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APPEARANCES:

COUNSEL FOR THE APPLICANT (EVERSOURCE ENERGY):

Barry Needleman, Esq. (McLane Middleton)
Adam Dumville, Esq. (McLane Middleton)
Elizabeth Maldonado, Esq. (Eversource Energy)

REPTG. THE TOWN OF DURHAM:

Douglas L. Patch, Esq. (Orr & Reno)
Jeremy D. Eggleton, Esq. (Orr & Reno)

REPTG. THE DURHAM RESIDENTS GROUP:

Marcia A. Brown, Esq. (NH Brown Law)
Donna Heald

REPTG. THE CONSERVATION LAW FOUNDATION:

Thomas F. Irwin, Esq.

COUNSEL FOR THE PUBLIC:

Christopher G. Aslin, Esq.
Asst. Attorney General
N.H. Department of Justice

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P R O C E E D I N G

1
2 PRESIDING OFFICER SHULOCK: Good
3 morning. I'd like to open today's hearing in
4 the Eversource Seacoast Reliability Project.
5 We're here to deliberate three Motions for
6 Rehearing that were filed by the Conservation
7 Law Foundation, the Durham Residents Group, and
8 the Town of Durham on our January 31st, 2019
9 Decision and Order.

10 And I'll start by taking
11 appearances.

12 MR. NEEDLEMAN: Good morning, Mr.
13 Chair. Barry Needleman, from McLane Middleton,
14 representing the Applicant. Next to me is Adam
15 Dumville, also from McLane Middleton, and next
16 to Adam is Beth Maldonado, from Eversource.

17 PRESIDING OFFICER SHULOCK: Good
18 morning.

19 MR. PATCH: Doug Patch and Jeremy
20 Eggleton, for the Town of Durham.

21 MR. ASLIN: Chris Aslin, from the
22 Attorney General's Office, acting as Counsel
23 for the Public.

24 MS. BROWN: Marcia Brown, NH Brown

1 Law, representing Donna Heald.

2 MR. IRWIN: Good morning. Tom Irwin,
3 representing the Conservation Law Foundation.

4 PRESIDING OFFICER SHULOCK: So, good
5 morning. So, as everybody knows, this is a
6 Motion for a Rehearing. It's a deliberation
7 among the members of the Committee. It's not a
8 public participation hearing.

9 And the very first thing that we need
10 to do is to recess. We're going to go into a
11 non-meeting with the counsel. And we're going
12 to target -- the clock hasn't been changed --
13 nine o'clock for coming back. It may be a
14 little bit sooner, it may be a little bit
15 later, but we'll target nine o'clock. And with
16 that, we'll recess.

17 *(Recess taken at 8:39 a.m. and*
18 *the hearing and deliberations*
19 *resumed at 9:34 a.m.)*

20 PRESIDING OFFICER SHULOCK: Good
21 morning. We're all back. And we will begin
22 this morning's deliberations.

23 First, I would like for members of
24 the Committee to introduce themselves. It's

1 been a while since we've been here.

2 Mr. Way.

3 MR. WAY: Good morning. I'm
4 Christopher Way, a designee for the Department
5 of Business and Economic Affairs.

6 MR. FITZGERALD: Michael Fitzgerald,
7 New Hampshire Department of Environmental
8 Services.

9 MS. DUPREY: Susan Duprey, public
10 member.

11 PRESIDING OFFICER SHULOCK: David
12 Shulock, Public Utilities Commission.

13 DIR. MUZZEY: Elizabeth Muzzey,
14 Department of Natural and Cultural Resources.

15 PRESIDING OFFICER SHULOCK: We also
16 have here our attorney, Mike Iacopino, and Pam
17 Monroe, our Administrator.

18 So, we're going to jump right in and
19 go issue by issue. And we'll start with
20 arguments that there were approvals required by
21 the Governor and Executive Council.

