STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

May 19, 2016 - 10:13 a.m. DAY 2
Mountain View Grand Resort & Spa
101 Mountain View Road
Whitefield, New Hampshire

IN RE: SEC DOCKET NO. 2015-06
Joint Application of Northern Pass Transmission, LLC, and
Public Service Company of New Hampshire d/b/a Eversource Energy for a Certificate
of Site and Facility.
(Hearing on Pending Motions and deliberations)

PRESENT FOR SUBCOMMITTEE/SITE EVALUATION COMMITTEE:

Chrmn. Martin P. Honigberg Public Utilities Comm.
(Presiding as Presiding Officer)

Dir. Craig Wright, Designee Dept. of Environ. Serv.
Christopher Way, Designee Dept. of Resources &
Economic Development
William Oldenburg, Designee Dept. of Transportation
Patricia Weathersby Public Member
Rachel Whitaker Public Member

COURT REPORTER: Steven E. Patnaude, LCR No. 052
NOTED AS PRESENT:

ALSO PRESENT FOR THE SEC:  Michael J. Iacopino, Esq.
Iryna Dore, Esq.
Brennan Lenehan
Pamela G. Monroe, Admin.

Counsel for the Applicant:  Barry Needleman, Esq.
Thomas B. Getz, Esq.
(McLane Middleton)

Marvin P. Bellis, Esq.
Elizabeth Maldonado, Esq.
(Eversource Energy)

Counsel for the Public:  Peter C.L. Roth, Esq.
Sr. Asst. Attorney General
N.H. Dept. of Justice

Thomas Pappas, Esq.
Elijah Emerson, Esq.
(Primmer Piper Eggleston..)

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PROCEEDING

CHAIRMAN HONIGBERG: Good morning, ladies and gentlemen. Welcome to a hearing of New Hampshire Site Evaluation Committee. We have one docketed matter in front of us today. It is the Joint Application of Northern Pass Transmission, LLC, and Public Service Company of New Hampshire, which does business as Eversource Energy, for a Certificate of Site and Facility.

Before turning to our agenda, I'm going to have the members of the Subcommittee introduce themselves, starting from my left.

MR. OLDENBURG: Bill Oldenburg, representing the Department of Transportation.

MR. WAY: Christopher Way, representing the Department of Resources and Economic Development.

DIR. WRIGHT: Craig Wright, Department of Environmental Services.

CMSR. BAILEY: Kate Bailey from the Public Utilities Commission.

CHAIRMAN HONIGBERG: Martin Honigberg from the Public Utilities Commission.

{SEC 2015-06} [Hearing on Motions] {05-19-16/Day 2}
MS. WEATHERSBY: Patricia Weathersby, public member.

MS. WHITAKER: And Rachel Whitaker, a public member.

CHAIRMAN HONIGBERG: And to my right is Mike Iacopino, the legal counsel to the Site Evaluation Committee.

MR. IACOPINO: Good morning.

CHAIRMAN HONIGBERG: Somewhere our Administrator, Pam Monroe, is circulating. Pam will be sitting I think at the seat at the end.

DELIBERATIONS (continued)

CHAIRMAN HONIGBERG: I'm now going to open the public hearing. On October 19th, 2015, Northern Pass and Eversource submitted an Application to the Site Evaluation Committee for a Certificate of Site and Facility to construct a 192-mile transmission line. The line is proposed to have a capacity rating of up to 1,090 megawatts, and to run from New Hampshire, starting at the border in Pittsburg, down to Deerfield.

On November 2nd, the Chair of the Site Evaluation Committee appointed a
Subcommittee. Some members of the Subcommittee, under their statutory authority, appointed or designated members of their agencies to serve on this Subcommittee.

On December 7th of 2015, the Subcommittee reviewed the Application and determined that the Application contained sufficient information to satisfy the application requirements of each state agency having jurisdiction under state or federal law to regulate any aspect of the construction or operation of the proposed facility. The Subcommittee also made an independent determination that the Application contained sufficient information to carry out the purposes of RSA 162-H.

On December 16th of 2015, the full Site Evaluation Committee readopted its administrative rules, which are contained in the New Hampshire Code of Administrative Rules Annotated, at Site 100, 200, and 300. The readoption of the administrative rules was statutorily required. Later that month the Committee's Administrator asked the Applicant
to supplement the Application so that it would comply with the newly enacted regulations. The Applicant filed supplemental documentation on February 26 of 2016. Together with the supplemental documentation, the Applicant filed a Motion to Waive Certain Requirements of the newly adopted regulations. The Subcommittee also has received a number of motions asking the Subcommittee to suspend the time frames set forth under RSA 162-H.

Today's hearing is scheduled to continue deliberations on the Motions to Waive and to address the pending motions regarding the schedule. As all of you know, later today, I've forgotten exactly what time, I think six o'clock, there will be a Public Comment Hearing that was scheduled to allow comment on the additional information that the Applicant filed at the end of February. So, that -- the agenda for that is for this evening, and it is limited to the supplemental information, the additional information filed by the Company at the end of February.

Here we're dealing with motions, and
it is mostly for the members of the Subcommittee to have discussions. Although, when we start talking about the schedule, we'll certainly be interacting with those who have filed motions regarding the schedule and the suspension issue. As we deliberate on the waivers, we may engage or may not engage with those who have made filings regarding that, because we've already heard those motions when we were in Lincoln a few weeks ago.

With respect to Lincoln, I will note for the record that Rachel Whitaker, who is here today, was not in Lincoln. Ms. Whitaker, would you please confirm for us and for those who are here that you have had a chance and have reviewed the transcript from that proceeding regarding the waiver motions?

MS. WHITAKER: Yes, I have. Read and re-read.

CHAIRMAN HONIGBERG: Thank you. All right. The motions to waive are directed at rules that start with Site, S-i-t-e, and are 301 -- various provisions of 301.03. They are in different categories.
I think what might be helpful would be perhaps for Mr. Iacopino to briefly summarize the three areas that are before us where there's waivers requested and remind us of the waiver standard that is contained in our rules.

MR. IACOPINO: Thank you, Mr. Chairman. I would just point out to the Subcommittee that the waivers that are requested are in generally three areas. The first area involves the so-called "alternative route" and filings that would normally be filed with respect to the alternative route. There have been objections to the Motion to Waive the requirements regarding the alternative route. The Applicant has stated on the record that it does not intend to seek certification of the alternative route.

The specific areas where the Applicant seeks waivers on the alternative route and with respect to the entire project, the actual project that they're seeking certification on, pertains largely to those sections of our rules that require
identification of certain items. The Applicant seeks a waiver of our rule that requires the Applicant to identify residential, industrial/commercial structures within certain bounds from the project. The rule I believe requires that those structures be identified in -- on all abutting property and 100 feet beyond any abutting property that's not 100 feet. So, they have asked for waiver of that.

And what they have submitted is they have submitted maps with aerial photography. They are asking that we waive the rule. They are claiming that those maps provide at least as good, if not a better -- a better -- better information for the Committee than if the rule was followed strictly. There have been objections to that request.

The second item of identification in our rules that the Applicant is seeking is to waive the requirement that wetlands and surface waters be mapped within that same area. They have pointed out that they have provided mapping that goes beyond what is, in some
instances, what is required. They claim that there will be no impact beyond the mapping that they have shown. And they have pointed out that what they have done is, in those areas within the maps that you have, where they could -- did have access to the wetlands, they did full field delineation as required by the rules. And, in those areas where they did not have access, they used alternative means, such as aerial photography and database records regarding wetlands, and so that in those areas it's an estimate of the wetlands.

The third area that they seek waiver in is with respect to our rule requiring the filing of a decommissioning plan that identifies an independent third party as being the author of the plan, requires that there be financial assurances, and also requires the excavation of underground structures down to four feet at the time of decommissioning. The Applicant, in their motion, points to their Transmission Services Agreement with Hydro-Quebec, and argues to the Committee that that Transmission Services Agreement provides a
sufficient alternative to the rule requiring
the filing of a decommissioning plan. The
Applicant also argues that a facility like this
will be in service for an extremely long period
of time, and that it would be better to prepare
the decommissioning plan closer in time to when
it may be decommissioned, if ever, I suppose.

So, those are the areas that they
seek waivers in. I think that I got them all.

CHAIRMAN HONIGBERG: Don't move the
microphone farther.

MR. IACOPINO: Okay. I want to
get -- I want to get to the standard. With
respect to any of the waivers sought by any
participant in our proceedings, your decision
on whether or not to grant the waiver is
governed by our rules, and it's Site 302.05,
which basically states that "The committee or
subcommittee shall waive the provisions of the
rule, unless it's precluded by statute, if the
waiver serves the public interest; and will not
disrupt the orderly and efficient resolution of
matters before the committee." In this
particular rule we have, it has its own
definition of "public interest", and that
definition says "In determining the public
interest, the committee or subcommittee shall
waive the rule if: Compliance with the rule
would be onerous or inapplicable given the
circumstances of the affected person;", in this
case the Applicant, "or the purpose of the rule
would be satisfied by an alternative method
proposed" by the person. So, that's the
consideration that you must give to the public
interest in determining whether or not to waive
any or all of the rules that the Applicant has
sought.

That's about a -- that's a thumbnail
sketch. If anybody has any other questions for
me, I'm happy to answer them.

CHAIRMAN HONIGBERG: All right. Do
members of the Subcommittee have questions for
Mr. Iacopino regarding what he's just said and
what it is we need to do with respect to the
waiver requests?

[No verbal response.]

CHAIRMAN HONIGBERG: Who would like
to start and on what topic?
Commissioner Bailey.

CMSR. BAILEY: Can I ask the Applicant a few questions?

CHAIRMAN HONIGBERG: Sure.

CMSR. BAILEY: I think we talked about this at the last meeting, and I can't find the answer in my notes. But how many properties would you have to do additional mapping on, if you had to do full mapping of all abutting properties, do you know?

MR. NEEDLEMAN: I can't recall off the top of my head. We'll look for that. I do know that we've got 900 mapping sheets in the Application.

CMSR. BAILEY: Okay. All right. With respect to wetlands and water -- surface water, does the Department of Environmental Services require you -- or, do they look at surface water and wetlands beyond a quarter of a mile from the edge of right-of-way to determine whether there's any impact on those waters?

MR. NEEDLEMAN: I don't believe directly. I think the way it's regulated is...
that, with respect to activity that anyone is conducting on a site that may result in erosion or runoff off the site, the Department of Environmental Services regulates that Applicant through their various permits, like the Terrain Alteration Permit, to manage that runoff so that it doesn't leave the site.

So, I don't believe that they're looking any particular distance as you define it. I think they're charging the Applicant with implementing the permit on the site to prevent any type of runoff beyond what they would consider to be acceptable.

MR. WAY: A follow-up?

CMSR. BAILEY: Go ahead.

MR. WAY: In that same vein, the Army Corps of Engineers that would participate in the DES permit, do they have a distance that they might extend from the ROW?

MR. NEEDLEMAN: Not that I know of.

