that they collapse in on
3 themselves. So I thought -- and these are much
4 shorter than a telecommunications tower, which
5 are generally -- a lattice tower is around
6 190 feet. And these, I think, are 105 feet on
7 the tallest end, I think, down to 50 to 60 feet
8 on the shorter end. So that makes sense to me.
9 It would seem that if there was a collapse, it
10 would happen within the right-of-way.

11 PRESIDING OFFICER WEATHERSBY: I
12 think, too, we heard testimony concerning tower
13 collapse, that for transmission lines or
14 electric lines generally, that if there is a
15 problem with the conductors strung between the
16 poles, that they tend to have them fall -- they
17 kind of pull it, and it will collapse in the
18 right-of-way and not just randomly to the left
19 or the right. It will kind of follow that. So
20 that certainly -- and these are subjects that,
21 you know, everyone fears. It's going to fall
22 in my yard. We're going to get radiated from
23 the electric -- but the science of it and
24 the -- and I understand those fears, especially

1 as a parent. But the science of it all and the
2 experience of what has gone before I think
3 really can put a lot of those fears to rest.

4 DIR. MUZZEY: I would agree with that
5 as well. And I would also note that our review
6 of public -- of potential unreasonable adverse
7 effects on public health and safety cover a
8 whole range of different types of energy
9 projects, whether transmission lines, biomass
10 facilities, wind facilities. And so we do have
11 a longer record with facilities such as
12 transmission lines and this type of project.
13 So there is much more to depend upon than some
14 of the newer technologies that might come
15 before this Committee.

16 MR. WAY: Mr. Shulock, as you looked
17 at the testimony of the individual intervenors,
18 most of the concern I think was EMF, some
19 sound. I'm trying to remember if there was
20 significant concern about falling in the
21 testimony.

22 MR. SHULOCK: I didn't see any
23 concern with collapsing towers in the
24 testimony.

1 MR. WAY: I seem to recall --

2 MR. SHULOCK: Donna Heald McCosker
3 was concerned about sound and that she wouldn't
4 be able to sleep. She was also concerned about
5 health effects. The Millers were concerned
6 about health effects and reception. And the
7 Fitches were concerned about health effects. I
8 don't recall seeing among their concerns that
9 towers would collapse.

10 MR. WAY: I seem to recall Ms. Heald
11 mentioning it, but I'm looking at her testimony
12 now and I'm not seeing that.

13 MR. SHULOCK: Well, it is possible
14 that she gave that testimony on the stand.

15 MR. WAY: That's what I -- yes. Good
16 point.

17 MR. FITZGERALD: Mr. Shulock, the PUC
18 has a safety division also. Do they oversee
19 the area of transmission line safety as well?

20 MR. SHULOCK: We will respond to
21 safety concerns regarding transmission
22 structures, yes.

23 MR. FITZGERALD: I mean, it seems to
24 me the casual observer -- I don't think I've

1 ever heard of a transmission line tower
2 collapsing or falling is -- has the -- in your
3 experience, has that been an issue for the PUC?

4 MR. SHULOCK: In my experience, no.
5 But my experience is limited.

6 MR. FITZGERALD: Yeah.

7 PRESIDING OFFICER WEATHERSBY: I will
8 say that in other dockets we've seen pictures
9 from other parts of the world and in this
10 country where transmission towers have
11 collapsed.

12 MR. SHULOCK: You know, I don't doubt
13 that some may have collapsed in hurricane
14 conditions or tornado conditions and things
15 like that, but these standards for heavy
16 loading are for the conditions we experience
17 here in New Hampshire, right. Our loading is
18 basically from snow, ice and wind. And they
19 are designing these towers to the highest
20 requirements that there are for those. So I
21 don't think that our safety division would have
22 a concern at all about the way that these
23 towers have been designed. But understand, I'm
24 not the safety division. But given the

1 standards that they're designing them to, I
2 think I can safely make that statement.

3 MR. FITZGERALD: And I believe there
4 was a number of, as well as construction,
5 there's a significant amount of maintenance
6 requirements that are referenced in many of the
7 documents we've looked at. So I assume that's
8 a large --

9 MR. SHULOCK: I believe it's their
10 practice to do aerial surveys of all their
11 transmission lines on a periodic basis to
12 identify any problems that might exist.

13 PRESIDING OFFICER WEATHERSBY:
14 Anything else concerning tower collapse?

15 [No verbal response]

16 PRESIDING OFFICER WEATHERSBY: We'll
17 move on to the next topic, sound.

18 MR. SHULOCK: Yeah. So sound was
19 discussed by Mr. Jarvis. And according to his
20 testimony, Eversource used International Best
21 Practices to model sound impacts at
22 representative sites along the Project route.
23 Based on that modeling, they assert that the
24 Project will not increase sound above the

1 present levels, and therefore not by the 10 dBA
2 or more over background noise levels at the
3 property boundary of the site or at the edge of
4 the right-of-way, which is the standard that we
5 have to consider.

6 The Applicant asserts that the
7 Project will not cause a corona effect that
8 will manifest itself in audible noise, as
9 that usually occurs on lines of 500 kV and
10 above, not usually on 115 kV lines. The
11 worst calculated noise level along the
12 Project route are within EPA guidelines and
13 also meet the World Health Organization's 40
14 dBA guideline. So Mr. Jarvis asserted that
15 the Project will comply with all relevant
16 federal, state and international guidelines
17 for audible noise.

18 PRESIDING OFFICER WEATHERSBY: Any
19 questions or comments concerns sound?

20 [No verbal response]

21 PRESIDING OFFICER WEATHERSBY: Okay.
22 We can move on.

23 MR. SHULOCK: So the next area is the
24 decommissioning plan. In an order we issued on

1 December 29th, 2016, we waived certain filing
2 requirements relating to the hiring of
3 independent experts to develop a
4 decommissioning plan at this time and other
5 requirements, although the order indicated that
6 any certificate that we issue might contain
7 related conditions.

8 In the supplemental testimony of
9 Bowes and Plante, the Applicant requested
10 related decommissioning-related conditions be
11 placed on the certificate. And since that
12 time, the Applicant has agreed to proposed
13 conditions with the Counsel for the Public.
14 And these are found in Applicant Exhibit 193.
15 They're Conditions 36 and 37.

16 Condition 36 says, in the event
17 that the Project ceases to be used and
18 useful, the Applicant shall be obligated to
19 decommission the Project in accordance with
20 then-applicable rules of the SEC or
21 successive -- its successor regulatory body.

22 Thirty-seven says that the Applicant
23 shall: 1) submit a report to the Committee
24 every ten years indicating any change in the

1 need for the Project to ensure the continued
2 reliability of the regional bulk transmission
3 system; 2) properly notify the Committee of
4 any retirement obligation that arises; and 3)
5 submit to the Committee a decommissioning
6 plan in accordance with then-applicable rules
7 upon any imposition of a decommissioning
8 obligation or prior to the retirement of any
9 part of the Project. These are the same
10 decommissioning requirements that were
11 ordered for the Merrimack Valley Reliability
12 Project. And I would note in there that
13 there are no additional funding requirements
14 for that, other than the FERC accounting
15 requirements.

16 That's it. So does anybody else have
17 any comments or questions?

18 MR. FITZGERALD: Just it was
19 mentioned that these are the same requirements
20 for Merrimack Valley. Obviously this project
21 is going through an existing corridor. But it
22 goes through significant areas of cultural and
23 historical concern, as well as historic sites
24 and districts, et cetera. I wasn't concerned

1 with Merrimack Valley, but I don't think that
2 was a major, major issue. I just wondered if
3 the Committee -- if there's anything the
4 Committee needs to consider relative to
5 decommissioning if it became necessary. It
6 seems to me we heard a lot of testimony that
7 these transmission lines don't get
8 decommissioned. They get, you know,
9 maintained, possibly improved or whatever over
10 time. So I think that was the basis of our
11 order not to require a decommissioning plan.
12 But I guess I just wondered about these
13 sensitive areas, if we need to think about
14 anything with relationship to those. And I
15 don't have anything in particular in mind but
16 just wanted to raise the issue.

17 PRESIDING OFFICER WEATHERSBY: So I
18 would point out that our rules require certain
19 things in a decommissioning plan, in that the
20 plan -- particularly, the plan has to be
21 prepared by an independent, qualified person
22 with demonstrated knowledge and experience in
23 similar energy projects and cost estimates. I
24 mean, there's a number of other requirements,

1 nothing that relates specifically to historic
2 resources. But the person who is preparing the
3 plan would need to be qualified and have
4 demonstrated knowledge concerning
5 decommissioning similar energy projects.