22 Mr. Way.

23 MR. WAY: I'll summarize some of the
24 issues or the issues that were raised.

1 With respect to RSA 4:40 and the
2 disposal of state owned real estate, the
3 comment is that the Subcommittee did not have
4 authority to decide which property rights the
5 Applicant obtained and/or should be required to
6 obtain.

7 We also have further consideration
8 that (2) the Subcommittee committed an error of
9 law when it determined that the license granted
10 to the Applicant did not constitute a *de facto*
11 lease.

12 (3) The Subcommittee committed an
13 error of law when it determined that
14 installation of concrete mattresses will not
15 cause a disposal of property.

16 Next, the Subcommittee's decision
17 that concrete mattresses will be installed
18 temporarily and will be decommissioned is not
19 supported by the record.

20 And finally, the Subcommittee should
21 have found that the Applicant should seek
22 Governor's and Executive Council's approval
23 under the common law doctrine of public trust.

24 I think I would start this off and

1 state that I think we addressed this issue
2 quite in depth during the hearings and
3 deliberation. I think we established that this
4 was not a disposal of property. It was not a
5 lease. It was not an easement, but was subject
6 to a license.

7 And I think I would start there and
8 see what people --

9 PRESIDING OFFICER SHULOCK: So, I
10 agree. I think we went over this pretty
11 thoroughly. The one argument that I saw in the
12 briefing had to do with investments made in
13 reliance on the license, and the fact that in
14 some situations that could turn a license into
15 something more than that, and give a person an
16 actual right in the land. And, you know,
17 having looked at that issue, I don't think that
18 that comports with New Hampshire law.

19 The second thing that I would note is
20 that the argument is based upon a letter from
21 an Assistant Attorney General, and that that
22 letter is based on a provision of law that has
23 since been repealed.

24 MS. DUPREY: I agree.

1 PRESIDING OFFICER SHULOCK: I guess,
2 if I were to add anything else, it would be
3 that the Applicant argues that it received a
4 license and nothing more.

5 MR. WAY: I agree.

6 PRESIDING OFFICER SHULOCK: And there
7 was one other issue that was brought up, and
8 that was that the description of the concrete
9 mattresses and some of the effects of the
10 concrete mattresses were permanent. But we
11 specifically addressed the removal of those
12 concrete mattresses when we were dealing with
13 decommissioning. And the Applicant, once the
14 project is decommissioned, will have to address
15 removal of the concrete mattresses in one way
16 or another, in accordance with whatever rules
17 are in effect at that time.

18 So, I don't see that as a "permanent"
19 in the sense of a granting of a fee.

20 MR. WAY: I agree. And I think it --
21 we did include it in decommissioning. So, it
22 does not mean that there is a disposal of
23 property for the purposes of the concrete
24 mattresses.

1 PRESIDING OFFICER SHULOCK: So, did
2 anybody else have any additional comments at
3 this time on whether this was a disposal of
4 land?

5 DIR. MUZZEY: No. I agree with the
6 discussion as we've had it.

7 MS. DUPREY: I agree as well.

8 PRESIDING OFFICER SHULOCK: So, the
9 next issue was whether the DES Wetland Permits
10 require approval by Governor and Council under
11 RSA 482-A:3, II. And this is an argument that
12 I don't believe was raised in the original
13 briefing.

14 But, having looked at it, I don't
15 believe that G&C approval is necessary, because
16 DES has not approved the Wetlands Permit under
17 this statutory construction. DES provides us
18 with a recommendation for a permit. The permit
19 is actually approved by the Site Evaluation
20 Committee under its statute. And therefore, I
21 don't believe the permit is subject to G&C
22 approval in this instance.

23 That is different for other wetlands
24 permits. But, for permits that are subject to

1 our approval, they do not require G&C approval.