CHAIRMAN HONIGBERG: Commissioner Bailey.

CMSR. BAILEY: Want me to lead the discussion on this one?
CHAIRMAN HONIGBERG: Sure.

CMSR. BAILEY: So, I've been thinking about this, with respect to water and wetlands. And I can't come up with a reason in my mind why mapping water bodies beyond a quarter of a mile from the right-of-way would be applicable to our decision. I think that the DES regulates the impact on water very carefully. And, given what the Applicant just confirmed that I thought was the case, that what DES really tries to do is force the Applicant to keep the runoff within the project area. They have mapped out beyond that a quarter of a mile. I can't think of what we would use additional information with this, on this topic.

So, those are my thoughts.

CHAIRMAN HONIGBERG: Does anyone have any other or different thoughts regarding the wetlands, just focusing on the wetlands for a moment?

MR. OLDENBURG: Mr. Chairman?

CHAIRMAN HONIGBERG: Yes. Who was that? Mr. Oldenburg.
MR. OLDENBURG: So, I guess you've met the mapping requirements for DES, the Army Corps, and the permitting requirements on the project. So, I mean, do I understand that correctly?

MR. NEEDLEMAN: I believe that's correct, yes.

MR. OLDENBURG: So, is it, I don't know if this is safe to say, or is it, are the SEC rules more stringent in mapping than those, the requirements of DES and Army Corps?

MR. NEEDLEMAN: I would say, in this particular context, they require more than those other rules require.

MR. OLDENBURG: Okay. Thank you.

CHAIRMAN HONIGBERG: Other comments?

[No verbal response.]

CHAIRMAN HONIGBERG: Commissioner Bailey, do you want to make a motion regarding the waiver request regarding wetlands?

CMSR. BAILEY: Sure.

CHAIRMAN HONIGBERG: Mr. Iacopino, is the relevant section 301.03(c)(4) regarding wetlands?
MR. IACOPINO: That is correct.

CMSR. BAILEY: Thank you. I move that we grant the Applicants' request to waive additional mapping requirements consistent with Site Rule 301.03(c)(4). I believe that it's in the public interest, because I can't -- I don't believe that the additional information would be applicable to our determination.

CHAIRMAN HONIGBERG: Is there a second?

DIR. WRIGHT: I would second.

CHAIRMAN HONIGBERG: Mr. Wright seconds. Is there any further discussion of that motion?

MS. WEATHERSBY: I have a question --

CHAIRMAN HONIGBERG: Ms. Weathersby.

MS. WEATHERSBY: A comment or a question. I'm wondering whether or not this should apply to both the transmission corridor and to the substations and transition stations, whether any special concerns surrounding those properties with regard to wetlands. In my mind, there's an awful lot more going on on those sites, particularly in Deerfield.
And, so, I guess I would be in favor of amending the motion to having it pertain simply to the transmission corridor and requiring information for the stations.

CHAIRMAN HONIGBERG: Commissioner Bailey, are you interested in amending your motion consistent with s. Weathersby's question?

CMSR. BAILEY: Well, for the same reason that I made the motion on the transmission corridor, I don't understand how the impact would be greater. I understand that the impact on the size of the land would be greater. But, if they have mapped out a quarter mile beyond the boundary of the transmission stations and the substations, can the Applicant confirm that they have done that?

MR. NEEDLEMAN: I'm sorry. Could you repeat that. I was looking ahead to the next issue. I apologize. I'm getting ready to answer your next question.

CMSR. BAILEY: So, Ms. Weathersby suggested that we -- that I amend my motion to limit it to just the transmission right-of-way,
but that require full mapping of abutting properties on the transmission, to the transmission [transition?] stations and the substations.

And, my question to you is, have you mapped those areas out in the same way that you've mapped out the corridor, that is, at least a quarter of a mile out?

MR. NEEDLEMAN: I don't have the line sheets in front of me, but I believe we have. I think there are really three different kinds of locations that you're talking about. One would be the transition stations, where the line transitions from above ground to below ground. And I don't think the footprint in those areas is very large. And, so, I don't think there would be any reason why we would not have gone out that quarter mile.

The second area would be the substation in Deerfield. And I don't have the maps in front of me, we can check, but I do believe that we went out that distance around that substation.

And, then, the third would be the
converter terminal in Franklin. And I'm not sure what distance we went out around that one, but the area of disturbance on that property, which is a fairly large property, is more or less in the middle of the property with significant undisturbed buffers around the area of disturbance.

CMSR. BAILEY: All right. So, in my mind, if that's in the middle of the property, and there's already a large amount of property that they own or lease in Franklin, and then you have to map out the full -- every bit of every abutting property, I just -- I think that's a lot of information that we're not going to use. I can't see how we would use it.

CHAIRMAN HONIGBERG: So, the answer, Commissioner Bailey, is "no"? You're not interested in amending your motion?

CMSR. BAILEY: No, not at this time.

CHAIRMAN HONIGBERG: Is there any further discussion on Commissioner Bailey's motion?

[No verbal response.]

CHAIRMAN HONIGBERG: Seeing none, are
you ready for the vote? All in favor, say "aye"?

[Multiple members indicating "aye".]

CHAIRMAN HONIGBERG: Any opposed?

[One member indicating "opposed".]

CHAIRMAN HONIGBERG: All right. That motion carries.

Next issue. I'm going to take on the additional mapping associated with the "alternative route" that the Applicant was required to provide information about under the amended rules.

I don't see any reason to require additional information -- or, I think rather additional mapping regarding that route, given that its purpose is to allow the Committee to analyze the Applicant's thought process and the alternatives the Applicant considered before bringing forward the proposal that it is seeking certification of.

If circumstances change, and the Applicant does want to pursue the "alternate"
route, there's going to be a whole new proceeding. And there's going to be additional requirements associated with it at that time. But, to me, I don't believe there's any value to us in what we need to do to require additional mapping on that route.

That's my opinion. And I would be prepared to make a motion, although it's unusual, I think, for the Chair to make motions. So, I would -- I'm going to do that, because I'm going to take some prerogative to keep this thing moving.

Mr. Iacopino, which -- how do I phrase that motion?

MR. IACOPINO: You're seeking to grant the request to waive the requirements of Administrative Rule Site 301.03(c), Subsections (3) through (5), with respect to the so-called "alternative route".

CHAIRMAN HONIGBERG: All right. That is a motion. Is there a second?

MR. WAY: Second.

CHAIRMAN HONIGBERG: Moved and seconded. Is there further discussion?
[No verbal response.]

CHAIRMAN HONIGBERG: Seeing none,
I'll call for a vote.

All in favor, please say "aye"?

[Multiple members indicating "aye".]

CHAIRMAN HONIGBERG: Are there any opposed?

[No verbal response.]

CHAIRMAN HONIGBERG: All right. That motion carries.

What do we have? We have historic resources and --

MR. IACOPINO: And buildings,
structures -- buildings and structures and property lines.

CHAIRMAN HONIGBERG: I have a question for the Applicant regarding those two. But there's a question for you, Mr. Iacopino, first.

Am I correct that that is -- it is those two where there's a provision within the rules that says "if the Applicant does not have access to the property, that is grounds for
them to not provide the mapping that's required under the rule"?

MR. IACOPINO: That is correct.

CHAIRMAN HONIGBERG: Then, I have a question for the Applicant. From our hearing in Lincoln, and from the papers that you filed, I do not understand you to be relying on that provision of the rule. Am I correct?

MR. NEEDLEMAN: We're not directly relying on it, Mr. Chairman. Indirectly, in some circumstances, we are. For example, we could not gain access to any property where we didn't have permission to do any sort of archeological assessment. So, I think it's fair to say it's a component of our broader argument.

CHAIRMAN HONIGBERG: Okay. Does anyone want to discuss historical/archeological resources, etcetera? Or make a motion?

Commissioner Bailey.

CMRS. BAILEY: My understanding about this one is that the federal government requires the Applicant to look at historical and archeological resources within the Area of
Potential Impact. And is that a mile for both of those.

MR. NEEDLEMAN: No. In this case, with respect to aboveground historic resources, the Area of Potential Effect is one mile from the corridor. With respect to archeological resources, the area for potential effect was limited to the corridor itself.

CMSR. BAILEY: Oh, right. Okay. So, the archeological sites, if there are any, would be underground, buried things?

MR. NEEDLEMAN: Right. And, I think, maybe with respect to the underground portions, it might be slightly broader, because we're not in that defined corridor for archeological, but still in the disturbed areas.

CMSR. BAILEY: But you have met the federal requirements?

MR. NEEDLEMAN: For purposes of the Section 106 process, we have met those requirements regarding the areas of potential effect, yes.

CMSR. BAILEY: Why did you qualify your answer with "for purposes of the Section
106 process"?

MR. NEEDLEMAN: Because this process
at this point is largely, if not completely,
being dictated by the federal process. And I
know that the Division of Historic Resources
does take the view that, while that process is
the dominant process, there is still the
separate -- there is still the separate
analysis that this Committee needs to do.

I think, ultimately, they're all
subsumed. But I wanted to respect the view of
DHR on that issue.

CMSR. BAILEY: Oh. Okay. Thank you.
All right.

MR. ROTH: Mr. Chairman, if I may, a
point of order. I think we're delving into a
little bit of argument on this point. And I
think we may have some things to say about
what's just been offered. For example, the
federal regulations, as far as we know, do not
have a set requirement for the distance in
which the APE must look. That's been a
decision that's reached by DHR, but it's not
one that is set in federal law.
CMSR. BAILEY: Thank you.

CHAIRMAN HONIGBERG: Thank you, Mr. Roth.

CMSR. BAILEY: Yes. I believe that that's the Area of Potential Effect that the federal government has set for this project. Do you not disagree with that?

MR. ROTH: I believe that that's something that's been determined by DHR. I don't think it's been set by the federal government.

CMSR. BAILEY: Oh. Okay.

MR. ROTH: And my understanding is it was something that was worked out amongst the consulting parties.

CMSR. BAILEY: And "DHR" being the Division of Historical Resources for the state?

MR. ROTH: That's correct.

CHAIRMAN HONIGBERG: Ms. Weathersby.

MS. WEATHERSBY: A question. Has DHR acknowledged or confirmed that the mapping that has been done, the one mile for historic resources and within the corridor for archeological resources is sufficient for them
to review this proposal?

MR. NEEDLEMAN: I can't recall whether they have specifically said that. But they are the entity that set those boundaries for us to then implement that analysis. So, presumably, they would have believed those boundaries were adequate.

MS. WEATHERSBY: Thank you.

CHAIRMAN HONIGBERG: Further comments? Would anyone like to make a motion?

CMSR. BAILEY: I'm just looking at -- I'm looking for a reference.

MR. WAY: (c)(5).

CMSR. BAILEY: No, not the reference to the rule. I'm looking for a reference in the motion.

