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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

December 7, 2018 - 2:15 P.M. DAY 5
49 Donovan Street Afternoon Session ONLY
Concord, New Hampshire

{Electronically filed with SEC 12/21/18}

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

1	I N D E X	
2		PAGE
3		
4	TOPIC: ORDERLY DEVELOPMENT OF THE REGION	3
5	by Ms. Duprey	
6	Construction	3
7	Land Use	40
8	DISCUSSION	51
9	Municipal Views	60
10	Newington and Durham Master Plans	64
11	and Zoning Ordinances	
12	DISCUSSION	70
13	Economics by Mr. Shulock	83
14	DISCUSSION	88
15	Property Taxes by Ms. Duprey	89
16	DISCUSSION	93
17		
18		
19		
20		
21		
22		
23		
24		

P R O C E E D I N G S

(Hearing resumed at 2:15 p.m.)

PRESIDING OFFICER WEATHERSBY: Okay.

Good afternoon, everyone. We're going to pick up with our discussion concerning orderly development of the region, our next topic.

Orderly development of the region is land use and the views of the regional and municipal planning commission and municipal government.

Ms. Duprey, would you like to start us off.

MS. DUPREY: Thank you, Madam Chair.

I thought we would start with construction.

And I'm not going to belabor it, in that we had quite a lengthy discussion on construction the other day. But that angle was more public safety, and the angle for this category is whether the construction is going to unduly interfere in the orderly development of the region. So what we are going to want to do is look at it through that lens as opposed to the public safety lens, even though there's certainly overlap between the two areas.

So we started yesterday, or at some

1 point yesterday we got to reading the many
2 proposed conditions that were proposed by
3 Counsel for the Public and also by the
4 Applicant relating to construction. In
5 addition, we all had the homework assignment
6 of, if we could, reading the MOUs that
7 pertain largely to construction between the
8 Applicant and UNH, Town of Durham, the Town
9 of Newington, and the Rockingham County
10 Commission, Conservation Commission. And in
11 addition to that, there's the MOU with the
12 Division of Historical Resources. And then
13 there are numerous letters by and between the
14 Applicant and private individuals relating in
15 some instances to construction. So I thought
16 that I could start by sort of summarizing
17 that very briefly and seeing if people feel
18 the need to discuss those instances in more
19 detail.

20 With respect to the individual
21 property owners, I don't know if we want to
22 take this up in construction or if we want to
23 take it up in the property value section or
24 where all, but let's at least start out with

1 the larger categories, those being the host
2 communities and UNH. And I just do want to
3 point out that the Conservation Commission
4 MOU relates also to the Frink option
5 agreement. Those two are related together.

6 So let me start off by saying that
7 the two host communities had a number of
8 construction-related issues that they have
9 raised to us through various means, whether
10 it be by prefiled direct testimony or whether
11 it be on cross through testimony here in our
12 hearing room and through various exhibits
13 that they have provided to us. Over the
14 course of the months leading up to our
15 hearings, and even right through our
16 hearings, the Applicant and the host
17 communities have been hammering away at
18 trying to come up with procedures to be
19 utilized with respect to the roads. In a
20 very, very broad overview, there were some
21 things that jumped out as being of
22 significance or concern, one was blasting.
23 And in the case of Newington, we even have a
24 separate procedure for blasting: Time of day

1 of construction flagging of construction for
2 safety purposes; was the road going to be
3 shut down so that businesses wouldn't be able
4 to operate; were the roads going to be
5 restored properly to their previous
6 condition. In the case of roads that were
7 owned not by the municipality but by
8 individuals, or property that was owned by
9 individuals that was used as an access road,
10 there was big concern that we heard
11 particularly from intervenors about what is
12 going to happen when you've left. And I
13 believe Janet Mackie made some very valid
14 points with respect to that. And these MOUs
15 between Newington and Durham and the
16 Applicant resolved that issue by saying that
17 unless the property owner doesn't want that
18 to happen, that the roads will be restored to
19 their previous condition. It talks about how
20 things are going to be trucked away, where
21 they're going to be disposed of, cuttings in
22 the area. And so in my review of these
23 documents and also my review of testimony,
24 particularly from Mr. Hebert for Newington,

1 my understanding is that the MOU with
2 Newington resolves the construction concerns
3 that they had. It is also my impression,
4 although I could not find a direct statement
5 to this effect, that that was true for both
6 UNH and Durham as well.

7 I think that what's fair to say
8 with respect to all of the parties is that
9 they don't want the Project to happen. So,
10 really, these are the conditions that they
11 would like to have us adopt if we decide to
12 approve the Project. But they would still
13 maintain, if they were standing right here
14 before you this very minute, that they don't
15 want the Project to be approved for a variety
16 of reasons that we've been addressing over
17 the last several days. So I wanted to be
18 sure I'm clear about this. This is not a
19 waiving by any of these folks of their
20 opposition to the Project.

21 MR. FITZGERALD: Ms. Duprey, if I
22 could just, you mentioned that there had been
23 testimony that the Newington MOU resolved their
24 issues, but you weren't able to find any

1 request regards to UNH or Durham. But would it
2 not be presumed that if they were not resolved,
3 they wouldn't have signed the MOU? I
4 understand they don't like the Project and so
5 on. But I would assume that their signing of
6 the MOU indicates that they've come to some
7 resolution on the construction issues.

8 DIR. MUZZEY: There is a "whereas"
9 clause on Page 2. Whereas, the Town, by
10 entering into this agreement, does not in any
11 way relinquish or compromise its ability to
12 take a position on the Project and/or any
13 conditions which it believes should be included
14 in a certificate that are not in this
15 agreement. So, to the degree that something is
16 in this agreement, the Town has found some
17 common ground with the Applicant but has
18 reserved certain abilities.

19 MS. DUPREY: I guess what I would say
20 is I don't -- I can't tell you that it has
21 addressed every single concern that Durham
22 might have had. I guess what I can tell you is
23 this is the agreement that they've come to as
24 best I can tell with respect to the

1 construction. We certainly haven't continued
2 to hear people raising the construction issues
3 as the testimony in this matter has wound down.
4 So I believe that this is largely the
5 resolution of those issues. I'm unaware -- let
6 me put it this way: I'm unaware of outstanding
7 construction issues, with one exception, and
8 that is with respect to the crossing of Little
9 Bay. And that is a construction issue. We've
10 tackled it in other parts of these proceedings
11 and in other parts of our deliberations. So if
12 you take that as a specific issue, there's a
13 construction issue that we don't have agreement
14 on and is not resolved in the MOU. So that's
15 all I'm really trying to point out here, that I
16 can't say with a hundred percent certainty that
17 everything is taken care of with respect to
18 construction other than the crossing of Little
19 Bay. But if there are outstanding issues, I
20 don't think that we know what they are any
21 longer. But I believe they've been resolved in
22 these MOUs.

23 MR. FITZGERALD: So I think we had
24 testimony from, couple of times, that was along

1 the lines of we don't want you to issue a
2 certificate. But if you do issue a
3 certificate, these are the -- you know, this is
4 the agreement that we would like you to
5 enforce, and it was signed by both parties.

6 MS. DUPREY: Correct. I don't know
7 that we want to talk about Little Bay any
8 further with respect to construction because I
9 think we've been down that path already and
10 made some decisions about it. But I did just
11 want to point out that it is a matter of
12 construction as well. In my view, the
13 construction issue between the discussion that
14 we had yesterday through -- directed by Mr.
15 Shulock and through these MOUs with respect to
16 UNH, Durham and Newington, it's in my view
17 resolved, and I don't -- I wouldn't see it as
18 having an undue impact on the orderly
19 development of the region. And then there's
20 the individuals.

21 DIR. MUZZEY: Just taking a look at
22 the Durham MOU, and I haven't double-checked
23 this, but did want to note that there is a
24 Resolution of Disputes clause under the

1 agreement, and this is in particular for items
2 in this agreement where the parties agree to
3 work in good faith to resolve issues, and
4 noting that if such disputes cannot be
5 resolved, the party or parties may submit the
6 disagreement to the SEC Administrator for
7 resolution. Parties agree that the SEC
8 Administrator's decision on any unresolved
9 disputes under this agreement, including
10 construction items, will be -- shall be final.
11 So that may be the path that is taken if there
12 are disputes about construction items.

13 MS. DUPREY: That's correct. And I'm
14 just flipping through this quickly now. I'm
15 trying to remember. One town actually has an
16 individual appointed who is a liaison between
17 the Applicant and the town. I thought it was
18 Durham, but now I'm --

19 MR. SCHMIDT: Newington.

20 MS. DUPREY: Newington. All right.

21 MR. SCHMIDT: The consultant is S.W.
22 Cole.

23 MS. DUPREY: Okay. No wonder they're
24 happy or happier.

1 At any rate, so I don't know if
2 people want to have further discussion about
3 impacts that you might think that there is
4 beyond these MOUs. Or maybe you'll say,
5 well, the MOUs resolved how the actual
6 construction is going to happen, but I still
7 feel like the construction itself is an undue
8 interference with the orderly development of
9 the region.

10 I will tell you that Mr. Varney,
11 who is the primary expert in this particular
12 area, the area of orderly development,
13 reviewed all of this and came to the
14 conclusion that there was no undue influence
15 or impact on the orderly development as a
16 result of construction. I'm happy for us to
17 go into this in more detail. I just feel
18 like we've done this already and visited it
19 already. And I felt comfortable with it, but
20 I wanted to be sure how you all felt before I
21 moved on to the individuals.

22 MR. SCHMIDT: I have just one
23 question, and that's with the MOU with DHR in
24 the Termination clause. This wouldn't affect

1 us directly unless we accepted it as a whole.
2 The Termination clause, last sentence, "If
3 within 30 days an amendment cannot be reached,
4 any signatory may terminate the MOU upon
5 written notification." I just want to make
6 sure it won't affect us if we were to adopt it
7 as a whole.

8 DIR. MUZZEY: Could you remind me
9 what the exhibit number is?

10 MR. SCHMIDT: 200. I'm sorry.

11 DIR. MUZZEY: Thank you.

12 MR. SCHMIDT: It's on Page 5,
13 electronic Page 5 as well.

14 I was just clarifying if we adopt
15 it as a whole, that it wouldn't have any
16 bearing on us.

17 MR. WAY: That's how I read it.
18 Director Muzzey, do you have any thoughts?

19 MR. SCHMIDT: That was my next
20 question.

21 DIR. MUZZEY: And I'd also note that
22 there are -- as we discussed before, there's
23 both an MOU and an MOA for historic sites. And
24 in the same Exhibit 200, if you go to Page 11

1 at the bottom, there's a similar termination
2 clause that goes on to Page 12. These are
3 fairly boiler plate administrative measures,
4 conditions that are included in historical site
5 MOUs and MOAs. In my experience, I don't
6 believe a MOA or MOU has been terminated in my
7 time with the Division of Historical Resources.
8 And the DHR has asked the Site Evaluation
9 Committee to adopt these agreements and their
10 conditions therein. But I would need to turn
11 to counsel to understand whether, you know, in
12 the incredibly rare event that either agency or
13 the Applicant later asked to terminate the
14 agreement, whether or not that would relieve
15 their responsibilities under the SEC
16 certificate to do the conditions.

17 MR. IACOPINO: It would relieve DHR's
18 responsibilities?

19 DIR. MUZZEY: The Applicant's.

20 MR. IACOPINO: No. If we issue
21 conditions, the Applicant is subject to those
22 conditions, even if DHR terminated.

23 MR. SCHMIDT: So if we adopted the
24 MOU as a whole, Mike, that termination clause

1 is part of the MOU. And that's what I'm
2 wondering.

3 MR. IACOPINO: I think when you -- if
4 you condition the certificate on this MOU, you
5 can put in, if you so choose, determine to
6 require the Applicant be bound by the terms and
7 conditions of the MOU, regardless of whether or
8 not other parties terminate.

9 MR. SCHMIDT: I would recommend that
10 we add that one.

11 PRESIDING OFFICER WEATHERSBY: I
12 would agree. Does anyone feel differently that
13 that should be the condition?

14 [No verbal response]

15 PRESIDING OFFICER WEATHERSBY: So we
16 will do that. Has anyone had a chance to look
17 at the various MOUs? I know I had a couple of
18 points I wanted to raise regarding one. I
19 think this is probably a good time to talk
20 about the other MOUs as well.

21 For me, it was the MOU with the
22 Town of Newington, which is Exhibit 168, PDF
23 Page 5, concerning Paragraph 9. This
24 concerns road damage. I just wanted to talk

1 about the last sentence of Paragraph 9. It's
2 again a dispute resolution provision. Should
3 there be a dispute after the town makes a
4 final determination as to casualty and repair
5 cost, Eversource may, within 90 days, appeal
6 the Town's determination to the SEC
7 Administrator, who shall hear the parties'
8 information and shall make such determination
9 as fairness and equity require. I'm
10 wondering if this is, instead of going
11 directly to Ms. Monroe, that this is
12 something that follows that dispute
13 resolution process that we were talking about
14 prior to lunchtime.

15 MS. DUPREY: Or even if it didn't go
16 through the whole process, Madam Chair, perhaps
17 the individual that's been chosen to oversee
18 that process could be the individual that it's
19 delegated to.

20 PRESIDING OFFICER WEATHERSBY: Rather
21 than the SEC Administrator, be the SEC's
22 Dispute Resolution Administrator.

23 DIR. MUZZEY: And that could
24 potentially be extended to the clause in the

1 Durham MOU as well if we feel that's
2 appropriate.

3 PRESIDING OFFICER WEATHERSBY: I
4 think that's a good suggestion. At this point
5 in the game, they've already talked to the
6 Applicant and tried to work things out. I
7 don't think they need to go to mediation. But
8 when you get to this point, to have it go,
9 rather than the SEC Administrator, going to the
10 dispute resolution administrator is an
11 excellent idea. So if we adopt this MOU as an
12 enforcement of this condition, that we carve
13 out this section and have it changed to the
14 dispute resolution administrator.

15 The other question I had, does
16 anyone feel differently concerning that?

17 DIR. MUZZEY: I don't. I think
18 that's a good idea. But looking at
19 Exhibit 267, the UNH MOU, bottom of PDF Page 5,
20 resolution of disputes, similar assignment to
21 the SEC Administrator. And do we want to
22 change this one as well to be the other dispute
23 administrator?

24 MR. WAY: What page?

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DIR. MUZZEY: Bottom of Page 5,
Exhibit 267.

PRESIDING OFFICER WEATHERSBY: I
recommend if we are doing it for one town, we
probably should do it for the other. Not to
get too into the weeds here, but it seems to me
that they probably shouldn't be required to
follow the whole 283 process -- 268 process --
(Court Reporter interrupts.)

PRESIDING OFFICER WEATHERSBY: Should
not have to follow the 268 process, but maybe
we should just take a look at that Exhibit 268.

MS. DUPREY: I was thinking that
there was a distinction between municipality
and an individual, just the significance of the
things that they were working on. That's what
I think was a tipping point for me.

PRESIDING OFFICER WEATHERSBY: Right.
So I think what we're saying is they don't need
to follow the dispute resolution process
outlined in whatever we end up adopting as the
dispute resolution process, just that in
working out disagreements in those MOUs, that
the person who will do that will be the SEC

1 Dispute Resolution Administrator rather than
2 Director Monroe. Was that clear?

3 MR. SHULOCK: And I'd also point out
4 that there's a similar provision in the UNH
5 MOU. You already pointed that out while I was
6 asleep? Okay.

7 PRESIDING OFFICER WEATHERSBY: So
8 let's -- if the municipalities or the
9 University of New Hampshire have disputes, they
10 go to the -- that cannot be resolved amongst
11 themselves, they go to the dispute resolution
12 administrator of the SEC.

13 MR. WAY: Right.

14 MR. FITZGERALD: Madam Chair, I asked
15 about this yesterday, and maybe I'm just not
16 understanding it. But I can take an answer
17 offline also. But if we want to make
18 changes -- we're looking at these MOUs as
19 conditions, I guess. And if we want to make
20 changes, how do we actually -- do we adopt the
21 MOU as a condition and then as a separate
22 condition say Paragraph 9, you know, is not in
23 effect or whatever? Because these are signed
24 and they're done. We can't change these.

1 PRESIDING OFFICER WEATHERSBY: Right.
2 I think we talked about this a little bit
3 already. The agreement between the parties who
4 signed it is still bound. We will require them
5 to adhere to the provisions of the agreement,
6 except that with regard to paragraph whatever,
7 dispute resolution, they shall instead go to
8 the SEC Dispute Resolution Administrator, for
9 example. So we carve out an exception to what
10 we're requiring should this be a condition of
11 their certificate.

12 MR. FITZGERALD: So our condition is
13 that they adhere to the terms of the MOU,
14 except for --

15 PRESIDING OFFICER WEATHERSBY: That's
16 my understanding.

17 Attorney Iacopino, care to comment?

18 MR. IACOPINO: That is correct. And
19 in this particular instance, it's not that much
20 of a difference at all because Ms. Monroe will
21 be the person who hires the dispute resolution
22 administrator.

23 MR. FITZGERALD: Okay. Thank you.

24 PRESIDING OFFICER WEATHERSBY: There

1 is another issue I wanted to raise regarding
2 Newington's MOU. This is in PDF Page 5,
3 Paragraph C, concerning laydown areas or
4 marshaling yards. So as it reads, if
5 Eversource is going to use town -- any
6 properties in town for laydown areas or
7 marshaling yards, they notify the town. And if
8 it hadn't been previously disclosed and
9 permitted, they have to get permission from the
10 SEC. My understanding in the past was that
11 these sorts of issues did not come back to the
12 SEC, but rather, if they needed any permits,
13 say from DES, that that was delegated to DES
14 and that the SEC didn't get further involved.

15 Perhaps, Attorney Iacopino, you
16 could comment on that process.

17 MR. IACOPINO: We have had very few
18 delegations to the Administrator in the past.
19 With respect to laydown areas and marshaling
20 yards, they implicate a couple of different
21 considerations for the Committee. It could
22 implicate environmental issues, also implicate
23 transportation issues where trucks come in and
24 out on the roadway from a marshaling yard or

1 laydown area. So my guess is that's why this
2 particular condition has been directed by the
3 parties to the SEC Administrator since it
4 involves more than one jurisdictional area.

5 PRESIDING OFFICER WEATHERSBY:

6 Director Muzzey.

7 DIR. MUZZEY: My concern with that
8 is, as counsel indicated, there could be
9 environmental permits that would be needed,
10 transportation issues, even review by the
11 Division of Historical Resources. And to
12 submit -- to leave it to the SEC Administrator
13 to approve that type of thing, it doesn't seem
14 appropriate to me to assign that type of
15 responsibility to the SEC Administrator. I'm
16 trying to think back to when we didn't have an
17 SEC Administrator. It was only five years ago
18 or so -- three years ago?

19 MS. MONROE: Feels like five.

20 DIR. MUZZEY: And in my memory, the
21 SEC was notified of those changes. And
22 included with the information would have been
23 any additional reviews or permits by agencies
24 with jurisdiction. And then there was no

1 approval included in that. It was a
2 notification of what may be considered a minor
3 change in the project.

4 PRESIDING OFFICER WEATHERSBY: Ms.
5 Duprey.

6 MS. DUPREY: I don't really
7 understand this issue very well. I guess I'm a
8 little surprised to learn that there would be
9 large areas of the Project that haven't been
10 determined to date and that could be subject to
11 the kind of reviews that Director Muzzey is
12 raising.

13 Attorney Iacopino, is that true,
14 that there's still a lot of undetermined
15 physical property that hasn't been subject to
16 permitting that this whole thing has gone
17 through that's hanging out there?

18 MR. IACOPINO: I don't know. It's a
19 contingent provision in the MOU. It's in the
20 event Eversource wishes to utilize property
21 within the town of Newington for laydown areas
22 or marshaling yards. So I assume there is
23 right now not any laydown yards or marshaling
24 yards scheduled for Newington, but this is in

1 the event that they want to do so.

2 MS. DUPREY: It's property, I
3 presume, that is not necessarily owned by the
4 Applicant?

5 MR. IACOPINO: Well, it could be.
6 Under this, it could be owned by the Applicant.
7 And I would understand the issues that would
8 come up with laydown and marshaling yards would
9 be, if they're large, obviously environmental,
10 but also transportation issues coming in and
11 out of roadways and things like that, which is
12 something that has come up in many dockets.

13 So, to answer your question, I
14 don't know if there's a large area in
15 Newington that may be used as a laydown area
16 or a marshaling yard, off the top of my head.
17 I think that this is just a conditional
18 provision.

19 MR. WAY: Just so -- because I agree.
20 I maybe don't understand this as much as I
21 should. But this would seem to be a decision
22 with the appropriate agency.

23 MR. IACOPINO: Also remind you there
24 is a request for a condition from the Applicant

1 to delegate to DES to approve any environmental
2 requirements for any additional laydown or
3 marshaling yards as well. That's separate.
4 It's not in this particular MOU, but it is in
5 the Application.

6 MR. WAY: And that's sort of what I'm
7 thinking.

8 DIR. MUZZEY: There's also a
9 condition that the Division of Historical
10 Resources asked us to include that addresses
11 any changes to project plans, which this would
12 represent, to submit that for review to DHR as
13 well. It's not uncommon for these small
14 changes to happen. And certainly Chuck could
15 speak to this -- or Mr. Schmidt. I'm sorry.
16 You know, as construction and sources of
17 materials and that type of thing become
18 apparent closer to the date of construction,
19 some changes do happen.

20 MR. SCHMIDT: Right. These would be
21 staging area or a laydown yard. I would
22 recommend that we say it shall be submitted and
23 state permits secured and leave it global. You
24 could say state and local, but I think the

1 local permits are probably already covered in
2 this MOU, in all of the MOUs. But if it's just
3 kept general to the appropriate state agency,
4 it would be --

5 MR. WAY: I agree. And then what?
6 With a copy to the SEC Administrator?

7 MR. SCHMIDT: Yes, that's what I was
8 thinking.

9 PRESIDING OFFICER WEATHERSBY: So it
10 sounds like we're not going to require approval
11 by the SEC Administrator, but that all
12 applicable state agencies will be notified, any
13 necessary permits obtained, and that
14 information submitted to the SEC.

15 MR. SCHMIDT: Correct.

16 MR. WAY: Yeah. Like the last
17 decision, we're making this a little more broad
18 to apply to similar language in other MOUs?

19 MR. SCHMIDT: I would recommend that,
20 yeah.

21 PRESIDING OFFICER WEATHERSBY: Yes.

22 I think that's all I had on MOUs.
23 Double-checking. Does anyone else have any
24 items in the MOUs they which to discuss?