6 Director Muzzey.

7 DIR. MUZZEY: I'm looking at our
8 rules as well in regard to what a
9 decommissioning plan needs to be for all energy
10 facilities. This is at Site 301.08(d)(2)a, b,
11 c, d. And thinking about Mr. Fitzgerald's
12 concern regarding the sensitive historical and
13 cultural areas this line travels through, I do
14 think a decommissioning plan as envisioned by
15 this rule would address the concerns typically
16 encountered. Although I will note under (2)d,
17 it specifies all underground infrastructure at
18 depths less than four feet below grade shall be
19 removed from the site, and all underground
20 infrastructure at depths greater than four feet
21 below finished grade shall be abandoned in
22 place. So there could be some archeological
23 concerns at that point. We may be operating in
24 what we would consider disturbed areas already,

1 although we would want to see some sort of
2 review by the Division of Historical Resources
3 if they -- of the decommissioning plan at that
4 point.

5 My concern also is for the concrete
6 mattresses. I think this has come up once or
7 twice before. They are a different type of
8 feature on the Project, at least in my
9 experience that I'm used to considering. And
10 Items A through B don't -- I don't feel
11 really anticipate that type of
12 infrastructure. And I'm just wondering what
13 others on the Committee are thinking, whether
14 we need to address them in any manner or if
15 the condition as currently drafted is
16 sufficient to assume that they will be taken
17 care of in an appropriate way.

18 PRESIDING OFFICER WEATHERSBY: So I
19 think you can look at proposed Condition 37
20 agreed to between Counsel for the Public and
21 the Applicant. The Applicant's decommissioning
22 plan under (iii), the Applicant has to submit
23 the decommissioning plan in accordance with
24 then-applicable rules, upon imposition of a

1 decommissioning obligation or prior to the
2 retirement of any part of the Project. So if
3 they're going to take concrete mattresses out
4 for any reason, whether it's they want to put
5 in new ones or have found a different
6 technology or it's decommissioning, I think
7 this covers it because it is a part of -- the
8 mattresses are part of the Project. If folks
9 feel more comfortable, we can be more specific
10 or disagree with my reading of this.

11 MS. DUPREY: Could you give us the
12 site again?

13 PRESIDING OFFICER WEATHERSBY: So
14 this is proposed Condition 37 found in
15 Applicant's Exhibit 193.

16 (SEC Members reviewing document.)

17 DIR. MUZZEY: During the proceeding
18 we heard that this facility will be in place
19 for some time, that it may never be
20 decommissioned. And if it is decommissioned,
21 it may be in a long time from now, 40, 50, 60
22 years. And it's difficult to anticipate what
23 the concrete mattresses will have done in the
24 meantime. They're in a very active aquatic

1 environment, and it's difficult to anticipate
2 whether or not it would be, from an
3 environmental perspective, preferable to remove
4 them or to leave them in place. I don't know
5 that we can anticipate that. When I read the
6 last part of Section 37, my first concern was
7 the Applicant not wanting to retire the
8 concrete mattresses and take them away but
9 rather abandon them in place, because they seem
10 to fall between the lines of infrastructure
11 that's considered in our rules now under the
12 decommissioning plan. And it may be from, an
13 environmental perspective, preferable to
14 abandon them in place. But we don't know that
15 now. Or I don't know that now. I should
16 clarify.

17 PRESIDING OFFICER WEATHERSBY: Maybe
18 we just add the clause to this that, you know,
19 such plans shall include a provision for the
20 concrete mattresses in case it's not -- in case
21 they do not plan to retire them and perhaps
22 it's not covered by the then-applicable rules.
23 So if we want to be sure the mattresses are
24 addressed, we just say the plan will include a

1 provision for the concrete mattresses, and then
2 applicable agencies will review it and a
3 decision will be made.

4 Mr. Shulock.

5 MR. SHULOCK: This may be a question
6 for counsel, but others can feel free to
7 answer. I'm not sure that anywhere in our
8 rules or our statute there's a requirement to
9 decommission. We just have a requirement to
10 review a decommissioning plan, as I understand
11 it. So I don't know who requires
12 decommissioning. I don't know who requires
13 retirement, or whether that's always a
14 voluntary decision. And I'm wondering whether
15 we should require decommissioning and removal
16 at a certain functional point, you know, once
17 the line is no longer necessary to meet the
18 needs and is no longer in use or something like
19 that, rather than risking that the poles and
20 wires will be abandoned in place. As I
21 understand it, the transmission wires over
22 Gundalow Landing -- or the distribution line
23 under Gundalow was there for quite some time
24 after the line was no longer in the use and was

1 finally taken out. But I don't know whether
2 that was voluntary or a requirement. And, you
3 know, I just -- I don't know if this Committee
4 has ever actually required decommissioning
5 after a facility is no longer used and useful.

6 MR. IACOPINO: I'm aware of no
7 hearing or no application or other
8 consideration by the Committee about having to
9 retire -- having to decommission any existing
10 facility or transmission line. But I think the
11 practical answer to the question is when -- who
12 would require a retirement? Probably the ISO
13 or whoever is operating the grid. And then the
14 question is: If the line is transmission -- if
15 the transmission line is retired, do you
16 require it to be removed? I think that's where
17 you're getting. That's a decision for you all
18 as a committee to make.

19 MS. DUPREY: Is that something that
20 we need to make now? Is that not something
21 that the SEC could review at the time?

22 MR. IACOPINO: The stipulation that
23 you're considering does have a requirement of a
24 report every ten years regarding what the

1 status is.

2 MS. DUPREY: Can someone remind me,
3 and I'm sorry if I didn't hear people mention
4 it before, what was waived in the docket with
5 respect to decommissioning?

6 MR. IACOPINO: The filing of a formal
7 decommissioning plan, which would include both
8 what they anticipate salvage costs to be, how
9 they're going to take -- how they're going to
10 remove the actual infrastructure and things
11 like that are all required in a decommissioning
12 plan.

13 MS. DUPREY: And how does that relate
14 to this rule?

15 MR. IACOPINO: How does what relate
16 to the rule?

17 MS. DUPREY: What we waived. What
18 did we waive? Where in the rule is --

19 MR. IACOPINO: Well, you waived the
20 filing of a decommissioning plan, so there is
21 no decommissioning plan before you today. For
22 instance, if this was a wind facility, you
23 would probably have a formal decommissioning
24 plan that would have specifications about how

1 the towers would be dismantled, how they would
2 be removed, what would happen with the roadways
3 and things like that. You don't have that in
4 this particular docket because you waived that
5 requirement. What you do have before you is a
6 proposed condition between Counsel for the
7 Public and the Applicant requiring making a
8 decommissioning plan at some point in the
9 future and reports every ten years I believe.
10 Yeah, every ten years reporting on the need for
11 the Project to ensure continued reliability of
12 the system and of any retirement obligations,
13 which I think, as I mentioned before, more
14 likely would come from ISO rather than anywhere
15 else.

16 MS. DUPREY: Okay, okay.

17 MR. IACOPINO: And then they would
18 submit the decommission plan.

19 MS. DUPREY: That's way more
20 information than I'm looking for.

21 MS. MONROE: Okay.

22 MS. DUPREY: I'm just trying to find
23 out did we waive the terms of this rule that
24 we're looking at right now, which is 308 --

1 301.08(d)(2)a through d. Seems to me that must
2 be what we waived.

3 DIR. MUZZEY: I believe what we
4 waived is the time of when that plan is filed.
5 The plan and its contents remain the same as
6 described in our rules, or in the rules as they
7 exist in the future when the timing kicks in
8 for the decommissioning plan.

9 MS. DUPREY: Okay. So we didn't
10 waive decommissioning. So back to my original
11 question --

12 DIR. MUZZEY: No, we waived the
13 timing.

14 MS. DUPREY: We just waived the
15 timing of it.

16 DIR. MUZZEY: That's my understanding
17 of it.

18 MS. DUPREY: Okay. Thank you.

19 MR. IACOPINO: Normally one is filed
20 at the time the Application is filed.

21 MR. WAY: So, back to the Chair's
22 point. And that is my understanding, too.
23 We're just simply allowing this to come to some
24 point in the future.

1 But Condition 37, where we have
2 ten-year increments of assessment, if we
3 qualify that by adding the concrete mats into
4 that, would that suffice? Do people think
5 that would suffice?

6 MR. SCHMIDT: I think it would.

7 PRESIDING OFFICER WEATHERSBY: I have
8 a new concern I didn't have earlier after
9 listening to everybody, and that is, if the
10 line is retired, that the poles remain, how
11 realistic that is. But that certainly isn't
12 something we would wish on the hosting
13 communities. So I'm adding more things to my
14 suggestion. Something to the effect of if a
15 line is retired, that a decommissioning plan
16 should be submitted for the entire project.

17 MS. DUPREY: So there's a difference
18 between decommissioning and removal? Is that
19 what I'm understanding?

20 MR. SHULOCK: I think that
21 decommissioning is generally thought of as
22 removal of the equipment.

23 MS. DUPREY: Well, why doesn't 36
24 take care of this?

1 PRESIDING OFFICER WEATHERSBY:

2 Actually, I think 37 maybe does as I read it
3 again. I'm going to get nudged by the person
4 to my right. If there's a retirement of any
5 part of the Project -- so, say the line is
6 retired -- then they do need to submit to the
7 Committee a decommissioning plan for the
8 Project. So I think that my concern is
9 covered.