2 Anybody have any comments --

3 MR. WAY: I agree.

4 PRESIDING OFFICER SHULOCK: -- they
5 would like to raise on this?

6 MR. FITZGERALD: I agree. They're
7 separate statutory requirements.

8 MS. DUPREY: I agree as well.

9 PRESIDING OFFICER SHULOCK: So, the
10 next issue that we need to address is an
11 argument that the PUC essentially did not have
12 the information necessary to issue its order,
13 because the Applicant did not specifically
14 state that the mechanical protection that it
15 would be using in this project in the crossing
16 of Little Bay would be concrete mattresses.

17 And this is really a repeat of
18 arguments that were made before. I think we
19 fully considered these arguments. And I don't
20 really see that it's our purview to say what
21 the PUC should have had in front of it or what
22 they do with the information that they did
23 receive.

24 MR. WAY: I agree.

1 MR. FITZGERALD: Yes.

2 MS. DUPREY: I agree as well.

3 DIR. MUZZEY: I agree as well.

4 PRESIDING OFFICER SHULOCK: Okay.

5 So, well, I guess I would add to that that in
6 our record we do have a letter from Debra
7 Howland at the PUC saying that the PUC had all
8 of the information that it required in order to
9 make its decision when the application for the
10 license was originally filed.

11 And then we have a letter from the
12 PUC, after the Applicant notified the PUC that
13 it would be using the mechanical stabilization,
14 that its original order could stand. And so,
15 the PUC apparently did do its work, and I trust
16 they did it well.

17 So, I think the next issue we need to
18 address are arguments that we erred when we
19 allowed the Presiding Officer to communicate
20 with NHDES about its final decision.

21 And, Chris.

22 MR. WAY: So, with regards to the
23 Applicant's and Presiding Officer's
24 communication with New Hampshire Department of

1 Environmental Services, the Subcommittee
2 committed an error of law when it allowed the
3 Applicant to communicate with NHDES after NHDES
4 issued its final permits recommendations on
5 February 28th, 2018. And it was inappropriate
6 for the Presiding Officer to request NHDES to
7 comment on recommended conditions that the
8 Applicant disputed prior to the hearing without
9 the approval of the Subcommittee.

10 And then, if we talk about the final
11 decision by NHDES, the Subcommittee committed
12 an error of law when it denied the August 21st,
13 2018 motion requesting a suspension of the
14 proceedings and an inclusion of the parties in
15 communication with NHDES; and secondly, denied
16 the October 24th, 2018 motion to strike
17 communication from NHDES that was provided
18 after February 28th, 2018 and related
19 testimony.

20 This is another one I think we spent
21 a considerable amount of time and response on.
22 With regards to the Presiding Officer, I think
23 the statute bears out, the Presiding Officer
24 has the authority and responsibility to

1 identify issues that may have bearing on the
2 Committee. And I think we're obviously going
3 to have ongoing interactions with many parties,
4 and we want to be able to have interactions
5 with those parties.

6 And I think also, too, that with
7 regards to final decisions, there was ample
8 opportunity for review, questioning, and input.

9 I'd open it up for other thoughts.

10 MS. DUPREY: I agree with that
11 characterization.

12 DIR. MUZZEY: And I would just add
13 that this type of argument was made both by the
14 Presiding Officer, as well as the full
15 Committee, as the proceeding went through many
16 days of hearings and that type of thing. So,
17 it's not just what the Presiding Officer had
18 agreed to, but the entire Committee did as
19 well.

20 MR. WAY: Correct.

21 PRESIDING OFFICER SHULOCK: Any other
22 comments?

23 MR. FITZGERALD: I would concur with
24 that, those opinions.

1 PRESIDING OFFICER SHULOCK: Okay.

2 So, I think the next area we need to deliberate
3 on are arguments that we made inappropriate
4 delegations to state authorities.

5 Beth.

6 DIR. MUZZEY: Thank you. The
7 argument that's been made is that the
8 Subcommittee crossed the boundaries of
9 delegation set forth in the statute when we
10 authorized a number of different entities to do
11 various things in the order. This included a
12 number of things that the New Hampshire
13 Department of Environmental Services will be
14 doing, such as approving plans, reviewing
15 results of the jet plow trial, using its
16 expertise to determine whether the testing of
17 oysters should be required, a number of other
18 natural resource decision-making.