1 MR. SCHMIDT: I have one general
2 question. On PDF Page 3 of the Town of
3 Newington agreement, I guess it's about halfway
4 down the page, maybe a third of the way down,
5 it talks about S.W. Cole and their consulting
6 services. And further down the line that
7 begins with "engineering and investigations,"
8 it says, Engineering and investigations after
9 review and approval by the SEC Administrator
10 shall be paid directly by Eversource. And my
11 question was why -- and this may be just an
12 educational thing on my behalf. But why would
13 the SEC Administrator have to approve that?

14 DIR. MUZZEY: I think we need to
15 search all of these MOUs for "Administrator"
16 and see what is exactly being assigned.

17 MR. SCHMIDT: I did note in several
18 of them that there were references to the
19 Administrator.

20 PRESIDING OFFICER WEATHERSBY: So it
21 looks like they're asking the SEC Administrator
22 to basically review the fees that are being
23 charged to make sure they're reasonable.

24 Is that typically a role the SEC

1 Administrator plays, Mr. Iacopino?

2 MR. IACOPINO: No.

3 DIR. MUZZEY: I think our
4 Administrator has many skills and abilities,
5 but I'm not certain we should begin to assign
6 approval of this type of thing to the person in
7 that position. And I would be more comfortable
8 deleting this portion as well of the agreement
9 and instead relying on whatever dispute
10 resolution process was in place if there were
11 concerns about submitted charges.

12 PRESIDING OFFICER WEATHERSBY: Ms.
13 Duprey.

14 MS. DUPREY: So I didn't read these
15 documents with this purpose for the SEC. I
16 read them for the purpose of trying to be
17 certain that the concerns that had been raised
18 by the parties had been addressed and what
19 might have been hanging out there still, and
20 more so for just an understanding of the
21 categories of issues and the resolution of
22 them.

23 It seems to me that it would be
24 advisable to have our counsel look through

1 these documents and find anywhere that it
2 refers to the SEC Administrator, and if it's
3 not obvious what should happen, that he bring
4 it back to us on Monday so that we can make a
5 decision about it.

6 MR. IACOPINO: Sure.

7 PRESIDING OFFICER WEATHERSBY: I
8 think that's a great idea. So does Attorney
9 Iacopino.

10 MR. IACOPINO: We aim to please.

11 PRESIDING OFFICER WEATHERSBY: So I
12 did, too, look at these to better understand
13 the purpose for which they were drafted, which
14 is to address all of the impacts of
15 construction, road use, et cetera, and I found
16 it very comprehensive and appreciate all the
17 time and effort that the parties put into them
18 to address the issues should this move forward.
19 So why don't we move on from there into --
20 Director Muzzey.

21 DIR. MUZZEY: Just a very quick
22 comment to note that construction is also
23 occurring in the town of Madbury, as well as
24 the city of Portsmouth. We don't have MOUs or

1 any type of agreement between the Applicant and
2 those communities, nor do we have any concerns
3 voiced by those communities. So my assumption
4 is that all construction issues have been
5 solved in those areas of the Project area as
6 well.

7 MS. DUPREY: I agree with you,
8 Director Muzzey. And Mr. Varney, in his
9 report, addressed that there were no unresolved
10 construction issues there.

11 And by the way, he also cited in
12 his report that the Applicant had met with
13 both Portsmouth and Madbury a couple of times
14 and had offered to meet with them into the
15 future, so that if there were concerns, that
16 they get addressed.

17 PRESIDING OFFICER WEATHERSBY: I also
18 point out that Portsmouth wrote to this
19 Committee on August 27th, 2018, and they
20 discussed Eversource's cooperation with the
21 city and its efforts regarding outreach and
22 confidence that any concerns they had would be
23 worked out with Eversource.

24 We also have a written comment by

1 Madbury that doesn't deal with construction,
2 but more that they believe the Applicant has
3 dealt with wetlands in an adequate manner.
4 But even though we don't have a lot of
5 information from those communities, they are
6 involved in the process, although not here
7 for testimony and deliberations.

8 MS. DUPREY: Madam Chair, that brings
9 us to the intervenors. And they raised, I
10 guess I'm going to call them, broadly speaking,
11 some construction issues. So let me sort of
12 give it a broad brush initially and then drill
13 down as we wish to.

14 The types of things that were
15 raised by the intervenors were locations of
16 poles and towers; access to driveways;
17 cutting of the easement area; in the case of
18 Ms. Frink and the Frink Farm, the
19 installation of the underground line
20 specifically as it related to soils. And
21 then we also had Fat Dog raise the issue of
22 the construction in Little Bay as endangering
23 his oyster population. The Applicant has met
24 with all of these parties and had discussions

1 with all of them. I think it was a little
2 difficult having them meet with Fat Dog just
3 because his operation made it very difficult
4 to get together with him. But by my
5 calculation, the Frizzells, the Fitches and
6 the Frink party have come to an agreement, if
7 this project is to proceed, what remediation
8 will happen on their property.

9 I want to be sure, with respect to
10 the Frink property, and probably with respect
11 to all of these folks, that no one is
12 comfortable with the size of the towers that
13 are going to be either on their property or
14 near their property. So I want to be sure
15 I'm not giving short shrift to that. But
16 what I do mean is the offers that have been
17 made by Applicant in certain situations have
18 been accepted.

19 So there is an option agreement
20 with Ms. Frink and her brother, and Sally
21 Ryder I think it is, related to the Frink
22 Farm, as to the methodology with respect to
23 the soils, what will happen with the soils
24 there. We heard a lot of testimony about

1 that. There's an agreement, an informal
2 agreement -- I'm using the term very
3 broadly -- between Mr. Frizzell and the
4 Fitches with respect to their properties and
5 what the Applicant will do should the Project
6 move forward.

7 With respect to the Millers, Ms.
8 Heald and Fat Dog, proposals have been made
9 and they have not been accepted. I can't
10 even really tell how much discussion there
11 has been. But in some cases there have been
12 a couple of attempts with proposals, and
13 others I can't tell that.

14 And then with respect to Regis
15 Miller, I don't find anything. So I'm not
16 really sure where that one stands.

17 But with respect to everyone else,
18 there is written correspondence in the file.
19 There are, in certain cases, in fact in most
20 cases where it's appropriate, planting
21 plans -- not with respect to the Frink
22 property, or with respect to Fat Dog, which
23 is water, but with respect to the other
24 properties. There are mitigation plans that

1 are in the file. But I wanted to be clear
2 that roughly half, with respect to these
3 folks, appear to have an agreement, and the
4 other half appear not to have an agreement.
5 Everyone has had outreach, although I
6 couldn't document the Regis Miller outreach
7 through the various means that I used.

8 And so I leave it to the Committee
9 as to how they would like to handle these
10 various issues. As I look at it, I say that
11 our charge is to determine more broadly
12 whether the construction unduly interferes
13 with the orderly development of the region.
14 I don't find that three or four unresolved
15 individual property owners prevents me from
16 making that determination. But at the same
17 time, these people are people who intervened.
18 They took the time and the trouble to do
19 that. They hired counsel, that being the
20 Durham Residents counsel, who did come to the
21 hearings every day. I'm not sure that
22 construction is the right place to address
23 this. Maybe it's in property values. But
24 the claims weren't all about property values.

1 They were about ability to get in and out of
2 my driveway, I don't like this pole this
3 close to my driveway, I don't like this pole
4 this close to my house, I don't want to look
5 at it. So I wanted to be sure that I got on
6 the record those claims and the state of
7 resolution or lack thereof.

8 PRESIDING OFFICER WEATHERSBY: I
9 thank you for that summary. I think that the
10 disagreement between several affected property
11 owners or business owners goes across a lot of
12 different areas that we're talking about, the
13 property values, aesthetics, and we're talking
14 about it now based on construction and land use
15 issues. But I agree that we probably shouldn't
16 get into the specifics of what's been offered
17 to each different party and work out whether
18 that's fair. That kind of goes back to what we
19 talked about this morning with the dispute
20 resolution process. I think everyone is
21 working in good faith to resolve the issues
22 concerning the various properties. And to the
23 extent that they cannot be resolved, there is a
24 dispute resolution process in place. So I

1 think I would rather focus on some of the
2 broader issues that affect the region, and in
3 particular as we're talking about this subject,
4 the views of the municipalities, to the extent
5 they haven't been discussed already, if you
6 have more on that. Does anyone want to talk
7 about the individual property owners further?
8 Mr. Way.

9 MR. WAY: I agree with what you just
10 said, that if we did our job right this morning
11 and we come up with language that we can agree
12 on with both the 268 dispute resolution
13 process, but also the steps leading up to that
14 process, then hopefully we've dealt with the
15 very legitimate concerns of people that have
16 come before us, that we've dealt with the
17 issues of the businesses, particularly three
18 businesses that we talked about this morning
19 that come before us. So I would like to think
20 that by firming up that process we helped take
21 care of that issue and that will allow us maybe
22 to move to a little more broader as you said.

23 PRESIDING OFFICER WEATHERSBY: Ms.
24 Duprey.

1 MS. DUPREY: Are we ready? Okay.
2 Great.

3 MR. FITZGERALD: Madam Chair, I'm
4 sorry. I'm not sure whether this is the
5 appropriate place to take this up or not, but
6 there's two concerns I wanted to raise. One is
7 in these various dispute resolution mechanisms
8 and so on we're discussing, I think we heard a
9 lot of testimony that there was frustration
10 with the communication and outreach process
11 conducted by the Applicant, and examples were
12 entities that were never approached for
13 face-to-face meeting. I can't speak -- and,
14 you know, claims of not being properly notified
15 of things, et cetera. The Applicant, I'll
16 note, in almost every instance provided
17 documentation indicating how they had
18 attempted, what they had attempted and so on.
19 So I guess I just want to ensure, if
20 possible -- and one other piece is that I think
21 we heard some testimony that at one point an
22 individual with concerns was referred to the
23 Applicant's attorney.

24 So I think in one of the -- in the

1 dispute resolutions, in Paragraphs 17 to 19,
2 or 21 today, it did indicate that they shall
3 initiate, I forget the exact language. But I
4 think to my mind it seemed to indicate it
5 would be a face-to-face discussion, that it
6 wasn't going to be e-mails and phone calls
7 and messages and so on.

8 PRESIDING OFFICER WEATHERSBY: So I'm
9 going to stop you because I think the time for
10 discussion about the proposed dispute
11 resolution process will be when we have a new
12 draft in front of us.

13 MR. FITZGERALD: Okay.

14 PRESIDING OFFICER WEATHERSBY: And we
15 can look at it and see if it satisfies our
16 concerns. But I don't want to get us too off
17 track right now.

18 MR. FITZGERALD: Sure. That's fine.
19 The only other thing, again, could be just a
20 placeholder at the moment, is I think that in
21 the interest of transparency there was a
22 requirement to have information on plans,
23 monitoring reports and so on, posted on our web
24 site. I would also like to see that

1 information posted on the Applicant's web site.
2 I don't think people are, individuals are going
3 to be -- or at least that they be provided
4 information, that the Applicant provides
5 information that sends people to our web site,
6 whatever. I think there should be one central
7 clearinghouse for all those construction plans,
8 Best Management plans, monitoring records, et
9 cetera, et cetera. And I would think that the
10 general public, if they're going to go look for
11 them, they would look for them on Eversource's
12 web site. So I think that's an issue that we
13 ought to -- whether that's appropriate now or
14 later is --

15 PRESIDING OFFICER WEATHERSBY: Let's
16 take that up later, too. I would say that
17 certainly we have a condition that all the
18 plans are coming to the SEC and they will be
19 posted on the SEC web site. And anyone who's
20 involved with the process so far knows that's
21 the central location for those.

22 MR. FITZGERALD: Just want to be
23 sure that --

24 PRESIDING OFFICER WEATHERSBY: I hear

1 you. It's good to have belts and suspenders.
2 And maybe Eversource should have something on
3 theirs. But I haven't looked at their web
4 site, and I don't know what's there. But
5 certainly --

6 MR. FITZGERALD: My concern is the
7 public has a place where they would think to
8 look.

9 PRESIDING OFFICER WEATHERSBY: Let's
10 go back to orderly development of the region
11 and talk about land use and views of
12 municipalities.

13 MS. DUPREY: Thank you. Just
14 reminding us that we're following Site Rule
15 301.15, which states, In determining whether a
16 proposed energy facility will unduly interfere
17 with the orderly development of the region, the
18 Committee shall consider the extent to which
19 the siting and operation of the proposed
20 facility will affect land use -- I'm just
21 reading the parts that we're going to address
22 now -- and also the views of municipal and
23 regional planning commissions and municipal
24 governing bodies regarding the proposed

1 facility.

2 So the first question that I had
3 was what's the region? If it's regional,
4 what's the region? Because I do think that
5 it's important for us to keep this in mind.
6 This is a different standard than the other
7 standards. And so I looked at a couple of
8 things. We're talking about the Seacoast
9 Region, so I think it's fair to say that this
10 is the Seacoast Region. It's the Seacoast
11 Reliability Project. But I don't know that
12 anyone's ever defined exactly what towns
13 belong in that region.

14 I do note in Mr. Varney's materials
15 that he talks about the two regional planning
16 commissions that encompass the towns that are
17 part of this project, and they are the
18 Strafford Regional Planning Commission and
19 the Rockingham Planning Commission. Two of
20 the towns are in each of these two
21 commissions, within the reach of these two
22 commissions. However, these commissions go,
23 in the case of Strafford, into Carroll County
24 as well. So I'm not trying to get us bogged

1 down there. I'm just saying that it's a
2 bigger area than the four towns. And I think
3 that it's important for us to keep that in
4 mind. This is a reliability project for the
5 seacoast. It's not a reliability project for
6 Durham and Newington. So we just want to
7 keep that in mind as we go through this. I
8 read earlier the stipulations that were
9 agreed to, the stipulated facts. They
10 weren't particularly extensive. There are no
11 stipulated conditions that relate to this.

12 Sorry. I just went out of order a
13 little bit, so I'm jumping around a little
14 bit.

15 So I'm just going to take a second
16 to talk about what I looked at in order to
17 assess this area. First and foremost, I
18 looked at Mr. Varney's report, his prefiled
19 testimony and his cross-examination. To the
20 extent there were official experts offered, I
21 would say they were Mr. Selig and Mr. Hebert.
22 I don't know that they're officially experts,
23 but they're certainly very familiar with
24 their own towns. Then we had a variety of

1 testimony by various individuals, and we also
2 had a lot of briefing related to this
3 particular topic. And I thought that it
4 might be useful to just give a bit of an
5 overview of the briefing for a moment.

6 From the Applicant's side, the
7 argument was this is in an existing corridor,
8 and therefore it has to be consistent with
9 prevailing land uses. It was also pointed
10 out that creating a new corridor would be
11 more disruptive to prevailing land uses than
12 using an existing corridor, where already
13 this property couldn't be used for the
14 purposes surrounding it. The claim was made
15 that the existing land uses will be
16 undisturbed, that all of these land uses were
17 reviewed by their expert, that being Mr.
18 Varney, and found that the Project is
19 generally consistent with local and regional
20 planning documents. The expert found the
21 Project will not change the character of
22 existing land uses along the corridor, that
23 siting of transmission lines in existing
24 corridors is a sound planning and

1 environmental principle. And that goes back
2 again to this statement that do you want to
3 create a new corridor, and is that more
4 disruptive. That is different than, and this
5 was not addressed, putting it in an existing
6 transmission corridor.

7 They also point out that the
8 Applicant worked diligently with the host
9 communities and made numerous changes to
10 accommodate local concerns, including
11 lowering poles, relocating poles, placing
12 portions of the Project underground, agreeing
13 to protocols for construction, offering
14 mitigation, and changing pole design, among
15 other things. Importantly to them, they also
16 note that neither Counsel for the Public nor
17 any other party has cited any example of an
18 actual change in land use due to the Project.

19 In a nutshell, Counsel for the
20 Public claims Mr. Varney's analysis is overly
21 simplistic and boils down to it's in an
22 existing corridor and that the Applicant has
23 not given us, the SEC, enough guidance and
24 we'll have to solve this on our own and

1 decide whether the change in scope and use
2 makes the Project inconsistent with adjacent
3 land uses.

4 Newington argues that the Project
5 violates its master plan and that Varney's
6 testimony is the same as that in Northern
7 Pass, which was rejected by the SEC. It also
8 argues that it contravenes the Town's
9 position that every effort should be made to
10 preserve open space.

11 Durham argues in its brief that
12 transmission lines have been zoned out in the
13 town of Durham, and we'll talk about that
14 more later; that they will have significant
15 negative effects on UNH; that it also
16 violates the Durham Master Plan for reasons
17 related to aesthetics and scenic resources.
18 And a big portion of the Durham brief and, in
19 fact, the testimony, prefiled testimony, and
20 the cross related to Little Bay. That was a
21 particularly important issue, a significant
22 issue to Durham.

23 So with that said, I then thought
24 about a few questions that we might keep in

1 mind as we think about this area. One was
2 how disruptive to both the existing land use
3 and planned future land use in the area will
4 siting of this facility be. Also probably
5 going to want to take into consideration our
6 findings on historic resources, aesthetics
7 and water quality as we consider this. What
8 was the purpose of rolling all of the review
9 from, instead of leaving it in various towns'
10 hands, into the SEC as was done by the
11 legislature? We also, I think, have to
12 consider that we have two towns that have
13 either zoned out or by master plan mandated
14 that lines as planned not occur where they
15 are planned to be put, so what weight do we
16 give to that? And then lastly, the question
17 that we've been talking about a bit, or I
18 have anyway, is what constitutes the region.

19 So that having been said, I'm going
20 to refer to Mr. Varney's report. And I'm
21 looking at Page 5 of it. And I am not going
22 to go through this report line by line. It's
23 70 pages, and that's not counting things that
24 are attached to it.

1 So I'm going to try to summarize
2 things as best I can. And first, I'm going
3 to take up the prevailing land use. So I
4 thought we would first start with the
5 prevailing land use and then go to the
6 municipal officials' views, master plans and
7 zoning ordinances.

8 So we know that the Project route
9 is 12.9 miles long. It goes through four
10 municipalities. And I thought this was
11 interesting: It's 152 acres, which I would
12 have thought it was a lot bigger than that
13 is. But it's 152 acres. The Project
14 corridor is well below 1 percent of the total
15 land area in each municipality. Aside from
16 the cable houses along Little Bay that date
17 back to 1902, most of the rights of the
18 corridor were originally obtained in the
19 mid-20th century. The corridor contains
20 electric lines and structures which have been
21 actively maintained for decades.

22 Then turning to the actual land
23 uses in the corridor today. There are a lot
24 of them, and here's what they are: Forests,

1 agriculture, residential,
2 commercial/industrial, transportation and
3 utilities, recreation, conservation and open
4 space, historical and archeological,
5 wetlands, water resources, wildlife habitat,
6 and institutional government. All of these
7 land uses include the presence of the
8 existing right-of-way.

9 So what Mr. Varney does, in what I
10 have to say was a very thorough report in
11 terms of cataloging of all of these uses, is
12 he takes each and every one of those
13 categories and goes through it in a bit of
14 detail as to what exists there now, and he
15 arrives at the conclusion with respect to
16 each of them that the prevailing land use
17 will -- I just want to get the exact word
18 that he uses. That it's "consistent with the
19 proposed facility." So he finds that the
20 Project, and he says here, "Overall, the
21 Project is generally consistent with these
22 uses and will not have an adverse impact on
23 land use along the corridor."

24 So a number of these areas are

1 areas that we have already addressed, things
2 like I think we've talked about agriculture;
3 we've talked about recreation, conservation,
4 open space, historical archeological
5 wetlands, water resources, wildlife habitat.
6 It seems to me that we've had quite a bit of
7 discussion about those things, and so I
8 really didn't feel it was necessary for us to
9 go through each and every one of these. But
10 I will if you want to. And I think the
11 question before us is: Does this line being
12 put in the right-of-way that exists today, is
13 that going to affect the existing uses, such
14 that there would be an undue interference in
15 the -- sorry, forgetting my words -- in the
16 prevailing land use? So I'm at your pleasure
17 as to how you want to go through this,
18 whether you want to go through it category by
19 category. It seemed to me that we had
20 already made a number of determinations. And
21 I'm willing to handle this any way that you
22 want to.

23 I will say that with Mr. Varney's
24 report, that I did find that what he had to

1 say was conclusory in a lot of places. In
2 neither case could you put your hands on hard
3 evidence of how this was affecting the
4 prevailing land uses. I think the closest
5 thing would be I don't want to see this pole,
6 I'm impacted by the visuals of this. And I
7 think that that's really what we're talking
8 about here. Whether it be on a recreational
9 trail, whether it be I'm sitting in my living
10 room, I'm sitting on my dock, I'm not sure
11 any of us would argue that you can't still
12 farm your land on the side of the
13 right-of-way or you can't still conduct your
14 forestry practice on the side of the
15 right-of-way by virtue of a tower going into
16 an existing right-of-way. But I think the
17 bigger question is: Do those visuals in some
18 way sufficiently impact the land use of the
19 area that it rises to the level of violating
20 the segment of the statute and of our rules?
21 I think that where we have been through the
22 aesthetics piece of this and the historic
23 piece, to me, that weighs against that. But
24 I don't know how others of you feel. And you

1 might look at it differently. It's a
2 different standard than the standards that
3 we've been talking about previously. It was
4 unreasonably adverse here. It isn't that
5 standard here. It's does it rise to the
6 level of unduly interfering.

7 PRESIDING OFFICER WEATHERSBY: Mr.
8 Fitzgerald.

9 MR. FITZGERALD: It seems to me that
10 the central, or one of the key questions here
11 is this notion of consistency with existing
12 land use and the issue of existing land use
13 being a distribution corridor, which generally
14 I think is considered under, you know, 30 to 40
15 kV, and converting that to use for a 115 kV
16 transmission line with significantly larger
17 structures and facilities and so on. And I
18 guess I think this is somewhat intertwined with
19 the question that Ms. Duprey posed about the
20 region, because growth and electricity use is a
21 natural phenomenon. Obviously, I think the
22 Seacoast is growing more. But it's a result of
23 growth. We're talking about a growing region.
24 And serving a growing region, you know, we're

1 increasing our use of electricity all the time.
2 But serving a growing region results in the
3 need to provide additional electrical capacity,
4 whether that be distribution, transmission or
5 whatever. But I think at some point you have
6 to make a determination of whether the
7 transmission line at 130 kV is a consistent
8 land use, you know. I think Mr. Varney's
9 conclusion was it's a utility corridor. And I
10 don't have a preconceived notion. I guess I
11 just wanted to put it out there for discussion
12 and see what others thought.