Okay. I'll make a motion. Based on my understanding that the Department of Historical Resources for the State of New Hampshire and the federal government are satisfied with the identification of historical resources and archeological sites associated with this project, I don't believe that further mapping will help us in our decision on this
project. And, so, I move that we grant the Applicant's request for further mapping -- request for waiver of the requirements in Site 301.03(c)(5).

CHAIRMAN HONIGBERG: Is there a second?

DIR. WRIGHT: Second.

CHAIRMAN HONIGBERG: Further discussion of the motion? Seeing none -- oh, yes, Mr. Way.

MR. WAY: So, I guess part of the thought process on that, that statement, is that Historical Resources is indeed on board with what is being proposed in their presentation to the federal government. That didn't seem too firm to me when I heard that.

CMSR. BAILEY: Well, I'm looking at the Applicant's motion, and they represent that. "This Area of Potential Impact, as designated by USDOE and the New Hampshire Division of Historical Resources, for aboveground historic properties, the Application already identifies all existing historic properties within a mile of the edge..."
of the right-of-way." So, that's a two-mile swath.

MR. WAY: All right.

CHAIRMAN HONIGBERG: Further discussion?

[No verbal response.]

CHAIRMAN HONIGBERG: Seeing none, we'll call for a vote.

All in favor, please "aye"?

[Multiple members indicating "aye".]

CHAIRMAN HONIGBERG: Any opposed?

[No verbal response.]

CHAIRMAN HONIGBERG: All right. The motion carries.

All right. We have two left. We have the property lines and buildings and we have the decommissioning plan. Anyone have any thoughts?

Ms. Weathersby.

MS. WEATHERSBY: With regard to property lines, I would be in favor to grant -- in favor of granting the waiver provided that, similar to what we did recently with another
transmission project, that the abutting properties that extend beyond the area that are mapped that the tax map and assessor's card be provided for those properties. And also that, with regard to those properties that abut a substation or transition station, that a supplemental map for those properties be provided.

CHAIRMAN HONIGBERG: That sounds like a counteroffer to the Applicant.

MS. WEATHERSBY: Uh-huh. Grant in --
CHAIRMAN HONIGBERG: Yes. Can you elaborate?
MS. WEATHERSBY: So, it's a "grant in part and deny in part", I guess.
So, with regard to requiring the tax mapping card, I think it would be helpful to the Committee to see what is on those properties that abut the right-of-way, to the extent that the property had not been shown on the map, in case there are some buildings or structures that are of particular interest, such as schools, hospitals, etcetera, on that abutting property. I just think it would be
good information for the Committee to have.

And the alternative that I've suggested would not be onerous on the Applicant. It's an alternative method that I would propose that would help satisfy the requirement.

With regard to the stations, I think that those are different than -- different than the transmission line and should be treated differently, particularly, again, with regard to Deerfield Substation, and, to some extent, Franklin. And it would be helpful to me, certainly, that those properties that abut those stations, that maps include the location of buildings on those abutting properties.

CHAIRMAN HONIGBERG: So, your motion then would be "to grant on the condition that"?

MS. WEATHERSBY: Yes.

CHAIRMAN HONIGBERG: Okay. All right. Are there other comments, before I ask Ms. Weathersby to turn that into a more formal motion?

MR. NEEDLEMAN: Could I offer one --

CHAIRMAN HONIGBERG: Mr. Needleman.
MR. NEEDLEMAN: I got the information that Commissioner Bailey requested earlier. It's in the neighborhood of 900 parcels that would extend beyond the one-quarter mile.

CMSR. BAILEY: So, we would be getting 900 tax maps?

MR. NEEDLEMAN: Nine hundred (900) tax maps and tax cards, yes.

CMSR. BAILEY: That's a lot of paper and information. And, not that I -- I agree with Ms. Weathersby that we definitely want to identify important buildings. But I think that at the last meeting of this Subcommittee we talked about the idea of requiring them to have maps of any property where the property owner requested such.

And, so, it might be worth talking about that idea, since this case is so known publicly, that people who were concerned about buildings that abutted the property would probably ask to have those buildings identified, if they believe that there was going to be an impact on it.

So, just something to talk about.
CHAIRMAN HONIGBERG: Ms. Weathersby.

MS. WEATHERSBY: I think that would be reasonable, so long as those abutters knew of that opportunity. So, maybe a simple letter to the Applicant be sent out saying, you know, offering to provide that information for the property. Just so long as they're aware of that opportunity.

CHAIRMAN HONIGBERG: Mr. Wright.

DIR. WRIGHT: I was going to say, I think that would be very important, to make sure that we had a very clear procedure for how these people would get onto this list for that information to be provided to the Committee.

CHAIRMAN HONIGBERG: Mr. Needleman, do you understand the discussion that's going on up here?

MR. NEEDLEMAN: I do understand the discussion. I was just trying to think of how we could implement that, if the Committee asked us to do it, and that's not immediately clear to me.

Are we -- would we be asked to identify the 900 parcels, pull the tax map
information, and write to each of the owners of record and offer to extend the mapping if they asked us to? Is that what the Committee is envisioning?

CMSR. BAILEY: That's kind of, I think, what I'm thinking about or what we're thinking about. But do you have to pull the tax records to do that?

MR. NEEDLEMAN: I'm told that I think we do. We would have to identify those owners of record to be able to ensure that we made a valid attempt to reach them.

CMSR. BAILEY: Okay.

CHAIRMAN HONIGBERG: But aren't those people already identified? Haven't those people already received notice from you?

MR. NEEDLEMAN: Yes. I think they -- they have received whatever notice would be required by the Committee generically or with any of the underlying permits, like, for example, if there were wetlands or on abutting properties.

I'm not sure they have received any other type of notice that I can think of off
the top of my head. But, you're right, as abutting properties, I think we would have that information.

CHAIRMAN HONIGBERG: Mr. Roth.

MR. ROTH: It seems to me it would be easier to just deny the waiver request in this instance.

MR. NEEDLEMAN: Well, that did sound like argument. So, if I may?

CHAIRMAN HONIGBERG: Well, I'm not sure how helpful it was, actually, to anybody.

MR. NEEDLEMAN: I understand.

CHAIRMAN HONIGBERG: But, if -- and I don't know, I don't know how -- it sounds like there is currently a motion that could be made along those lines, and it seems like information that you have access to, in terms of who you would need to notify.

Now, would people need to give you access to their property, in order for you to do the work that needs to be done?

MR. NEEDLEMAN: I don't know. I can't think of any reason off the top of my head at this point. I mean, certainly, in the
future, if the Committee were to grant the certificate and we were to go forward with the work, we would be having interactions with those towns and those abutters. But, between now and the proceeding, I can't think of a reason specifically why we would.

CHAIRMAN HONIGBERG: All right. Ms. Weathersby, are you interested in turning your thought into a motion?

MS. WEATHERSBY: I think what I'd like to do is delay a motion on this and move onto decommissioning, and maybe circle back, after folks have had a chance to think about it.

CHAIRMAN HONIGBERG: All right. That's fine. Commissioner Bailey and I need to take a one-minute break, because we have a PUC piece of business that she and I need to communicate to our office about. So, we're going to break for one minute.

(Brief recess taken at 11:54 a.m and the hearing resumed at 11:55 a.m.)

CHAIRMAN HONIGBERG: Thank you for
All right. Who, if anyone, wants to offer comments regarding decommissioning?

Mr. Way.

MR. WAY: I guess, and maybe, Mr. Needleman, you can answer this a little bit more. I still have some concerns about the decommissioning. As I understand it, the decommissioning plan that you're proposing would go -- would originate from the TSA, probably some 30 years in the distance, and then five years before that happens you then start the process.

But I'm also looking back at the rules that were put in place. And I'm trying to think how, for any energy facility, why that couldn't -- that argument almost couldn't be made.

I'm also thinking, to your waiver request, where you say that these things are "rarely or likely never to be decommissioned". And I just have to imagine changes in technology, whatever reason, that decommissioning will come up. And I think we
probably need an answer why that wouldn't fit right into the rules as they are now?

MR. NEEDLEMAN: I'm going to ask Mr. Getz to address the decommissioning.

MR. ROTH: Mr. Chairman, I'm sorry, but Mr. Way has just invited oral argument on the motion again. And I respectfully reserve time for Mr. Pappas to make --

CHAIRMAN HONIGBERG: You respectfully request the opportunity to respond, should Mr. Getz make additional argument, is that what you're saying, Mr. Roth?

MR. ROTH: Yes.

CHAIRMAN HONIGBERG: Understood. After we've heard from Mr. Getz, we will make a determination whether it's appropriate to allow further discussion from any of the others.

MR. ROTH: I just don't see how, you know, with all due respect to Mr. Way, I don't see how his question is factual in matter, but rather invites argument.

CHAIRMAN HONIGBERG: I understand exactly what you've requested, Mr. Roth. I get it and I get the reason.
Mr. Getz.

MR. GETZ: Thank you, Mr. Chairman. Mr. Way, it seems like there's two questions you're asking. And the first, I think you have to define the term "plan", what that involves. And I think what's in the statute and what's in the rule is limited in the sense that it does not include engineering details, which I think seems to be an underlying presumption in some of the questions and the discussion about filing a plan.

So, I think in terms of what's required now, both under the statute and the rule, there is a plan on how to address decommissioning. And, through the TSA, there is a plan that, when you get close to actual decommissioning, there will be an engineering type plan drawn up that then has to be considered, approved, and then we'll implement. So, I think that it's critical to make that distinction. And I think it's, you know, basically what we said before, it's premature to do the engineering type of plan. But we think what we filed and what's within the TSA
constitutes the elements of a plan.

With respect to the technology issue, in terms of transmission lines, the experience in the industry and our experience is that maybe you swap out poles or reconductor over time. Maybe there will be a day when there will be a technological change that would -- for wireless transfer of electricity, I'm not sure that's coming any time soon, that would, you know, obviate transmission lines. But, you know, I don't think that's the type of technological change that would affect this time of a project.

But, in either case, there is financial -- a plan that includes financial assurances, which, in effect, is the TSA. So that, to the extent decommissioning is required, then the federally approved rate under the Transmission Service Agreement is in place to assure funding.

CHAIRMAN HONIGBERG: Mr. Pappas,

would you like to respond very briefly?

MR. PAPPAS: I would. Thank you, Mr. Chairman. Essentially what the TSA says is "in
30 or 40 or 50 years, we will do a
decommissioning plan”. What it doesn't say or
doesn't do is meet the elements that a
decommissioning plan needs to have currently.
It doesn't identify an independent party who
will do it. It says somebody associated with
the Applicant will do it. That's an important
distinction. It doesn't say the source of
funding or what the costs will be. It doesn't
give assurances that the funding will be there.
It essentially says "in 30 or 40 or 50 years,
or whenever we're going to decommission, we'll
do a plan." That's not what the statute
requires, it's not what your rules require.
Your rules don't require complete, detailed
engineering plans, I would agree with that.
But your rules require some basic things to
assure the State of New Hampshire and its
citizens that, when decommissioning is going to
occur, that it will occur. That the
independent party will be there and they will
do it. That the source of funding is
identified, the source of funding is there, and
so forth. So that the Applicant, or whomever
owns the line, just doesn't disappear, and the
state is stuck with no decommissioning plan and
no ability to decommission something that's
going to run from Pittsburg to Deerfield.