19 Also delegation to the Division of
20 Ports & Harbors or the Department of Safety
21 Marine Patrol, as well as authorizing various
22 agencies with permitting authorities and review
23 authorities to review marshalling yards and
24 laydown areas that may not be known yet in this

1 proceeding.

2 As well as the Department of
3 Transportation to issue it's required permits,
4 licenses, and approvals.

5 As well as the Dispute Resolution
6 Procedure that was laid out, and how that
7 authority will be delegated.

8 As we've noted with some of these
9 other concerns, I believe that this delegation
10 was thoroughly discussed within the proceeding.
11 And that we made our decisions based on
12 evidence, and that there is not new evidence
13 that would lead us to change our
14 decision-making.

15 Although it's noted that there are
16 many plans that are part of this proceeding, it
17 seems -- I continue to believe that our
18 delegating authority here was done within the
19 statute, and we don't need to reopen this
20 hearing in order to consider it further.

21 I'm wondering if anyone else has
22 other thoughts on that.

23 MS. DUPREY: I agree with your
24 characterization. And I just would add, with

1 respect to the Dispute Resolution Process, that
2 regarding the claim that the burden of proof
3 has shifted to private property owners, it's my
4 feeling that this argument disregards the fact
5 that the Dispute Resolution Process is simply a
6 mitigation measure. It's not required.

7 Any private property owner can choose
8 to forgo this process and sue the Applicant for
9 damages for their specific property, or it can
10 undergo the process that we have sought to
11 provide to people.

12 But there's no requirement that they
13 do it. And so, therefore I disagree with the
14 argument that's been made.

15 DIR. MUZZEY: And one final aspect of
16 some of the arguments that were made is that
17 the Subcommittee deprived parties of their due
18 process rights when we did not implement a
19 separate process administered by the Site
20 Evaluation Committee to review the various
21 plans, and hear comments, hold hearings on the
22 plans as they are implemented and reviewed by
23 DES.

24 Again, we did discuss how public

1 comments could be made to those plans within
2 our deliberation. We cannot govern the
3 internal processes that DES uses for its
4 authorities, although we did recognize that
5 there is room for public comment within those,
6 and that would be, again, within the
7 jurisdiction of DES to accept those comments
8 and potentially act or not act on them.

9 PRESIDING OFFICER SHULOCK: I think
10 I'd just like to add that I think that all of
11 these delegations fall squarely within the
12 statute that allows us to delegate. Which says
13 that "the committee may delegate to the
14 administrator or to such state agency or
15 official as it deems necessary or appropriate
16 the authority to specify the use of any
17 technique, methodology, practice, or procedure
18 approved by the committee within a certificate
19 issued under this chapter."

20 Any further comments on delegation?

21 *[No verbal response.]*

22 PRESIDING OFFICER SHULOCK: All set?
23 So, the next issue that I have on my checklist
24 is that we erred in determining that there is a

1 reliability need for the project.

2 And, Mike, I believe you're going to
3 discuss that for us.

4 MR. FITZGERALD: Yes. The arguments
5 made were that there -- that our decision was
6 unreasonable and arbitrary, not supported by
7 the record, and that we committed an error of
8 law when we refused to ask ISO-New England to
9 update their analyses. And that we acted
10 arbitrary and unreasonably when we refused to
11 order the Applicant to consider other
12 alternatives.

13 I think we carefully considered all
14 of these arguments previously during our
15 deliberations. We heard these, I think that we
16 fully -- had full confidence in the ISO-New
17 England process for determining that this was a
18 reliability project, it was necessary for
19 the -- for the growth in the area, to address
20 the growth in the area, and to ensure reliable
21 electric service to the region.

22 I don't think that we heard any
23 evidence as to why that process was
24 inappropriate. So, I think we addressed these

1 fully and don't need to go back and look at
2 this again.