10 MR. WAY: That's my reading of this.
11 You know, we may be the kicking the plan down
12 the road for someone else to look at. But I
13 don't think we're giving them something with
14 lots of gaps. It's clear to me that we're
15 talking about the Project. I think 36 and 37
16 cover it. My only question on 37 is do you
17 want to call out the mattresses, including the
18 mattresses? I think 36, myself, covers it,
19 but...

20 MR. SHULOCK: I also think that 36
21 covers the mattresses.

22 MR. SCHMIDT: I do, too.

23 MR. FITZGERALD: I have one question.
24 In waiving the requirement for the plan, did we

1 also waive any requirement for financial
2 assurance?

3 MR. WAY: At this point. So at this
4 point we wouldn't be requiring financial
5 assurance.

6 PRESIDING OFFICER WEATHERSBY: What
7 we determined, according to my notes, was back
8 early in the proceeding when we were
9 considering the decommissioning plan, we
10 determined that the Applicant provide at least
11 satisfactory alternative mechanism for
12 recovering the cost of decommissioning if it
13 becomes necessary at some future date under the
14 FERC-approved transmission tariff.

15 So we did -- didn't make them show
16 they had money reserved because it was -- we
17 considered that most likely the cost of
18 decommissioning would be recovered from the
19 FERC tariff.

20 MR. WAY: As I recall, I think under
21 the financial discussion we also brought this
22 up as well.

23 PRESIDING OFFICER WEATHERSBY:
24 Director Muzzey.

1 DIR. MUZZEY: To get back to your
2 question about leaving poles in place, when I
3 look at our rule for what a decommissioning
4 plan needs to include, there's four things.
5 And the two things that address removal of
6 infrastructure are Items C and D. C notes that
7 all transformers shall be transported off site.
8 D notes that all underground infrastructure at
9 depths less than four feet below grade shall be
10 removed from the site, and all underground
11 infrastructure at depths greater than four feet
12 below the finished grade shall be abandoned in
13 place.

14 So as I read Item D, it seems to
15 address only underground infrastructure. So
16 I'm wondering if others on the Committee read
17 that differently.

18 PRESIDING OFFICER WEATHERSBY: I
19 think we're overthinking it.

20 DIR. MUZZEY: Okay.

21 MR. SHULOCK: 8(c) says all overhead
22 power collection conductors and the power poles
23 shall be removed from the site.

24 DIR. MUZZEY: I think you may be

1 reading something different than me. Can you
2 tell me what site that is?

3 PRESIDING OFFICER WEATHERSBY: I
4 think you're reading the requirements of what
5 needs to be in the Application for a
6 decommissioning plan.

7 MR. SHULOCK: Yes.

8 PRESIDING OFFICER WEATHERSBY: And
9 this, what we're asking, is that they abide by
10 the rules concerning decommissioning plans that
11 may be there in the future, which I would think
12 would include that.

13 Also as a practical point of view,
14 if they take out the base of the tower that's
15 underground -- so I think we're overthinking
16 it a little bit. My personal opinion after
17 listening to all of us talk is that 36 and 37
18 are more than adequate.

19 MR. SCHMIDT: I think Mr. Shulock is
20 looking at the wind energy systems portion.

21 MR. SHULOCK: Sorry. You're right.
22 I was.

23 PRESIDING OFFICER WEATHERSBY: You
24 want to talk any more about decommissioning?

1 Any further comments?

2 What's our next -- oh, wait, wait.

3 Ms. Duprey.

4 MS. DUPREY: I do. Just as a point
5 of order, what else are we going to talk about
6 with respect to decommissioning under the
7 Orderly Development of the Region?

8 PRESIDING OFFICER WEATHERSBY: I
9 think it would be the same conversations.

10 MS. DUPREY: Okay.

11 PRESIDING OFFICER WEATHERSBY: We'd
12 probably be able to skip that or maybe look at
13 the other comments that look at it from that
14 point of view.

15 MS. DUPREY: All right. Thank you.

16 MR. SHULOCK: So the next is a fire
17 safety plan. So, Site 301.08(d)(3) required
18 Eversource to submit a plan for fire safety
19 prepared by or in consultation with a fire
20 safety expert. In its Application, Eversource
21 asserted there is no need to prepare a plan for
22 fire safety because the right-of-way will not
23 be occupied, and therefore there won't be any
24 personnel to evacuate. They said that during

1 construction and operation of the Project, any
2 workers in the right-of-way will be evacuated
3 and a local fire department will be called.
4 Fires are to be addressed by local fire
5 departments. And Eversource will respond
6 pursuant to its Electric Operations Emergency
7 Response Plan, which they provided as
8 Exhibit 62.

9 PRESIDING OFFICER WEATHERSBY: Any
10 questions or comments concerning fire safety?

11 [No verbal response]

12 PRESIDING OFFICER WEATHERSBY:
13 Hearing none.

14 MR. SHULOCK: Okay. So the next is a
15 plan for emergency response to a site. So the
16 Applicant filed Eversource Energy Emergency
17 Response Program, New Hampshire Electric
18 Operations Emergency Plan, dated March 5th,
19 2015. They provided that as Applicant's
20 Exhibit 62. That emergency response program is
21 designed for response to, quote, emergency
22 events caused by, but not limited to: Severe
23 weather, flooding, civil disturbance, fire,
24 explosion or other major disruption of the

1 distribution system, or any other instance for
2 which the incident commander determines that
3 additional assistance or coordination is
4 needed.

5 Additionally, there is an MOU with
6 Newington that requires Eversource to ensure
7 that access roads to the Project are
8 accessible to emergency vehicles. And that's
9 it. So, essentially, we'd be relying on an
10 established Eversource response program.

11 PRESIDING OFFICER WEATHERSBY: Any
12 questions or concerns or comments concerning
13 the emergency response plan?

14 [No verbal response]

15 MR. SHULOCK: Okay. So those are the
16 specifically called-out issues that we would
17 look at. And then we have the issues that are
18 raised by the evidence itself. And the first
19 is navigation safety.

20 There were several intervenors who
21 raised concerns that the concrete pads in
22 Little Bay Crossing would pose a hazard to
23 kayakers and boaters. There was also some
24 concern about whether boaters in general

1 would know where the transmission line was in
2 the deeper channel.

3 And Counsel for the Public's
4 construction experts thought that it might be
5 beneficial to require the Applicant to
6 install sign identification identifying the
7 cable's location in Little Bay.

8 So the Applicant's evidence came in
9 primarily through Mr. Dodeman. And according
10 to Mr. Dodeman, Applicant submitted as-built
11 plans to the National Oceanic and Atmospheric
12 Administration. That will enable, call it
13 NOAA, to mark the area of the cable and
14 concrete mattresses on navigation charts. If
15 DES and the Coast Guard approve, Eversource
16 will install temporary markers to identify
17 the mattresses pending their identification
18 on the navigation charts. And Eversource
19 will work with the Coast Guard to issue a
20 notice to mariners to make the boating
21 community aware of the construction.
22 Coordinate with the New Hampshire Division of
23 Ports and Harbors and the New Hampshire
24 Department of Safety Marine Patrol to

1 determine whether markers should be placed.

2 MR. WAY: Question?

3 MR. SHULOCK: Yes.

4 MR. WAY: That last part, "to
5 determine whether markers should be placed," is
6 that whether markers should be placed
7 permanently?

8 MR. SHULOCK: I think it's whether
9 they should be placed at all. There's no
10 qualification.

11 MR. WAY: Didn't we already agree to
12 do temporary?

13 DIR. MUZZEY: I believe it was in
14 consultation with entities such as the Coast
15 Guard and Marine Harbor, given their local
16 knowledge of conditions there. I mean, sitting
17 here in Concord, it seems like a good idea,
18 consultation with those entities with the more
19 localized decision.

20 MR. WAY: That seems appropriate.

21 PRESIDING OFFICER WEATHERSBY: I'd
22 point out that DES Permit Condition No. 52
23 deals with this and requires, prior to the
24 concrete mattresses being installed, the

1 Applicant has to coordinate with the Division
2 of Ports and Harbor and Marine Patrol to
3 determine if the mattresses create a
4 navigational hazard; and if so, require
5 compliance with any of theirs requirements. So
6 that's a condition in the DES permit already.

7 MR. SHULOCK: Okay. So the next is
8 aviation safety. And in its Application,
9 Eversource represented that it met with --

10 PRESIDING OFFICER WEATHERSBY: Oh,
11 actually, before we go there, Mr. Shulock,
12 there was also -- and maybe you touched on
13 this. But we had talked about markings for the
14 cable in the channel to notify boaters where
15 the channel was -- I'm sorry -- where the cable
16 was so they didn't anchor there. I seem to
17 recall discussions about that. It was more
18 than concrete mattresses I thought.