CHAIRMAN HONIGBERG: And, therefore,
Mr. Pappas, because they would stipulate they
don't comply with the rule as it currently
sits, that's why they asked for a waiver.

MR. PAPPAS: And I don't think they
have established that -- they haven't said on
the waiver "it's onerous", and they haven't
said that -- what they have asked is that
"their alternative meets the purpose of the
statute". And I'm arguing their alternative
does not meet the purpose of the statute. The
purpose of the statute requires certain
requirements, and those requirements are not
within the TSA that they say look to.

And, because their alternative
doesn't meet the requirements of the statute or
the rule, it's not an alternative that meets --
that satisfies the purpose of the statute,
therefore it doesn't satisfy the public
interest.
CHAIRMAN HONIGBERG: Thank you. All right. Are there other comments people want to make regarding the decommissioning plan issue?

[No verbal response.]

CHAIRMAN HONIGBERG: Would anyone like to make a motion of any sort regarding the Applicant's waiver request regarding the decommissioning plan?

MR. WAY: I actually -- I'm not convinced, and I do not think it's in the public's best interest to grant the waiver. And I would make a motion that the waiver be denied.

CHAIRMAN HONIGBERG: Is there a second?

MS. WEATHERSBY: I'll second.

CHAIRMAN HONIGBERG: All right. There's a motion and a second.

Is there any further discussion?

MS. WHITAKER: I do have one question, actually. It seems to me that one of the biggest pieces that's missing from this is that there's not a third party independent qualified person involved. And I'm just...
curious if the Applicant can address, what does it take to get a third party independent qualified person involved? Is that you guys just hiring somebody to come up with the decommissioning plan?

MR. GETZ: Well, there's, again, a couple of pieces to that. And that's the fundamental waiver we're asking for, is that we waive having a independent third party coming up now with the plan. But there is some question of "what does that really mean and why" -- I don't want to get into the -- the underlying issue of "why this, as opposed to everything else that's being done, it can't either be done in house or with an existing -- or with an existing consultant?"

But it would be -- we'd have to hire somebody. So, if that qualifies as an independent third party, that they would work for us, and they would put together the elements of a plan that meet the rule. So, that's the way we understand what that part of the rule means, but it would be engaging someone to put together a plan that meets the
elements of the rule.

MS. WHITAKER: Okay.

CHAIRMAN HONIGBERG: Commissioner Bailey.

CMSR. BAILEY: Just for discussion purposes of members of the committee, do you think that it would meet the -- would it meet the statutory requirement, and maybe this is a question for counsel, I'm not sure, if their plan had said "we will develop a plan sometime in the future, and, you know, maybe ten years after it's built, maybe after it's built, maybe 40 years after it's built, whatever, but a third party consultant will do it", I'm more concerned about the financial aspect of it, frankly.

Because I think it does make sense that it's hard to engineer something for decommissioning that's not built. And, so, if we have the requirement in place that they have to engineer such a plan, and maybe by a date certain, or that a third party has to, and I think that's important, do you think -- do the other members of the Committee think that that
would meet the requirements? Or are we looking for them to develop a plan right now by a third party that would provide all the details of decommissioning?

CHAIRMAN HONIGBERG: Attorney Iacopino would like to add something.

MR. IACOPINO: I would just point out to the Committee that RSA 162-H:7, V(g), this is in the statute now, it requires an application to "describe in reasonable detail the elements of and financial assurances for a facility decommissioning plan". That requirement cannot be waived. That is in the statute.

Our rule, which is Site 301.08(c)(2), goes beyond that and provides additional information -- requires -- actually defines some of the information that is required, and that information includes that "the plan be prepared by an independent, qualified person with demonstrated knowledge and experience", that it contain "a description of sufficient and secure funding to implement the plan", and that "the provision of financial assurance be
in the form of an irrevocable standby letter of credit" or other type of financial vehicles, that "all transformers will be transported off the site" as part of the plan, and that "all underground infrastructure less than 4 feet below grade will be removed". And I've summarized those requirements of our rule.

You can waive the provisions of the rule, but you cannot waive the provisions of the statute.

So, to answer the first question that Ms. Bailey raised, is it's up to the Committee to determine that what's been provided to you under the statute provides you with reasonable detail. Then, you can consider whether or not the rule -- the requirements of the rule itself should be waived, using the same waiver standard that I referenced earlier in our discussion.

CHAIRMAN HONIGBERG: And I actually was going to go to that statute and provide a partial answer to Commissioner Bailey's question. That, in my view, the proposal met the minimum requirements of the statute,
barely, but it did provide the elements of what a decommissioning plan needs to have; a source of funds, and a way that things would proceed.

I think everybody agrees, including the Applicant, that what they have done does not meet the rule, and that's why they need a waiver.

I, like Mr. Way, am not convinced that a waiver is in the public interest, certainly not a waiver of all of the provisions. And, so, I'm not inclined to vote -- or, I'm inclined to vote in favor of Mr. Way's motion to deny the waiver request.

But I do think it's important for us to keep in mind that there is something in the Application that was intended to meet the statutory requirement. And, in my view, it does, but barely.

Further discussion? Comments?

[No verbal response.]

CHAIRMAN HONIGBERG: Are you ready for the vote?

Yes, Ms. Weathersby.

MS. WEATHERSBY: I just wanted to
comment and let me explain my vote. To me, this project is different than others in that it's not a reliability project, but it's being built for commercial reasons. And, in my mind, that increases the likelihood that it will be decommissioned, unlike a reliability line. And, therefore, the need for funding, in particular, is very important. And the fact that the Applicant will determine, in 35 years or so from now, how much a foreign nation will contribute is fraught with problems.

CHAIRMAN HONIGBERG: Any further discussion?

[No verbal response.]

CHAIRMAN HONIGBERG: All right. I'm going to call for a vote. But I'm going to just remind people that a "yes" or an "aye" vote is on Mr. Way's motion to deny the requested waiver. So, if you are in favor of denying the waiver, you will vote "yes". If you are opposed to denying, in other words, if you would grant the waiver, you will vote "no", okay?

So, all in favor of Mr. Way's motion,
please say "aye"?

CHAIRMAN HONIGBERG: Any opposed?

[No verbal response.]

CHAIRMAN HONIGBERG: All right. The ayes have it and that request is denied.

All right, Ms. Weathersby, we're back. We circled back.

MS. WEATHERSBY: I haven't had time.

CHAIRMAN HONIGBERG: That didn't take long, but here we are.

MS. WEATHERSBY: So, I guess we're back talking about showing the location on the map of structures and improvements on abutting properties that extend beyond what has already been mapped. And I understand that the project maps extend to approximately one-quarter mile of the project corridor. And my proposal, if I remember, was that supplemental maps showing the structures be required for abutting properties around sub and transmission [transition?] stations. I don't think, I just want to clarify, I guess, that regarding properties along the transmission corridor, that it's only those -- it's not every abutting
property for which I seek more information, it's only those where there are structures on those abutting properties beyond the quarter mile that is already mapped. I don't know if that reduces the 900 figure or not.

So, and I think it -- I still think it would be helpful to me, and hopefully other Committee members, to have some idea of what is on those abutting properties beyond the quarter mile.

So, I guess that's my proposal. And I can turn it into a motion, I guess, or just throw it out for discussion, that --

CHAIRMAN HONIGBERG: I want to make sure I understand. You would grant the requested waiver on the condition that instead the Applicant provide what?

MS. WEATHERSBY: Well, I guess we could discuss, either provide the tax map and card for those properties, or I'd be -- I'm open to Commissioner Bailey's suggestion that those property owners be given the opportunity to have their properties included in the supplemental information, either by map or
perhaps those are the only ones they pulled with the tax map and card.

I'm trying to find a way to get the information that is less onerous on the Applicant, but still provides the Committee with information that will be helpful to it.

So, if anyone has a suggestion to another way, I think that would be welcome as well.

MR. NEEDLEMAN: Could I volunteer something to help you?

CHAIRMAN HONIGBERG: Sure. Why not.

MR. NEEDLEMAN: I think that, given the choices that you're debating, it would certainly be more efficient to simply provide the map and the tax cards for properties that abut the corridor and also extend a quarter mile beyond the existing mapping, rather than have to engage in a back-and-forth with all of those owners to determine what their preference would be.

CHAIRMAN HONIGBERG: Okay.

MS. WHITAKER: Can I ask a question?

CHAIRMAN HONIGBERG: Sure.
MS. WHITAKER: So, a quarter mile beyond the quarter mile that's already been mapped?

MR. NEEDLEMAN: No. What I'm talking about is properties that abut the corridor that also extend beyond the quarter mile mapping. So, those are very large properties.

MS. WHITAKER: Uh-huh.

MR. NEEDLEMAN: And what I'm saying is, we would just provide the tax map and cards for those properties.

MS. WHITAKER: Do you have a number of properties that that would include or an overall percentage?

MR. NEEDLEMAN: I don't have a percentage. I think it's probably about half of the number I gave you before, so, in the 400 to 500 neighborhood.

MS. WHITAKER: Okay.

CMSR. BAILEY: What's the difference between "900" and "400 to 500"?

MR. NEEDLEMAN: Because there are two categories of properties that extend beyond the one-quarter mile map. One category is the one
I just described, it's large properties that touch the corridor and extend beyond a quarter mile. The second category would be a property where the abutting property might be an eighth of a mile wide, and then the property beyond that would be a large property that would extend off the map, as opposed to that large property touching the corridor. And, so, what I'm talking about is the abutting properties that extend off the map.

CHAIRMAN HONIGBERG: All right. Ms. Weathersby, are you prepared to turn your thoughts into a motion at this point?

MS. WEATHERSBY: I can try. So, I move that we grant the waiver requested by the Applicant from Rule 301.03(c)(3), provided -- with regard to the transmission corridor only and not to substations or transition stations, provided, in the alternative, the Applicant provide tax maps -- tax map and card for all abutting properties that extend beyond one-quarter mile of the project corridor.

CHAIRMAN HONIGBERG: Is there a second?
CMSR. BAILEY: Second. But I have a question.

CHAIRMAN HONIGBERG: Sure.

CMSR. BAILEY: I think you -- I'm not sure the Franklin Station is -- well, is that a substation technically?

MR. NEEDLEMAN: No. It's a converter terminal.

(Multiple parties speaking at the same time.)

CMSR. BAILEY: A converter station. So, do you want to include the Franklin converter station, in addition to the transition station and substations?

MS. WEATHERSBY: Yes. All stations.

CHAIRMAN HONIGBERG: So that you are amending your motion to include the Franklin station?

MS. WEATHERSBY: Correct.

CHAIRMAN HONIGBERG: And the seconder is the one who suggested that, presumably will second that as well?

CMSR. BAILEY: Yes, I will.