13 PRESIDING OFFICER WEATHERSBY: I
14 think it's definitely an issue we need to
15 consider, as to whether this is a different
16 land use. Or even if it's not a different land
17 use, whether or not that change affects the
18 adjacent land uses, both use of the
19 right-of-way and the adjacent land uses. So I
20 think it is something we need to consider. I
21 would avoid gross generalities that, you know,
22 in all cases going from a distribution to a
23 transmission line means X. As far as this
24 project, it's primarily in an existing

1 distribution line right-of-way or cable
2 crossing right-of-way. There's a few
3 exceptions, of course, Gundalow Landing and a
4 couple of others, where there's small sections
5 of a new right-of-way. But the majority is in
6 an existing utility right-of-way. But what's
7 in that right-of-way is changing. I won't say
8 considerably 'cause that's a judgment. But it
9 is certainly getting, as you said, the towers,
10 and they are changing the placement of them,
11 the height, and the type of -- the amount of
12 electricity that's being transported across the
13 lines.

14 Mr. Way.

15 MR. WAY: I think it was the Town of
16 Newington, in their brief, that brought up the
17 previous docket where we addressed -- where
18 this issue was addressed as well. And I think
19 I see some differences between this docket and
20 that previous docket. And I think one of the
21 challenges that might have happened previously
22 was that there was a lot different situations
23 in the corridors. It wasn't the smaller
24 structure we're dealing with here. It was very

1 large stretches, a lot of situations. And
2 there came points where, you know, it went
3 beyond what was the intended land use. And I
4 think it's hard -- it was hard to grasp what
5 that was.

6 I think in this case that land
7 use -- the person with the prevailing land
8 use has been a little bit more defined than
9 maybe it has in the past. And looking at the
10 adjacent uses, I think, from my standpoint,
11 it had more meat than what maybe it was --
12 what has been done in the past as well. And
13 so I've got a sense that, you know, just the
14 standard language, hey, it's in a
15 right-of-way, it's a utility corridor, it's
16 fine. I didn't sense that as much in this
17 report or this testimony, which was helpful
18 for me. Let me leave it at that for right
19 now.

20 PRESIDING OFFICER WEATHERSBY:

21 Director Muzzey.

22 DIR. MUZZEY: In considering that
23 list of prevailing land uses in the Project
24 area that you gave us, Ms. Duprey, I do agree

1 that we have talked about some of these land
2 uses in a manner that we could draw similar
3 conclusions in this area, even with the use of
4 different criteria. You know, we've had pretty
5 robust discussions about water resources,
6 wetlands, historical, archeological, wildlife,
7 recreational, transportation.

8 One of the areas that I wanted to
9 address was conservation lands and open space
10 because I don't think we've spent too much
11 time, and in the report that Mr. Varney
12 provided, trails are included in that as
13 well.

14 In thinking about distribution
15 lines versus transmission lines, I draw
16 parallels with roadway systems, where we know
17 that we have roads that are dirt roads that
18 serve as woods roads and we have interstates
19 that are eight lanes wide. And although
20 they're both roads, that doesn't mean their
21 scale and their impacts are the same. And I
22 find a similar, although not as dramatic,
23 argument could be made with the difference
24 between distribution and transmission lines.

1 Although they are both utility corridors, we
2 do have a difference in scale. And we've
3 heard a great deal about that. The lines are
4 larger. There are more lines. The poles are
5 taller, particularly at the start of the
6 Project. Clearing will be greater. So it
7 may be a similar use, but the impacts and the
8 scale differ. And thinking about that in
9 particular as it applies to conservation
10 lands, within the Varney report we have a
11 fairly extensive list of conservation lands
12 and open space and trails in each of the
13 communities that begins I believe on Page 25
14 of the report.

15 PRESIDING OFFICER WEATHERSBY: Is it
16 26?

17 DIR. MUZZEY: 146.

18 MS. DUPREY: Yes, it's 146.

19 DIR. MUZZEY: Sorry. I should have
20 had this queued up.

21 MR. IACOPINO: Conservation lands are
22 on electronic Page 44.

23 MS. DUPREY: And real Page 25 for
24 anyone who's looking at the document.

1 DIR. MUZZEY: That was my concern.
2 So, going through each of the four
3 towns the Project traverses, we have each of
4 the compilations of the conservation areas.
5 I bring up conservation areas because, as Mr.
6 Fitzgerald pointed out, places where humans
7 need power -- and we've come to recognize
8 that transmission or distribution lines are
9 part of the developed environment.
10 Conservation lands offer a different,
11 undeveloped part of our landscape. And it
12 really is an impressive list of conservation
13 areas that have been set aside in these
14 communities, particularly in an area that we
15 know has been lived in for a long time, but
16 also has a great deal of developmental
17 pressures.

18 Given that, though, it's
19 interesting to me that we only had one
20 easement where the line appeared not to meet
21 the conditions of the easement, and that was
22 at the Frink Farm. And that was for burial
23 of the line, which in other areas that we're
24 considering was meant to be a positive

1 impact. The conditions of that easement were
2 met. There were long discussions with the
3 conservation district. And as we look at the
4 list of all the other conservation lands and
5 open spaces listed, I don't see anywhere
6 where this type of line is not allowed in any
7 easements that protect those places, any
8 agreements that might exist.

9 And so my conclusion, at least in
10 regard to this type of land use, the Project
11 does appear to be compatible, given that no
12 additional approvals were needed.

13 MS. DUPREY: I think it's really
14 interesting, as I was thinking about this on a
15 theoretical level -- and I won't go on very
16 long here 'cause I know that's not what we're
17 doing -- but about where would we want the line
18 to be. I think the short answer is probably we
19 wish we didn't have to see them anyplace. But
20 if you start taking it apart, do we want it to
21 go through open space, which is actually
22 somewhat of a suggestion in some of the towns,
23 or do we want it to go through neighbors?
24 Because it can't always only go through

1 necessarily industrial-type land. You can't
2 necessarily create a line that only goes
3 through industrial land. It's just really a
4 struggle. And I think it's the Durham
5 ordinance that suggests that if you go through
6 a pretty onerous process, which we'll talk
7 about a little bit later, that you can put them
8 in their wetlands overlay district. And this
9 was an interesting thing. So I appreciate
10 those remarks, Director Muzzey.

11 PRESIDING OFFICER WEATHERSBY:

12 Anything else on use of the right-of-way,
13 affected land uses? I know for me personally,
14 I guess that I think in general Mr. Varney's
15 correct, in that using an existing right-of-way
16 is generally a sound planning principle. But
17 that still doesn't ensure that it will not
18 unreasonably impact adjacent land uses or that
19 the existing right-of-way would not be so
20 overburdened that locating a new line in an
21 existing right-of-way is necessarily the
22 preferred location. But as we get down to this
23 project, I think that in this case I feel as
24 though the right-of-way is not being

1 overburdened, in that while there are some
2 adverse impacts on adjacent land uses, they are
3 not unreasonable after review of everything
4 we've heard and read. So that's where I stand.

5 Why don't we move on to municipal
6 views or -- okay.

7 MS. DUPREY: I'm ready. So in
8 thinking about municipal views, that
9 incorporates the zoning ordinances, the master
10 plan, as well as obviously testimony and
11 comments that have been made on the report. So
12 let's just start for a moment with comments and
13 testimony made on the record.

14 We had both Mr. Selig and
15 Mr. Hebert on the stand for cross-
16 examination. We also had their prefiled
17 testimony. I think that it's fair to say
18 that they both feel strongly that this -- and
19 they said these words -- that it interferes
20 with the order -- "unduly interferes with the
21 orderly development of the region." I will
22 say that I could not find any concrete
23 example of that occurring in anyone's
24 testimony. And I did want to point that out.

1 I can't -- that this couldn't be built, our
2 town library can't be built. There isn't a
3 parcel that's been set aside for something in
4 a master plan that's important to the
5 community that this rules out. There wasn't
6 anything like that.

7 I found these statements on --
8 sorry, Dawn -- it's Page 46 of Mr. Varney's
9 testimony, which is Applicant's Exhibit 146,
10 that helped me as I was going through this
11 analysis to sort of focus my attention. So
12 you may not think it's right, but I just
13 thought it was worth our taking a look at.
14 It's the first full paragraph. It starts
15 with, The nature of energy facilities under
16 SEC jurisdiction, especially linear
17 transmission projects, is that they often
18 cross municipal boundaries and multiple
19 zoning districts. The SEC process,
20 therefore, provides for a resolution of
21 issues in an integrated fashion. RSA 162-H
22 and the SEC rules do not require that a
23 project conform to local zoning ordinances.
24 The Committee is required to give due

1 consideration to the views of the municipal
2 regional planning commission; however, a
3 project before the SEC, specifically one that
4 traverses multiple municipal boundaries and
5 zoning districts, is not bound by the
6 specific requirements of each municipality.
7 If there was such a requirement, a project
8 would be subject to a patchwork of
9 inconsistent local municipal regulations that
10 would make it virtually impossible to design
11 and site a single project to comply with the
12 various regulations. In the SEC context,
13 master plans and zoning ordinances should be
14 considered as part of the background to
15 understand land use and development in a
16 community. For example, a review of local
17 master plans and zoning ordinances may show
18 that there is a better route, such as running
19 a gas or electric line along an existing,
20 available corridor rather than creating a new
21 one, or that an Applicant should consider
22 avoiding a parcel where the town proposes
23 constructing a new town facility such as a
24 school or library. Almost all utility

1 corridors in New Hampshire cross a number of
2 zoning districts as they pass through
3 communities. In many cases, zoning
4 ordinances were established after the
5 electric line ROW, and the regulations have
6 allowed for other development, including
7 residential and commercial uses, to be
8 located and built in the vicinity of the ROW.
9 In general, most zoning ordinances do not
10 specifically address electric or utility
11 transmission lines or utility easement
12 corridors as a use. Some ordinances
13 designate specific zoning districts, usually
14 industrial parks or commercial areas, as
15 appropriate for larger generation facilities
16 such as power plants.

17 So I thought that that just gave us
18 maybe some context. We don't have to accept
19 that. But that's a view of what this
20 particular expert -- not an expert
21 necessarily on the SEC, but in the land use
22 area, how someone involved in the land use
23 area looks at trying to figure out how you
24 get a transmission line into a setting that,

1 you know, is almost 13 miles and goes through
2 four towns in a lot of different zoning
3 districts.

4 With that said, Mr. Varney did a
5 very thorough review of all the regional
6 plans that pertain to this area. He started
7 with Strafford Regional Planning Commission.
8 He talked about the Rockingham Planning
9 Commission. He reviewed river corridor
10 management plans. He reviewed the Oyster
11 River as a part of that and the Lamprey
12 River. He looked at the scenic and cultural
13 byways. And then he also looked at the
14 municipal plans and zoning ordinances.

15 And I wanted to next move to those
16 municipal plans and zoning ordinances, but I
17 wanted to be sure that you knew of all of the
18 things that he specifically looked at. He
19 looked at the plans for both Portsmouth and
20 Madbury as well, the master plans and the
21 zoning ordinances. I don't intend to dwell
22 on those because we've not had any objection
23 to them. He found that the corridor did not
24 rise to the level of violating the statutory

1 prescription there.

2 So I think what we do want to
3 concentrate on are the plans and zoning
4 ordinances, master plans and zoning
5 ordinances of Newington and of Durham. So I
6 thought we would take up Newington first.

7 As we all know, the Newington
8 Master Plan, because there was a lot of
9 testimony about this, the Newington Master
10 Plan rules out above-ground transmission
11 lines in the residential corridor. They have
12 asked that the transmission line be
13 undergrounded through all of the residential,
14 as well as the historic corridor. It isn't.
15 And so their point to us is: You're clearly
16 violating our master plan. And that loops
17 back to the question that I raised with you
18 at the beginning of this conversation, which
19 is what happens when a town, and in this
20 case, a town specifically took action to
21 prevent the installation of a corridor in a
22 district that they don't want it in? So
23 that's one question that we have to address.

24 So, with Newington it's very clear

1 and on the table. And they spent a lot of
2 time talking to us about that and telling us
3 why they felt the way they did. One of the
4 reasons was that they felt the town has been
5 asked or required to give up a lot of its
6 property to Pease and other industrial
7 endeavors and that it had made a lot of
8 sacrifice for public utilities and that only,
9 I think it's approximately 25 percent of its
10 land mass, which was not very many acres, is
11 available for residential development, and
12 that this is a huge intrusion in that. On
13 the other side, we have the Applicant
14 arguing, wait a minute. This line is already
15 there. You're not going to put a house in
16 the middle of it. This area is developed for
17 housing already. This does not rise to the
18 level of undue interference with the orderly
19 development, you know, future looking of the
20 town. You're not going to develop this.

21 And there are other -- another
22 piece of the argument that we have to
23 consider obviously is whether one town in a
24 region's master plan, whether we really see

1 towns who rule out transmission lines through
2 their master plans, whether that is something
3 that's definitive for us or something that we
4 take into consideration.

5 I will note that in the case of
6 both Durham and Newington, in their master
7 plans, if you go through them, and I read a
8 lot of all of them. I'm not going to tell
9 you I read every word of them. I certainly
10 scanned the entirety of the plans. But there
11 are numerous sections in both plans that talk
12 about a desire of future development. It's
13 balanced development. I don't mean to
14 suggest they want to cover the town from one
15 side to the other with development. But
16 they're looking for more commercial and
17 industrial development. Both towns are. I
18 would note that in order to accommodate that,
19 you have to have a reliable source of power.
20 And in fact, both master plans talk about
21 that. In various parts of each of their
22 master plans, they talk about the need for
23 reliable, affordable energy. And I thought
24 that was interesting. Not that it should

1 really surprise me. But I just thought it
2 was an interesting point in both of those
3 master plans. At the same time, I think it's
4 fair to say that neither master plan or their
5 zoning ordinances encourage this development
6 where it is.

7 The Durham zoning ordinance rules
8 out transmission lines in the entirety of the
9 town unless you get a special use permit from
10 the planning board, which if you follow the
11 Durham brief is a very tough order to fill.
12 It requires a super majority of the planning
13 board, which is five members of the planning
14 board, to rule on a number of conditions in
15 favor of the utility. The counsel for Durham
16 said in his brief that he didn't believe that
17 they could be met.

18 So in one case we have a town who's
19 completely, essentially zoned it out, aside
20 from this special use permit. In the case of
21 Newington, it's allowed in the industrial
22 zone. I don't know if it's allowed at Pease
23 because that is its own whole zoning area and
24 I don't have any information on that. And I

1 know I'm not supposed to go outside of what's
2 been presented to us in order to do that, so
3 I didn't.

4 So the question is: We have this
5 existing corridor. It goes through areas
6 that have either been specifically ruled out
7 by zoning ordinance -- and I would say in
8 this case, both communities ruled it out by
9 zoning ordinance or ruled it out by master
10 plan. Durham's Master Plan isn't nearly as
11 clear on that as Newington's Master Plan is.
12 Newington's is very specific as we've said.
13 And taking that in combination with the
14 testimony that's been put before us by
15 Mr. Selig and Mr. Hebert, as well as other
16 individuals, I think we need to talk about
17 how we feel -- how we want to address these
18 comments, how it connects to the statutory
19 standard that we've been asked to apply to
20 this, and particularly with the regional
21 question. And then for me, and I would like
22 to comment on this after I've heard from you,
23 how we think about a town specifically,
24 either zoning out or through master plan,

1 attempting to prevent utility lines from
2 going through their boundaries, because I'm
3 not sure that's what the legislature was
4 anticipating here.

5 PRESIDING OFFICER WEATHERSBY: Anyone
6 care to comment? Mr. Fitzgerald.

7 MR. FITZGERALD: It seems to me that
8 we have to give consideration to what the
9 legislature intended this Committee to do. And
10 this is one of the first projects since the
11 legislature -- a more recent project since the
12 legislature implemented the language of giving
13 "due consideration to the views of local and
14 municipal municipalities." And so I guess it
15 seems to me that we have to sort of figure out
16 where that balance point is, where the intent
17 of the SEC, as Mr. Varney points out in his
18 report, is to provide some consistency to
19 projects that cross multiple boundary lines,
20 multiple municipal boundary lines. And I don't
21 think that the legislature intended to give the
22 municipalities veto power. They wanted us to
23 consider their views. They wanted us to
24 understand and know how they felt.

1 I've been thinking a little bit
2 about, you know, the Merrimack Valley
3 Reliability Project. And it's not the
4 subject of this, obviously, but it is
5 referenced in the some of the Application
6 materials. And there were no objections --
7 there was very little. And I think it's sort
8 of a similar nature. But there was a
9 significant difference in my mind to the fact
10 that you have two communities with cultural,
11 historical districts that are significantly
12 different than the way things were under
13 Merrimack Valley. So I guess to me that is
14 the challenge of trying to decide where that
15 balance point is. And I think we have to
16 sort of look at that ourselves and come to an
17 understanding of what does "giving due
18 consideration to the municipalities' views"
19 mean that will give us some guidance as to
20 how to proceed. I don't know if that's
21 helpful or not but...

22 PRESIDING OFFICER WEATHERSBY: Ms.
23 Duprey.

24 MS. DUPREY: Madam Chair, I was

1 remiss in failing to bring to the attention of
2 the Committee once again that I think also in
3 this category one should consider the outreach
4 and mitigation that's been proposed by the
5 Applicant. And both individuals on the stand I
6 think testified to the fact that there was a
7 lot of outreach. They were included in a lot
8 of meetings. They'd had an opportunity to
9 voice a lot of their concerns and that the
10 Applicant had responded to a number of them.
11 They didn't respond by not proceeding with the
12 project, but they did respond in various
13 instances. And I'd just forgotten to mention
14 that.

15 PRESIDING OFFICER WEATHERSBY: Thank
16 you.

17 You look like you were going to
18 speak, Mr. Way. Go ahead.

19 MR. WAY: No, I defer to you.

20 PRESIDING OFFICER WEATHERSBY: So I
21 think Mr. Fitzgerald tees up nicely exactly
22 what we're wrestling with here. I think
23 there's no getting around the fact that this
24 project, in large part, is inconsistent with

1 the master plans and zoning ordinances of the
2 towns of Durham and Newington. There's areas
3 where it may be partially consistent as Ms.
4 Duprey laid out. But in areas both specific
5 and general concerning natural beauty,
6 recreation, et cetera, et cetera, it is
7 inconsistent. So the question is what do we do
8 about it, and we do need to give it
9 consideration? But at the same time, we can't
10 allow the specific town or town's ordinances or
11 master plans to rule this process. The
12 legislature has given us the authority to
13 resolve all of these issues in an integrated
14 fashion. So while we do need to give it
15 consideration and a lot of thought, we do need
16 to look a little broader than just those two
17 towns and look at a larger scale and go back to
18 see if, given those concerns of the
19 communities, how does that affect the region
20 and whether it's undue interference with the
21 development of the region.

22 MR. FITZGERALD: Madam Chair, I think
23 there's one more issue to that facet. We've
24 already given significant consideration to

1 Newington's desire to have this project
2 undergrounded in our discussion of aesthetics
3 and historical, and I believe we made some
4 determinations that the land rights were not
5 available to do that. You know, there were
6 several complications. But I think that we --
7 that puts us in the position somewhat of again
8 saying if we were to give significant
9 consideration to the Town of Newington's Master
10 Plan, that would put us in the position of
11 mandating a different project.

12 PRESIDING OFFICER WEATHERSBY: Anyone
13 else care to comment on this area? Mr. Way.

14 MR. WAY: As you alluded to as well,
15 we had a lot of testimony with Newington on
16 implementing their plan and whether this fits
17 into their plan. And I think there was some
18 holes in discussions there about comparison to
19 telecommunication towers. It almost doesn't
20 matter in that respect because I think it comes
21 back to, Madam Chair, what you said. What do
22 we do when it may be inconsistent with the
23 master plan? We can quibble about whether it
24 is or isn't at one level. But if it is

1 inconsistent with the master plan, I tend to
2 agree with Mr. Fitzgerald, that it's something
3 that we consider. It adds to our decision.
4 Doesn't necessarily result in a veto, because
5 it would be the death of a project very
6 quickly, particularly if plans could be updated
7 as you go through the long process that we have
8 and towns can be responsive. So I don't know
9 where that leaves us.

10 PRESIDING OFFICER WEATHERSBY: Mr.
11 Shulock.

12 MR. SHULOCK: This is a very
13 difficult area for me because I see master
14 plans and zoning ordinances as the community's
15 effort to develop their land in an orderly
16 fashion. That's the exact purpose. And if
17 what we are permitting is contrary to those
18 master plans or ordinances, then we are
19 adversely affecting that community's desire to
20 shape itself, right, because it's not just
21 what's there now, it's what's there in the
22 future. And those zoning ordinances are
23 designed to decrease non-conforming uses and
24 get rid of them so that they can establish

1 districts with characteristics that they
2 actually want.

3 So I don't -- I agree with you.
4 There's no way we can get around that this is
5 not in conformity with the master plans, and
6 it will impact adversely those communities'
7 ability to develop in the orderly way they
8 want to. We have to decide whether that's
9 undue. I think that's our standard.

10 PRESIDING OFFICER WEATHERSBY: Ms.
11 Duprey.

12 MS. DUPREY: Having been assigned
13 this section, I've spent a lot of time thinking
14 about this very issue. And the concern that I
15 have is, particularly if you checked the
16 Newington situation where this was in specific
17 reference to this particular project, but even
18 if it hadn't been, I mean, what's to stop every
19 community from going -- and trust me, these
20 communities are very connected with each other.
21 They know what each other is doing, you know,
22 that they ought to be thinking about in their
23 own ordinances, and it ripples through the
24 towns. What happens when every town in the

1 Seacoast Region says, you know, we don't want
2 any transmission lines here unless you go
3 through a really inordinately difficult
4 process? And I ended up coming to the
5 conclusion that that can't be what the
6 legislature intended here, that it can't be
7 that a single town or even, I don't know what
8 to say about all of them -- and luckily we're
9 not faced with that today -- but all the towns
10 in the region did it.

11 So I don't think that's what the
12 legislature was getting at when it put this
13 language in there. And also, it may be undue
14 interference from their point of view, but
15 that isn't necessarily the question that
16 we're asked to answer. I think we're the
17 ones who have to determine whether it's undue
18 interference. And so when I look at that, I
19 say: What is this transmission line going to
20 stop from being built that is allowed for in
21 the zoning ordinances or is promoted by the
22 master plan? No one put any evidence in as
23 to anything that would be stopped or
24 interfered with its promotion. And honestly,

1 I couldn't see it. As I looked through all
2 these land use categories, I said: Does that
3 mean houses won't be built? Does it mean
4 anything that is planned in these various
5 zones won't be built? And I ended up coming
6 to the conclusion that it doesn't mean that.
7 And that's my personal conclusion. I'm not,
8 you know, pushing that on anybody. And I
9 didn't want to put it in my initial remarks.
10 I'm now commenting just as a member here of
11 the SEC. But that's -- I don't think we can
12 allow towns to be in the position of zoning
13 out transmission lines because they don't
14 like them, which none of us do, so you're the
15 last town standing and everything goes
16 through you because you didn't get around to
17 changing your zoning ordinance or you're too
18 poor and you can't afford attorneys to do it.
19 I just don't think that can be the standard.
20 And so for whatever it's worth, that's what I
21 thought.