19 MR. SHULOCK: Right. So the --

20 PRESIDING OFFICER WEATHERSBY: Did
21 you already --

22 MR. SHULOCK: Counsel for the
23 Public's expert thought it might be beneficial
24 to install some identification of the cable's

1 location. They will be providing -- I don't
2 think there's any agreement on that, however.
3 But the Applicant has said that they're going
4 to provide as-built plans to NOAA. I think we
5 heard testimony that NOAA will mark on all the
6 navigational charts where they are. I don't
7 know whether NOAA would require signage, but --

8 MR. WAY: I think, as Director Muzzey
9 said, it's the same thing as marking the
10 concrete mattresses. I mean, from my way of
11 looking at it, I would think they want markers
12 in the bay so you're not going to have anchors.
13 But that's just one person's opinion. I think
14 I'd defer to those that know the bay and know
15 the best way to mark.

16 MS. DUPREY: Do we have the power to
17 request something like that in navigable
18 waters? I'm going to go with "No."

19 PRESIDING OFFICER WEATHERSBY: I
20 think I'd leave it to the governing body.

21 MR. IACOPINO: You certainly have the
22 authority to order the Applicant to consult
23 with the appropriate agencies.

24 DIR. MUZZEY: Trying to quickly get

1 to a marine chart in that area. My
2 understanding was that, given this is a
3 designated cable crossing area, that anchoring
4 is only allowed in emergency situations anyway.
5 But I haven't gotten to the chart to prove
6 that's right. It's an old memory of mine.

7 PRESIDING OFFICER WEATHERSBY: I
8 believe the Applicant said they were going to
9 submit all the information to the appropriate
10 bodies to determine whether markers were
11 necessary or appropriate. I would probably
12 stick with that.

13 MR. FITZGERALD: I think there was
14 also testimony that there was a -- that people
15 navigating on the bay tuned to a specific
16 channel for instructions and information
17 regarding hazards. And I think the only
18 question for us was really the concrete
19 mattresses -- and I think it was the issue, if
20 I recall, was in areas where they were in
21 intertidal areas where they might be covered
22 and uncovered by tides, whether there should be
23 any marking, temporary marking, especially
24 until such sometime as they can be on the

1 navigation charts because they would be a new
2 hazard in the bay.

3 PRESIDING OFFICER WEATHERSBY: We
4 have that Condition 52. I think that deals
5 with that, that they have to coordinate prior
6 to the mattresses going in. They have to
7 coordinate with the appropriate governmental
8 entities.

9 Any more conversation concerning
10 navigation safety?

11 What's the next, aviation?

12 MR. SHULOCK: Aviation safety. So in
13 its Application, Eversource represented that it
14 met with the FAA, and the FAA and Air National
15 Guard and Pease Development Authority reviewed
16 the Project. Eversource represented that the
17 Project will meet all FAA requirements and will
18 not interfere with any local or federal
19 aviation regulations. In addition, the FAA has
20 issued a determination of no hazard to air
21 navigation.

22 The Applicant and Counsel for the
23 Public have entered into a factual
24 stipulation that basically follows what I

1 just said. And that's found at Applicant
2 184, Paragraph 31. Applicant and Counsel for
3 the Public have also entered into a
4 stipulated condition that the Project shall
5 resubmit FAA Form 7460-1, Notice of Proposed
6 Construction or Alteration, to the Federal
7 Aviation Administration at least 45 days
8 before commencing construction to address any
9 changes that have been made to the original
10 design.

11 Any questions or concerns on this?

12 [No verbal response]

13 MR. SHULOCK: Okay. So the next area
14 is traffic safety. So the Applicant retained
15 Lynn Frazier, or Lynn Farrington Frazier I
16 guess. She's a civil highway engineer and
17 licensed professional traffic operations
18 engineer to review the traffic impacts
19 occasioned by the construction of the Project.
20 DOT's permits will require the Applicant to
21 develop and follow traffic control plans
22 consistent with the Manual of Uniform Traffic
23 Control Devices that will be approved by a
24 certified traffic operations engineer. The

1 traffic control plans were filed with DOT, and
2 DOT didn't raise any concerns about their
3 adequacy.

4 Ms. Frazier opined that the traffic
5 management components of the Project will
6 provide appropriate mitigation of temporary
7 impacts to traffic to ensure that there will
8 be no unreasonable adverse effects on public
9 safety along public highways and local
10 streets and that the Project will not have
11 and unreasonable adverse effect on public
12 safety along public highways and local
13 streets.

14 With regard to access of emergency
15 vehicles for UNH facilities, Mr. Bowes and
16 Mr. Plante testified that emergency vehicles
17 will be able to access all UNH facilities
18 during construction of the Project and that
19 roads will have at least one lane open with
20 traffic control and/or police detail. In the
21 case of a road closure, temporary access
22 roads will be constructed or detours will be
23 established. Any changes will be
24 communicated to emergency officials. Mr.

1 Bowes and Mr. Plante stated that the
2 Applicant will ensure that emergency access
3 will be maintained for all roads during
4 construction of the Project. And the
5 Applicant has entered into a Memorandum of
6 Understanding with Newington and Durham that
7 govern the use of -- or at least touch on the
8 use of town roads for oversize and overweight
9 equipment, the repair of roads and use of
10 traffic control plans.

11 Eversource and Counsel for the
12 Public suggest two conditions that would
13 require Eversource to adopt safety measures,
14 including traffic officers and flaggers to
15 mitigate any temporary traffic impacts due to
16 construction of the Project and traffic
17 controls that will be conducted in accordance
18 with DOT policies, including the 2009 edition
19 of the Manual of Uniform Traffic Control
20 Devices. And a similar provision appears in
21 the MOU between the Applicant and Durham.

22 MR. WAY: I seem to recall Ms.
23 Frazier had a number of conditions in her
24 testimony and in her supplemental, and I'm just

1 wondering, because you had listed off several
2 conditions, did you take into account --

3 MR. SHULOCK: I did not go back and
4 align those up.

5 MR. WAY: I'm pulling it up now. So,
6 the conditions she wanted us to consider: Mall
7 parking lot, police detail, flagger -- I think
8 you mentioned that -- reducing to the extent
9 practicable number of oversized loads, such as
10 drilling rigs and cranes on New Hampshire
11 roads. And what I'm looking at is Applicant
12 Exhibit 141. I'm on PDF Page 4. Give
13 everybody a moment to look at that if you want.
14 Three: When the overhead right-of-way is being
15 accessed by construction vehicles from
16 municipal roads, police detail or flagger once
17 again; cease construction activities at the
18 campus during graduation weekend -- I think
19 that would be a good idea -- ensure compliant
20 pedestrian detour signing --

21 MR. FITZGERALD: Are you on Page 4
22 or --

23 MR. WAY: I'm now on electronic
24 Page 5, the very top.

1 If a roadwork area must remain
2 while crews and traffic control are not
3 present in the area, steel plates should be
4 placed on town roads, and recommend that the
5 Project team continue its outreach with
6 businesses. I don't know if there's anything
7 there we need to put in as a condition.

8 MS. DUPREY: I actually looked at the
9 same things, except for the steel plating, and
10 compared them to the MOUs, including the
11 graduation weekend, and they are in the MOUs.
12 I do think that one thing we could order is, to
13 say to the extent any of these conditions
14 aren't covered with the MOU, that they're so
15 ordered. But again, except for the steel
16 plating, I think they're in there and so I
17 think some general statement like that would
18 cover it.

19 MR. WAY: I think that's appropriate.

20 PRESIDING OFFICER WEATHERSBY: I
21 think it would be a good idea, too, because
22 there's also Madbury and Portsmouth. And
23 Newington has a different MOU. The terms may
24 be a little bit different. So I think

1 extending these conditions as appropriate to
2 all towns would be helpful.

3 MR. SHULOCK: I agree.

4 DIR. MUZZEY: I agree as well.

5 MR. SCHMIDT: I agree.

6 PRESIDING OFFICER WEATHERSBY: I'm
7 sensing consensus on that. Do you have more on
8 road issues?

9 MR. SHULOCK: No.

10 PRESIDING OFFICER WEATHERSBY: So I
11 would just like to point out that we have a
12 number of stipulated proposed conditions
13 concerning all these road issues, some of which
14 Mr. Shulock touched on, like the Manual of
15 Uniform Traffic Control Devices, et cetera --

16 MR. WAY: Where are you looking?

17 PRESIDING OFFICER WEATHERSBY: So,
18 Exhibit 193, Conditions 1 through 16.

19 MS. DUPREY: And Madam Chair, really
20 17 and 18 bear on it as well with the
21 mitigation dispute process.

22 PRESIDING OFFICER WEATHERSBY: Yes.

23 MS. DUPREY: And 21?

24 PRESIDING OFFICER WEATHERSBY: Do we

1 want to go through each of these conditions to
2 see if it's something you'd like to adopt? I
3 don't want to take up too much time, but it
4 seems as though if we're going to adopt them,
5 we should at least raise it.

6 Okay. So the first one, the
7 Applicant shall construct the Project in
8 accordance with good utility practice in a
9 manner to best accommodate the public and to
10 avoid interference with existing utility
11 facilities as required, blah, blah, blah.
12 That seems like a good idea. Anyone feel
13 otherwise?