CHAIRMAN HONIGBERG: Is there further
discussion of that motion?

MR. IACOPINO: Can I ask a procedural question? Are we really including or excluding the converter station and the substation? In other words, did you want the condition to apply to them or not apply to them?

MS. WEATHERSBY: No. They're excluded from the waiver. So, the information would need to be provided with regard to station properties.

CHAIRMAN HONIGBERG: Did everyone understand that?

[Multiple members nodding in the affirmative.]

CHAIRMAN HONIGBERG: Okay. Is there any further discussion?

[No verbal response.]

CHAIRMAN HONIGBERG: Seeing none, all in favor please say "aye"?

[Multiple members indicating "aye".]

CHAIRMAN HONIGBERG: Are there any opposed?

[No verbal response.]
CHAIRMAN HONIGBERG: All right. The "ayes" have it.

Mr. Iacopino, have we processed all of the pending waiver requests?

MR. IACOPINO: I believe we have.

CMSR. BAILEY: Mr. Chairman?

CHAIRMAN HONIGBERG: Commissioner Bailey.

CMSR. BAILEY: Just so the record is clear, on the motion that I made about historical and cultural resources, there's a third provision in that rule about natural resources, which is wildlife and that kind of thing. And I didn't specifically cover that in my motion, but we granted a waiver of the entire rule.

Does Attorney Iacopino find any problem with that or are members of the Committee comfortable with that? We didn't talk about that, and I apologize.

CHAIRMAN HONIGBERG: Attorney Iacopino.

MR. IACOPINO: I interpreted it as a waiver of the entire requirement in the rule.
But, if the Committee is otherwise inclined, now would be the time to deal with it.

CHAIRMAN HONIGBERG: Commissioner Bailey, I then take it that you would say, to the extent not already granted, you would move to grant the waiver requested under -- which provision is it?

MR. IACOPINO: 301.03(c)(5).

CHAIRMAN HONIGBERG: Under that provision, regarding --

CMSR. BAILEY: Natural resources.

CHAIRMAN HONIGBERG: -- natural resources, correct?

CMSR. BAILEY: Yes.

CHAIRMAN HONIGBERG: All right. Is there a second for that motion? There should be.

DIR. WRIGHT: Second.

CHAIRMAN HONIGBERG: Any further discussion?

[No verbal response.]

CHAIRMAN HONIGBERG: Seeing none, all in favor please say "aye"?

[Multiple members indicating]
"aye".

CHAIRMAN HONIGBERG: Are there any opposed?

[No verbal response.]

CHAIRMAN HONIGBERG: All right. The ayes have it. So, to the extent that we may have missed something, we just picked it up. Correct, Mr. Iacopino?

MR. IACOPINO: That is correct.

CHAIRMAN HONIGBERG: All right.

MR. NEEDLEMAN: Peter is asking if we requested a waiver of that portion of the rule, and I need to go back and to look at precisely what we asked, whether we asked for a waiver of the historic and archeological portions or whether we asked for a waiver of the rule as a whole.

CHAIRMAN HONIGBERG: Well, then, maybe a way to deal with this would be to reconsider the grants that we've -- the waivers that we've -- no. Reconsider the grants of the waivers that we've done and do a new grant granting what you requested without specifying that, with respect to the relevant section.
The unfortunate level of specificity may have
done us in here.

    CMSR. BAILEY: I found it.


    CHAIRMAN HONIGBERG: Who would like
to clarify this? Commissioner Bailey, you
found it first, I think.

    CMSR. BAILEY: It's in Footnote 1 of
the Applicant's motion. It says "Natural
resources (plant and wildlife) were studied in
large areas beyond the right-of-way given the
nature of the resource and assessed fully in
the original Application and accompanying
technical reports."

    So, they were not asking for a waiver
of natural resources. I apologize. I just
wanted to cover it, and I forgot why I thought
it wasn't, why we didn't need any more
information about natural resources.

    CHAIRMAN HONIGBERG: I move that we
reconsider the motion, the most recent motion
that we adopted, which was the clarifying
sweep-up motion that Commissioner Bailey made.

    I haven't voted in favor of that, I have the
right to move to reconsider.

Is there a second?

DIR. WRIGHT: Second.

MR. WAY: Second.

CHAIRMAN HONIGBERG: The purpose is to either have Commissioner Bailey withdraw the motion, after we -- assuming we grant reconsideration, or for us to vote it down. I think either one works. So, if you will vote in favor of this, we can then take the next step of either withdrawing that motion or voting it down.

Is there any further discussion of the motion to reconsider?

CHAIRMAN HONIGBERG: Seeing none. All in favor, please say "aye"?

[Multiple members indicating "aye".]

CHAIRMAN HONIGBERG: Are there any opposed?

[No verbal response.]

CHAIRMAN HONIGBERG: All right. That motion is now back up for discussion.

Commissioner Bailey, would you like to withdraw
the motion?

CMSR. BAILEY: Yes. I would like to withdraw the motion with respect to natural resources.

CHAIRMAN HONIGBERG: Who was the second? I think it might have been Mr. Wright.

DIR. WRIGHT: I think it was.

CHAIRMAN HONIGBERG: Will you withdraw the second?

DIR. WRIGHT: I will.

CHAIRMAN HONIGBERG: All right. That motion has now been withdrawn.

MS. MANZELLI: Mr. Chairman, may I make a clarification?

[Court reporter interruption.]

CHAIRMAN HONIGBERG: All right. Now, yes, Ms. Manzelli.

MS. MANZELLI: Thank you. I wanted to clarify, my understanding of the waiver request is that it includes a waiver of mapping water resources. So, it did not include a waiver for "natural resources", but it did include a waiver for "water resources", with respect to the alternative location and with
respect to the main route.

I'm sure the Applicants can clarify. But I just wanted to make sure that the motions clearly articulated what is being waived or not waived with respect to water resources.

MR. NEEDLEMAN: I think Ms. Manzelli is talking about two different issues. The water resources waiver is covered in Section 301.03(c)(4). The reconsideration discussion that just occurred was with respect to (c)(5).

CHAIRMAN HONIGBERG: All right. So, we're clear, Ms. Manzelli?

MS. MANZELLI: I'm not. But I will wait for the order.

CHAIRMAN HONIGBERG: Well, during the break, perhaps you can discuss it with the others who are affected, and either maybe we have to do some more business on this after lunch or you'll get it clarified.

We're going to need to break in the next ten minutes. But we can get started on something else, Mr. Iacopino. What would you suggest?

MR. IACOPINO: I believe that the
next item of business that would be up for
c consideration would be the motions by Counsel
for the Public and by the Forest Society to
suspend the time frames required by the
statute. Both of those parties have alleged
that it's in the public interest to do that.
The Applicant has objected to that. Each of
those three parties has suggested schedules,
which the Committee has.

So, a discussion regarding that issue
would be the next major thing to discuss.

CHAIRMAN HONIGBERG: All right.
Well, I think the plan will be to give the
parties who have made the motions the
opportunity to speak to them before we
deliberate. I don't want to do that in five
minutes.

But I think it might be helpful if
you would give us the legal lay of the land,
and, to the extent that you can briefly, some
of the history of how this -- these deadlines
have been dealt with in prior proceedings,
understanding that the one-year deadline that
is in the current statute is new, and also
keeping in mind that it's probably been 40 years since the SEC or any predecessor entity has considered anything of this magnitude.

So, if you could briefly give us the statutory and rule-based background for us, that will help.

MR. IACOPINO: Yes. The statutory background for what the motions request is contained in RSA 162-H:14, which states that "If the site evaluation committee, at any time while an application for a certificate is before it, deems it to be in the public interest, it may temporarily suspend its deliberations and time frames [frame?] established under RSA 162-H:7." That is the statute. It has been used in a number of cases in the past.

Notably, the term "in the public interest" is not defined within the statute. We do not have a definition of it in our rules. In other words, this particular section of the statute is not interpreted by our rules, nor is there a definition of the "public interest" for this particular portion of the statute.
In the past, the Committee has suspended deliberations under a number of different types of circumstances. In one, in the Lempster Wind Project -- I'm sorry. In the Lempster Wind Project, for instance, there was a late entry by an intervenor from the Town of Goshen, who had concerns regarding the transmission lines that were going to be upgraded through their town as a result of the construction of the proposed wind farm. In that particular wind case, the Committee found that, in order to address those issues, it was in the public interest to extend the time frames and suspend the -- suspend its proceedings.

Similar -- and, actually, I think in virtually every wind case that we had, except for one, the time frames had been suspended because the Committee had found that it would be in the public interest. In a couple of those, it was because we were at a point where we were either on the verge of or in the middle of deliberations, and the time frame was coming up, and the Committee found that, in order to
provide the public with a fully reasoned
decision, and to fully deliberate, it was
necessary to extend the time frames.

Understand, of course, that all of
these decisions were made at a time when the
time frame was nine months for these particular
projects. There is now a one-year requirement.

We have also extended the time frame
when it was the Applicant, when the Applicant
caus[ed] -- well, at least -- I shouldn't say
that, let me back up. We extended a time frame
when it turned out that there was additional
historical resource information that was
necessary in a particular case, and we required
the Applicant to provide us with that, with
that information, and it was determined to be
in the public interest so that the Committee
could have all of the information that was
needed for it to undertake its obligations
under the statute and properly deliberate.

So, the statute that permits the
temporary suspension of the time frames has
been used on a number of occasions in the past.

But, again, I can't tell you that there's any
hard or firm definition of "in the public interest". That is up to the Committee to decide on a case-by-case basis at this point.

CHAIRMAN HONIGBERG: The last thing I think I'll put on the record before we break, is that, when we were together in Loon, we did not have -- we had not identified a facility where hearings on the merits could take place. Since that time, thanks to the hard work of a number of people, we have identified a location in Concord that is appropriate and is available for multiple months starting later this year. And it will be a -- will have a large hearing -- a room for a large hearing, plus rooms for the parties and for the Subcommittee to meet privately, and store materials, if necessary.

I don't think we need to do anything else before we break for lunch, but we do need to break at this time given schedules that I'm not in control of.

So, with that, we will break. It's 12:30 now. We will come back as close to 1:30 as we can.
(Lunch recess taken at 12:30 p.m. and the hearing resumed at 1:38 p.m.)

CHAIRMAN HONIGBERG: All right. We're going to get started. We're going to hear first from the two parties or intervenors who have moved to suspend deliberations and the time frames under RSA 162-H:14.

Why don't we hear first from Counsel for the Public.

MR. ROTH: Tom Pappas will be presenting the argument on my behalf.

CHAIRMAN HONIGBERG: Mr. Pappas.

MR. PAPPAS: Good afternoon, members of the Committee. I will supplement what we have said in our motion, and I will try not to repeat what we have said in our motion. But I do want to address a number of things that were said in opposition.