22 PRESIDING OFFICER WEATHERSBY: Mr.
23 Shulock.

24 MR. SHULOCK: I agree with Ms.

1 Duprey. I think the statute's purpose and
2 design is to give us those decisions so that
3 we're not left with a series of parochial
4 decisions by towns who decide to zone out
5 energy infrastructure. And there are many
6 instances in our state where towns are
7 prohibited from enacting exclusionary zoning
8 ordinances: Services for the mentally
9 disabled, land fills and that sort of thing,
10 and energy infrastructure is infrastructure
11 that serves the public. We need it. And I
12 think that our statute was designed to take
13 those decisions out of the hands of localities
14 so that the facilities could proceed if they're
15 appropriate.

16 PRESIDING OFFICER WEATHERSBY: Okay.
17 I think we've got a good sense I think of what
18 the Committee is thinking along these lines.
19 We don't need to vote on this one. And I'll
20 see if anyone else wants to comment before we
21 move on. But this is something we need to
22 consider, the land use issues. And we need to
23 consider the views of the communities. But
24 we're not going to vote "Yay" or "Nay" on this

1 subject matter.

2 Mr. Fitzgerald, you want to say
3 something else concerning this?

4 MR. FITZGERALD: Yeah. I think we
5 also have to give due consideration, and we're
6 not bound by it obviously, to the ISO planning
7 process, that 30 years ago that planning
8 process was created to deal with the issue of
9 massive power blackouts that occurred across
10 the Northeast. And they gave certain powers,
11 federal powers, to a regionally designated
12 entity to determine the most appropriate energy
13 practice structure. And I know and fully
14 understand that people -- it's a complex
15 procedure. It's worse than dealing with the
16 SEC probably. And maybe it failed these towns
17 to some degree. Maybe the Applicant could have
18 done a better job bringing these towns into
19 that process, knowing this was the project they
20 were promoting. Host of issues there. But
21 ISO-New England has determined this is the most
22 appropriate solution to the problem that this
23 region faces, so...

24 PRESIDING OFFICER WEATHERSBY: Mr.

1 Way.

2 MR. WAY: And I know when I look at
3 the statutory language and we're supposed to
4 weigh the views of the municipalities, I think
5 that there is a formula, a balance there that
6 you have to strike, and what do you do with
7 that information. But I know it's a different
8 discussion when it's our reliability project as
9 opposed to something that might be more
10 elective. It's different. And so to what
11 extent we may have the luxury of maybe
12 considering the impact of a master plan might
13 be a little bit different with a reliability
14 project.

15 PRESIDING OFFICER WEATHERSBY: I
16 think we'll take up that issue as well in the
17 public interest area when we talk about that.
18 You're ahead of us as usual.

19 Anything else about land use, views
20 of municipalities you want to talk about?

21 Ms. Duprey.

22 MS. DUPREY: I just wanted to note
23 that I had specifically asked to move land use
24 towards the end of our discussion. And while

1 this may feel like a briefer discussion than we
2 expected, it's for the very reason that I asked
3 to have it moved to the end, where I felt like
4 getting through historic and the aesthetics and
5 the water quality in particular would help to
6 make this discussion easier to get our arms
7 around. Because if we had started at the other
8 end, I just didn't know how we were going to be
9 able to address each of these things. So I
10 appreciate your willingness to move it, and I
11 think that's made the discussion a bit more
12 efficient than it would have otherwise been.
13 Thank you.

14 PRESIDING OFFICER WEATHERSBY: Okay.
15 Let's take a ten-minute break and come back at
16 4:15. We'll talk about economic, if there's
17 anything left to talk about, and then maybe
18 property tax. We'll try to wrap up around
19 5:00. So we'll try to take some of the smaller
20 issues when we come back, or hopefully smaller
21 issues. So let's come back in ten minutes.
22 Thank you.

23 (Recess was taken at 4:08 p.m.
24 and the hearing resumed at 4:23 p.m.)

1 PRESIDING OFFICER WEATHERSBY: Okay.
2 We'll get started again. Our next sort of
3 subtopic will be sort of the general economic
4 area. Mr. Shulock.

5 MR. SHULOCK: Okay. So, again, this
6 is under the orderly development of the region.
7 And when we're making our determination whether
8 there's undue interference with that, we're
9 required to consider the extent to which the
10 siting, construction and operation of the
11 proposed facility will affect the economy of
12 the region.

13 So in their Application, the
14 Applicants were to give us information
15 regarding the economic effect of the facility
16 on the affected communities; the economic
17 effect of the proposed facility on in-state
18 economic activity during construction and
19 operation periods; the effect of the proposed
20 facility on state tax revenues and tax
21 revenues of the hosting regional communities;
22 the effect of the proposed facility on real
23 estate values in the affected communities;
24 the effect of the proposed facility on

1 tourism and recreation; and the effects on
2 community services and infrastructure. So
3 I've been asked to talk about just the
4 general economics and a few things about the
5 electric market implications of that. And
6 others are going to talk about -- well,
7 Mr. Way already talked about tourism and
8 recreation. And Ms. Duprey is going to talk
9 about real estate values and taxes.

10 So in this area of the general
11 economic effects, I think it's important to
12 point out that the Applicant is the only
13 party who presented us with evidence. It's
14 not contested. Well, it's not contested with
15 other evidence in the record I should say.
16 So the Applicant addressed these issues on
17 Pages 123 to 128 of its Application,
18 beginning on electric 154 if anybody wants to
19 go there, and on Pages 28 of 29 of the
20 Amended Application. Eversource also
21 provided expert testimony of Dr. Lisa
22 Shapiro, and her testimony was admitted as
23 Exhibits 9 and 83. And I believe Mr. Way
24 described that when she was looking at

1 economics and employment, that she used the
2 REMI econometric model. That's the model
3 produced by Regional Economic Models, Inc.

4 When she looked at the economic
5 effect, her input into that model was
6 primarily the cost of the Project, the
7 professional fees, technical services fees,
8 fees for engineering, site work materials and
9 construction. And using that recognized
10 model, she was able to determine that the
11 Project will benefit the economy by creating
12 a number of jobs during construction;
13 increasing average annual sales by
14 approximately 6.7 million to 7.1 million per
15 year; increasing average annual gross state
16 product by approximately 4.3 million to
17 5 million per year; increasing personal
18 income on an average of approximately 3 to
19 3.1 million per year during the construction
20 period. So, on a cumulative basis over the
21 four years of construction, she opined that
22 the state's economic output will be
23 approximately \$26.9 to \$28.3 million higher;
24 gross state product will be approximately

1 \$17.3 to \$19.9 million higher than without
2 the Project. And personal income will
3 increase by approximately \$8.1 to
4 \$12.3 million per year on a cumulative basis
5 over that four-year period.

6 So her testimony was criticized for
7 not having considered negative economic
8 effects of the Project, such as negative
9 effects on businesses and the impact of
10 increased electric transmission rates. But
11 Dr. Shapiro testified that she had reviewed
12 the testimony in the docket and didn't
13 identify any potential negative impacts that
14 were not being mitigated, and that the
15 difference in electric transmission rates was
16 too small to be meaningful in the REMI model.
17 She also said that, in any event, you would
18 also have to consider the value of
19 reliability when you were looking at the
20 negative economic impacts of the facility and
21 that there's a value to that, but it's
22 difficult to quantify.

23 So we also have the economic issue
24 relating to the amount that was modeled, and

1 that's the issue of whether costs will be
2 regionalized or localized. It's my
3 understanding that the inputs into the
4 economic model were based upon all of the
5 costs being regionalized. And there was some
6 question about that, given that there was
7 undergrounding of part of the Project. Mr.
8 Andrew, and I can't remember his first name,
9 testified --

10 PRESIDING OFFICER WEATHERSBY:

11 Robert?

12 MR. SHULOCK: Robert Andrew testified
13 that he believed that there's at least an
14 80 percent chance that all of the costs will be
15 regionalized. And Mr. Quinlan seemed confident
16 that all of those costs would be regionalized
17 because the Project had been designed using
18 Good Utility Practice.

19 Then there was some question about
20 what the effect would be on rates, and Mr.
21 Quinlan testified to that. Based on the
22 \$84 million construction costs being
23 regionalized, he estimated that an average
24 ratepayer using 600 kilowatts per month would

1 pay an additional 8 to 11 cents per month on
2 their bill.

3 Anybody have any comments? And
4 again, none of that evidence was really
5 controverted with other evidence.

6 PRESIDING OFFICER WEATHERSBY: Ms.
7 Duprey? I thought you had a question.

8 Thank you, Mr. Shulock, for the
9 excellent summary. Does anyone have any
10 further questions or comments concerning the
11 subject area?

12 MR. FITZGERALD: I just want to note
13 that most of these economic impacts, when you
14 look at the big picture for the state of New
15 Hampshire, are relatively trivial, even though
16 they're millions of dollars of impact on gross
17 state product and so on. But relative to the
18 argument that the negatives weren't considered,
19 there's also a positive that is unquantifiable.
20 But if the electric system is unreliable and we
21 have outages, there can be significant costs
22 associated with that as well. So, you know, I
23 think there are things on both sides that
24 either are too small to be quantified or are

1 unquantifiable because they're unknown. But
2 overall, it's pretty much noise in terms of the
3 overall economic impact to the state, 30 or 40
4 jobs, et cetera.

5 MR. SHULOCK: And then the other
6 factor I don't think any of us were planning on
7 talking about under economics, and that's the
8 effect on community services and
9 infrastructure. I think we've probably talked
10 that to death already, and we have seen that
11 all of those issues have been resolved through
12 the community MOUs.

13 PRESIDING OFFICER WEATHERSBY: Okay.
14 Let's move on to property taxes.

15 MS. DUPREY: Thank you, Madam Chair.
16 I may not be the best person to lead this, but
17 I'm going to do my best, and others can jump
18 in.

19 So the only testimony that we had,
20 to my recollection, on property taxes was
21 given to us by Applicant's expert,
22 Dr. Shapiro. And she gave us a chart that's
23 in Applicant's 101, marked on the exhibit
24 itself as 201, but it's 101. And this, I

1 think it's a four-page document, neatly
2 encapsulates her testimony with respect to
3 property taxes.

4 On this first page, which Dawn
5 kindly put up, she puts forth her estimate of
6 SRP allocated cost by community. So what
7 she's done in this is break down the
8 \$84 million price tag by community as best
9 she can based on certain factors. And you
10 can see that Durham and Newington obviously
11 have the vast majority of that. Then she
12 breaks that into a 2015 town valuation in the
13 next column. And in the last column she has
14 the SRP expressed as a percentage growth in
15 the 2015 town valuation. And I think what
16 she is demonstrating there or attempting to
17 demonstrate is the significance of this new
18 valuation in the towns in comparison to the
19 town.

20 If we could go to the next page,
21 and this was the page that I found the most
22 useful, she then takes that estimated
23 allocation by community that she had on the
24 first page we looked at, and she has come up

1 with, through her calculations, an estimated
2 first-year local property tax payment to the
3 various communities, a high and a low end
4 from her analysis. And so you can see from
5 looking at this that Madbury, on the lower
6 side, would expect to get property taxes
7 somewhere between about \$60,000 and \$90,000,
8 rounding, where Durham is expected to get on
9 the low end around \$750 to a million one.
10 Newington would be \$133,000 to \$195,000, and
11 Portsmouth, 42 to 61, for a total of \$982,000
12 on the low end to \$1,442,500 on the high end
13 as a collective group.

14 She then does something on the next
15 page which I don't understand. I'm not going
16 to try to tell you that I do or that I could
17 figure it out because I couldn't. So,
18 perhaps one of you can talk about that. But
19 what I did want to talk about is the last
20 page where she talks about the county and
21 state taxes, because not only are there taxes
22 by community, but also by county.

23 In Strafford County, she estimates
24 the first-year tax payment to be between

1 \$122,000 and \$135,000; then Rockingham, from
2 between \$36,000 and \$40,000. And then she
3 says the utility property also pays the state
4 utility education tax directly to the state.
5 Utility property does not pay the state
6 property tax at the community level, but pays
7 the state directly at a higher fixed rate of
8 \$6.60 of per thousand of assessed value. So
9 the estimated first-year utility education
10 property tax SRP payment is estimated at
11 about \$500,000 to \$612,000 to the state.

12 Critiques of her analysis here, I
13 found two. One was from Counsel for the
14 Public who said that this was only the first
15 year, and I don't know why there's only one
16 year. There wasn't any explanation that I
17 could find for that. And in addition, and
18 someone else raised the issue, I think it was
19 either Newington or Durham in their brief,
20 that there was no calculation for reduced
21 property taxes from people who felt that
22 their assessed values had been reduced, and
23 therefore that there would be less. I think
24 she did respond to that and say that in fact

1 there wasn't enough evidence of that or the
2 number was too small to take into
3 consideration.

4 But there you have everything that
5 I think I can tell you on this topic. It
6 appears to me that there's definitely a
7 positive value in terms of these taxes. It's
8 a range. There was no evidence to the
9 contrary of that, and particularly in the
10 case of Durham, really a significant add.

11 PRESIDING OFFICER WEATHERSBY: Thank
12 you for that summary. Would anyone care to
13 comment or add or have questions concerning
14 property taxes?

15 MR. WAY: Could we just hold one
16 moment while I look something up before we move
17 on?

18 PRESIDING OFFICER WEATHERSBY: I
19 think with regard to the last point you made,
20 Ms. Duprey, concerning property tax abatements,
21 I think we'll know more about that when we talk
22 about the effect on property values, which will
23 be our next topic that we'll probably take up
24 on Monday. So the subjects are all intertwined

1 here, but we'll get a sense of whether we think
2 many properties will seek abatements based on
3 this project.

4 MR. WAY: And that's actually what I
5 was looking up in the transcript of Day 6. So
6 I'll put that off until we have that
7 discussion.

8 PRESIDING OFFICER WEATHERSBY: If you
9 have it teed up now, we can talk about it now.
10 I didn't have anything specific. I was just
11 generalizing.

12 MR. WAY: I think I'd like to read
13 through it a little bit more.

14 PRESIDING OFFICER WEATHERSBY: I have
15 a question, Ms. Duprey. It's my understanding
16 that the property taxes are assessed to
17 Eversource based on the assessed value, what
18 the community believes is the value, rather
19 than the book value of the assets on
20 Eversource's books -- meaning if they
21 depreciate things down to zero in 40 years,
22 they're still paying taxes; correct? Is that
23 your understanding?

24 MS. DUPREY: I have to say I never

1 thought of depreciation in my own life as
2 reducing my taxes. So my husband being in the
3 real estate development business, I've never
4 seen our taxes go down because of anything. So
5 I don't think so, no.

6 PRESIDING OFFICER WEATHERSBY:
7 Anybody else care to comment on this issue for
8 today? Ms. Duprey.

9 MS. DUPREY: I wanted to have a
10 discussion on our next topic to talk about
11 approach.

12 PRESIDING OFFICER WEATHERSBY: Okay.
13 Before we get there, Director Muzzey has a
14 question or comment.

15 DIR. MUZZEY: I was looking at the
16 transcript for Day 6 in the afternoon, and it
17 was Attorney Geiger with the Town of Newington
18 that spoke at least about the abatements on
19 energy projects and whether that would have a
20 sizable effect on the benefits of the taxes
21 raised for the communities. And Dr. Shapiro
22 said, In my experience, abatements on energy
23 projects, while they're out there and I'm aware
24 of some abatements that have been granted in

1 some places in some communities in my 20 years
2 of experience, I've never seen the abatement
3 level rise anywhere to a significant level that
4 offsets, significantly offsets new taxpayer's
5 payments to the town. So that backs up I think
6 what you alluded to as well, that if there were
7 decreased property values, therefore decreased
8 taxation, it wasn't a significant effect that
9 Dr. Shapiro was expecting.

10 MR. FITZGERALD: Are we talking about
11 the abatement process here or just the fact
12 that the assessed value of a property might
13 decrease because -- I think the testimony we
14 had was that the property value, you know, was
15 extremely limited, 100 feet or 500 feet. I
16 can't remember what the number was.

17 MS. DUPREY: 300 feet.

18 MR. FITZGERALD: 300 feet. Okay.
19 Sold. But as I understand it, what we're
20 talking about is the fact that the assessed
21 value may be lower, not -- are the towns giving
22 rebate -- I mean abatements for some reason?

23 DIR. MUZZEY: I think it may be a
24 question of semantics here, because the

1 question was: Did you factor into your
2 calculation any offsetting decrease in tax
3 revenues that might be realized as a result of
4 tax abatements that are granted to properties
5 or property owners whose properties may
6 decrease in value due to the construction of
7 this project?

8 MR. FITZGERALD: Okay.

9 MR. WAY: I think also, too, the
10 question on Day 6 was whether Eversource could
11 seek tax abatements over the long term as well.
12 So there's two elements here.

13 PRESIDING OFFICER WEATHERSBY: I
14 think as a practical matter, a town seldom
15 lowers one's assessment without being asked to
16 do so by the property owner.

17 Anything else concerning property
18 taxes?

19 Ms. Duprey, you wanted to talk
20 about the process for --

21 MS. DUPREY: I changed my mind.

22 PRESIDING OFFICER WEATHERSBY: Okay.
23 All right. Given that it's almost quarter of
24 five, I don't think it's a good time to launch

1 into a property value impact discussion. So
2 let's save that until Monday. So, on Monday we
3 will reconvene and talk about property values,
4 public interest, tie up all of our loose ends
5 and make some sort of final decision. So we
6 are adjourned for the day. Have a nice
7 weekend.

8 (Whereupon the Day 5 Afternoon
9 Session was adjourned at 4:45
10 p.m., and the hearing will resume
11 on Monday, December 10, 2018,
12 commencing at 10:00 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
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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
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Susan J. Robidas, LCR/RPR
Licensed Shorthand Court Reporter
Registered Professional Reporter
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<p>42:2;17;46:1,3; 47:15;50:19;54:24; 55:3;57:14;63:22,23; 64:6;66:16;68:23; 74:13;75:13;81:17; 83:4;84:10;88:11</p> <p>areas (19) 3:23;21:3,6,19; 23:9,21;30:5;35:12; 48:24;49:1;55:8; 57:4,5,13,23;63:14; 69:5;73:2,4</p> <p>argue (1) 50:11</p> <p>argues (3) 45:4,8,11</p> <p>arguing (1) 66:14</p> <p>argument (4) 43:7;55:23;66:22; 88:18</p> <p>arms (1) 82:6</p> <p>around (7) 42:13;72:23;76:4; 78:16;82:7,18;91:9</p> <p>arrives (1) 48:15</p> <p>Aside (4) 47:15;57:13;61:3; 68:19</p> <p>asleep (1) 19:6</p> <p>assess (1) 42:17</p> <p>assessed (6) 92:8,22;94:16,17; 96:12,20</p> <p>assessment (1) 97:15</p> <p>assets (1) 94:19</p> <p>assign (2) 22:14;28:5</p> <p>assigned (2) 27:16;76:12</p> <p>assignment (2) 4:5;17:20</p> <p>associated (1) 88:22</p> <p>assume (2) 8:5;23:22</p> <p>assumption (1) 30:3</p> <p>attached (1) 46:24</p> <p>attempted (2) 37:18,18</p> <p>attempting (2) 70:1;90:16</p> <p>attempts (1) 33:12</p> <p>attention (2)</p>	<p>61:11;72:1</p> <p>Attorney (6) 20:17;21:15;23:13; 29:8;37:23;95:17</p> <p>attorneys (1) 78:18</p> <p>August (1) 30:19</p> <p>authority (1) 73:12</p> <p>available (3) 62:20;66:11;74:5</p> <p>average (4) 85:13,15,18;87:23</p> <p>avoid (1) 52:21</p> <p>avoiding (1) 62:22</p> <p>aware (1) 95:23</p> <p>away (2) 5:17;6:20</p>	<p>3:14</p> <p>believes (2) 8:13;94:18</p> <p>belong (1) 41:13</p> <p>below (1) 47:14</p> <p>belts (1) 40:1</p> <p>benefit (1) 85:11</p> <p>benefits (1) 95:20</p> <p>best (6) 8:24;39:8;47:2; 89:16,17;90:8</p> <p>better (3) 29:12;62:18;80:18</p> <p>beyond (2) 12:4;54:3</p> <p>big (3) 6:10;45:18;88:14</p> <p>bigger (3) 42:2;47:12;50:17</p> <p>bill (1) 88:2</p> <p>bit (13) 20:2;42:13,14; 43:4;46:17;48:13; 49:6;54:8;59:7;71:1; 81:13;82:11;94:13</p> <p>blackouts (1) 80:9</p> <p>blasting (2) 5:22,24</p> <p>board (3) 68:10,13,14</p> <p>bodies (1) 40:24</p> <p>bogged (1) 41:24</p> <p>boiler (1) 14:3</p> <p>boils (1) 44:21</p> <p>book (1) 94:19</p> <p>books (1) 94:20</p> <p>both (21) 7:5;10:5;13:23; 30:13;36:12;46:2; 52:18;55:20;56:1; 60:14,18;64:19;67:6, 11,17,20;68:2;69:8; 72:5;73:4;88:23</p> <p>bottom (3) 14:1;17:19;18:1</p> <p>bound (4) 15:6;20:4;62:5; 80:6</p> <p>boundaries (3) 61:18;62:4;70:2</p>	<p>boundary (2) 70:19,20</p> <p>break (2) 82:15;90:7</p> <p>breaks (1) 90:12</p> <p>brief (6) 45:11,18;53:16; 68:11,16;92:19</p> <p>briefer (1) 82:1</p> <p>briefing (2) 43:2,5</p> <p>briefly (1) 4:17</p> <p>bring (3) 29:3;57:5;72:1</p> <p>bringing (1) 80:18</p> <p>brings (1) 31:8</p> <p>broad (3) 5:20;26:17;31:12</p> <p>broader (3) 36:2,22;73:16</p> <p>broadly (3) 31:10;33:3;34:11</p> <p>brother (1) 32:20</p> <p>brought (1) 53:16</p> <p>brush (1) 31:12</p> <p>built (6) 61:1,2;63:8;77:20; 78:3,5</p> <p>burial (1) 57:22</p> <p>business (2) 35:11;95:3</p> <p>businesses (4) 6:3;36:17,18;86:9</p> <p>byways (1) 64:13</p>	<p>74:23;75:8,24;76:4; 78:11,19;88:21; 89:17;90:9,10;91:4, 18;93:5;94:9</p> <p>capacity (1) 52:3</p> <p>care (7) 9:17;20:17;36:21; 70:6;74:13;93:12; 95:7</p> <p>Carroll (1) 41:23</p> <p>carve (2) 17:12;20:9</p> <p>case (13) 5:23;6:6;31:17; 41:23;50:2;54:6; 59:23;65:20;67:5; 68:18,20;69:8;93:10</p> <p>cases (5) 33:11,19,20;52:22; 63:3</p> <p>casualty (1) 16:4</p> <p>cataloging (1) 48:11</p> <p>categories (4) 5:1;28:21;48:13; 78:2</p> <p>category (4) 3:17;49:18,19;72:3</p> <p>cause (2) 53:8;58:16</p> <p>central (3) 39:6,21;51:10</p> <p>cents (1) 88:1</p> <p>century (1) 47:19</p> <p>certain (7) 8:18;28:5,17; 32:17;33:19;80:10; 90:9</p> <p>certainly (8) 3:23;9:1;25:14; 39:17;40:5;42:23; 53:9;67:9</p> <p>certainty (1) 9:16</p> <p>certificate (6) 8:14;10:2,3;14:16; 15:4;20:11</p> <p>cetera (7) 29:15;37:15;39:9, 9;73:6,6;89:4</p> <p>Chair (9) 3:12;16:16;19:14; 31:8;37:3;71:24; 73:22;74:21;89:15</p> <p>challenge (1) 71:14</p> <p>challenges (1) 53:21</p>
	B			
			C	