14 DIR. MUZZEY: Why don't you just keep
15 going and we'll --

16 PRESIDING OFFICER WEATHERSBY: If you
17 object or want to talk about it -- keep going.

18 No. 2, the Project shall be
19 constructed in accordance with all Eversource
20 policies, National Electric Safety Code,
21 requirements for transmission lines, and
22 national and regional reliability standards.

23 The Applicant -- No. 3. The
24 Applicant shall implement safety measures,

1 including traffic officers and flaggers, to
2 mitigate any temporary traffic impacts due to
3 construction of the Project.

4 No. 4, the Applicant shall
5 construct the Project in accordance with the
6 New Hampshire Department of Transportation
7 Utility Accommodation Manual.

8 No. 5, the Applicant shall
9 implement traffic controls to ensure the
10 materials are delivered safely to the site,
11 and such traffic controls shall be conducted
12 in accordance with New Hampshire DOT
13 policies, including the 2009 edition of the
14 Manual on Uniform Traffic Control Devices.

15 No. 6, the Applicant shall require
16 construction contractors and field personnel
17 to be trained in Safety/Occupational Safety
18 And Health Administration, basic first aid/
19 cardiopulmonary resuscitation, environmental
20 compliance and other relevant topics. In
21 addition, the Applicant shall provide
22 Project-specific training.

23 No. 7, the Project shall resubmit
24 FAA Form 7460-1, Notice of Proposed

1 Construction or Alteration, to the FAA at
2 least 45 days before commencing construction
3 to address any changes that have been made to
4 the original design.

5 MR. FITZGERALD: Madam Chair, if I
6 could go back to 5, I think it was -- oh,
7 No. 6, Applicant shall require construction
8 contractors to be trained in
9 Safety/Occupational Safety Health
10 Administration, basic first aid, et cetera. I
11 believe there was a reference to OSHA hazardous
12 waste operations, HAZWOPER training, for
13 encountering hazardous waste. Does anyone --
14 is that condition covered in another --

15 DIR. MUZZEY: Isn't that part of the
16 DES permitting?

17 MR. SHULOCK: That's part of I think
18 what they're going to do with the groundwater
19 management plan.

20 MR. FITZGERALD: So it may be part of
21 the soil and groundwater management plan. Any
22 worker that directly handles contaminated or
23 potentially contaminated soil water should have
24 OSHA haz waste -- I mean, this generally refers

1 to OSHA, so that may cover it as well. I'm
2 sorry. I'm getting tired.

3 MR. SHULOCK: So I think we've
4 covered the area of contractor safety which was
5 two down.

6 PRESIDING OFFICER WEATHERSBY: Look
7 at that. Going back to the conditions, I guess
8 there's definitely a lot of overlap here.

9 No. 8, prior to any construction
10 activity, the Applicant shall file with the
11 New Hampshire Site Evaluation Committee a
12 copy of all Best Management Practices to be
13 utilized with the Project for all
14 construction activity, to the extent they
15 have not already been provided to the SEC,
16 including, without limitation, BMPs for
17 entering and exiting the right-of-way or
18 construction site; sweeping paved roads and
19 access points; BMPs related to the
20 Applicant's stormwater pollution prevention
21 plan; BMPs for specific locations, such as
22 steep slopes near water bodies; BMPs for
23 submarine shoreland cable installation; BMPs
24 for work near archeological historic sites.

1 During construction, the Applicant shall
2 adhere to BMPs consistent with all state and
3 federal permit requirements.

4 MS. DUPREY: Madam Chair, can I just
5 suggest that while you're reading these
6 conditions, it's taking us a long time to do
7 that, that this is the very area I'm going to
8 be addressing first in the orderly development.
9 And so people might think of these conditions
10 through that lens as well so that we don't have
11 to reread them all over again tomorrow or
12 tonight or whatever.

13 PRESIDING OFFICER WEATHERSBY: Do you
14 think it would be better to wait and discuss
15 these then?

16 MS. DUPREY: I think it doesn't
17 matter when we do it. I just don't think we
18 should do it twice.

19 PRESIDING OFFICER WEATHERSBY: So
20 this is travel safety and construction safety.
21 I suppose we should just keep going. I don't
22 like reading these --

23 MR. WAY: Plow on.

24 MR. SCHMIDT: Madam Chair, relative

1 to No. 8, though, I don't see any reference to
2 submissions to the specific state agencies. Is
3 that all covered elsewhere? Like BMPs from the
4 environmental end, is that required in the
5 DES --

6 MR. FITZGERALD: I believe those are
7 in the DES permit.

8 MR. SCHMIDT: And then archeological
9 and historic sites to DHR?

10 DIR. MUZZEY: We did come up with a
11 condition addressing that. Thanks.

12 PRESIDING OFFICER WEATHERSBY: So I
13 think it's covered. We could amend it so that
14 prior to any construction activity the
15 Applicant will file with the SEC and any
16 relevant state agency.

17 MR. SCHMIDT: Sure, that would be
18 fine.

19 PRESIDING OFFICER WEATHERSBY:
20 Shaking of heads "Yes" ?

21 DIR. MUZZEY: Sure.

22 PRESIDING OFFICER WEATHERSBY: So
23 we're going to amend Condition 8 to be sure, in
24 case we miss something, this deals with the

1 purview of the state agency, that it would be
2 filed with that entity as well. Does anyone
3 disagree with that change in the condition?

4 [No verbal response]

5 PRESIDING OFFICER WEATHERSBY: No. 9
6 the Applicant shall comply with all terms and
7 conditions of the Memorandum of Understanding
8 entered into between the Applicant and host
9 communities or other entities. I want to have
10 a review of those at some point. For now,
11 let's leave that one.

12 No. 10, to the extent the Applicant
13 requires the use of local roads for
14 deliveries of heavy equipment and/or
15 materials that exceed the weight limits of
16 locally maintained roads, the Applicant shall
17 comply with the specific terms and conditions
18 of any Memorandum of Understanding with the
19 host municipality. To the extent the MOUs do
20 not cover oversize and overweight equipment
21 and deliveries, the Applicant shall work with
22 the local town or city to reach an agreement
23 on the use of local roads. If an agreement
24 cannot be reached, the Applicant and the town

1 or city shall resolve any such issues with
2 the SEC Administrator. Again, I would just
3 note that Portsmouth and Madbury don't have
4 MOUs. But it seems as though the second half
5 of this No. 10 would apply to them.

6 No. 11, again, to the extent not
7 already addressed by a Memorandum of
8 Understanding, the Applicant shall coordinate
9 with the municipal engineer, road agent or
10 other authorized municipal officer for any
11 municipality through which the Project will
12 pass in order for the Applicant to comply to
13 the extent possible with existing municipal
14 construction rules and regulations. Such
15 coordination shall include the provision of
16 any information necessary for the
17 municipality to assess compliance, but shall
18 not require the Applicant to apply for or
19 obtain local permits. If it is not
20 practicable for the Applicant to comply with
21 such municipal rules and regulations, the
22 Applicant shall work with the municipal
23 officials to reach an agreement. In the
24 event a dispute arises as to the Applicant's

1 compliance with any rule or regulation that
2 the Applicants are unable to resolve directly
3 with the municipal officials, the Applicant
4 and/or the municipality may refer the matter
5 in writing to the SEC Administrator for
6 resolution.

7 So that kind of gets back to who
8 controls local roads where DOT is not
9 supervising road crossings on town roads.

10 Does anyone want to comment at all on
11 Condition 11, as to whether it addresses
12 everything that needs to be addressed
13 concerning local road crossings?

14 MR. SHULOCK: So the Applicant has
15 made an argument that our authority preempts
16 local authority with regard to roads, municipal
17 road crossings. Counsel for the Public has
18 stated that we need to decide that issue before
19 we grant that request, but then it's come to
20 agreement on a stipulation with the Applicant,
21 which I believe you just read. And the
22 Applicant proposes that the Subcommittee
23 approve the crossings of locally maintained
24 roads, subject to the Applicant complying with

1 DOT standard specifications for road and bridge
2 construction and the provisions, instructions
3 and regulations set forth in DOT standard
4 excavation permit. And then they agreed to
5 comply with the Memorandum of Understanding
6 that they've entered into with the towns with
7 regard to the construction of those roads. So
8 I think it's probably all covered.

9 MS. DUPREY: Where was that language?

10 MR. SHULOCK: About the Applicant's
11 commitment, requesting commitment?

12 MS. DUPREY: The one that you just
13 read.

14 MR. SHULOCK: It is on Page 123, the
15 written page of the Applicant's post-hearing
16 brief.

17 Eversource proposes that the
18 Subcommittee approve the crossings of locally
19 maintained roads, subject to the Applicant
20 complying with DOT standards, specifications
21 for road and bridge construction and the
22 provisions, instructions and regulations set
23 forth in the DOT standard excavation permit.
24 And then in addition, they've entered into

1 MOUs with the towns that bear on road
2 construction, and they would comply with
3 those.

4 MR. SCHMIDT: So, to clarify -- I
5 don't have those at my fingertips -- are they
6 expecting DOT to issue an encroachment permit
7 on the local road?