3 MR. WAY: I agree.

4 PRESIDING OFFICER SHULOCK: I agree
5 as well.

6 Any other comments on those findings?

7 *[No verbal response.]*

8 PRESIDING OFFICER SHULOCK: Okay.
9 Then, there have been arguments made regarding
10 orderly development of the region and prior
11 precedent, specifically whether our Order
12 conforms with the Order issued in the Northern
13 Pass docket.

14 MR. WAY: The argument is the
15 Subcommittee in the Northern Pass docket found
16 that, just because the project will be
17 constructed in an existing right-of-way, it
18 does not automatically become comparable with
19 local land uses. Mr. Varney's report in this
20 docket and in the Northern Pass docket are
21 based on this assumption. The Subcommittee
22 should have followed the Northern Pass
23 precedent and declined to accept Mr. Varney's
24 findings.

1 I believe this is rehashing an old
2 argument, and I'm not seeing a lot of new
3 information. I think it is reasonable to
4 anticipate that there will be parallels made
5 between the two projects. But the projects
6 were different in scope, they were different in
7 contents, they were different in their
8 conclusions. They were very different
9 projects. And I think we look at them very
10 differently. And I think also, too, we're not
11 bound to take the decisions -- past decisions
12 as dictates for our next decision.

13 So, I think for my part, I don't
14 think this merits a rehearing. I think we've
15 addressed this issue.

16 And open it up for others.

17 PRESIDING OFFICER SHULOCK: I don't
18 think I have anything to add.

19 Anybody else?

20 DIR. MUZZEY: No. I agree with that
21 summary. Thank you.

22 PRESIDING OFFICER SHULOCK: I think
23 the next issue we should address is the
24 argument that we failed to properly consider

1 the views expressed by the municipalities who
2 were affected by the project.

3 Susan.

4 MS. DUPREY: Thank you.

5 Specifically, the Town of Durham concluded that
6 we arbitrarily and unreasonably failed to
7 provide due consideration to the testimony
8 provided by the Town, and relied on an
9 erroneous report by Mr. Varney instead.

10 I think it's fair to say that we
11 would disagree with that characterization of
12 Mr. Varney's report. We spent a great deal of
13 time listening to, in particular, the two
14 communities, Newington and Durham's town
15 officials, they testified for hours, as I
16 recall. We also received written testimony
17 from all four communities that were directly
18 affected by the installation of this facility.

19 The requirement is that we "consider"
20 the town's position, not that we necessarily
21 adopt it, agree with it or implement it, but
22 rather that we consider it. And we consider it
23 along with a host of other issues that we are
24 required to consider when making this decision.

1 I think we spent extensive time
2 listening and making that consideration. And I
3 think what we did was appropriate.

4 MR. FITZGERALD: I would agree that
5 we very carefully gave consideration and
6 listened to all of the towns' arguments and
7 gave them due consideration.

8 MR. WAY: Agree.

9 PRESIDING OFFICER SHULOCK: Agreed.

10 DIR. MUZZEY: Agreed as well.

11 PRESIDING OFFICER SHULOCK: So, our
12 next issue has to do with orderly development
13 of the region, Little Bay and Great Bay
14 estuary, and some environmental concerns. And
15 that would be followed by arguments that we did
16 not properly consider effect on water quality
17 and the natural environment, including our
18 consideration of the jet plow trial run,
19 sediment dispersal, and impact on eelgrass, and
20 then, in addition, some Mitigation Fund issues.

21 And, Mike.

22 MS. DUPREY: If I could just
23 interrupt you, Mr. Chair? I'm not sure that
24 you mentioned "nitrogen", which was also one of

1 the issues.