<p>chance (2) 15:16;87:14</p> <p>change (7) 17:22;19:24;23:3; 43:21;44:18;45:1; 52:17</p> <p>changed (2) 17:13;97:21</p> <p>changes (7) 19:18,20;22:21; 25:11,14,19;44:9</p> <p>changing (4) 44:14;53:7,10; 78:17</p> <p>character (1) 43:21</p> <p>characteristics (1) 76:1</p> <p>charge (1) 34:11</p> <p>charged (1) 27:23</p> <p>charges (1) 28:11</p> <p>chart (1) 89:22</p> <p>checked (1) 76:15</p> <p>choose (1) 15:5</p> <p>chosen (1) 16:17</p> <p>Chuck (1) 25:14</p> <p>cited (2) 30:11;44:17</p> <p>city (2) 29:24;30:21</p> <p>claim (1) 43:14</p> <p>claims (4) 34:24;35:6;37:14; 44:20</p> <p>clarifying (1) 13:14</p> <p>clause (7) 8:9;10:24;12:24; 13:2;14:2,24;16:24</p> <p>clear (5) 7:18;19:2;34:1; 65:24;69:11</p> <p>Clearing (1) 56:6</p> <p>clearinghouse (1) 39:7</p> <p>clearly (1) 65:15</p> <p>close (2) 35:3,4</p> <p>closer (1) 25:18</p> <p>closest (1) 50:4</p>	<p>Cole (2) 11:22;27:5</p> <p>collective (1) 91:13</p> <p>column (2) 90:13,13</p> <p>combination (1) 69:13</p> <p>comfortable (3) 12:19;28:7;32:12</p> <p>coming (4) 24:10;39:18;77:4; 78:5</p> <p>commencing (1) 98:12</p> <p>comment (11) 20:17;21:16;29:22; 30:24;69:22;70:6; 74:13;79:20;93:13; 95:7,14</p> <p>commenting (1) 78:10</p> <p>comments (5) 60:11,12;69:18; 88:3,10</p> <p>commercial (3) 63:7,14;67:16</p> <p>commercial/industrial (1) 48:2</p> <p>commission (9) 3:9;4:10,10;5:3; 41:18,19;62:2;64:7,9</p> <p>commissions (5) 40:23;41:16,21,22, 22</p> <p>Committee (9) 14:9;21:21;30:19; 34:8;40:18;61:24; 70:9;72:2;79:18</p> <p>common (1) 8:17</p> <p>communication (1) 37:10</p> <p>communities (21) 5:2,7,17;30:2,3; 31:5;44:9;56:13; 57:14;63:3;69:8; 71:10;73:19;76:20; 79:23;83:16,21,23; 91:3;95:21;96:1</p> <p>communities' (1) 76:6</p> <p>community (12) 61:5;62:16;76:19; 84:2;89:8,12;90:6,8, 23;91:22;92:6;94:18</p> <p>community's (2) 75:14,19</p> <p>comparison (2) 74:18;90:18</p> <p>compatible (1) 58:11</p> <p>compilations (1)</p>	<p>57:4</p> <p>completely (1) 68:19</p> <p>complex (1) 80:14</p> <p>complications (1) 74:6</p> <p>comply (1) 62:11</p> <p>comprehensive (1) 29:16</p> <p>compromise (1) 8:11</p> <p>concentrate (1) 65:3</p> <p>concern (7) 5:22;6:10;8:21; 22:7;40:6;57:1;76:14</p> <p>concerning (11) 3:5;15:23;17:16; 21:3;35:22;73:5; 80:3;88:10;93:13,20; 97:17</p> <p>concerns (14) 7:2;15:24;28:11, 17;30:2,15,22;36:15; 37:6,22;38:16;44:10; 72:9;73:18</p> <p>conclusion (7) 12:14;48:15;52:9; 58:9;77:5;78:6,7</p> <p>conclusions (1) 55:3</p> <p>conclusory (1) 50:1</p> <p>concrete (1) 60:22</p> <p>condition (13) 6:6,19;15:4,13; 17:12;19:21,22; 20:10,12;22:2;24:24; 25:9;39:17</p> <p>conditional (1) 24:17</p> <p>conditions (14) 4:2;7:10;8:13;14:4, 10,16,21,22;15:7; 19:19;42:11;57:21; 58:1;68:14</p> <p>conduct (1) 50:13</p> <p>conducted (1) 37:11</p> <p>confidence (1) 30:22</p> <p>confident (1) 87:15</p> <p>conform (1) 61:23</p> <p>conformity (1) 76:5</p> <p>connected (1) 76:20</p>	<p>connects (1) 69:18</p> <p>Conservation (14) 4:10;5:3;48:3; 49:3;55:9;56:9,11, 21;57:4,5,10,12;58:3, 4</p> <p>consider (14) 40:18;46:7,12; 52:15,20;62:21; 66:23;70:23;72:3; 75:3;79:22,23;83:9; 86:18</p> <p>considerably (1) 53:8</p> <p>consideration (12) 46:5;62:1;67:4; 70:8,13;71:18;73:9, 15,24;74:9;80:5;93:3</p> <p>considerations (1) 21:21</p> <p>considered (5) 23:2;51:14;62:14; 86:7;88:18</p> <p>considering (3) 54:22;57:24;81:12</p> <p>consistency (2) 51:11;70:18</p> <p>consistent (6) 43:8,19;48:18,21; 52:7;73:3</p> <p>constitutes (1) 46:18</p> <p>constructing (1) 62:23</p> <p>construction (47) 3:13,15,18;4:4,7, 15,22;6:1,1;7:2;8:7; 9:1,2,7,9,13,18;10:8, 12,13;11:10,12;12:6, 7,16;25:16,18;29:15, 22;30:4,10;31:1,11, 22;34:12,22;35:14; 39:7;44:13;83:10,18; 85:9,12,19,21;87:22; 97:6</p> <p>construction-related (1) 5:8</p> <p>consultant (1) 11:21</p> <p>consulting (1) 27:5</p> <p>contains (1) 47:19</p> <p>contested (2) 84:14,14</p> <p>context (2) 62:12;63:18</p> <p>contingent (1) 23:19</p> <p>continued (1) 9:1</p> <p>contrary (2)</p>	<p>75:17;93:9</p> <p>contravenes (1) 45:8</p> <p>controverted (1) 88:5</p> <p>conversation (1) 65:18</p> <p>converting (1) 51:15</p> <p>cooperation (1) 30:20</p> <p>copy (1) 26:6</p> <p>correspondence (1) 33:18</p> <p>corridor (22) 43:7,10,12,22;44:3, 6,22;47:14,18,19,23; 48:23;51:13;52:9; 54:15;62:20;64:9,23; 65:11,14,21;69:5</p> <p>corridors (5) 43:24;53:23;56:1; 63:1,12</p> <p>cost (3) 16:5;85:6;90:6</p> <p>costs (6) 87:1,5,14,16,22; 88:21</p> <p>Counsel (10) 4:3;14:11;22:8; 28:24;34:19,20; 44:16,19;68:15; 92:13</p> <p>counting (1) 46:23</p> <p>County (5) 4:9;41:23;91:20, 22,23</p> <p>couple (7) 9:24;15:17;21:20; 30:13;33:12;41:7; 53:4</p> <p>course (2) 5:14;53:3</p> <p>Court (1) 18:9</p> <p>cover (1) 67:14</p> <p>covered (1) 26:1</p> <p>create (2) 44:3;59:2</p> <p>created (1) 80:8</p> <p>creating (3) 43:10;62:20;85:11</p> <p>criteria (1) 55:4</p> <p>criticized (1) 86:6</p> <p>Critiques (1) 92:12</p>
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<p>cross (5) 5:11;45:20;61:18; 63:1;70:19</p> <p>cross- (1) 60:15</p> <p>cross-examination (1) 42:19</p> <p>crossing (3) 9:8,18;53:2</p> <p>cultural (2) 64:12;71:10</p> <p>cumulative (2) 85:20;86:4</p> <p>cutting (1) 31:17</p> <p>cuttings (1) 6:21</p>	<p>definitive (1) 67:3</p> <p>degree (2) 8:15;80:17</p> <p>delegate (1) 25:1</p> <p>delegated (2) 16:19;21:13</p> <p>delegations (1) 21:18</p> <p>deleting (1) 28:8</p> <p>deliberations (2) 9:11;31:7</p> <p>demonstrate (1) 90:17</p> <p>demonstrating (1) 90:16</p> <p>depreciate (1) 94:21</p> <p>depreciation (1) 95:1</p> <p>DES (3) 21:13,13;25:1</p> <p>described (1) 84:24</p> <p>design (3) 44:14;62:10;79:2</p> <p>designate (1) 63:13</p> <p>designated (1) 80:11</p> <p>designed (3) 75:23;79:12;87:17</p> <p>desire (3) 67:12;74:1;75:19</p> <p>detail (3) 4:19;12:17;48:14</p> <p>determination (6) 16:4,6,8;34:16; 52:6;83:7</p> <p>determinations (2) 49:20;74:4</p> <p>determine (5) 15:5;34:11;77:17; 80:12;85:10</p> <p>determined (2) 23:10;80:21</p> <p>determining (1) 40:15</p> <p>develop (3) 66:20;75:15;76:7</p> <p>developed (2) 57:9;66:16</p> <p>development (23) 3:6,7,19;10:19; 12:8,12,15;34:13; 40:10,17;60:21; 62:15;63:6;66:11,19; 67:12,13,15,17;68:5; 73:21;83:6;95:3</p> <p>developmental (1) 57:16</p>	<p>DHR (4) 12:23;14:8,22; 25:12</p> <p>DHR's (1) 14:17</p> <p>differ (1) 56:8</p> <p>difference (5) 20:20;55:23;56:2; 71:9;86:15</p> <p>differences (1) 53:19</p> <p>different (17) 21:20;35:12,17; 41:6;44:4;51:2; 52:15,16;53:22;55:4; 57:10;64:2;71:12; 74:11;81:7,10,13</p> <p>differently (3) 15:12;17:16;51:1</p> <p>difficult (5) 32:2,3;75:13;77:3; 86:22</p> <p>diligently (1) 44:8</p> <p>DIR (21) 8:8;10:21;13:8,11, 21;14:19;16:23; 17:17;18:1;22:7,20; 25:8;27:14;28:3; 29:21;54:22;56:17, 19;57:1;95:15;96:23</p> <p>direct (2) 5:10;7:4</p> <p>directed (2) 10:14;22:2</p> <p>directly (5) 13:1;16:11;27:10; 92:4,7</p> <p>Director (9) 13:18;19:2;22:6; 23:11;29:20;30:8; 54:21;59:10;95:13</p> <p>dirt (1) 55:17</p> <p>disabled (1) 79:9</p> <p>disagreement (2) 11:6;35:10</p> <p>disagreements (1) 18:23</p> <p>disclosed (1) 21:8</p> <p>discuss (2) 4:18;26:24</p> <p>discussed (3) 13:22;30:20;36:5</p> <p>discussing (1) 37:8</p> <p>discussion (18) 3:5,15;10:13;12:2; 33:10;38:5,10;49:7; 52:11;74:2;81:8,24;</p>	<p>82:1,6,11;94:7; 95:10;98:1</p> <p>discussions (4) 31:24;55:5;58:2; 74:18</p> <p>disposed (1) 6:21</p> <p>dispute (21) 16:2,3,12,22;17:10, 14,22;18:20,22;19:1, 11;20:7,8,21;28:9; 35:19,24;36:12;37:7; 38:1,10</p> <p>Disputes (6) 10:24;11:4,9,12; 17:20;19:9</p> <p>disruptive (3) 43:11;44:4;46:2</p> <p>distinction (1) 18:14</p> <p>distribution (7) 51:13;52:4,22; 53:1;55:14,24;57:8</p> <p>district (3) 58:3;59:8;65:22</p> <p>districts (7) 61:19;62:5;63:2, 13;64:3;71:11;76:1</p> <p>Division (4) 4:12;14:7;22:11; 25:9</p> <p>dock (1) 50:10</p> <p>docket (4) 53:17,19,20;86:12</p> <p>dockets (1) 24:12</p> <p>document (3) 34:6;56:24;90:1</p> <p>documentation (1) 37:17</p> <p>documents (4) 6:23;28:15;29:1; 43:20</p> <p>Dog (4) 31:21;32:2;33:8,22</p> <p>dollars (1) 88:16</p> <p>done (6) 12:18;19:24;46:10; 54:12;80:18;90:7</p> <p>double-checked (1) 10:22</p> <p>Double-checking (1) 26:23</p> <p>down (13) 6:3;9:3;10:9;27:4, 4,6;31:13;42:1; 44:21;59:22;90:7; 94:21;95:4</p> <p>Dr (5) 84:21;86:11;89:22; 95:21;96:9</p>	<p>draft (1) 38:12</p> <p>drafted (1) 29:13</p> <p>dramatic (1) 55:22</p> <p>draw (2) 55:2,15</p> <p>drill (1) 31:12</p> <p>driveway (2) 35:2,3</p> <p>driveways (1) 31:16</p> <p>due (6) 44:18;61:24;70:13; 71:17;80:5;97:6</p> <p>Duprey (45) 3:10,12;7:21;8:19; 10:6;11:13,20,23; 16:15;18:13;23:5,6; 24:2;28:13,14;30:7; 31:8;36:24;37:1; 40:13;51:19;54:24; 56:18,23;58:13;60:7; 71:23,24;73:4;76:11, 12;79:1;81:21,22; 84:8;88:7;89:15; 93:20;94:15,24;95:8, 9;96:17;97:19,21</p> <p>Durham (27) 4:8;6:15;7:6;8:1, 21;10:16,22;11:18; 17:1;34:20;42:6; 45:11,13,16,18,22; 59:4;65:5;67:6;68:7, 11,15;73:2;90:10; 91:8;92:19;93:10</p> <p>Durham's (1) 69:10</p> <p>during (3) 83:18;85:12,19</p> <p>dwell (1) 64:21</p>
D				
<p>damage (1) 15:24</p> <p>date (3) 23:10;25:18;47:16</p> <p>Dawn (2) 61:8;90:4</p> <p>day (8) 3:16;5:24;34:21; 94:5;95:16;97:10; 98:6,8</p> <p>days (3) 7:17;13:3;16:5</p> <p>deal (4) 31:1;56:3;57:16; 80:8</p> <p>dealing (2) 53:24;80:15</p> <p>dealt (3) 31:3;36:14,16</p> <p>death (2) 75:5;89:10</p> <p>decades (1) 47:21</p> <p>December (1) 98:11</p> <p>decide (5) 7:11;45:1;71:14; 76:8;79:4</p> <p>decision (6) 11:8;24:21;26:17; 29:5;75:3;98:5</p> <p>decisions (4) 10:10;79:2,4,13</p> <p>decrease (4) 75:23;96:13;97:2,6</p> <p>decreased (2) 96:7,7</p> <p>defer (1) 72:19</p> <p>defined (2) 41:12;54:8</p> <p>definitely (2) 52:14;93:6</p>	<p>DES (3) 21:13,13;25:1</p> <p>described (1) 84:24</p> <p>design (3) 44:14;62:10;79:2</p> <p>designate (1) 63:13</p> <p>designated (1) 80:11</p> <p>designed (3) 75:23;79:12;87:17</p> <p>desire (3) 67:12;74:1;75:19</p> <p>detail (3) 4:19;12:17;48:14</p> <p>determination (6) 16:4,6,8;34:16; 52:6;83:7</p> <p>determinations (2) 49:20;74:4</p> <p>determine (5) 15:5;34:11;77:17; 80:12;85:10</p> <p>determined (2) 23:10;80:21</p> <p>determining (1) 40:15</p> <p>develop (3) 66:20;75:15;76:7</p> <p>developed (2) 57:9;66:16</p> <p>development (23) 3:6,7,19;10:19; 12:8,12,15;34:13; 40:10,17;60:21; 62:15;63:6;66:11,19; 67:12,13,15,17;68:5; 73:21;83:6;95:3</p> <p>developmental (1) 57:16</p>	<p>DHR (4) 12:23;14:8,22; 25:12</p> <p>DHR's (1) 14:17</p> <p>differ (1) 56:8</p> <p>difference (5) 20:20;55:23;56:2; 71:9;86:15</p> <p>differences (1) 53:19</p> <p>different (17) 21:20;35:12,17; 41:6;44:4;51:2; 52:15,16;53:22;55:4; 57:10;64:2;71:12; 74:11;81:7,10,13</p> <p>differently (3) 15:12;17:16;51:1</p> <p>difficult (5) 32:2,3;75:13;77:3; 86:22</p> <p>diligently (1) 44:8</p> <p>DIR (21) 8:8;10:21;13:8,11, 21;14:19;16:23; 17:17;18:1;22:7,20; 25:8;27:14;28:3; 29:21;54:22;56:17, 19;57:1;95:15;96:23</p> <p>direct (2) 5:10;7:4</p> <p>directed (2) 10:14;22:2</p> <p>directly (5) 13:1;16:11;27:10; 92:4,7</p> <p>Director (9) 13:18;19:2;22:6; 23:11;29:20;30:8; 54:21;59:10;95:13</p> <p>dirt (1) 55:17</p> <p>disabled (1) 79:9</p> <p>disagreement (2) 11:6;35:10</p> <p>disagreements (1) 18:23</p> <p>disclosed (1) 21:8</p> <p>discuss (2) 4:18;26:24</p> <p>discussed (3) 13:22;30:20;36:5</p> <p>discussing (1) 37:8</p> <p>discussion (18) 3:5,15;10:13;12:2; 33:10;38:5,10;49:7; 52:11;74:2;81:8,24;</p>	<p>82:1,6,11;94:7; 95:10;98:1</p> <p>discussions (4) 31:24;55:5;58:2; 74:18</p> <p>disposed (1) 6:21</p> <p>dispute (21) 16:2,3,12,22;17:10, 14,22;18:20,22;19:1, 11;20:7,8,21;28:9; 35:19,24;36:12;37:7; 38:1,10</p> <p>Disputes (6) 10:24;11:4,9,12; 17:20;19:9</p> <p>disruptive (3) 43:11;44:4;46:2</p> <p>distinction (1) 18:14</p> <p>distribution (7) 51:13;52:4,22; 53:1;55:14,24;57:8</p> <p>district (3) 58:3;59:8;65:22</p> <p>districts (7) 61:19;62:5;63:2, 13;64:3;71:11;76:1</p> <p>Division (4) 4:12;14:7;22:11; 25:9</p> <p>dock (1) 50:10</p> <p>docket (4) 53:17,19,20;86:12</p> <p>dockets (1) 24:12</p> <p>document (3) 34:6;56:24;90:1</p> <p>documentation (1) 37:17</p> <p>documents (4) 6:23;28:15;29:1; 43:20</p> <p>Dog (4) 31:21;32:2;33:8,22</p> <p>dollars (1) 88:16</p> <p>done (6) 12:18;19:24;46:10; 54:12;80:18;90:7</p> <p>double-checked (1) 10:22</p> <p>Double-checking (1) 26:23</p> <p>down (13) 6:3;9:3;10:9;27:4, 4,6;31:13;42:1; 44:21;59:22;90:7; 94:21;95:4</p> <p>Dr (5) 84:21;86:11;89:22; 95:21;96:9</p>	<p>draft (1) 38:12</p> <p>drafted (1) 29:13</p> <p>dramatic (1) 55:22</p> <p>draw (2) 55:2,15</p> <p>drill (1) 31:12</p> <p>driveway (2) 35:2,3</p> <p>driveways (1) 31:16</p> <p>due (6) 44:18;61:24;70:13; 71:17;80:5;97:6</p> <p>Duprey (45) 3:10,12;7:21;8:19; 10:6;11:13,20,23; 16:15;18:13;23:5,6; 24:2;28:13,14;30:7; 31:8;36:24;37:1; 40:13;51:19;54:24; 56:18,23;58:13;60:7; 71:23,24;73:4;76:11, 12;79:1;81:21,22; 84:8;88:7;89:15; 93:20;94:15,24;95:8, 9;96:17;97:19,21</p> <p>Durham (27) 4:8;6:15;7:6;8:1, 21;10:16,22;11:18; 17:1;34:20;42:6; 45:11,13,16,18,22; 59:4;65:5;67:6;68:7, 11,15;73:2;90:10; 91:8;92:19;93:10</p> <p>Durham's (1) 69:10</p> <p>during (3) 83:18;85:12,19</p> <p>dwell (1) 64:21</p>
E				
<p>earlier (1) 42:8</p> <p>easement (5) 31:17;57:20,21; 58:1;63:11</p> <p>easements (1) 58:7</p> <p>easier (1) 82:6</p> <p>econometric (1) 85:2</p> <p>economic (15) 82:16;83:3,15,16, 18;84:11;85:3,4,22; 86:7,20,23;87:4; 88:13;89:3</p>	<p>earlier (1) 42:8</p> <p>easement (5) 31:17;57:20,21; 58:1;63:11</p> <p>easements (1) 58:7</p> <p>easier (1) 82:6</p> <p>econometric (1) 85:2</p> <p>economic (15) 82:16;83:3,15,16, 18;84:11;85:3,4,22; 86:7,20,23;87:4; 88:13;89:3</p>	<p>earlier (1) 42:8</p> <p>easement (5) 31:17;57:20,21; 58:1;63:11</p> <p>easements (1) 58:7</p> <p>easier (1) 82:6</p> <p>econometric (1) 85:2</p> <p>economic (15) 82:16;83:3,15,16, 18;84:11;85:3,4,22; 86:7,20,23;87:4; 88:13;89:3</p>	<p>earlier (1) 42:8</p> <p>easement (5) 31:17;57:20,21; 58:1;63:11</p> <p>easements (1) 58:7</p> <p>easier (1) 82:6</p> <p>econometric (1) 85:2</p> <p>economic (15) 82:16;83:3,15,16, 18;84:11;85:3,4,22; 86:7,20,23;87:4; 88:13;89:3</p>	<p>earlier (1) 42:8</p> <p>easement (5) 31:17;57:20,21; 58:1;63:11</p> <p>easements (1) 58:7</p> <p>easier (1) 82:6</p> <p>econometric (1) 85:2</p> <p>economic (15) 82:16;83:3,15,16, 18;84:11;85:3,4,22; 86:7,20,23;87:4; 88:13;89:3</p>