8 MR. SHULOCK: I don't believe that's
9 what they're asking for. They say they would
10 comply with the standards. I don't know who
11 would be the judge of that but --

12 MR. SCHMIDT: Right. The DOT
13 certainly wouldn't have authority over local
14 municipal roads.

15 PRESIDING OFFICER WEATHERSBY: So as
16 I understand it, the Applicant is agreeing,
17 with regard to local roads that they will cross
18 or impact in any other way, that they will
19 conduct all their work in conformance with all
20 DOT standards, but oversight will be from a
21 different entity.

22 MR. SHULOCK: And I'd be hard-pressed
23 to find it and to give a cite to the record.
24 But I believe they also said that they would be

1 constructing in conformity with the National
2 Electric Safety Code and all the other codes
3 that would apply to the Project.

4 PRESIDING OFFICER WEATHERSBY: And in
5 Condition 11, if we impose it, they're agreeing
6 they'll be required to comply with all
7 municipal rules and regulations, which every
8 town I'm pretty sure has conditions about how
9 roads should be built, you know, thickness of
10 the pavement and the gravel underneath, et
11 cetera, road construction standards. So they
12 would attempt to meet those, work with the
13 officials to reach an agreement about it. If a
14 dispute arises, they would come to the SEC.

15 It does put the SEC in the role of
16 oversight for local roads, which isn't ideal.
17 Ms. Monroe has yet another hat to wear. But
18 I'm not sure what the alternative is.
19 Certainly the SEC could hire a person, an
20 engineer or someone who would work on behalf
21 of the SEC to make sure there's compliance
22 with all applicable standards concerning
23 local roads.

24 MR. IACOPINO: The only legal thing I

1 would suggest is if you're inclined to do that,
2 you also specifically give Ms. Monroe the
3 authority to hire such an expert and to assess
4 the cost against the Applicant.

5 MR. WAY: I think that's where I
6 would come down, because given the size of the
7 Project and the hope that we're not going to
8 hit a multitude of issues, I would opt to give
9 Pam some authority to address it.

10 MR. FITZGERALD: Madam Chair, there's
11 a Condition 21 below that I wonder, it talks
12 about a dispute resolution administrator. But
13 it seems specifically relative to property:
14 Loss of business or income, diminution of value
15 of property, et cetera. I'm wondering if it
16 would be appropriate to broaden that somewhat
17 to, you know, have a dispute resolution
18 administrator for the Project, given the huge
19 concerns that have been raised in so many
20 areas, historical, aesthetics and so on.

21 PRESIDING OFFICER WEATHERSBY: So I
22 think that that's contemplated in Condition 21.
23 It encompasses any damage to property or loss
24 of business. And I would say that loss of

1 income, et cetera, I would say that would
2 include damage to a local road that isn't
3 resolved or to a historic site which are, of
4 course, owned by somebody. So if things
5 don't -- if things go awry, there's a whole
6 process to address that. I see that process as
7 different than who's really going to be the
8 road agent. And it seems as though for
9 local -- for state roads, which would be
10 Route 4, Spaulding Turnpike, the access roads,
11 that would be DOT. But for local roads, it
12 seems as though we need to vest the monitoring
13 authority with the SEC Administrator, but
14 empower her to hire an engineer or other
15 qualified official to assist with that process
16 and to have the Applicant pay for the cost of
17 that person.

18 MS. DUPREY: Are we asking for this
19 engineer in the case there are issues or just
20 to be on Staff? I guess what are we asking
21 this person to do?

22 PRESIDING OFFICER WEATHERSBY: What's
23 role the DOT would have concerning this
24 project, Mr. Schmidt?

1 MR. SCHMIDT: The role the DOT would
2 have, jurisdiction over state routes to
3 enforce -- to issue the permits, to enforce the
4 requirements in accordance with the utility
5 manual. I'm not sure if that's clear enough.

6 DIR. MUZZEY: I see this as a little
7 different because it seems to offer a little
8 bit more wiggle room as to compliance. My
9 experience with the Department of
10 Transportation is the DOT instructs people what
11 to do and people do it. This seems to
12 anticipate that if it's not practicable for the
13 Applicant to comply with municipal rules and
14 regulations, the Applicant shall work with
15 municipal officials to reach agreement. In the
16 event that they can't do that and some sort of
17 dispute arises between municipal officials and
18 the Applicant's compliance with rules and
19 regulations, then we -- then this anticipates
20 that the SEC Administrator will resolve the
21 issue.

22 PRESIDING OFFICER WEATHERSBY: I
23 think our condition goes beyond what's in 11,
24 in that, first, they've agreed elsewhere to

1 abide by all of the state standards for all
2 roads. But I think that we do need to
3 specifically authorize the SEC Administrator to
4 have oversight over local roads that goes
5 beyond No. 11.

6 MR. SCHMIDT: I would concur with
7 that, Madam Secretary -- Madam Chairperson.

8 MR. WAY: And the authority to hire
9 someone to address the issue.

10 PRESIDING OFFICER WEATHERSBY: Yes.

11 DIR. MUZZEY: Yeah, I agree with that
12 as well.

13 MS. DUPREY: So what's this condition
14 going to read?

15 PRESIDING OFFICER WEATHERSBY:
16 Attorney Iacopino, do you have any idea how the
17 condition might read?

18 MR. IACOPINO: I would suggest that
19 at the end of either Condition 10 or 11 in
20 Applicant's Exhibit 193, which is the
21 stipulation, you add the sentence that the SEC
22 Administrator is specifically authorized to
23 hire a consultant to assist her in
24 determining -- to assist her in resolving such

1 issues and may charge the Applicant for all
2 costs and expenses incurred by said consultant.

3 MR. WAY: I'm trying to think back to
4 your first sentence. Is she required to hire
5 someone, or if it's a matter we could -- she
6 could handle it herself --

7 MR. IACOPINO: No. If she can handle
8 it herself, she -- it's her discretion.

9 MR. WAY: Very good.

10 MR. IACOPINO: The word "may" is in
11 the first sentence.

12 MR. WAY: All right. Thank you.

13 DIR. MUZZEY: I would agree with
14 adding that sentence to the end of both 10 and
15 11.

16 PRESIDING OFFICER WEATHERSBY: Is
17 there general agreement concerning local road
18 issues?

19 [No verbal response]

20 All right. Let's move on through
21 the proposed conditions regarding traffic and
22 other safety issues.

23 No. 12, to the extent not already
24 addressed by a Memorandum of Understanding,

1 the Applicant shall coordinate with all host
2 municipalities to restore all municipal roads
3 that are damaged by construction of the
4 Project to the same or better condition,
5 subject to the review of the municipal
6 engineer, road agent or other authorized
7 municipal officer. In the event a dispute
8 arises as to the Applicant's compliance with
9 this condition, the municipality may refer
10 the matter in writing to the SEC
11 Administrator for resolution.

12 MR. WAY: Is that the same condition?

13 MR. IACOPINO: My legal
14 recommendation is, if you are going to have the
15 matter referred to her, you add the same
16 proviso at the end of Condition No. 12.

17 MR. SHULOCK: So can we do that
18 generally for all conditions/requirements that
19 refer to the SEC Administrator?

20 MR. IACOPINO: We can.

21 MR. SHULOCK: It's just like a belts
22 and suspenders?

23 MR. IACOPINO: Yes.

24 MS. DUPREY: So if we do that, we

1 don't have to add it to each specific one;
2 right? We could add it as a general condition.

3 MR. IACOPINO: Yes.

4 PRESIDING OFFICER WEATHERSBY: Okay.

5 No. 13. The Applicant shall
6 provide each host town and the Administrator
7 of the SEC with copies of the Applicant's
8 proposed construction plans, blasting plans,
9 schedule and other public information to be
10 made available to the public.

11 DIR. MUZZEY: And I would just add
12 here that Newington has amended its MOU to
13 further address the potential of blasting and
14 potential effects of blasting.

15 MR. SHULOCK: Great. Now we've
16 touched on the blasting and we've touched on
17 economics and the effect on town
18 infrastructure. This is good. We should keep
19 going.

20 DIR. MUZZEY: We're making good
21 progress.

22 PRESIDING OFFICER WEATHERSBY: Very
23 efficient at this hour.

24 MR. SHULOCK: Crossing things off my

1 list.

2 PRESIDING OFFICER WEATHERSBY: No.14
3 construction plans, schedule and other
4 information provided to each host town and
5 Administrator of the SEC shall be updated at
6 least monthly, or sooner if necessary, to
7 reflect changes in the Project schedule or
8 other changes during construction.

9 No. 15, in the event of significant
10 unanticipated changes or events during
11 construction that may impact the public, the
12 environment, compliance with the terms and
13 conditions of the certificate, public
14 transportation or public safety, the
15 Applicant shall notify the board of selectmen
16 or town council of all affected host towns or
17 their respective designee and the
18 Administrator of the SEC in writing as soon
19 as possible, but no later than seven days
20 after the occurrence.