The first issue is, can the Subcommittee suspend currently, right now, the one-year time frames? The Applicants' objection presents a view of the legislative history of the 2014 amendments to RSA 162-H.
And I would submit that those are irrelevant.
That there's no need to look at the legislative
history to decide whether or not you can
suspend the time frame right now. RSA 162-H:14
allows you to suspend the time frame. It is
clear, it is unambiguous. And there's no need
to look at any legislative history beyond the
statute itself. It's black letter law in New
Hampshire that, when a statute is clear and
unambiguous, you must apply its terms, you must
consider the plain and ordinary meaning of the
statutory terms and you consider the statute as
a whole. If you find that the statute is
unambiguous, there is no need, in fact, you're
not even allowed to look at the legislative
history, you simply apply the statute.

Now, RSA 162-H:7 provides for a
365-day review period. It's RSA 162-H:14 that
is at issue, and there's nothing ambiguous
about it. It says that "at any time while an
application for a certificate is before it",
"it" being the Committee, you can suspend the
time frame.

Now, I think it's important in
deciding how you interpret that statutory provision to look at what existed before and what was changed in 2014. It's not legislative history, it is looking at the statute and the change in the statute. Can I approach?

[Atty. Pappas distributing documents.]

MR. PAPPAS: What I have passed out is, on the first page, the statute as it existed prior to the 2014 amendments. And, then, the second page, which is the statute effective today that you need to interpret. Prior to 2014, the statute said that "If the site evaluation committee at any time during its deliberations relative to an application for a certificate deems it to be in the public interest, it may temporarily suspend its deliberations and time frame established under 162-H:7", which is currently the 365 days. Before 2014, it was during your deliberations that you had the ability to suspend the time frame. And the different cases that Attorney Iacopino referred to, I believe, were mostly, if not all, decided under that statute before
2014, when you had the authority during your deliberations to suspend the time frame.

In 2014, the statute was amended. And, the second page is the current version of the statute that says "If the Site Evaluation Committee at any time while an application for a certificate is before it, deems it to be in the public interest, it may temporarily suspend its deliberations and time frame established under RSA 162-H:7." That is a significant change. It changed from authorizing you "during your deliberations" to suspend the time frame, to authorizing you to suspend the time frame "at any time an application is pending before you". This Application is pending before you, and you have statutory authority to suspend the time frames at any time, including today or any time in the future.

That is a clear and unambiguous authorization for this Committee to suspend the time frame now and institute a longer than 365 day time frame. There's nothing ambiguous about "at any time", and I would argue that any legislative history is irrelevant, and you need
not, nor, in fact, should not consider legislative history if you indeed find the words "at any time while an application is before you" to be clear and unambiguous.

There's one other thing that you should note about the current statute. It provides that the Committee "may temporarily suspend its deliberations and time frame under RSA 162-H:7." Which means you can either suspend your deliberations, if it comes to the point where you need to suspend your deliberations for additional time, or you can simply suspend the time frame, the 365-day time frame. The legislative language allows you to do either, and allows you to do either at any time. And I would argue that you need not look any further than that statute in order to suspend the time frame now.

Now, like all quasi-judicial bodies, the Subcommittee has some discretion as to what's a reasonable amount of time to suspend the time frame, based on the facts and circumstances you find before you. The Legislature did not dictate to you how long the
Committee should suspend the time frame, if you
deem that to be necessary. It left it up to
your discretion to do it at any time during --
when a matter is before you.

And I would argue that, under the
facts and circumstances of this case, as we
argue in our motion, and I won't repeat it,
that they present the facts and circumstances
that would allow for you to suspend the time
frame.

Very briefly, if you consider the
legislative history of the 2014 amendment,
which was Senate Bill 245, as argued in some of
the objections, I would contend that the
legislative history of the 365-day period is
not the issue. Because the issue in front of
you is you have the authority to suspend the
time frame, and that is the legislative history
of 162-H:14. And that legislative history does
not provide you much guidance in terms of how
long you should suspend or when you should
suspend.

Now, the Applicants argue that the
phrase "temporarily suspend" somehow was
intended by the Legislator to limit the meaning of the suspension statute. That's an argument that they raise in their objection. That it somehow limits the circumstances under which you can suspend. They argue that the phrase "temporarily suspend" was meant to somehow permit suspending only when you needed additional information. That's their argument -- or, one of their arguments in the objection.

They then argue that the Subcommittee does not need additional information now, and, therefore, there's no basis to suspend the time frame currently. There is nothing in the statute itself to suggest such an interpretation. There is no limiting language in the statute somehow limiting "temporarily suspend" to mean you need additional information. It's not found in any of the language of the statute, and it's not supported by the legislative history of the suspension statute.

What they cite to is a 1990 Study Committee report to support the view that you can only suspend when you need additional
information. That 1990 Study Committee report is not legislative history and it can't be used to interpret the statute. And, in fact, that 1990 report doesn't even support their argument.

Can I approach?

CHAIRMAN HONIGBERG: Why don't you have Mr. Roth approach, and you can keep talking.

MR. PAPPAS: Thank you. What Mr. Roth is about to pass out is a portion of that 1990 report that they cite to in support of the argument that the words "temporarily suspend" means "you only suspend when you need additional information."

[Atty. Roth distributing documents.]

MR. PAPPAS: This was a report in August of 1990. And what they cite to is Page 8. And, so, the last page of this document is Page 8. And what Page 8 is is a summary of testimony by Attorney Holtman, who at the time was an Assistant Attorney General and serving as Counsel for the Public in SEC
proceedings. And they cite to the paragraph that I've highlighted in yellow on Page 8 as the sole authority for the argument that "temporarily suspending" -- I mean, "temporarily suspending means "not unless you have additional information". And in here you see a summary where it says "if it is determined that additional information is needed".

[Atty. Roth distributing documents.]

MR. PAPPAS: What Mr. Roth just passed out is Attorney Holtman's actual testimony in 1991 to the Legislature dealing with, at that time, House Bill 736. House Bill 736 was the House bill that put the suspension provision into RSA 162-H. It was the genesis of the suspension provision.

And what you have is Mr. Holtman's actual testimony in support of that bill. And I've highlighted some sections that you can read, but what I really want to draw your attention to are two things.

If you look at the first page, and
I've highlighted the second paragraph, Attorney Holtman wanted to address specifically the notion of reducing the time period from then it was 14 months to 9 months. And he said that it would be adequate for most applications, but he said "it is certainly and will prove inadequate for consideration of more complex and significant projects, those for which the chapter is most intended." He then goes on to talk about transmission projects, and talks about the need for experts and discovery and so forth.

And, on the second page, what he says is "[his] concern is largely addressed by this new provision, which allows the Committee to suspend its deliberations when the public interest warrants." He goes onto say "I raise this whole subject simply to urge the Committee, should it act favorably on this legislation, understand this provision to be one that will be invoked prudently but not infrequently, available in each case to balance expeditiousness with the need to gather relevant information and consider each proposed
project in a full and reasoned manner."

Now, he goes on later on, and you can read this, where he frames his support of shortening from 14 months to 9 months the time frame, because the Committee has the ability to suspend its deliberations if it needs more time, and, in fact, talks about the complex cases where you will need more time. This is such a complex case where this Committee needs more time.

As Attorney Holtman testified, and which is in the legislative history of the suspension provision, the provision was not intended only when the Committee needed more information. It was intended for complex and significant projects. And I would suggest that Northern Pass is the most significant and complex project in over a generation.

The Applicants then argue that "to suspend the time frame now would be to ignore the statutory 365 days time frame." There's no question that the Legislature had 365-day time frame for most projects. But they also specifically provided a suspension provision.
The Applicants argue that, because the Legislature determined that 365 days would be adequate, that it is one key feature in the "extensive debate" in the Legislature over going to a 365-day time frame. In fact, they argue that the extended time period from 9 months to 12 months was after careful study and guidance from many stakeholders, and they conclude that the Legislature extended the time frame from 9 months to 12 months "in no small part because of Northern Pass".

Well, the legislative history of 245 simply does not support those claims. The legislative history of 245, which was the 2014 amendments, was set up by a prior senate bill and set up a study committee. And the study committee was organized by New Hampshire Office of Energy Planning and coordinated the work of the study committee. They hired consultants. There was a coordinating committee that served as advisers. In fact, Attorney Roth and Attorney Getz both served on the coordinating committee.

The coordinating committee identified...
issues for the consultants. The 9-month review period was not one of the issues they identified for the consultants. The consultants when on to establish focus groups to study the identified issues, which were 15. The 9-month review period was not one of the issues studied by the consultants or the focus groups. In fact, the review period was not even included in a very extensive report in December of 2013 that the consultants produced.

The only thing the Applicants cite in their papers to support the notion that the time frame, which went from 9 months to 12 months, in no small part because Northern Pass was a preliminary review that the consultants did for the Committee before their official report. The preliminary review was simply background information, and all they did is, on two pages of a preliminary review, simply list what the six New England states and New York did in terms of time frame. That was it. If you look at the legislative history, and that's not -- and, arguably, that's not even legislative history, because there's no
evidence the Legislature even received the preliminary background review, because it wasn't part of the official report, let alone whether or not the Legislature even considered it in going from 9 months to 12 months. There's simply no evidence in the legislative history that, by going from 9 months to 12 months, the Legislature did so with Northern Pass in mind. It's simply not in the legislative history. In fact, if you look at the testimony, nobody even testified to the fact that we're going from 9 months to 12 months because of Northern Pass. Northern Pass was just barely mentioned in the legislative history, and all is mentioned in passing, and nobody mentioned it in context of going from 9 months to 12 months.

So, the argument that the Legislature set 12 months with Northern Pass in mind, and that you need to somehow use the 12 months and not suspend, is just not supported or found, frankly, in the legislative history of the 2014 amendments. It's simply not there.

So, what your left with is, is it in
the public interest to suspend the 365-day time
frame and adopt a larger schedule? Iacopino --
Attorney Iacopino told you earlier that that's
not defined. And what I would suggest you do,
as we say in our papers, is look at that first
section of Section 162 where there's a
discussion of factors that the Legislature
thought important. And I would suggest that,
if you look at those factors, you will find
that it's certainly in the public interest to
suspend the 365 day, do it now, and set a
schedule that support it.

We review those in our motion. I
review the factors in the motion, so, I'm not
going to take your time now to repeat them all.
I would suggest that you look at our motion.
We cite the section of the statute that the
Legislature put in factors for you to consider
what is in the public interest, and we make
arguments about that.

Let me just then say a few more
things.

CHAIRMAN HONIGBERG: How brief --

MR. PAPPAS: Five minutes.
CHAIRMAN HONIGBERG: -- are these last few things?

MR. PAPPAS: A couple minutes, and I'll be done.

The Applicants also argue that "suspending the time frame always comes near the end of the process". We would disagree with that characterization, but I don't think you have to look at any more than the 2014 amendments. Because, before 2014, it allowed you to suspend during your deliberations. That's at the end of the process. You don't have that anymore. You have the ability to suspend at any time. And, so, I would argue that just because, in some cases in the past, suspension came at the end of the process, that does not control here. What I would argue is that you should look at your past experience with other cases and see what needs to be done in those, what is necessary in those other cases to consider an application, and use your experience to guide you here.