<p>economics (3) 84:4;85:1;89:7</p> <p>economy (2) 83:11;85:11</p> <p>education (2) 92:4,9</p> <p>educational (1) 27:12</p> <p>effect (13) 7:5;19:23;83:15, 17,19,22,24;85:5; 87:20;89:8;93:22; 95:20;96:8</p> <p>effects (5) 45:15;84:1,11; 86:8,9</p> <p>efficient (1) 82:12</p> <p>effort (3) 29:17;45:9;75:15</p> <p>efforts (1) 30:21</p> <p>eight (1) 55:19</p> <p>either (7) 14:12;32:13;46:13; 69:6,24;88:24;92:19</p> <p>elective (1) 81:10</p> <p>electric (9) 47:20;62:19;63:5, 10;84:5,18;86:10,15; 88:20</p> <p>electrical (1) 52:3</p> <p>electricity (3) 51:20;52:1;53:12</p> <p>electronic (2) 13:13;56:22</p> <p>elements (1) 97:12</p> <p>else (10) 26:23;33:17;59:12; 74:13;79:20;80:3; 81:19;92:18;95:7; 97:17</p> <p>e-mails (1) 38:6</p> <p>employment (1) 85:1</p> <p>enacting (1) 79:7</p> <p>encapsulates (1) 90:2</p> <p>encompass (1) 41:16</p> <p>encourage (1) 68:5</p> <p>end (8) 18:21;81:24;82:3, 8;91:3,9,12,12</p> <p>endangering (1) 31:22</p>	<p>endeavors (1) 66:7</p> <p>ended (2) 77:4;78:5</p> <p>ends (1) 98:4</p> <p>energy (8) 40:16;61:15;67:23; 79:5,10;80:12;95:19, 22</p> <p>enforce (1) 10:5</p> <p>enforcement (1) 17:12</p> <p>engineering (3) 27:7,8;85:8</p> <p>England (1) 80:21</p> <p>enough (2) 44:23;93:1</p> <p>ensure (2) 37:19;59:17</p> <p>entering (1) 8:10</p> <p>entirety (2) 67:10;68:8</p> <p>entities (1) 37:12</p> <p>entity (1) 80:12</p> <p>environment (1) 57:9</p> <p>environmental (5) 21:22;22:9;24:9; 25:1;44:1</p> <p>equity (1) 16:9</p> <p>especially (1) 61:16</p> <p>essentially (1) 68:19</p> <p>establish (1) 75:24</p> <p>established (1) 63:4</p> <p>estate (3) 83:23;84:9;95:3</p> <p>estimate (1) 90:5</p> <p>estimated (5) 87:23;90:22;91:1; 92:9,10</p> <p>estimates (1) 91:23</p> <p>et (7) 29:15;37:15;39:8, 9;73:6,6;89:4</p> <p>Evaluation (1) 14:8</p> <p>even (13) 3:22;5:15,23; 14:22;16:15;22:10; 31:4;33:10;52:16;</p>	<p>55:3;76:17;77:7; 88:15</p> <p>event (4) 14:12;23:20;24:1; 86:17</p> <p>Eversource (9) 16:5;21:5;23:20; 27:10;30:23;40:2; 84:20;94:17;97:10</p> <p>Eversource's (3) 30:20;39:11;94:20</p> <p>everyone (4) 3:4;33:17;34:5; 35:20</p> <p>evidence (8) 50:3;77:22;84:13, 15;88:4,5;93:1,8</p> <p>exact (3) 38:3;48:17;75:16</p> <p>exactly (3) 27:16;41:12;72:21</p> <p>examination (1) 60:16</p> <p>example (4) 20:9;44:17;60:23; 62:16</p> <p>examples (1) 37:11</p> <p>excellent (2) 17:11;88:9</p> <p>except (2) 20:6,14</p> <p>exception (2) 9:7;20:9</p> <p>exceptions (1) 53:3</p> <p>exclusionary (1) 79:7</p> <p>exhibit (8) 13:9,24;15:22; 17:19;18:2,12;61:9; 89:23</p> <p>exhibits (2) 5:12;84:23</p> <p>exist (1) 58:8</p> <p>existing (20) 43:7,12,15,22,23; 44:5,22;46:2;48:8; 49:13;50:16;51:11, 12;52:24;53:6;59:15, 19,21;62:19;69:5</p> <p>exists (2) 48:14;49:12</p> <p>expect (1) 91:6</p> <p>expected (2) 82:2;91:8</p> <p>expecting (1) 96:9</p> <p>experience (3) 14:5;95:22;96:2</p> <p>expert (7)</p>	<p>12:11;43:17,20; 63:20,20;84:21; 89:21</p> <p>experts (2) 42:20,22</p> <p>explanation (1) 92:16</p> <p>expressed (1) 90:14</p> <p>extended (1) 16:24</p> <p>extensive (2) 42:10;56:11</p> <p>extent (6) 35:23;36:4;40:18; 42:20;81:11;83:9</p> <p>extremely (1) 96:15</p>	<p>39:20;52:23</p> <p>Farm (4) 31:18;32:22;50:12; 57:22</p> <p>fashion (3) 61:21;73:14;75:16</p> <p>Fat (4) 31:21;32:2;33:8,22</p> <p>favor (1) 68:15</p> <p>federal (1) 80:11</p> <p>feel (12) 4:17;12:7,17; 15:12;17:1,16;49:8; 50:24;59:23;60:18; 69:17;82:1</p> <p>Feels (1) 22:19</p> <p>fees (4) 27:22;85:7,7,8</p> <p>feet (4) 96:15,15,17,18</p> <p>felt (7) 12:19,20;66:3,4; 70:24;82:3;92:21</p> <p>few (4) 21:17;45:24;53:2; 84:4</p> <p>figure (3) 63:23;70:15;91:17</p> <p>file (2) 33:18;34:1</p> <p>fill (1) 68:11</p> <p>fills (1) 79:9</p> <p>final (3) 11:10;16:4;98:5</p> <p>find (9) 7:4,24;29:1;33:15; 34:14;49:24;55:22; 60:22;92:17</p> <p>findings (1) 46:6</p> <p>finds (1) 48:19</p> <p>fine (2) 38:18;54:16</p> <p>firming (1) 36:20</p> <p>first (11) 41:2;42:17;47:2,4; 61:14;65:6;70:10; 87:8;90:4,24;92:14</p> <p>first-year (3) 91:2,24;92:9</p> <p>Fitches (2) 32:5;33:4</p> <p>fits (1) 74:16</p> <p>FITZGERALD (24) 7:21;9:23;19:14;</p>
F				
			<p>faced (1) 77:9</p> <p>faces (1) 80:23</p> <p>facet (1) 73:23</p> <p>face-to-face (2) 37:13;38:5</p> <p>facilities (4) 51:17;61:15;63:15; 79:14</p> <p>facility (13) 40:16,20;41:1; 46:4;48:19;62:23; 83:11,15,17,20,22, 24;86:20</p> <p>fact (9) 33:19;45:19;67:20; 71:9;72:6,23;92:24; 96:11,20</p> <p>factor (2) 89:6;97:1</p> <p>factors (1) 90:9</p> <p>facts (1) 42:9</p> <p>failed (1) 80:16</p> <p>failing (1) 72:1</p> <p>fair (5) 7:7;35:18;41:9; 60:17;68:4</p> <p>fairly (2) 14:3;56:11</p> <p>fairness (1) 16:9</p> <p>faith (2) 11:3;35:21</p> <p>familiar (1) 42:23</p> <p>far (2)</p>	

20:12,23;37:3;38:13, 18:39;22:40:6;51:8, 9:57:6;70:6,7;72:21; 73:22;75:2;80:2,4; 88:12;96:10,18;97:8 five (4) 22:17,19;68:13; 97:24 fixed (1) 92:7 flagging (1) 6:1 flipping (1) 11:14 focus (2) 36:1;61:11 folks (3) 7:19;32:11;34:3 follow (4) 18:8,11,20;68:10 following (1) 40:14 follows (1) 16:12 foremost (1) 42:17 forestry (1) 50:14 Forests (1) 47:24 forget (1) 38:3 forgetting (1) 49:15 forgotten (1) 72:13 formula (1) 81:5 forth (1) 90:5 forward (2) 29:18;33:6 found (8) 8:16;29:15;43:18, 20:61:7;64:23;90:21; 92:13 four (6) 34:14;42:2;47:9; 57:2;64:2;85:21 four-page (1) 90:1 four-year (1) 86:5 Frink (9) 5:4;31:18,18;32:6, 10,20,21;33:21;57:22 Frizzell (1) 33:3 Frizzells (1) 32:5 front (1) 38:12 frustration (1)	37:9 full (1) 61:14 fully (1) 80:13 further (6) 10:8;12:2;21:14; 27:6;36:7;88:10 future (5) 30:15;46:3;66:19; 67:12;75:22 G game (1) 17:5 gas (1) 62:19 gave (4) 54:24;63:17;80:10; 89:22 Geiger (1) 95:17 general (9) 26:3;27:1;39:10; 59:14;63:9;73:5; 83:3;84:4,10 generalities (1) 52:21 generalizing (1) 94:11 generally (4) 43:19;48:21;51:13; 59:16 generation (1) 63:15 given (9) 44:23;57:18;58:11; 73:12,18,24;87:6; 89:21;97:23 giving (4) 32:15;70:12;71:17; 96:21 global (1) 25:23 goes (10) 14:2;35:11,18; 44:1;47:9;48:13; 59:2;64:1;69:5;78:15 Good (10) 3:4;11:3;15:19; 17:4,18;35:21;40:1; 79:17;87:18;97:24 governing (1) 40:24 government (2) 3:9;48:6 granted (2) 95:24;97:4 grasp (1) 54:4 great (4) 29:8;37:2;56:3;	57:16 greater (1) 56:6 gross (4) 52:21;85:15,24; 88:16 ground (1) 8:17 group (1) 91:13 growing (4) 51:22,23,24;52:2 growth (3) 51:20,23;90:14 guess (13) 8:19,22;19:19; 22:1;23:7;27:3; 31:10;37:19;51:18; 52:10;59:14;70:14; 71:13 guidance (2) 44:23;71:19 Gundalow (1) 53:3 H habitat (2) 48:5;49:5 half (2) 34:2,4 halfway (1) 27:3 hammering (1) 5:17 Hampshire (3) 19:9;63:1;88:15 handle (2) 34:9;49:21 hands (3) 46:10;50:2;79:13 hanging (2) 23:17;28:19 happen (9) 6:12,18;7:9;12:6; 25:14,19;29:3;32:8, 23 happened (1) 53:21 happens (2) 65:19;76:24 happier (1) 11:24 happy (2) 11:24;12:16 hard (3) 50:2;54:4,4 head (1) 24:16 Heald (1) 33:8 hear (3) 9:2;16:7;39:24	heard (7) 6:10;32:24;37:8, 21;56:3;60:4;69:22 Hearing (4) 3:2;5:12;82:24; 98:10 hearings (3) 5:15,16;34:21 Hebert (4) 6:24;42:21;60:15; 69:15 height (1) 53:11 help (1) 82:5 helped (2) 36:20;61:10 helpful (2) 54:17;71:21 here's (1) 47:24 hey (1) 54:14 high (2) 91:3,12 higher (3) 85:23;86:1;92:7 hired (1) 34:19 hires (1) 20:21 historic (5) 13:23;46:6;50:22; 65:14;82:4 Historical (10) 4:12;14:4,7;22:11; 25:9;48:4;49:4;55:6; 71:11;74:3 hold (1) 93:15 holes (1) 74:18 homework (1) 4:5 honestly (1) 77:24 hopefully (2) 36:14;82:20 host (5) 5:1,7,16;44:8; 80:20 hosting (1) 83:21 house (2) 35:4;66:15 houses (2) 47:16;78:3 housing (1) 66:17 huge (1) 66:12 humans (1) 57:6	hundred (1) 9:16 husband (1) 95:2 I IACOPINO (17) 14:17,20;15:3; 20:17,18;21:15,17; 23:13,18;24:5,23; 28:1,2;29:6,9,10; 56:21 idea (3) 17:11,18;29:8 identify (1) 86:13 impact (12) 10:18;12:15;48:22; 50:18;58:1;59:18; 76:6;81:12;86:9; 88:16;89:3;98:1 impacted (1) 50:6 impacts (8) 12:3;29:14;55:21; 56:7;60:2;86:13,20; 88:13 implemented (1) 70:12 implementing (1) 74:16 implicate (3) 21:20,22,22 implications (1) 84:5 important (5) 41:5;42:3;45:21; 61:4;84:11 Importantly (1) 44:15 impossible (1) 62:10 impression (1) 7:3 impressive (1) 57:12 Inc (1) 85:3 include (2) 25:10;48:7 included (6) 8:13;14:4;22:22; 23:1;55:12;72:7 including (3) 11:9;44:10;63:6 income (2) 85:18;86:2 inconsistent (6) 45:2;62:9;72:24; 73:7;74:22;75:1 incorporates (1) 60:9
--	--	--	--	--

increase (1) 86:3	institutional (1) 48:6	53:18;73:23;76:14; 80:8;81:16;86:23; 87:1;92:18;95:7	35:7	leave (4) 22:12;25:23;34:8; 54:18
increased (1) 86:10	integrated (2) 61:21;73:13	issues (32) 5:8;7:24;8:7;9:2,5, 7,19;11:3;21:11,22, 23;22:10;24:7,10; 28:21;29:18;30:4,10; 31:11;34:10;35:15, 21;36:2,17;61:21; 73:13;79:22;80:20; 82:20,21;84:16; 89:11	laid (1) 73:4	leaves (1) 75:9
increasing (4) 52:1;85:13,15,17	intend (1) 64:21	items (4) 11:1,10,12;26:24	Lamprey (1) 64:11	leaving (1) 46:9
incredibly (1) 14:12	intended (4) 54:3;70:9,21;77:6	J	land (53) 3:7;35:14;40:11, 20;43:9,11,15,16,22; 44:18;45:3;46:2,3; 47:3,5,15,22;48:7,16, 23;49:16;50:4,12,18; 51:12,12;52:8,16,16, 18,19;54:3,6,7,23; 55:1;58:10;59:1,3,13, 18;60:2;62:15;63:21, 22;66:10;74:4;75:15; 78:2;79:9,22;81:19, 23	left (3) 6:12;79:3;82:17
indicate (2) 38:2,4	intent (1) 70:16	Janet (1) 6:13	Landing (1) 53:3	legislature (9) 46:11;70:3,9,11,12, 21;73:12;77:6,12
indicated (1) 22:8	interest (3) 38:21;81:17;98:4	job (2) 36:10;80:18	lands (6) 55:9;56:10,11,21; 57:10;58:4	legitimate (1) 36:15
indicates (1) 8:6	interesting (6) 47:11;57:19;58:14; 59:9;67:24;68:2	jobs (2) 85:12;89:4	landscape (1) 57:11	lengthy (1) 3:15
indicating (1) 37:17	interfere (2) 3:19;40:16	judgment (1) 53:8	lanes (1) 55:19	lens (2) 3:21,22
individual (8) 4:20;11:16;16:17, 18;18:15;34:15;36:7; 37:22	interfered (1) 77:24	jump (1) 89:17	language (7) 26:18;36:11;38:3; 54:14;70:12;77:13; 81:3	less (1) 92:23
individuals (9) 4:14;6:8,9;10:20; 12:21;39:2;43:1; 69:16;72:5	interference (7) 12:8;49:14;66:18; 73:20;77:14,18;83:8	jumped (1) 5:21	largely (2) 4:7;9:4	letters (1) 4:13
industrial (5) 59:3;63:14;66:6; 67:17;68:21	interferes (3) 34:12;60:19,20	jumping (1) 42:13	large (5) 23:9;24:9,14;54:1; 72:24	level (9) 50:19;51:6;58:15; 64:24;66:18;74:24; 92:6;96:3,3
industrial-type (1) 59:1	interfering (1) 51:6	jurisdiction (2) 22:24;61:16	larger (5) 5:1;51:16;56:4; 63:15;73:17	liaison (1) 11:16
influence (1) 12:14	interrupts (1) 18:9	jurisdictional (1) 22:4	last (8) 7:17;13:2;16:1; 26:16;78:15;90:13; 91:19;93:19	library (2) 61:2;62:24
informal (1) 33:1	interstates (1) 55:18	K	lastly (1) 46:16	life (1) 95:1
information (11) 16:8;22:22;26:14; 31:5;38:22;39:1,4,5; 68:24;81:7;83:14	intertwined (2) 51:18;93:24	keep (4) 41:5;42:3,7;45:24	later (5) 14:13;39:14,16; 45:14;59:7	limited (1) 96:15
infrastructure (5) 79:5,10,10;84:2; 89:9	intervened (1) 34:17	kept (1) 26:3	launch (1) 97:24	line (21) 27:6;31:19;46:22, 22;49:11;51:16;52:7, 23;53:1;57:20,23; 58:6,17;59:2,20; 62:19;63:5,24;65:12; 66:14;77:19
initial (1) 78:9	intervenor (3) 6:11;31:9,15	key (1) 51:10	laydown (10) 21:3,6,19;22:1; 23:21,23;24:8,15; 25:2,21	linear (1) 61:16
initially (1) 31:12	into (21) 8:10;12:17;18:6; 29:17,19;30:14; 35:16;41:23;46:5,10; 50:15;63:24;67:4; 74:17;80:18;85:5; 87:3;90:12;93:2; 97:1;98:1	key (1) 51:10	lead (1) 89:16	lines (22) 10:1;43:23;45:12; 46:14;47:20;53:13; 55:15,15,24;56:3,4; 57:8;63:11;65:11; 67:1;68:8;70:1,19, 20;77:2;78:13;79:18
initiate (1) 38:3	intrusion (1) 66:12	kilowatts (1) 87:24	leading (2) 5:14;36:13	Little (20) 9:8,18;10:7;20:2; 23:8;26:17;31:22; 32:1;36:22;42:13,13; 45:20;47:16;54:8; 59:7;71:1,7;73:16;
inordinately (1) 77:3	investigations (2) 27:7,8	kind (2) 23:11;35:18	learn (1) 23:8	
input (1) 85:5	involved (4) 21:14;31:6;39:20; 63:22	kindly (1) 90:5	least (5) 4:24;39:3;58:9; 87:13;95:18	
inputs (1) 87:3	involves (1) 22:4	knew (1) 64:17		
installation (2) 31:19;65:21	ISO (1) 80:6	knowing (1) 80:19		
instance (2) 20:19;37:16	ISO-New (1) 80:21	knows (1) 39:20		
instances (4) 4:15,18;72:13;79:6	issue (26) 6:16;9:9,12,13; 10:1,2,13;14:20; 21:1;23:7;31:21; 36:21;39:12;45:21, 22;51:12;52:14;	kV (3) 51:15,15;52:7		
in-state (1) 83:17		L		
instead (4) 16:10;20:7;28:9; 46:9		lack (1)		