2 PRESIDING OFFICER SHULOCK: Yes,
3 nitrogen.

4 MS. DUPREY: Yes. Thank you.

5 MR. FITZGERALD: Yes. These, there
6 were several areas of discussion under water
7 quality, under the issue of water quality.
8 These included the release of nitrogen into the
9 bay, and whether or not we adequately responded
10 to the towns' experts; the jet plow trial run,
11 and whether our reliance on the jet plow trial
12 run to ensure that the project will not have an
13 unreasonable effect is unsupported. And I
14 think there were several questions raised
15 there, that especially it would not address all
16 the variables, and because of its very limited
17 time and duration. And that DES does not have
18 the authority to stop the project. The
19 argument's made that DES does not have the
20 authority to stop the project if they approve
21 of the trial run.

22 It also included the sediment
23 dispersion analysis, and the impact on
24 eelgrass, and, lastly, the -- well, the impact

1 of the Mitigation Fund for the salt marsh
2 restoration at Wagon Hill. And also, the
3 health and safety impact on oysters in the bay.

4 Again, in most of these, I saw very
5 little new information. It just seems to me
6 that these arguments are that we got it wrong.
7 I think that we very carefully listened to and
8 questioned the experts that were presented.
9 There were a number of arguments that said that
10 that there "may be effects" or "potential
11 impacts". But I think we gave significant
12 consideration to them.

13 We also heard the arguments from, you
14 know, we looked at the DES decision, and felt
15 that DES had made the appropriate
16 characterizations, and their permit addressed
17 the potential for impacts.

18 With respect to sediment dispersion,
19 the impact to eelgrass, again, these are
20 arguments that we heard. We deliberated and
21 decided. I saw nothing new in these arguments.

22 And with respect to the Mitigation
23 Fund regarding Wagon Hill, it was clear that
24 that Mitigation Fund would be administered by

1 DES, is administered by DES, and that there's a
2 DES process for how those funds are
3 appropriated.

4 Our statement was that we assumed or
5 estimated that the funds would be applied in a
6 certain manner, but that we clearly understood
7 that that was up to DES, and that was
8 appropriate.

9 So, again, and with regards to the
10 health and safety issues, again, I see nothing
11 new here. The same arguments are made that we
12 considered and addressed. And I believe we
13 made an appropriate decision. Excuse me.

14 PRESIDING OFFICER SHULOCK: Beth.

15 DIR. MUZZEY: One other aspect that
16 relates to the material you just covered is the
17 concern that the Subcommittee failed to
18 consider the issues of water quality, habitat
19 health, health and safety of the estuary of
20 Great and Little Bays on the idea of orderly
21 development.

22 And I think it's worth noting that,
23 by the time the Subcommittee began considering
24 the project's potential impact on the orderly

1 development of the area, we had already covered
2 whether or not the project presented
3 unreasonable adverse effects to Little Bay and
4 the natural environment, and had determined
5 that it would not have an unreasonable adverse
6 impact on that.

7 And so, although we did consider it
8 during orderly development, I just wanted to
9 note that we already determined it was not
10 unreasonably adverse by the time we were doing
11 that deliberation.

12 MR. FITZGERALD: I would agree with
13 that.

14 PRESIDING OFFICER SHULOCK: Susan?

15 MS. DUPREY: I agree with all of
16 these characterizations. Thank you.

17 MR. WAY: I do, too.

18 PRESIDING OFFICER SHULOCK: I think I
19 would add that, with the exception of the Wagon
20 Hill issue, I see all of these arguments as
21 going toward our weighting and balancing of the
22 evidence. And there is evidence to support all
23 of the findings that we made and all of the
24 decisions that we made.

1 I see these as simply an argument
2 that we should have viewed the evidence
3 differently than we did, right? But, clearly,
4 we understood that there would be nitrogen
5 released into the water column. We made a
6 specific finding that the sediment plume would
7 not reach the eelgrass. All of that is
8 supported by the record, right? And this is
9 just a rehash of the arguments and asking us to
10 reweigh that evidence. And I think we weighed
11 it appropriately in the first instance.

12 Any other comments on that issue?

13 *[No verbal response.]*

14 PRESIDING OFFICER SHULOCK: And the
15 next set of issues that have been raised has to
16 do with our decision as it relates to private
17 property.