21 Mr. Shulock, in the emergency plan,
22 obviously if there's an event of construction
23 that affects public safety, et cetera, I'm
24 guessing there's requirements to deal with

1 that prior to the seven-day time frame.

2 And the same, Mr. Fitzgerald, I'm
3 guessing, for DES. If there's a spill or
4 some environmental issue, there's also
5 probably immediate reporting requirements?

6 MR. FITZGERALD: Yes, there's
7 certainly statutory and regulatory
8 requirements.

9 MR. SHULOCK: The question again?

10 PRESIDING OFFICER WEATHERSBY: So as
11 I was reading No. 15, a significant,
12 unanticipated change or event that can affect
13 the public, the environment, transportation,
14 public safety, they've got seven days to put a
15 letter in the mail. And I'm just wondering --
16 actually, it's as soon as possible, but no
17 later than seven days. So maybe that's enough.

18 MR. SHULOCK: I don't think I can
19 recite the different time frames that they have
20 to report to us for incidents. But most of
21 those incident reporting time lines are rather
22 short, and are shorter for the incidents that
23 are more severe.

24 PRESIDING OFFICER WEATHERSBY: Okay.

1 Then moving on.

2 No. 16. Here we go. In the event
3 of emergency conditions which may impact
4 public safety, the Applicant shall notify the
5 host town's appropriate officials and the
6 Administrator of the SEC immediately.

7 Those were the construction traffic
8 safety-related items. There are some others
9 in 17 and 18 concerning what happens if
10 things don't go so well. Actually, 17 is
11 more concerning notification. So I think we
12 can address those at another time.

13 Is there anything else concerning
14 traffic safety?

15 MR. SHULOCK: Well, if you consider
16 construction and crossings of state-maintained
17 highways a safety issue, which we probably
18 should, then I think it bears a little bit of
19 review. And excuse me if I get more
20 tongue-tied than usual in this section because
21 my computer printer malfunctioned and it's just
22 a mess.

23 Okay. So Ms. Frazier testified
24 that the following DOT permits would be

1 required: That's a use and occupancy
2 agreement, an excavation/trenching permit, a
3 turnpike encroachment permit, an application
4 for driveway permit and permission for aerial
5 crossing. I think as of the time the brief
6 was filed by the Applicant, DOT had not
7 issued any of its final permits and
8 conditions. The Applicant has requested that
9 we delegate authority to DOT to issue those
10 permits and that the certificate be
11 conditioned upon their issuance. And I think
12 that's really it for DOT. I mean, normally
13 they give some of the those certificates
14 after it's constructed, right, because they
15 review some of those afterwards.

16 MR. SCHMIDT: The initial permits are
17 normally given in advance. But they may be
18 modified upon final completion, you know, an
19 as-built type situation.

20 MR. SHULOCK: Okay.

21 PRESIDING OFFICER WEATHERSBY: Mr.
22 Schmidt, we don't have construction plans for
23 the Project yet. Does DOT need to have
24 construction plans before they issue a permit?

1 What's the process there?

2 MR. SCHMIDT: Yeah, they'll need to
3 see details of the proposal before a permit can
4 be executed. There are times that we've done a
5 letter of cooperation, but we have not actually
6 approved any crossings or anything like that
7 without any details.

8 PRESIDING OFFICER WEATHERSBY: Thank
9 you.

10 MR. SHULOCK: And then for municipal
11 crossings, I think the Applicant stated that
12 those design drawings are 80 percent complete,
13 which is a pretty high level of detail for this
14 point in the Project. And they have provided
15 drawings to all host communities for their
16 review and comment. They provided host
17 communities with copies of Appendix 18 and 18A,
18 which are Exhibits 39 and 93 which contain
19 design details for local road crossings and
20 installations in local roads. They state that
21 the proposed overhead design meets the
22 requirements of the National Electric Safety
23 Code, meets all local and state clearance
24 requirements, and that they will prepare full

1 traffic control plans consistent with the
2 Manual on Uniform Traffic Control Devices. And
3 they've entered into MOUs with Newington and
4 Durham and the proposed condition that we
5 looked at with the Counsel for the Public.

6 So then there are crossings of
7 state lands and waters, and we've already
8 discussed those because those were the PUC
9 permits where we decided not to require the
10 Applicant to provide additional detail about
11 the concrete mattresses to the PUC.

12 I don't think we discussed
13 blasting, although we read the stipulation,
14 or the stipulated condition. Am I right?

15 PRESIDING OFFICER WEATHERSBY: You
16 didn't get into any of the conditions in the
17 MOUs concerning blasting. I think at this
18 point in the day, we can take those up when we
19 talk about orderly development.

20 MR. SHULOCK: I think with regard to
21 safety and blasting, let me summarize that. We
22 have ten minutes. I think if do the safety for
23 blasting and then go back to the contractor
24 safety, which is very short, then we've covered

1 public health and safety.

2 PRESIDING OFFICER WEATHERSBY: Great.

3 MR. SHULOCK: Okay. So with regard
4 to blasting, Mr. Plante testified that it was
5 anticipated that blasting will be required only
6 for the installation of the underground cable
7 under Main Street in Durham. Now, they could
8 be couldn't sure of that, but that's their
9 expectation. They agreed to conduct
10 pre-blasting and post-blasting surveys and
11 compensate for damages that may be caused by
12 blasting. They've entered into MOUs with
13 Newington and Durham that cover blasting within
14 those towns. Mr. Hebert represented that that
15 town's agreement on blasting resolved all of
16 the issues that he had previously raised in his
17 testimony about blasting. That MOU has
18 provisions dealing with the transportation,
19 handling and storage of explosives, application
20 to the fire chief for permission to a blast,
21 and appeal path culminates in review by the SEC
22 Administrator and notification to abutters.

23 The Durham MOU requires the
24 Applicant to hire a licensed blasting

1 contractor to provide an approved site plan,
2 contractor's license, certificate of
3 insurance, vehicle trip sheet and material
4 inventory to the Durham Fire Department, and
5 to advise the police and fire department
6 prior to each blast.

7 The UNH MOU requires the Applicant
8 to retain a licensed blasting contractor to
9 perform required blasting. And Eversource
10 has agreed to provide the University with a
11 blasting plan that has vibration monitoring.

12 So that's it for blasting. Unless
13 we actually want to go through the town MOUs
14 and the UNH MOUs.

15 PRESIDING OFFICER WEATHERSBY: Let's
16 save that for when we go through the
17 municipalities and then go through the MOUs.

18 MR. SHULOCK: Okay.

19 PRESIDING OFFICER WEATHERSBY: Does
20 anyone have any comments concerning blasting
21 safety?

22 MR. FITZGERALD: I'd just note that
23 the Town of Newington, there's a lot of
24 discussion about any disputes regarding

1 blasting. And again it refers it to the SEC
2 Administrator finally. So is that covered in
3 the other section?

4 PRESIDING OFFICER WEATHERSBY:
5 Director Muzzey.

6 DIR. MUZZEY: Well, my understanding
7 is that we're going to have a general condition
8 that allows the SEC Administrator to hire an
9 expert as needed in order to complete any of
10 the responsibilities assigned.

11 MR. FITZGERALD: With regards to all
12 of these issues, environment -- yeah, okay.

13 MR. IACOPINO: Can I just ask a
14 question? Where are you referencing that the
15 Administrator will be called upon to do the
16 blasting --

17 MR. SHULOCK: Newington MOU.

18 MR. FITZGERALD: Newington 2-2, Board
19 of Engineers decision may be appealed with the
20 Administrator of the Committee. There's an
21 appeal process here that says Newington -- the
22 application for blasting will be filed with the
23 Newington Fire chief. The fire chief's
24 decision may be appealed with the Town of

1 Newington Board of Fire Engineers; the Board of
2 Engineers decision may be appealed with the
3 Administrator of the Committee. That's all
4 referenced in Newington 2-2.

5 MR. SHULOCK: If you look at the
6 Durham MOU, which is Exhibit 250, any dispute
7 under the agreement would go to the SEC
8 Administrator for resolution. So any of the
9 blasting disputes would go there as well. I'm
10 assuming there's a similar provision in UNH.

11 PRESIDING OFFICER WEATHERSBY: Okay.
12 So right now that's what the MOUs say.

13 MR. SCHMIDT: May I?

14 PRESIDING OFFICER WEATHERSBY: Yes,
15 Mr. Schmidt.

16 MR. SCHMIDT: I have a question. The
17 MOU is signed. Can we modify the contents of
18 that with conditions?

19 PRESIDING OFFICER WEATHERSBY: We
20 can't modify. As I understand it, we can't
21 modify the MOU. But we don't need to make
22 compliance with every section of it a condition
23 of the certificate. So if there's a section
24 that we say don't like, the agreement would

1 still exist between the parties, but it would
2 not be a condition of the certificate.