81:13;94:13 lived (1) 57:15 living (1) 50:9 local (9) 25:24;26:1;43:19; 44:10;61:23;62:9,16; 70:13;91:2 localities (1) 79:13 localized (1) 87:2 located (1) 63:8 locating (1) 59:20 location (2) 39:21;59:22 locations (1) 31:15 long (6) 47:9;57:15;58:2, 16;75:7;97:11 longer (1) 9:21 look (23) 3:21;10:21;15:16; 18:12;28:24;29:12; 34:10;35:4;38:15; 39:10,11;40:8;51:1; 58:3;61:13;71:16; 72:17;73:16,17; 77:18;81:2;88:14; 93:16 looked (11) 40:3;41:7;42:16, 18;64:12,13,18,19; 78:1;85:4;90:24 looking (12) 17:18;19:18;46:21; 54:9;56:24;66:19; 67:16;84:24;86:19; 91:5;94:5;95:15 looks (2) 27:21;63:23 loops (1) 65:16 loose (1) 98:4 lot (23) 23:14;31:4;32:24; 35:11;37:9;43:2; 47:12,23;50:1;53:22; 54:1;64:2;65:8;66:1, 5,7;67:8;72:7,9; 73:15;74:15;76:13 low (3) 91:3,9,12 lower (2) 91:5;96:21 lowering (1) 44:11	lowers (1) 97:15 luckily (1) 77:8 lunchtime (1) 16:14 luxury (1) 81:11 M Mackie (1) 6:13 Madam (9) 3:12;16:16;19:14; 31:8;37:3;71:24; 73:22;74:21;89:15 Madbury (5) 29:23;30:13;31:1; 64:20;91:5 maintain (1) 7:13 maintained (1) 47:21 majority (3) 53:5;68:12;90:11 makes (2) 16:3;45:2 making (3) 26:17;34:16;83:7 Management (2) 39:8;64:10 mandated (1) 46:13 mandating (1) 74:11 manner (2) 31:3;55:2 many (7) 4:1;24:12;28:4; 63:3;66:10;79:5;94:2 marked (1) 89:23 market (1) 84:5 marshaling (9) 21:4,7,19,24;23:22, 23;24:8,16;25:3 mass (1) 66:10 massive (1) 80:9 master (34) 45:5,16;46:13; 47:6;60:9;61:4; 62:13,17;64:20;65:4, 8,9,16;66:24;67:2,6, 20,22;68:3,4;69:9,10, 11,24;73:1,11;74:9, 23;75:1,13,18;76:5; 77:22;81:12 materials (4) 25:17;41:14;71:6;	85:8 matter (5) 9:3;10:11;74:20; 80:1;97:14 may (19) 11:5,11;13:4;16:5; 23:2;24:15;27:11; 56:7;61:12;62:17; 73:3;74:22;77:13; 81:11;82:1;89:16; 96:21,23;97:5 maybe (15) 12:4;18:11;19:15; 24:20;27:4;34:23; 36:21;40:2;54:9,11; 63:18;80:16,17; 81:11;82:17 mean (9) 32:16;55:20;67:13; 71:19;76:18;78:3,3, 6;96:22 meaning (1) 94:20 meaningful (1) 86:16 means (3) 5:9;34:7;52:23 meant (1) 57:24 measures (1) 14:3 meat (1) 54:11 mechanisms (1) 37:7 mediation (1) 17:7 meet (3) 30:14;32:2;57:20 meeting (1) 37:13 meetings (1) 72:8 member (1) 78:10 members (1) 68:13 memory (1) 22:20 mentally (1) 79:8 mention (1) 72:13 mentioned (1) 7:22 Merrimack (2) 71:2,13 messages (1) 38:7 met (4) 30:12;31:23;58:2; 68:17 methodology (1)	32:22 mid-20th (1) 47:19 middle (1) 66:16 might (12) 8:22;12:3;28:19; 43:4;45:24;51:1; 53:21;58:8;81:9,12; 96:12;97:3 Mike (1) 14:24 miles (2) 47:9;64:1 Miller (2) 33:15;34:6 Millers (1) 33:7 million (11) 85:14,14,16,17,19, 23;86:1,4;87:22; 90:8;91:9 millions (1) 88:16 mind (7) 38:4;41:5;42:4,7; 46:1;71:9;97:21 minor (1) 23:2 minute (2) 7:14;66:14 minutes (1) 82:21 mitigated (1) 86:14 mitigation (3) 33:24;44:14;72:4 MOA (2) 13:23;14:6 MOAs (1) 14:5 model (6) 85:2,2,5,10;86:16; 87:4 modeled (1) 86:24 Models (1) 85:3 moment (4) 38:20;43:5;60:12; 93:16 Monday (5) 29:4;93:24;98:2,2, 11 monitoring (2) 38:23;39:8 Monroe (4) 16:11;19:2;20:20; 22:19 month (2) 87:24;88:1 months (1) 5:14	more (25) 3:16;4:18;12:17; 22:4;26:17;28:7,20; 31:2;34:11;36:6,22; 43:11;44:3;45:14; 51:22;54:8,11;56:4; 67:16;70:11;73:23; 81:9;82:11;93:21; 94:13 morning (3) 35:19;36:10,18 most (7) 33:19;47:17;63:9; 80:12,21;88:13; 90:21 MOU (27) 4:11;5:4;7:1,2,3; 8:3,6;9:14;10:22; 12:23;13:4,23;14:6, 24;15:1,4,7,21;17:1, 11,19;19:5,21;20:13; 21:2;23:19;25:4;26:2 MOUs (18) 4:6;6:14;9:22; 10:15;12:4,5;14:5; 15:17,20;18:23; 19:18;26:2,18,22,24; 27:15;29:24;89:12 move (11) 29:18,19;33:6; 36:22;60:5;64:15; 79:21;81:23;82:10; 89:14;93:16 moved (2) 12:21;82:3 much (6) 20:19;24:20;33:10; 54:16;55:10;89:2 multiple (4) 61:18;62:4;70:19, 20 municipal (15) 3:8,9;40:22,23; 47:6;60:5,8;61:18; 62:1,4,9;64:14,16; 70:14,20 municipalities (8) 19:8;36:4;40:12; 47:10;70:14,22;81:4, 20 municipalities' (1) 71:18 municipality (4) 6:7;18:14;47:15; 62:6 MUZZEY (29) 8:8;10:21;13:8,11, 18,21;14:19;16:23; 17:17;18:1;22:6,7, 20;23:11;25:8;27:14; 28:3;29:20,21;30:8; 54:21,22;56:17,19; 57:1;59:10;95:13,15;
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SEC 2015-04 PSNH,D/B/A EVERSOURCE ENERGY DELIBERATIONS - DAY 5 AFTERNOON SESSION ONLY
 APPLICATION FOR CERTIFICATE OF SITE & FACILITY December 7, 2018

96:23	nicely (1) 72:21	57:10	84:12;89:19;91:21;	95:23
N	noise (1) 89:2	offered (3) 30:14;35:16;42:20	92:14,15	outages (1) 88:21
name (1) 87:8	non-conforming (1) 75:23	offering (1) 44:13	open (7) 45:10;48:3;49:4; 55:9;56:12;58:5,21	outlined (1) 18:21
natural (2) 51:21;73:5	none (2) 78:14;88:4	offers (1) 32:16	operate (1) 6:4	output (1) 85:22
nature (2) 61:15;71:8	nor (2) 30:2;44:16	OFFICER (57) 3:3;15:11,15; 16:20;17:3;18:3,10, 18;19:7;20:1,15,24; 22:5;23:4;26:9,21; 27:20;28:12;29:7,11; 30:17;35:8;36:23; 38:8,14;39:15,24; 40:9;51:7;52:13; 54:20;56:15;59:11; 70:5;71:22;72:15,20; 74:12;75:10;76:10; 78:22;79:16;80:24; 81:15;82:14;83:1; 87:10;88:6;89:13; 93:11,18;94:8,14; 95:6,12;97:13,22	operation (4) 32:3;40:19;83:10, 19	outreach (6) 30:21;34:5,6; 37:10;72:3,7
Nay (1) 79:24	Northeast (1) 80:10	official (1) 42:20	opined (1) 85:21	outside (1) 69:1
near (1) 32:14	Northern (1) 45:6	officially (1) 42:22	opportunity (1) 72:8	outstanding (2) 9:6,19
nearly (1) 69:10	note (11) 10:23;13:21;27:17; 29:22;37:16;41:14; 44:16;67:5,18;81:22; 88:12	officials' (1) 47:6	opposed (2) 3:21;81:9	Over (5) 5:13;7:16;85:20; 86:5;97:11
neatly (1) 90:1	notification (2) 13:5;23:2	offline (1) 19:17	opposition (1) 7:20	Overall (3) 48:20;89:2,3
necessarily (7) 24:3;59:1,2,21; 63:21;75:4;77:15	notified (3) 22:21;26:12;37:14	offsets (2) 96:4,4	option (2) 5:4;32:19	overburdened (2) 59:20;60:1
necessary (2) 26:13;49:8	notify (1) 21:7	offsetting (1) 97:2	order (6) 42:12,16;60:20; 67:18;68:11;69:2	overlap (1) 3:23
need (18) 4:18;14:10;17:7; 18:19;27:14;52:3,14, 20;57:7;67:22;69:16; 73:8,14,15;79:11,19, 21,22	noting (1) 11:4	often (1) 61:17	orderly (15) 3:5,7,19;10:18; 12:8,12,15;34:13; 40:10,17;60:21; 66:18;75:15;76:7; 83:6	overlay (1) 59:8
needed (3) 21:12;22:9;58:12	notion (2) 51:11;52:10	once (1) 72:2	ordinance (5) 59:5;68:7;69:7,9; 78:17	overly (1) 44:20
negative (5) 45:15;86:7,8,13,20	number (10) 5:7;13:9;48:24; 49:20;63:1;68:14; 72:10;85:12;93:2; 96:16	once (1) 72:2	ordinances (22) 47:7;60:9;61:23; 62:13,17;63:4,9,12; 64:14,16,21;65:4,5; 68:5;73:1,10;75:14, 18,22;76:23;77:21; 79:8	oversee (1) 16:17
negatives (1) 88:18	numerous (3) 4:13;44:9;67:11	one (42) 5:22;9:7;11:15; 12:22;15:10,18; 17:22;18:4;22:4; 27:1;32:11;33:16; 37:6,20,21,24;39:6; 46:1;48:12;49:9; 51:10;53:20;55:8; 57:19;62:3,21;65:23; 66:3,23;67:14;68:18; 70:10;72:3;73:23; 74:24;77:22;79:19; 91:9,18;92:13,15; 93:15	ordnance (5) 59:5;68:7;69:7,9; 78:17	overview (2) 5:20;43:5
neighbors (1) 58:23	nutshell (1) 44:19	ones (1) 77:17	order (6) 42:12,16;60:20; 67:18;68:11;69:2	own (5) 42:24;44:24;68:23; 76:23;95:1
neither (3) 44:16;50:2;68:4		one's (1) 97:15	orderly (15) 3:5,7,19;10:18; 12:8,12,15;34:13; 40:10,17;60:21; 66:18;75:15;76:7; 83:6	owned (4) 6:7,8;24:3,6
New (12) 19:9;38:11;43:10; 44:3;53:5;59:20; 62:20,23;63:1;88:14; 90:17;96:4	O	only (11) 22:17;38:19;57:19; 58:24;59:2;66:8;	ordinances (22) 47:7;60:9;61:23; 62:13,17;63:4,9,12; 64:14,16,21;65:4,5; 68:5;73:1,10;75:14, 18,22;76:23;77:21; 79:8	owner (2) 6:17;97:16
Newington (31) 4:9;5:23;6:15,24; 7:2,23;10:16;11:19, 20;15:22;23:21,24; 24:15;27:3;42:6; 45:4;53:16;65:5,6,7, 9,24;67:6;68:21; 73:2;74:15;76:16; 90:10;91:10;92:19; 95:17	objection (1) 64:22		ordnance (5) 59:5;68:7;69:7,9; 78:17	owners (6) 4:21;34:15;35:11, 11;36:7;97:5
Newington's (5) 21:2;69:11,12; 74:1,9	objections (1) 71:6		ordinances (22) 47:7;60:9;61:23; 62:13,17;63:4,9,12; 64:14,16,21;65:4,5; 68:5;73:1,10;75:14, 18,22;76:23;77:21; 79:8	oyster (2) 31:23;64:10
next (9) 3:6;13:19;64:15; 83:2;90:13,20;91:14; 93:23;95:10	obtained (2) 26:13;47:18		ordnance (5) 59:5;68:7;69:7,9; 78:17	P
nice (1) 98:6	obvious (1) 29:3		ordnance (5) 59:5;68:7;69:7,9; 78:17	Page (23) 8:9;13:12,13,24; 14:2;15:23;17:19,24; 18:1;21:2;27:2,4; 46:21;56:13,22,23; 61:8;90:4,20,21,24; 91:15,20
	obviously (7) 24:9;51:21;60:10; 66:23;71:4;80:6; 90:10		ordnance (5) 59:5;68:7;69:7,9; 78:17	pages (3) 46:23;84:17,19
	occur (1) 46:14		ordnance (5) 59:5;68:7;69:7,9; 78:17	paid (1) 27:10
	occurred (1) 80:9		ordnance (5) 59:5;68:7;69:7,9; 78:17	Paragraph (6) 15:23;16:1;19:22; 20:6;21:3;61:14
	occurring (2) 29:23;60:23		ordnance (5) 59:5;68:7;69:7,9; 78:17	Paragraphs (1) 38:1
	off (5) 3:11;5:6;24:16; 38:16;94:6		ordnance (5) 59:5;68:7;69:7,9; 78:17	parallels (1)
	offer (1)		ordnance (5) 59:5;68:7;69:7,9; 78:17	

<p>55:16 parcel (2) 61:3;62:22 parks (1) 63:14 parochial (1) 79:3 part (8) 15:1;41:17;57:9, 11;62:14;64:11; 72:24;87:7 partially (1) 73:3 particular (11) 11:1;12:11;20:19; 22:2;25:4;36:3;43:3; 56:9;63:20;76:17; 82:5 particularly (11) 6:11;24;36:17; 42:10;45:21;56:5; 57:14;69:20;75:6; 76:15;93:9 parties (11) 7:8;10:5;11:2,5,7; 15:8;20:3;22:3; 28:18;29:17;31:24 parties' (1) 16:7 parts (4) 9:10,11;40:21; 67:21 party (5) 11:5;32:6;35:17; 44:17;84:13 Pass (2) 45:7;63:2 past (4) 21:10,18;54:9,12 patchwork (1) 62:8 path (2) 10:9;11:11 pay (2) 88:1;92:5 paying (1) 94:22 payment (3) 91:2,24;92:10 payments (1) 96:5 pays (2) 92:3,6 PDF (4) 15:22;17:19;21:2; 27:2 Pease (2) 66:6;68:22 people (10) 4:17;9:2;12:2; 34:17,17;36:15;39:2, 5;80:14;92:21 per (7)</p>	<p>85:14,17,19;86:4; 87:24;88:1;92:8 percent (4) 9:16;47:14;66:9; 87:14 percentage (1) 90:14 perhaps (3) 16:16;21:15;91:18 period (2) 85:20;86:5 periods (1) 83:19 permission (1) 21:9 permit (2) 68:9,20 permits (6) 21:12;22:9,23; 25:23;26:1,13 permitted (1) 21:9 permitting (2) 23:16;75:17 person (5) 18:24;20:21;28:6; 54:7;89:16 personal (3) 78:7;85:17;86:2 personally (1) 59:13 pertain (2) 4:7;64:6 phenomenon (1) 51:21 phone (1) 38:6 physical (1) 23:15 pick (1) 3:4 picture (1) 88:14 piece (4) 37:20;50:22,23; 66:22 place (5) 28:10;34:22;35:24; 37:5;40:7 placeholder (1) 38:20 placement (1) 53:10 places (4) 50:1;57:6;58:7; 96:1 placing (1) 44:11 plan (21) 45:5,16;46:13; 60:10;61:4;65:8,10, 16;66:24;68:4;69:10, 10,11,24;74:10,16,</p>	<p>17,23;75:1;77:22; 81:12 planned (4) 46:3,14,15;78:4 planning (17) 3:9;40:23;41:15, 18,19;43:20,24; 59:16;62:2;64:7,8; 68:10,12,13;80:6,7; 89:6 plans (31) 25:11;33:21,24; 38:22;39:7,8,18; 47:6;62:13,17;64:6, 10,14,16,19,20;65:3, 4;67:2,7,10,11,20,22; 68:3;73:1,11;75:6,14, 18;76:5 planting (1) 33:20 plants (1) 63:16 plate (1) 14:3 plays (1) 28:1 please (1) 29:10 pleasure (1) 49:16 pm (4) 3:2;82:23,24;98:10 point (20) 4:1;5:3;9:15; 10:11;17:4,8;18:17; 19:3;30:18;37:21; 44:7;52:5;60:24; 65:15;68:2;70:16; 71:15;77:14;84:12; 93:19 pointed (3) 19:5;43:9;57:6 points (4) 6:14;15:18;54:2; 70:17 pole (4) 35:2,3;44:14;50:5 poles (4) 31:16;44:11,11; 56:4 poor (1) 78:18 population (1) 31:23 portion (2) 28:8;45:18 portions (1) 44:12 Portsmouth (5) 29:24;30:13,18; 64:19;91:11 posed (1) 51:19</p>	<p>position (6) 8:12;28:7;45:9; 74:7,10;78:12 positive (3) 57:24;88:19;93:7 possible (1) 37:20 posted (3) 38:23;39:1,19 potential (1) 86:13 potentially (1) 16:24 power (5) 57:7;63:16;67:19; 70:22;80:9 powers (2) 80:10,11 practical (1) 97:14 practice (3) 50:14;80:13;87:18 preconceived (1) 52:10 preferred (1) 59:22 prefiled (4) 5:10;42:18;45:19; 60:16 prescription (1) 65:1 presence (1) 48:7 presented (2) 69:2;84:13 preserve (1) 45:10 PRESIDING (57) 3:3;15:11,15; 16:20;17:3;18:3,10, 18;19:7;20:1,15,24; 22:5;23:4;26:9,21; 27:20;28:12;29:7,11; 30:17;35:8;36:23; 38:8,14;39:15,24; 40:9;51:7;52:13; 54:20;56:15;59:11; 70:5;71:22;72:15,20; 74:12;75:10;76:10; 78:22;79:16;80:24; 81:15;82:14;83:1; 87:10;88:6;89:13; 93:11,18;94:8,14; 95:6,12;97:13,22 pressures (1) 57:17 presume (1) 24:3 presumed (1) 8:2 pretty (3) 55:4;59:6;89:2 prevailing (9)</p>	<p>43:9,11;47:3,5; 48:16;49:16;50:4; 54:7,23 prevent (2) 65:21;70:1 prevents (1) 34:15 previous (4) 6:5,19;53:17,20 previously (3) 21:8;51:3;53:21 price (1) 90:8 primarily (2) 52:24;85:6 primary (1) 12:11 principle (2) 44:1;59:16 prior (1) 16:14 private (1) 4:14 probably (11) 15:19;18:5,7;26:1; 32:10;35:15;46:4; 58:18;80:16;89:9; 93:23 problem (1) 80:22 procedure (2) 5:24;80:15 procedures (1) 5:18 proceed (3) 32:7;71:20;79:14 proceeding (1) 72:11 proceedings (1) 9:10 process (29) 16:13,16,18;18:8,8, 11,20,22;21:16; 28:10;31:6;35:20,24; 36:13,14,20;37:10; 38:11;39:20;59:6; 61:19;73:11;75:7; 77:4;80:7,8,19; 96:11;97:20 produced (1) 85:3 product (3) 85:16,24;88:17 professional (1) 85:7 prohibited (1) 79:7 Project (55) 7:9,12,15,20;8:4, 12;23:3,9;25:11; 30:5;32:7;33:5; 41:11,17;42:4,5; 43:18,21;44:12,18;</p>
--	---	--	--	--

45:2,4;47:8,13;48:20, 21;52:24;54:23;56:6; 57:3;58:10;59:23; 61:23;62:3,7,11; 70:11;71:3;72:12,24; 74:1,11;75:5;76:17; 80:19;81:8,14;85:6, 11;86:2,8;87:7,17; 94:3;97:7	purpose (6) 28:15,16;29:13; 46:8;75:16;79:1	21:12;36:1;62:20; 94:18	refer (1) 46:20	relieve (2) 14:14,17
projects (5) 61:17;70:10,19; 95:19,23	purposes (2) 6:2;43:14	reach (1) 41:21	reference (1) 76:17	relinquish (1) 8:11
promoted (1) 77:21	pushing (1) 78:8	reached (1) 13:3	referenced (1) 71:5	relocating (1) 44:11
promoting (1) 80:20	put (16) 9:6;15:5;29:17; 46:15;49:12;50:2; 52:11;59:7;66:15; 69:14;74:10;77:12, 22;78:9;90:5;94:6	read (8) 13:17;28:14,16; 42:8;60:4;67:7,9; 94:12	references (1) 27:18	relying (1) 28:9
promotion (1) 77:24	puts (2) 74:7;90:5	reading (3) 4:1,6;40:21	referred (1) 37:22	remarks (2) 59:10;78:9
properly (2) 6:5;37:14	putting (1) 44:5	reads (1) 21:4	refers (1) 29:2	remediation (1) 32:7
properties (7) 21:6;33:4,24; 35:22;94:2;97:4,5	Q	real (4) 56:23;83:22;84:9; 95:3	regard (3) 20:6;58:10;93:19	remember (3) 11:15;87:8;96:16
property (43) 4:21,23;6:8,17; 23:15,20;24:2;32:8, 10,13,14;33:22; 34:15,23,24;35:10, 13;36:7;43:13;66:6; 82:18;89:14,20;90:3; 91:2,6;92:3,5,6,10, 21;93:14,20,22; 94:16;96:7,12,14; 97:5,16,17;98:1,3	quality (2) 46:7;82:5	realized (1) 97:3	regarding (5) 15:18;21:1;30:21; 40:24;83:15	REMI (2) 85:2;86:16
proposals (2) 33:8,12	quantified (1) 88:24	really (15) 7:10;9:15;23:6; 33:10,16;49:8;50:7; 57:12;58:13;59:3; 66:24;68:1;77:3; 88:4;93:10	regardless (1) 15:7	remind (2) 13:8;24:23
proposed (13) 4:2,2;38:10;40:16, 19,24;48:19;72:4; 83:11,17,19,22,24	quantify (1) 86:22	reason (2) 82:2;96:22	regards (1) 8:1	reminding (1) 40:14
proposes (1) 62:22	quarter (1) 97:23	reasonable (1) 27:23	region (27) 3:6,7,20;10:19; 12:9;34:13;36:2; 40:10,17;41:3,4,9,10, 13;46:18;51:20,23, 24;52:2;60:21;73:19, 21;77:1,10;80:23; 83:6,12	remiss (1) 72:1
protect (1) 58:7	queued (1) 56:20	reasons (3) 7:16;45:16;66:4	regional (12) 3:8;40:23;41:3,15, 18;43:19;62:2;64:5, 7;69:20;83:21;85:3	repair (1) 16:4
protocols (1) 44:13	quibble (1) 74:23	rebate (1) 96:22	regionalized (5) 87:2,5,15,16,23	report (13) 30:9,12;42:18; 46:20,22;48:10; 49:24;54:17;55:11; 56:10,14;60:11; 70:18
provide (2) 52:3;70:18	quick (1) 29:21	recent (1) 70:11	regionally (1) 80:11	Reporter (1) 18:9
provided (5) 5:13;37:16;39:3; 55:12;84:21	quickly (2) 11:14;75:6	Recess (1) 82:23	region's (1) 66:24	reports (1) 38:23
provides (2) 39:4;61:20	Quinlan (2) 87:15,21	recognize (1) 57:7	Regis (2) 33:14;34:6	represent (1) 25:12
provision (4) 16:2;19:4;23:19; 24:18	quite (2) 3:15;49:6	recognized (1) 85:9	regulations (3) 62:9,12;63:5	request (2) 8:1;24:24
provisions (1) 20:5	R	recollection (1) 89:20	rejected (1) 45:7	require (5) 15:6;16:9;20:4; 26:10;61:22
public (12) 3:16,22;4:3;39:10; 40:7;44:16,20;66:8; 79:11;81:17;92:14; 98:4	raise (4) 15:18;21:1;31:21; 37:6	recommend (4) 15:9;18:4;25:22; 26:19	relate (1) 42:11	required (4) 18:7;61:24;66:5; 83:9
	raised (7) 5:9;28:17;31:9,15; 65:17;92:18;95:21	reconvene (1) 98:3	related (6) 5:5;31:20;32:21; 43:2;45:17,20	requirement (2) 38:22;62:7
	raising (2) 9:2;23:12	record (3) 35:6;60:13;84:15	relates (1) 5:4	requirements (2) 25:2;62:6
	range (1) 93:8	records (1) 39:8	relating (3) 4:4,14;86:24	requires (1) 68:12
	rare (1) 14:12	recreation (5) 48:3;49:3;73:6; 84:1,8	relative (1) 88:17	requiring (1) 20:10
	rate (2) 12:1;92:7	recreational (2) 50:8;55:7	relatively (1) 88:15	reserved (1) 8:18
	ratepayer (1) 87:24	reduced (2) 92:20,22	Reliability (7) 41:11;42:4,5;71:3; 81:8,13;86:19	residential (5) 48:1;63:7;65:11, 13;66:11
	rates (3) 86:10,15;87:20	reducing (1) 95:2	reliable (2) 67:19,23	Residents (1) 34:20
	Rather (7) 16:20;17:9;19:1;			resolution (26) 8:7;9:5;10:24; 11:7;16:2,13,22; 17:10,14,20;18:20,