18 And Susan, if you could.

19 MS. DUPREY: Yes. First, is the
20 issue related to the public interest. It was
21 argued that we didn't appropriately consider
22 the impact of the project on private property.
23 Specifically, it was argued that there was no
24 finding as to which properties will be affected

1 and to what extent. It was also argued that we
2 just found that there will be an impact on some
3 properties, and that we can't balance the
4 project's impact on private properties without
5 knowing the extent of the impact.

6 My response to that is that we spent
7 a great deal of time listening to the impact on
8 everybody's property that came forward. And we
9 also reviewed a number of expert reports on
10 impact to private property.

11 When it comes to this finding of the
12 public interest, though, the Committee is
13 called upon, as you were just noting, I
14 believe, Mr. Chairman, that we balance a number
15 of factors. This is but one of a laundry list
16 of factors that we are required to balance.
17 And as we take all of these factors into
18 consideration, it's our job to then decide
19 whether one of them is so important that it
20 would negate our issuing the facility.

21 And in this case, we did not find,
22 and I still believe we've made the correct
23 decision, that the impact to private property
24 was so significant that it should outweigh all

1 the other factors that we had to consider with
2 respect to whether or not to issue a
3 certificate here.

4 So, I feel that we thoroughly went
5 through those factors, not only in the "public
6 interest" segment of our discussion, but in the
7 15 days of hearings that we held, where I
8 thought we pretty carefully went through all of
9 the evidence, and listened and read testimony
10 with respect to not only private property, but
11 all the other things that we're required by
12 statute to consider, and that we appropriately
13 came to the right decision with respect to it.

14 It's also argued that we
15 impermissibly shifted the burden of
16 demonstrating the impact on private property to
17 property owners. I also disagree with that
18 statement, don't believe that we did that.

19 And in furtherance of that particular
20 matter, I would raise the Dispute Resolution
21 Procedure, which I note that Counsel for the
22 Public was involved in. And we spent a great
23 deal of time trying to fashion a Dispute
24 Resolution Procedure that would handle and

1 manage as best as possible the concerns that
2 had been raised to our attention about the
3 values of properties.

4 It was raised to us that, through one
5 of the motions, that the Right-to-Know Law is
6 being violated by the Dispute Resolution
7 Process being confidential. We would note that
8 no one has to go through the Dispute Resolution
9 Procedure. No agency is specifically managing
10 the Dispute Resolution Procedure. It's
11 completely voluntary.

12 There's no abandonment required by
13 anybody of any of their rights. No one is
14 being required to waive any of their rights.
15 They can choose to go through the Dispute
16 Resolution Process or not. It's completely at
17 their will. They have the right to pursue
18 their statutory rights to the fullest extent
19 and not go through the Dispute Resolution
20 Procedure.

21 So, therefore, I believe that our
22 Dispute Resolution Procedure is not a
23 substitute for the Subcommittee's findings, and
24 that we appropriately balanced the impacts on

1 private property by correctly applying the
2 criteria set forth in the statute, specifically
3 at Section 16 of Chapter 162-H.

4 PRESIDING OFFICER SHULOCK: Does
5 anybody have anything to add?

6 *[No verbal response.]*

7 PRESIDING OFFICER SHULOCK: Okay.
8 All right. That's -- Beth.

9 DIR. MUZZEY: I'm sorry if I missed
10 this in our discussion, but did we talk about
11 oysters in the section of natural environment?

12 MR. FITZGERALD: Yes.

13 DIR. MUZZEY: I know it was brought
14 up under health and safety as well within
15 our -- the proceeding. And I just wanted to
16 make sure that --

17 MR. FITZGERALD: Well, I included it
18 in my discussion, even though it was brought up
19 as a health and safety issue.

20 DIR. MUZZEY: Right. And the fact
21 that no new arguments seem to be made that we
22 had considered those factors.

23 MR. FITZGERALD: Yes.

24 DIR. MUZZEY: And no need to reargue

1 that?