In our papers, we cited Antrim Wind as an example of the difference between a
typical project and this project. And, by
arguing that you can't use your past experience
to determine now that you should suspend, I
think ignores the Committee's ability to rely
on its past practice.

What you need to do is establish a
workable schedule now, not an unworkable
schedule that could lead to a series of motions
for extensions or uncertainty in the schedule.

I would submit that there are a
couple of things that you need to consider, and
I'll be very brief. First, certain things have
to be done for you to develop a record. The
experts need time to do their work. Most
experts that are just about to retain will
probably need five to six months to complete
their work. I would suspect that the
Applicants' experts took much, much longer to
complete their work. But it seems to me
experts retained now would need sufficient time
to complete their work.

You also need sufficient time for
technical sessions. And you've got clearly
probably more than 15 or 20 witnesses that
would probably be subject to technical sessions. You can't get those done in a couple days. You're going to need a significant amount of time for technical sessions, for both the Applicants' witnesses, as well as all the intervenor witnesses. You're going to need sufficient time to prepare and conduct the hearings. I would suggest you're going to need time for post-hearing briefs that will assist you, and you need time for deliberations. Those five things are going to drive this schedule. And I don't think you can do all five of those things adequately or well in the next seven months. I think it's unrealistic to think that you can do so. We argued the very points in our papers. But, globally, I don't think you can get all that done in five months.

So, we would urge you to think now about what is a workable schedule, what was described earlier as a "very heavy lift", and that you come up with a schedule that everybody can get accomplished what it needs to get accomplished, you get the record that you need to make an informed decision, and everybody has
some certainty of that schedule, rather than try to do it later on or piecemeal, because I think it will add uncertainty, and it will not, in the end, make for a more efficient process.

And, finally, I would say, your ruling this morning will require additional information to be provided, that will require some additional discovery. And building that in now, rather than trying to build it in later, will make for a more efficient process.

Thank you.

CHAIRMAN HONIGBERG: All right. Who has questions for Attorney Pappas? I have one, if no one else does.

[No verbal response.]

CHAIRMAN HONIGBERG: If you look at your schedule, Attorney Pappas, --

MR. PAPPAS: Uh-huh.

CHAIRMAN HONIGBERG: -- and I'm not even sure I have it in front of me right now, it related to the need for deliberations and preparation of an order, your time frame seems unrealistically short. You have us, I think, finishing the hearing on the merits in early
June, three weeks for post-hearing briefs, and, if I read it correctly, three days for deliberations. That doesn't even seem close to enough time.

MR. PAPPAS: No. No. I think, Mr. Chairman, I didn't put a time period -- a time limit on your deliberations. What I said is you start on June 26th.

CHAIRMAN HONIGBERG: Oh. Oh, we misunderstood. We thought that's when we were done.

MR. PAPPAS: No, no, no, no.

CHAIRMAN HONIGBERG: Because most people would have the last date on a schedule like this the date we're supposed to be done.

MR. PAPPAS: I understand. I didn't want to presuppose how long you would need to deliberate. And, certainly not knowing what all the discovery and the testimony would be, I wasn't going to venture a guess on that. So, I just put a start date, and leave it to the Committee's discretion. And, I assume, as it comes time for deliberation, if you need more time, you'd take it.
CHAIRMAN HONIGBERG: I heard something of an answer, I just wanted to give you an opportunity to address a question that is in my mind, and is common, I think, to attorneys who litigate. Why not do as much as you can as quickly as you can, and then see where you are before looking to extend deadlines?

MR. PAPPAS: Well, because this process is just a little bit different, because you don't have, normally -- your discovery includes these technical sessions. So, you have to have your experts with you to do technical sessions against the Applicant, and then your excerpts need to have done their report and produce written testimony, prefiled testimony, for them to do their technical sessions. That's a little different than normal litigation. Normal litigation, you can just run off and do discovery, and you don't have these technical sessions or prefiled testimonies. So, those two events change the normal course of pretrial litigation or discovery. And that's why I think it's a
little bit different than you normally do.

And, if you don't, you know, if you don't have sufficient time for the experts to do their work, then the technical sessions aren't going to be as meaningful as they otherwise would be. And, then, you're going to have a problem later on, because you're going to get people doing discovery during the adjudicative hearing, and you don't want that, because that's only going to extend that and frustrate everybody.

I would argue that, really, the early work should be extended more than the late work, because the early work sets up, in this format, the later work. And, if you have sufficient time for the experts to complete, they have sufficient time to make meaningful technical sessions, and everybody gets complete prefiled testimony, then everybody can hurry up after that. But, if you shortchange that, then you've really messed the adjudicative hearing.

CHAIRMAN HONIGBERG: All right. Are the other questions for Attorney Pappas?

Attorney Iacopino.
MR. IACOPINO: Mr. Pappas, you've had 
or everybody has had the prefilled testimony of 
the Applicant since the day that the 
Application was filed. Why isn't that 
sufficient time for you to be preparing for 
what you need to prepare? To hire your experts 
and get your own prefilled testimony prepared?

MR. PAPPAS: Well, we -- first of 
all, a good deal of that testimony is technical 
and requires expert assistance. They have 25 
witnesses covering 26 subjects. I count 18 or 
19 of them to be expert necessary or 
expert-assisted topics. So, we can do some 
groundwork, but you really need your expert 
assistance to help you with those items. The 
economic stuff, the economic modelings, that I 
don't know a lawyer in the state who has ever 
used one of those economic models that could 
really understand it. Some of the other 
technical issues, you need experts to help you.

We have been working diligently, we 
filed our motions by the deadline. And we 
worked hard to try to get assent to the experts 
or at least the relief requested for the
experts. And, so, we have done that work on
the schedule. But, until we have experts who
we can engage and review the material, we're
not in a position to do the technical discovery
necessary.

We've submitted our non-expert
assistance data requests under the time frame,
and we've discussed it with the Applicant, and
we've had continuing discussions in terms of
any objections. And, like normal litigation,
we do that. But, since this is a technical
nature, you can't expect us to have done that
work because the need for an expert.

In normal litigation, you get your
expert right away. We need to go through a
process. For each expert, we interviewed
several experts. We didn't want to just pick
one and go. We canvassed a lot of folks, we
screened a lot of folks, a lot of conflicts as
you might imagine, because a lot of these type
of experts do work for a utility. And, then,
we interviewed each person, in person, that we
chose, and reviewed several other people that
we didn't choose. And, then, once we decided
on someone who was appropriate, we pushed them scope to narrow it as much as possible, we pushed them on price as much as possible, and pushed back on all of them to get to a point where we thought it was efficient. That took a fair amount of time. But we need them on board to then do the technical stuff. We couldn't do it up until now. We get them on board, we're prepared to move forward and expeditiously, but we couldn't do it before then, because it's a very technical matter.

MR. IACOPINO: I'm just going to pose to you the question that I'm sure the Applicant is going to argue is, you've had five months in order to do that. Why did you wait for last minute to file your motion?

MR. PAPPAS: Well, we met it on the deadline. We started looking -- first of all, I'll back up. So, you accepted this Application in December. We started looking at experts in early January, within a couple of weeks. It took us a while to screen some, then we started interviewing, and some of these folks we flew in from outside of New England,
because we had to cast a far net. It took us a while to narrow that down. In the meantime, we're doing several other things, such as attend public hearings and other things. But we were diligently working on that. And I would suggest that finding all the experts we found in the different areas, and having them gone through that process in the months it took was an efficient process.

Could we have got through it a little bit quicker? Sure. Was it fairly quick? Yes. Yes, I think it was fairly quick. And I don't think that slowed the process down. I don't think anything that Counsel for the Public has done has slowed the process down. I think we're moving as expeditious as we can. We're prepared to move forward as expeditious as we can. We've been doing this since we were engaged, and we're prepared to stay with it. Our schedule contains no gaps. We don't have any gaps in that schedule. And I would suggest the sequencing, when you think about a schedule, is very important. One event plays off the other event. And, if you look at our
sequencing, our sequencing follows one after
the other after the other, we don't have any
gaps in the sequencing that we suggested. We
require, for instance, responding to discovery
requests in 30 days, which is typical in
litigation.

CHAIRMAN HONIGBERG: Do you remember
the question, Mr. Pappas?

MR. PAPPAS: Yes. "Why did it take
five months?"

CHAIRMAN HONIGBERG: Yes. Are there
other questions for Mr. Pappas?

MR. IACOPINO: Can I follow-up?

MR. PAPPAS: Yes.

MR. IACOPINO: You mentioned in your
earlier argument that it's "going to take five
to six months to prepare prefiled testimony". Is that your understanding, if the motion that
you've filed to hire the eight consultants is
granted, that it will be five to six months?

MR. PAPPAS: For some of our experts,
yes, because we've asked each of them how long
it would take. Now, can we push some of them?
Sure. But can you really push every one of

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them to three months? No. The aesthetics folks, 192 miles, you know, they're going to take some time to go out and do some fieldwork. The same thing with the cultural/historic stuff, same thing with some of the environmental stuff, it just takes a little bit of time. And we have asked each one of them "give us a realistic time and then, really, how much time do you need?" And five or six months was the longest time, a couple of them will be a little shorter. But that's generally the time they're going to need to do their work, get it into a report, and get it into prefiled testimony so we can give it to the Applicants. I think that's a realistic time frame for all that to get done.

CHAIRMAN HONIGBERG: Are there other questions for Attorney Pappas?

[No verbal response.]

CHAIRMAN HONIGBERG: All right.

MR. PAPPAS: Thank you.

CHAIRMAN HONIGBERG: Thank you. I will note for the record that an order granting your motion regarding experts will issue in the

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next couple of days. Orders on the pending confidentiality motion, an order on that will come out in the next few days, and the order confirming the decisions from the hearing in Lincoln a few weeks ago is also sometime in the next few days.

Ms. Manzelli.

MS. MANZELLI: Thank you. My name is Amy Manzelli, from the law firm of BCM Environmental and Land Law, here representing the Forest Society.

So, first of all, for the record, we agree with and we incorporate into our position on this matter all of the arguments set forth by the Counsel for the Public, as we stated in our motion, and the arguments that he set forward today.

That argument, however, was pretty legalistic. I want to come at this more from a practicality-based argument. So, practically speaking, I'm going to speak for myself here, I would like to read the Application. I think we all deserve the temporal ability to read the Application. And I don't remember the exact
math, but I think it's in Counsel for the Public's motion or in a pleading somewhere, you know, if you read I think it's something like 60 pages a day for a year, for a year, without fail, you take a break on Sunday, you've got to read 120 on Monday, that's how long it would take to read the Application. So, I think that's a practical way of looking at this and of quantifying the magnitude of this project, in terms of the time that it's going to take us to get through.

Now, if I can just address some of the previous questions. Why do we need so much more time from now? Well, because we're almost half way through the year, from December of 2015 to December of 2016, we're almost halfway there. And where are we? We're just now making decisions collectively, of course, you're making the decisions, that more information needs to be provided. We need a decommissioning -- the requirements of the decommissioning need to be met.