22;19:1,11;20:7,8,21; 28:10,21;35:7,20,24; 36:12;37:7;38:11; 61:20	18:18;19:13;20:1; 23:23;25:20;34:22; 36:10;38:17;54:18; 61:12;75:20;97:23	32:21	secured (1) 25:23	shriff (1) 32:15
resolutions (1) 38:1	right-of-way (17) 48:8;49:12;50:13, 15,16;52:19;53:1,2,5, 6,7;54:15;59:12,15, 19,21,24	S	seeing (1) 4:17	Shulock (11) 10:15;19:3;75:11, 12;78:23,24;83:4,5; 87:12;88:8;89:5
resolve (3) 11:3;35:21;73:13	rights (2) 47:17;74:4	sacrifice (1) 66:8	seek (2) 94:2;97:11	shut (1) 6:3
resolved (11) 6:16;7:23;8:2;9:14, 21;10:17;11:5;12:5; 19:10;35:23;89:11	ripples (1) 76:23	safety (3) 3:17,22;6:2	seem (2) 22:13;24:21	side (6) 43:6;50:12,14; 66:13;67:15;91:6
resolves (1) 7:2	rise (4) 51:5;64:24;66:17; 96:3	sales (1) 85:13	seemed (3) 38:4;49:19;87:15	sides (1) 88:23
Resources (9) 4:12;14:7;22:11; 25:10;45:17;46:6; 48:5;49:5;55:5	rises (1) 50:19	Sally (1) 32:20	seems (6) 18:6;28:23;49:6; 51:9;70:7,15	signatory (1) 13:4
respect (24) 4:20;5:19;6:14; 7:8;8:24;9:8,17;10:8, 15;21:19;32:9,10,22; 33:4,7,14,17,21,22, 23;34:2;48:15;74:20; 90:2	river (3) 64:9,11,12	same (6) 13:24;34:16;45:6; 55:21;68:3;73:9	segment (1) 50:20	signed (4) 8:3;10:5;19:23; 20:4
respond (3) 72:11,12;92:24	road (4) 6:2,9;15:24;29:15	satisfies (1) 38:15	seldom (1) 97:14	significance (3) 5:22;18:15;90:17
responded (1) 72:10	roads (8) 5:19;6:4,6,18; 55:17,17,18,20	save (1) 98:2	Selig (3) 42:21;60:14;69:15	significant (9) 45:14,21;71:9; 73:24;74:8;88:21; 93:10;96:3,8
response] (1) 15:14	roadway (2) 21:24;55:16	saying (5) 5:6;6:16;18:19; 42:1;74:8	semantics (1) 96:24	significantly (3) 51:16;71:11;96:4
responsibilities (2) 14:15,18	roadways (1) 24:11	scale (4) 55:21;56:2,8;73:17	sends (1) 39:5	signing (1) 8:5
responsibility (1) 22:15	Robert (2) 87:11,12	scanned (1) 67:10	sense (4) 54:13,16;79:17; 94:1	similar (8) 14:1;17:20;19:4; 26:18;55:2,22;56:7; 71:8
responsive (1) 75:8	robust (1) 55:5	scenic (2) 45:17;64:12	separate (3) 5:24;19:21;25:3	simplistic (1) 44:21
restored (2) 6:5,18	Rockingham (4) 4:9;41:19;64:8; 92:1	scheduled (1) 23:24	series (1) 79:3	single (3) 8:21;62:11;77:7
result (4) 12:16;51:22;75:4; 97:3	role (1) 27:24	SCHMIDT (15) 11:19,21;12:22; 13:10,12,19;14:23; 15:9;25:15,20;26:7, 15,19;27:1,17	serve (1) 55:18	site (11) 14:4,8;38:24;39:1, 5,12,19;40:4,14; 62:11;85:8
results (1) 52:2	rolling (1) 46:8	school (1) 62:24	serves (1) 79:11	sites (1) 13:23
resume (1) 98:10	room (2) 5:12;50:10	scope (1) 45:1	services (5) 27:6;79:8;84:2; 85:7;89:8	siting (4) 40:19;43:23;46:4; 83:10
resumed (2) 3:2;82:24	roughly (1) 34:2	Seacoast (6) 41:8,10,10;42:5; 51:22;77:1	serving (2) 51:24;52:2	sitting (2) 50:9,10
revenues (3) 83:20,21;97:3	rounding (1) 91:8	search (1) 27:15	Session (1) 98:9	situation (1) 76:16
review (10) 6:22,23;22:10; 25:12;27:9,22;46:8; 60:3;62:16;64:5	route (2) 47:8;62:18	SEC (41) 11:6,7;14:15;16:6, 21;17:9,21;18:24; 19:12;20:8;21:10,12, 14;22:3,12,15,17,21; 26:6,11,14;27:9,13, 21,24;28:15;29:2; 39:18,19;44:23;45:7; 46:10;61:16,19,22; 62:3,12;63:21;70:17; 78:11;80:16	set (2) 57:13;61:3	situations (3) 32:17;53:22;54:1
reviewed (5) 12:13;43:17;64:9, 10;86:11	ROW (2) 63:5,8	SEC's (1) 16:21	setting (1) 63:24	sizable (1) 95:20
reviews (2) 22:23;23:11	RSA (1) 61:21	section (3) 4:23;17:13;76:13	several (4) 7:17;27:17;35:10; 74:6	size (1) 32:12
rid (1) 75:24	Rule (4) 40:14;67:1;68:14; 73:11	sections (2) 53:4;67:11	shall (8) 11:10;16:7,8;20:7; 25:22;27:10;38:2; 40:18	skills (1) 28:4
right (15) 5:15;7:13;11:20;	ruled (3) 69:6,8,9		shape (1) 75:20	small (5) 25:13;53:4;86:16; 88:24;93:2
	rules (5) 50:20;61:5,22; 65:10;68:7		Shapiro (5) 84:22;86:11;89:22; 95:21;96:9	smaller (3) 53:23;82:19,20
	running (1) 62:18		short (2) 32:15;58:18	soils (3)
	Ryder (1)		show (1) 62:17	

31:20;32:23,23 Sold (1) 96:19 solution (1) 80:22 solve (1) 44:24 solved (1) 30:5 someone (2) 63:22;92:18 somewhat (3) 51:18;58:22;74:7 somewhere (1) 91:7 sorry (7) 13:10;25:15;37:4; 42:12;49:15;56:19; 61:8 sort (11) 4:16;25:6;31:11; 61:11;70:15;71:7,16; 79:9;83:2,3;98:5 sorts (1) 21:11 sound (2) 43:24;59:16 sounds (1) 26:10 source (1) 67:19 sources (1) 25:16 space (6) 45:10;48:4;49:4; 55:9;56:12;58:21 spaces (1) 58:5 speak (3) 25:15;37:13;72:18 speaking (1) 31:10 special (2) 68:9,20 specific (8) 9:12;62:6;63:13; 69:12;73:4,10;76:16; 94:10 specifically (8) 31:20;62:3;63:10; 64:18;65:20;69:6,23; 81:23 specifics (1) 35:16 spent (3) 55:10;66:1;76:13 spoke (1) 95:18 SRP (3) 90:6,14;92:10 staging (1) 25:21 stand (3)	60:4,15;72:5 standard (7) 41:6;51:2,5;54:14; 69:19;76:9;78:19 standards (2) 41:7;51:2 standing (2) 7:13;78:15 standpoint (1) 54:10 stands (1) 33:16 start (9) 3:10,13;4:16,24; 5:6;47:4;56:5;58:20; 60:12 started (4) 3:24;64:6;82:7; 83:2 starts (1) 61:14 state (18) 25:23,24;26:3,12; 35:6;79:6;83:20; 85:15,24;88:14,17; 89:3;91:21;92:3,4,5, 7,11 statement (2) 7:4;44:2 statements (1) 61:7 states (1) 40:15 state's (1) 85:22 statute (2) 50:20;79:12 statute's (1) 79:1 statutory (3) 64:24;69:18;81:3 steps (1) 36:13 still (9) 7:12;12:6;20:4; 23:14;28:19;50:11, 13;59:17;94:22 stipulated (2) 42:9,11 stipulations (1) 42:8 stop (3) 38:9;76:18;77:20 stopped (1) 77:23 Strafford (4) 41:18,23;64:7; 91:23 stretches (1) 54:1 strike (1) 81:6 strongly (1)	60:18 structure (2) 53:24;80:13 structures (2) 47:20;51:17 struggle (1) 59:4 subject (8) 14:21;23:10,15; 36:3;62:8;71:4;80:1; 88:11 subjects (1) 93:24 submit (3) 11:5;22:12;25:12 submitted (3) 25:22;26:14;28:11 subtopic (1) 83:3 sufficiently (1) 50:18 suggest (1) 67:14 suggestion (2) 17:4;58:22 suggests (1) 59:5 summarize (1) 47:1 summarizing (1) 4:16 summary (3) 35:9;88:9;93:12 super (1) 68:12 supposed (2) 69:1;81:3 sure (16) 7:18;12:20;13:6; 27:23;29:6;32:9,14; 33:16;34:21;35:5; 37:4;38:18;39:23; 50:10;64:17;70:3 surprise (1) 68:1 surprised (1) 23:8 surrounding (1) 43:14 suspenders (1) 40:1 SW (2) 11:21;27:5 system (1) 88:20 systems (1) 55:16	9:10 tag (1) 90:8 talk (26) 10:7;15:19,24; 36:6;40:11;42:16; 45:13;59:6;67:11,20, 22;69:16;81:17,20; 82:16,17;84:3,6,8; 91:18,19;93:21;94:9; 95:10;97:19;98:3 talked (10) 17:5;20:2;35:19; 36:18;49:2,3;55:1; 64:8;84:7;89:9 talking (13) 16:13;35:12,13; 36:3;41:8;46:17; 50:7;51:3,23;66:2; 89:7;96:10,20 talks (4) 6:19;27:5;41:15; 91:20 taller (1) 56:5 tax (12) 82:18;83:20,20; 91:2,24;92:4,6,10; 93:20;97:2,4,11 taxation (1) 96:8 taxes (16) 84:9;89:14,20; 90:3;91:6,21,21; 92:21;93:7,14;94:16, 22;95:2,4,20;97:18 taxpayer's (1) 96:4 technical (1) 85:7 teed (1) 94:9 tees (1) 72:21 telecommunication (1) 74:19 telling (1) 66:2 ten (1) 82:21 tend (1) 75:1 ten-minute (1) 82:15 term (2) 33:2;97:11 terminate (3) 13:4;14:13;15:8 terminated (2) 14:6,22 Termination (4) 12:24;13:2;14:1,24 terms (5)	15:6;20:13;48:11; 89:2;93:7 testified (5) 72:6;86:11;87:9, 12,21 testimony (31) 5:10,11;6:23;7:23; 9:3,24;31:7;32:24; 37:9,21;42:19;43:1; 45:6,19,19;54:17; 60:10,13,17,24;61:9; 65:9;69:14;74:15; 84:21,22;86:6,12; 89:19;90:2;96:13 theirs (1) 40:3 theoretical (1) 58:15 therefore (4) 43:8;61:20;92:23; 96:7 therein (1) 14:10 thereof (1) 35:7 thinking (11) 18:13;25:7;26:8; 55:14;56:8;58:14; 60:8;71:1;76:13,22; 79:18 third (1) 27:4 thorough (2) 48:10;64:5 though (5) 3:22;31:4;57:18; 59:24;88:15 thought (18) 3:13;4:15;11:17; 43:3;45:23;47:4,10, 12;52:12;61:13; 63:17;65:6;67:23; 68:1;73:15;78:21; 88:7;95:1 thoughts (1) 13:18 thousand (1) 92:8 three (3) 22:18;34:14;36:17 tie (1) 98:4 times (2) 9:24;30:13 tipping (1) 18:17 today (5) 38:2;47:23;49:12; 77:9;95:8 together (2) 5:5;32:4 took (2) 34:18;65:20
			T	
		table (1) 66:1 tackled (1)		

<p>top (1) 24:16</p> <p>topic (5) 3:6;43:3;93:5,23; 95:10</p> <p>total (2) 47:14;91:11</p> <p>tough (1) 68:11</p> <p>tourism (2) 84:1,7</p> <p>towards (1) 81:24</p> <p>tower (1) 50:15</p> <p>towers (4) 31:16;32:12;53:9; 74:19</p> <p>Town (40) 4:8,8;8:9,16;11:15, 17;15:22;16:3;18:4; 21:5,6,7;23:21;27:2; 29:23;45:13;53:15; 61:2;62:22,23;65:19, 20;66:4,20,23;67:14; 68:9,18;69:23;73:10; 74:9;76:24;77:7; 78:15;90:12,15,19; 95:17;96:5;97:14</p> <p>towns (23) 41:12,16,20;42:2, 24;46:12;57:3;58:22; 64:2;67:1,17;73:2, 17;75:8;76:24;77:9; 78:12;79:4,6;80:16, 18;90:18;96:21</p> <p>towns' (1) 46:9</p> <p>Town's (3) 16:6;45:8;73:10</p> <p>track (1) 38:17</p> <p>trail (1) 50:9</p> <p>trails (2) 55:12;56:12</p> <p>transcript (2) 94:5;95:16</p> <p>transmission (22) 43:23;44:6;45:12; 51:16;52:4,7,23; 55:15,24;57:8;61:17; 63:11,24;65:10,12; 67:1;68:8;77:2,19; 78:13;86:10,15</p> <p>transparency (1) 38:21</p> <p>transportation (5) 21:23;22:10;24:10; 48:2;55:7</p> <p>transported (1) 53:12</p> <p>traverses (2)</p>	<p>57:3;62:4</p> <p>tried (1) 17:6</p> <p>trivial (1) 88:15</p> <p>trouble (1) 34:18</p> <p>trucked (1) 6:20</p> <p>trucks (1) 21:23</p> <p>true (2) 7:5;23:13</p> <p>trust (1) 76:19</p> <p>try (4) 47:1;82:18,19; 91:16</p> <p>trying (8) 5:18;9:15;11:15; 22:16;28:16;41:24; 63:23;71:14</p> <p>turn (1) 14:10</p> <p>turning (1) 47:22</p> <p>two (13) 3:23;5:5,7;37:6; 41:15,19,20,21; 46:12;71:10;73:16; 92:13;97:12</p> <p>type (8) 22:13,14;25:17; 28:6;30:1;53:11; 58:6,10</p> <p>types (1) 31:14</p> <p>typically (1) 27:24</p>	<p>10:18;12:7,14; 49:14;66:18;73:20; 76:9;77:13,17;83:8</p> <p>unduly (5) 3:18;34:12;40:16; 51:6;60:20</p> <p>UNH (8) 4:8;5:2;7:6;8:1; 10:16;17:19;19:4; 45:15</p> <p>University (1) 19:9</p> <p>unknown (1) 89:1</p> <p>unless (4) 6:17;13:1;68:9; 77:2</p> <p>unquantifiable (2) 88:19;89:1</p> <p>unreasonable (1) 60:3</p> <p>unreasonably (2) 51:4;59:18</p> <p>unreliable (1) 88:20</p> <p>unresolved (3) 11:8;30:9;34:14</p> <p>up (32) 3:5;4:22,23;5:14, 18;18:21;24:8,12; 36:11,13,20;37:5; 39:16;47:3;53:16; 56:20;57:5;65:6; 66:5;72:21;77:4; 78:5;81:16;82:18; 90:5,24;93:16,23; 94:5,9;96:5;98:4</p> <p>updated (1) 75:6</p> <p>upon (2) 13:4;87:4</p> <p>use (42) 3:7;21:5;29:15; 35:14;40:11,20; 44:18;45:1;46:2,3; 47:3,5;48:16,23; 49:16;50:18;51:12, 12,15,20;52:1,8,16, 17,18;54:3,7,8;55:3; 56:7;58:10;59:12; 62:15;63:12,21,22; 68:9,20;78:2;79:22; 81:19,23</p> <p>used (5) 6:9;24:15;34:7; 43:13;85:1</p> <p>useful (2) 43:4;90:22</p> <p>uses (23) 43:9,11,15,16,22; 45:3;47:23;48:7,11, 18,22;49:13;50:4; 52:18,19;54:10,23;</p>	<p>55:2;59:13,18;60:2; 63:7;75:23</p> <p>using (6) 33:2;43:12;59:15; 85:9;87:17,24</p> <p>usual (1) 81:18</p> <p>usually (1) 63:13</p> <p>utilities (2) 48:3;66:8</p> <p>utility (14) 52:9;53:6;54:15; 56:1;62:24;63:10,11; 68:15;70:1;87:18; 92:3,4,5,9</p> <p>utilize (1) 23:20</p> <p>utilized (1) 5:19</p>	<p>view (4) 10:12,16;63:19; 77:14</p> <p>views (14) 3:8;36:4;40:11,22; 47:6;60:6,8;62:1; 70:13,23;71:18; 79:23;81:4,19</p> <p>violates (2) 45:5,16</p> <p>violating (3) 50:19;64:24;65:16</p> <p>virtually (1) 62:10</p> <p>virtue (1) 50:15</p> <p>visited (1) 12:18</p> <p>visuals (2) 50:6,17</p> <p>voice (1) 72:9</p> <p>voiced (1) 30:3</p> <p>vote (2) 79:19,24</p>
V				
W				
<p>wait (1) 66:14</p> <p>waiving (1) 7:19</p> <p>wants (2) 79:20;84:18</p> <p>water (6) 33:23;46:7;48:5; 49:5;55:5;82:5</p> <p>way (33) 8:11;9:6;13:17; 17:24;19:13;24:19; 25:6;26:5,16;27:4; 30:11;36:8,9;49:21; 50:18;53:14,15;66:3; 71:12;72:18,19; 74:13,14;76:4,7;81:1, 2;84:7,23;93:15; 94:4,12;97:9</p> <p>WEATHERSBY (57) 3:3;15:11,15; 16:20;17:3;18:3,10, 18;19:7;20:1,15,24; 22:5;23:4;26:9,21; 27:20;28:12;29:7,11; 30:17;35:8;36:23; 38:8,14;39:15,24; 40:9;51:7;52:13; 54:20;56:15;59:11; 70:5;71:22;72:15,20; 74:12;75:10;76:10; 78:22;79:16;80:24; 81:15;82:14;83:1; 87:10;88:6;89:13;</p>				

93:11,18;94:8,14; 95:6,12;97:13,22 web (6) 38:23;39:1,5,12, 19;40:3 weeds (1) 18:6 weekend (1) 98:7 weigh (1) 81:4 weighs (1) 50:23 weight (1) 46:15 weren't (4) 7:24;34:24;42:10; 88:18 wetlands (5) 31:3;48:5;49:5; 55:6;59:8 what's (10) 7:7;35:16;40:4; 41:3,4;53:6;69:1; 75:21,21;76:18 whereas (2) 8:8,9 Whereupon (1) 98:8 whole (8) 13:1,7,15;14:24; 16:16;18:8;23:16; 68:23 who's (3) 39:19;56:24;68:18 whose (1) 97:5 wide (1) 55:19 wildlife (3) 48:5;49:5;55:6 willing (1) 49:21 willingness (1) 82:10 wish (2) 31:13;58:19 wishes (1) 23:20 within (5) 13:3;16:5;23:21; 41:21;56:10 without (2) 86:1;97:15 wonder (1) 11:23 wondering (2) 15:2;16:10 woods (1) 55:18 word (2) 48:17;67:9 words (2)	49:15;60:19 work (4) 11:3;17:6;35:17; 85:8 worked (2) 30:23;44:8 working (3) 18:16,23;35:21 worse (1) 80:15 worth (2) 61:13;78:20 wound (1) 9:3 wrap (1) 82:18 wrestling (1) 72:22 written (3) 13:5;30:24;33:18 wrote (1) 30:18 Y yard (3) 21:24;24:16;25:21 yards (8) 21:4,7,20;23:22,23, 24;24:8;25:3 Yay (1) 79:24 year (6) 85:15,17,19;86:4; 92:15,16 years (6) 22:17,18;80:7; 85:21;94:21;96:1 yesterday (4) 3:24;4:1;10:14; 19:15 Z zero (1) 94:21 zone (2) 68:22;79:4 zoned (3) 45:12;46:13;68:19 zones (1) 78:5 zoning (30) 47:7;60:9;61:19, 23;62:5,13,17;63:2,3, 9,13;64:2,14,16,21; 65:3,4;68:5,7,23; 69:7,9,24;73:1;75:14, 22;77:21;78:12,17; 79:7 1	1 (1) 47:14 10 (1) 98:11 10:00 (1) 98:12 100 (1) 96:15 101 (2) 89:23,24 11 (2) 13:24;88:1 115 (1) 51:15 12 (1) 14:2 12.9 (1) 47:9 123 (1) 84:17 128 (1) 84:17 13 (1) 64:1 130 (1) 52:7 146 (3) 56:17,18;61:9 152 (2) 47:11,13 154 (1) 84:18 162-H (1) 61:21 168 (1) 15:22 17 (1) 38:1 19 (1) 38:1 1902 (1) 47:17 2 2 (1) 8:9 2:15 (1) 3:2 20 (1) 96:1 200 (2) 13:10,24 201 (1) 89:24 2015 (2) 90:12,15 2018 (2) 30:19;98:11 21 (1) 38:2 25 (3) 56:13,23;66:9	26 (1) 56:16 267 (2) 17:19;18:2 268 (4) 18:8,11,12;36:12 27th (1) 30:19 28 (1) 84:19 283 (1) 18:8 29 (1) 84:19 3 3 (2) 27:2;85:18 3.1 (1) 85:19 30 (4) 13:3;51:14;80:7; 89:3 300 (2) 96:17,18 301.15 (1) 40:15 4 4.3 (1) 85:16 4:08 (1) 82:23 4:15 (1) 82:16 4:23 (1) 82:24 4:45 (1) 98:9 40 (3) 51:14;89:3;94:21 42 (1) 91:11 44 (1) 56:22 46 (1) 61:8 5 5 (9) 13:12,13;15:23; 17:19;18:1;21:2; 46:21;85:17;98:8 5:00 (1) 82:19 500 (1) 96:15 6	6 (3) 94:5;95:16;97:10 6.7 (1) 85:14 600 (1) 87:24 61 (1) 91:11 7 7.1 (1) 85:14 70 (1) 46:23 8 8 (1) 88:1 80 (1) 87:14 83 (1) 84:23 9 9 (4) 15:23;16:1;19:22; 84:23 90 (1) 16:5
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