2 MR. FITZGERALD: Absolutely.

3 DIR. MUZZEY: Thank you.

4 PRESIDING OFFICER SHULOCK: So,
5 that's the last -- that was the last issue that
6 I have on my list. So, I'm going to recess the
7 hearing, and we're going to go into a
8 non-meeting with our counsel. Hopefully, we'll
9 be back within 20 minutes.

10 *(Recess taken at 10:12 a.m. and*
11 *the hearing and deliberations*
12 *resumed at 10:20 a.m.)*

13 PRESIDING OFFICER SHULOCK: Okay.
14 I'd like to reopen the hearing and continue our
15 deliberations.

16 We have before us the Town of
17 Durham's Partially Assented-to Motion for
18 Rehearing. Does anybody have a motion with
19 regard to that hearing **[motion?]**?

20 MR. FITZGERALD: Mr. Chairman, I
21 would --

22 PRESIDING OFFICER SHULOCK: Susan.

23 MR. FITZGERALD: Oh. So sorry.

24 MS. DUPREY: Mr. Chairman I would

1 make a motion to deny the Town of Durham's
2 Motion for Rehearing.

3 PRESIDING OFFICER SHULOCK: Second?

4 DIR. MUZZEY: Second.

5 PRESIDING OFFICER SHULOCK: Okay.

6 Would anybody like to add anything to the
7 discussion that we've had so far?

8 DIR. MUZZEY: No.

9 PRESIDING OFFICER SHULOCK: Okay.

10 Well, let's take a vote.

11 All in favor of the motion?

12 *[Multiple members indicating*
13 *"aye".]*

14 PRESIDING OFFICER SHULOCK: So,
15 that's unanimous to deny.

16 We have a motion of Durham Residents'
17 Partially Assented-to Joint Motion for
18 Rehearing. Would anyone like to make a motion
19 with regard to that?

20 Mike.

21 MR. FITZGERALD: Mr. Chairman, I'd
22 make a motion that we deny that.

23 PRESIDING OFFICER SHULOCK: Second?

24 MS. DUPREY: Second.

1 PRESIDING OFFICER SHULOCK: Would
2 anyone like to add anything to our discussion
3 with regard to that motion?

4 *[No verbal response.]*

5 PRESIDING OFFICER SHULOCK: Well,
6 let's take a vote.

7 All in favor of denying, please say
8 "aye"?

9 *[Multiple members indicating*
10 *"aye".]*

11 PRESIDING OFFICER SHULOCK: It's
12 unanimous.

13 And lastly, we have a corrected
14 Partially Assented-to Motion of the
15 Conservation Law Foundation for Rehearing and
16 Reconsideration. Do I hear a motion on that?

17 Mr. Way.

18 MR. WAY: Mr. Chairman, I would make
19 a motion to deny the Conservation Law
20 Foundation motion.

21 PRESIDING OFFICER SHULOCK: Is there
22 a second?

23 MR. FITZGERALD: I'll second it.

24 PRESIDING OFFICER SHULOCK: Okay.

1 Would anyone like to add anything to our
2 discussion with regard to that motion?

3 *[No verbal response.]*

4 PRESIDING OFFICER SHULOCK: Let's
5 vote then.

6 All in favor of denying, say "aye"?

7 *[Multiple members indicating*
8 *"aye".]*

9 PRESIDING OFFICER SHULOCK: It's
10 unanimous.

11 So, those were the three motions that
12 have brought us here today. We've denied all
13 three.

14 And we will adjourn the hearing.
15 Thank you all very much.

16 *(Whereupon the deliberations and*
17 *the hearing was adjourned at*
18 *10:23 a.m.)*

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C E R T I F I C A T E

I, **Steven. E. Patnaude**, a Licensed Shorthand Court Reporter, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes of these proceedings taken at the place and on the date hereinbefore set forth, to the best of my skill and ability under the conditions present at the time.

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

Steven E. Patnaude, LCR
Licensed Court Reporter
N.H. LCR No. 52
(RSA 310-A:173)