3 Is that correct, Mr. Iacopino?

4 MR. IACOPINO: Yes. You are being
5 asked to approve the MOUs as part of conditions
6 on the certificate. You could reject the MOU
7 in full if you'd like. If you have adequate
8 evidence in the record, you can change the
9 conditions. That is within your authority.

10 PRESIDING OFFICER WEATHERSBY: We
11 also might want to have something in a
12 condition that, if there's a conflict between
13 something that we -- a condition we had made
14 and a condition in the MOU that we are not
15 aware of but that the SEC method is -- will win
16 out.

17 MR. SCHMIDT: So my question
18 specifically is: Where it says that any
19 decision by the town Board of Fire Engineers
20 may be appealed to the SEC Administrator, it
21 might be more appropriate to have them appeal
22 to the state fire marshal. And I'm wondering
23 how we should address that.

24 MR. IACOPINO: Actually, I'm going to

1 look into the Department of Safety rules
2 regarding blasting this evening, and maybe
3 tomorrow when we talk about orderly development
4 we may address that.

5 If you note at the bottom, there is
6 a reference to Safety Rule 1600. We have had
7 in other cases blasting problems. And in my
8 experience, it has been the Department of
9 Safety that has dealt with those issues.

10 MR. SCHMIDT: Right. That's who I
11 meant by the fire marshal's office is through
12 the Department of Safety.

13 MR. IACOPINO: Well, actually,
14 there's a division in the state police that
15 deals with blasting, or at least there was back
16 when we had an issue with the Groton Wind
17 Project.

18 MR. SCHMIDT: Very good. Thank you.

19 PRESIDING OFFICER WEATHERSBY: All
20 right. So we'll take up the specific
21 provisions tomorrow when we know a little bit
22 more about blasting protocols and where the
23 rules lie.

24 Mr. Shulock, do you have anything

1 else concerning blasting or contractor
2 safety?

3 MR. SHULOCK: Just contractor safety.

4 Okay. So there wasn't a lot of
5 evidence on that issue. But Bowes and Plante
6 testified that a site-specific health and
7 safety plan will be developed and will
8 dictate proper personal protective equipment
9 to be utilized by workers, such as
10 long-sleeved shirts, glasses, safety shoes
11 and chemical-resistant gloves.

12 And then because of the PFOA and
13 PFOS issues in the groundwater, a soil and
14 groundwater management plan had to be
15 developed. And that plan will be reviewed
16 and approved by DES prior to construction and
17 will require contractors to develop a
18 site-specific health and safety plan, that
19 any workers directly handling contaminated or
20 potentially contaminated soil or water are to
21 have OSHA hazardous waste operations
22 emergency response 40-hour training in
23 accordance with standard 1910.120(e). And
24 then, of course, the Applicant and Counsel

1 for the Public entered into a stipulated
2 condition that we've just discussed.

3 PRESIDING OFFICER WEATHERSBY: Any
4 comments or concerns regarding blasting or
5 contractor safety?

6 [No verbal response]

7 PRESIDING OFFICER WEATHERSBY: I
8 think the only other issue to touch on is just
9 to note under the section that we've had an
10 extended conversation concerning oysters and
11 shellfish consumption and the possible effects
12 on health that we're not going to reiterate
13 here, but that we've already had that
14 discussion and reached some conclusions there.

15 So, recognizing we need to just get
16 a little more detail other than just blasting
17 regulations, but knowing that some
18 regulations are there and that there's
19 provisions in the MOU and in these
20 conditions, I don't think it's necessary to
21 delay a straw vote on whether the project
22 creates an unreasonable adverse effect on
23 public health and safety. Would anyone like
24 to delay the vote until we learn more about

1 blasting?

2 [No verbal response]

3 PRESIDING OFFICER WEATHERSBY: Okay.

4 So we'll just kind of go down the line as to
5 whether you think this project will create an
6 unreasonable adverse effect on public health
7 and safety.

8 Mr. Fitzgerald.

9 MR. FITZGERALD: No.

10 MS. DUPREY: No.

11 MR. WAY: No.

12 MR. SCHMIDT: No.

13 MR. SHULOCK: No.

14 DIR. MUZZEY: No.

15 PRESIDING OFFICER WEATHERSBY: No.

16 Okay. Why don't we break for the
17 day. It's 6:00. We'll come back tomorrow.
18 We're here all day tomorrow unless we finish
19 early. Talk about all the issues under
20 ordinarily development.

21 MS. DUPREY: Madam Chair, if I could
22 just have us discuss a point of order so that
23 I'm appropriately prepared for tomorrow.

24 In what level of detail do you want

1 to go through the MOUs? There are several of
2 them. They're about ten pages each. And I
3 don't know if you want me to give an overview
4 of them or if you want me to read them or
5 what it is that -- I would suggest that
6 people read them tonight so that they have a
7 familiarity with them. And I can give the
8 referenced exhibits if that would be helpful.
9 But I just -- I don't want to take more time
10 than is necessary, but I want to be as
11 thorough as people desire. And I'd also like
12 to understand how much more you want to go
13 over with respect to construction and those
14 specific stipulations, the conditions, the
15 stipulated conditions.

16 PRESIDING OFFICER WEATHERSBY:

17 Personally, I think your approach is a good
18 one, in that we all take a look at those
19 tonight and flag any issues we have with
20 content or wording. With the MOUs, if we are
21 going to add as a condition to any approval of
22 this application that they must adhere to the
23 MOUs, there may be some things we want to carve
24 out or alter. So if everyone reads those

1 tonight and we can just have a more general
2 discussion about them rather than going word by
3 word through them, I think that's a better use
4 of everyone's time.

5 MS. DUPREY: Okay. Just as a quick
6 for people, the Newington MOU is at Applicant's
7 Exhibit 168. There's also a blasting addendum
8 to it, an amendment to it, at Newington 2-2 was
9 it? The UNH --

10 DIR. MUZZEY: Could you repeat the
11 Newington reference, please?

12 MS. DUPREY: Yes. It's Applicant's
13 Exhibit 168 plus Newington 2-2.

14 The UNH MOU is Applicant's
15 Exhibit 267.

16 The Durham MOU is Applicant's
17 Exhibit 270. There's also an MOU with the
18 Rockingham County Conservation Commission.
19 There's been an MOU with the DHR --

20 MR. FITZGERALD: Do you have a number
21 on that Rockingham?

22 MS. DUPREY: I don't have that. If I
23 can look at my exhibit list, I can probably
24 come up with it pretty quickly.

1 There's also the DHR MOU. I think
2 that's the majority of it.

3 The Rockingham MOU relates to soils
4 removal on the Frink Farm. And then there
5 are all the letters with everybody. But
6 they're fairly short. I feel like I can
7 summarize those. But I could also give you
8 citations to them, too, if people prefer
9 that.

10 And one more thing that I think
11 would be useful for people to look at is, and
12 I'm just scrambling around trying to find it,
13 is the dispute resolution process that's been
14 agreed to, and it's at Applicant's Exhibit
15 268.

16 MR. FITZGERALD: Madam Chair, also, I
17 don't need this discussion tonight, but if we
18 can at some point get some understanding. We
19 have all these MOUs and MOAs, and it's been
20 expressed that we can make revisions. So I
21 want to understand the legal step in it. If
22 two entities have entered into an MOU or an
23 MOA, and then we say it's not a condition,
24 what's the status legally of -- they've entered

1 into an agreement.

2 PRESIDING OFFICER WEATHERSBY: So I
3 think Mr. Iacopino addressed that a moment ago.

4 Would you like to address it again?

5 MR. IACOPINO: Sure. They may have
6 entered into an agreement that may bind them to
7 each other, but the Applicant's first
8 obligation is to comply with the conditions of
9 the certificate. So whatever the private
10 contractual matter between the Applicant and
11 the town is, if you want a different condition,
12 the Applicant's got to comply with that
13 condition. And that's the requirement.
14 They'll have to work it out with the town. If
15 it's something that --

16 (Court Reporter interrupts.)

17 MR. IACOPINO: As a practical matter,
18 we rarely make a change that makes that big of
19 a difference in the relationship between the
20 town and the Applicant.

21 MR. FITZGERALD: I was just going to
22 say it would seem to me that that would not be
23 something we would take lightly.

24 MR. IACOPINO: That's true. It

1 doesn't happen much. But you certainly have
2 the authority to do so.

3 PRESIDING OFFICER WEATHERSBY: We
4 also -- I think in the few instances I've seen
5 it is when the SEC has gone beyond what's
6 there. So compliance can be made with both
7 entities.

8 Okay. Anything else for tonight?

9 [No verbal response]

10 PRESIDING OFFICER WEATHERSBY: All
11 right. We are adjourned and we'll see everyone
12 tomorrow morning at 9:00. Thank you.

13 (Whereupon the Day 5
14 was adjourned at 6:10
15 p.m., and the hearing will resume
16 on December 7, 2018
17 commencing at 9:00 a.m.)

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C E R T I F I C A T E

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

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

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

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