Additionally, as you may be aware, the Department of Environmental Services is
seeking more information, and I'll talk about
that a little later.

So, we're already almost halfway
through, and we don't have all of the
information that we need to be developing a
comprehensive and coherent strategy with
respect to our positions in the case.

Now, I believe that the Forest
Society, like the Counsel for the Public, and
like many others here, have been working very
diligently in our efforts. I want to state for
the record, the Forest Society had hired its
aesthetic expert and had its aesthetic expert
in the field, doing fieldwork, before the
Application was even completed. I mean, we are
working as hard as we can. But there is so
much. It's just not workable to say that it's
all going to get done by December.

I want to emphasize a point in our
motion. Which is our motion is a -- its
plural, it's a "request to extend the time
frames", plural. And what I mean by that, is
not only the 365-day time frame, but also the
time frame by which other state agencies, with
whom you're coordinating as part of this process, for example, the Department of Environmental Services, need to make their final decision on the decision-making that is within their jurisdiction. I think it makes little sense to not adjust that time frame, but to adjust the year-long time frame. So, I wanted to emphasize that point.

Because of the practicalities of this Application, as I mentioned here and in the motion, and Counsel for the Public and others have mentioned, I think it makes sense to plan for a schedule that calls for your deliberation and decision in November of 2017. That's the schedule that we've proposed. That's the schedule that a large amount of parties in this docket have joined in requesting or they have assented to that request.

And I just want to make a brief illustration of how long complicated cases like this can take. Now, this isn't an SEC case. This is the PUC docket regarding the divestiture of PSNH generation assets. It's PUC Docket 14-238. So, there's a law that
requires that docket to be a "expedited proceeding". Okay? They don't have a
year-long deadline or anything like that, it's just required to be an "expedited proceeding". So, that docket opened in September of 2014. They had their trial in February of 2016. And, as I understand it, there is no final order. So, 20 months for a complicated proceeding that was supposed to be "expedited".

CHAIRMAN HONIGBERG: Ms. Manzelli, was there a motion to stay filed in that docket?

MS. MANZELLI: I don't know. What I know --

CHAIRMAN HONIGBERG: And was that motion granted? Would you disagree with me if I told you that a motion to stay was filed in that docket in December of 2014, and that that stay remained in place until the Summer of 2015?

MS. MANZELLI: I don't have enough information to disagree or agree.

CHAIRMAN HONIGBERG: And would you disagree with me if I suggested that there was
legislation that amended the statute under which the PUC was acting in that matter?

MS. MANZELLI: I don't have enough information to agree or disagree.

CHAIRMAN HONIGBERG: Would you disagree with me if I suggested that perhaps that might not have been your best analogy?

MS. MANZELLI: I am clear on your opinion of my analogy. But it's an illustration of how cases can be complicated and take a long time. And I do believe that that's accurate.

CHAIRMAN HONIGBERG: I believe that there are many other cases you could have pointed to that didn't have interim motions to stay granted or legislation changing the scope of the proceeding that might have illustrated your point much more effectively.

MS. MANZELLI: Understood. So, I said I would get back to the DES letter. I was able to skim this morning a letter from the Department of Environmental Services commenting I think it was a "status progress report" is how they styled it. And that letter calls for
39 different pieces of new information related to wetlands, six different pieces of information related to -- from the Watershed Management Bureau, and eight from Alteration of Terrain.

Now, many of us working on the data requests right now are trying to figure out how to count questions. And, so, many of these questions here have lots of sub questions. The bottom line is, it's a substantial amount of additional information that the Department of Environmental Services is requesting the Applicants to provide.

I understand and agree with the legal analysis earlier that the requirement of new information is not the only basis upon which to extend the time frames, but it is one of the bases, and it applies here. We have the decommissioning information, we have the information from the Department of Environmental Services. We may or may not have information regarding the economic report, depending on the disposition of that motion. And that new information helps justify, that
and the practicality of dealing with this large application, help justify the public interest that, in the Forest Society's position, mandates extending the time frames.

I thank you for your time and attention. I'd welcome any more questions.

CHAIRMAN HONIGBERG: Who has questions for Attorney Manzelli?

Commissioner Bailey.

CMSR. BAILEY: Did DES -- I haven't seen the report from DES, it hasn't come up to us, but did they ask for an extension of time from the 240 days?

MS. MANZELLI: It's 20 to 30 pages, and I have barely skimmed it. I don't recall seeing that in there, but I couldn't say for sure.

CMSR. BAILEY: Okay. So, why are you asking us to extend the agency time frames, if the agencies -- I don't believe the agencies have asked us for that?

MS. MANZELLI: Because the statute -- the way that the statute is written, it sets a certain cadence. You know, when Attorney
Pappas was talking about the sequence, one thing follows another thing follows another thing. It doesn't make sense, given that the Department has asked for so much more information, which the Parties should have a right to receive and review and provide further comment to the agency before the agency's deadline to make a decision comes up. It just -- it takes things out of step. The pattern set by the statute should be maintained if the time is extended.

CMSR. BAILEY: And do you think we have the legal authority to do that?

MS. MANZELLI: Yes. Absolutely.

CMSR. BAILEY: Tell me how.

MS. MANZELLI: That's what the statute -- that says you can extend the time frames. The time frames set for DES to make its final decision is in that same section of the statute where your 365-day deadline is set.

CMSR. BAILEY: And you don't think that that statute is just referring to the deadlines that are imposed on the Committee?

MS. MANZELLI: No, I do not.
CMSR. BAILEY: Okay. Thank you.

CHAIRMAN HONIGBERG: Who else has questions for Attorney Manzelli?

MR. IACOPINO: I have a question.

MR. ROTH: Mr. Chairman?

CHAIRMAN HONIGBERG: Yes, Mr. Roth.

MR. ROTH: If I can add something in response to Commissioner Bailey's question about request for more time. We do have a letter from the Fish & Game Department dated May 13th where they did request additional time.

CHAIRMAN HONIGBERG: Ms. Manzelli, the statute that is the suspension of time provision, 162-H:14, and you've actually highlighted, I think, whether the word "frame" is singular or plural. And, in the statute, it is singular, "the time frame established under RSA 162-H:7".

MS. MANZELLI: Uh-huh.

CHAIRMAN HONIGBERG: I'm interested, is that just a vestige of the old statute, that they haven't caught up, that that amendment didn't catch up with the fact that there are
multiple times specified in RSA 162-H:7? That seems to be what you're saying.

MS. MANZELLI: That is what I'm saying. So, it refers to one statute, H:7. And, when you look at that statute, there's more than one deadline set there. So, I interpret that to mean that any deadline set in that statute may be extended.

CHAIRMAN HONIGBERG: All right. Are there other questions from the Subcommittee for Attorney Manzelli?

MR. IACOPINO: I have one.

CHAIRMAN HONIGBERG: Attorney Iacopino.

MR. IACOPINO: Ms. Manzelli, if you look at what was filed by the DES, they did request additional information, and under the statute they're permitted to do that. But they also were able in the time that has gone on so far, they also set out a number of draft conditions, --

MS. MANZELLI: Uh-huh.

MR. IACOPINO: -- which indicates that they have been able to do some of their
work. Why doesn't -- why isn't this letter as much an indication that the proceeding could go forward within the time frame as it is that we need extra time?

MS. MANZELLI: I think you could flip that around and say the fact that they're looking for so much substantial amount of information --

MR. IACOPINO: But that's not my question.

MS. MANZELLI: I think they -- I did notice that they're emphasizing "draft" conditions, I think they put that in italics, in fact, that the conditions are merely drafts. I don't think they think they have enough information to make a "final decision". And their deadline is coming up. I think they said in the letter they would be making the final decision in the middle of August. So, they need to receive all of this information and process all of this information. And who knows whether they will be requesting more time at that time. But, in terms of sequencing, I think it makes sense to extend everything
wholesale.

MR. IACOPINO: But they did pretty firmly say they'll have their final permits and decisions in August, right?

MS. MANZELLI: They did say that.

MR. IACOPINO: The other question I have for you is you said that your aesthetic expert has been in the field since before the Application was filed. How much work is it going to take before your aesthetic expert is done?

MS. MANZELLI: That's a great question. One that I would like to know the answer to myself. We have a draft version of an outline for his report. That's where we're at right now. We're looking for a substantial amount of additional information. They're -- at this point, we're waiting for information.

MR. IACOPINO: Has your aesthetic expert finished that fieldwork?

MS. MANZELLI: No.

MR. IACOPINO: Thank you.

CHAIRMAN HONIGBERG: Are there other questions for Attorney Manzelli?
[No verbal response.]

CHAIRMAN HONIGBERG: All right.

There are others I know who filed --

MS. MANZELLI: Thank you.

CHAIRMAN HONIGBERG: -- documents supporting -- ma'am, who are you and what is it you would like to say?

MS. JENSEN: I'm the Co-Chair of the Bethlehem Conservation Commission. And I just wanted to point out something in the report that DES submitted.

CHAIRMAN HONIGBERG: Why don't you make sure you're at a microphone and identify yourself.

MS. JENSEN: Cheryl Jensen, Co-Chair Bethlehem Conservation Commission. I would just like to provide some information that was in the DES report that was just posted this morning about requiring more information, if I may?

CHAIRMAN HONIGBERG: Well, it's a matter of public record. Most of us haven't seen it yet. What is it you would briefly like to point out is in the document?
MS. JENSEN: Okay. Thank you. One of the things it talks about is plans for Transition Station Number 5 in Bethlehem. And it says "Given the amount of wetlands impacts and steep slopes in the area, alternative sites should be considered." Now, that's a transition station.

CHAIRMAN HONIGBERG: Okay, ma'am. Ma'am, that is far beyond what we're talking about right now. Thank you for adding that. We'll have an opportunity to look at what DES has provided and asked for. Right now we're talk about --

MS. JENSEN: I would say that would affect the time frame.

CHAIRMAN HONIGBERG: I understand exactly what you were saying. Thank you. I know there were a number of other intervenors who filed documents largely supporting the Forest Society's position. Would any of those who filed like to supplement what they have already said?

Other than Ms. Fillmore, Ms. Birchard I see. I see a bunch. You do not get to say
"I agree." I don't want to hear that. You've already signaled your assent. If you have something new, you're welcome to add it. We'll start from the back. Why don't you come first.

MS. BRADBURY: My name is --

CHAIRMAN HONIGBERG: Off the record.

[Brief off-the-record discussion ensued.]

MS. BRADBURY: Thank you. My name is Joanne Bradbury. I am one of the Deerfield abutters. We're 16 people in the Town of Deerfield. And we have been working very hard gathering and discussing our data requests and all of the -- all of the disparate information that we need to gather. And I just wanted to point out that, apart from the attorneys in the room and the people whose careers involve doing this sort of thing, we are ordinary people. And we are truly working on this, as ordinary people, as much as we can, to try to get our information together and to proceed with this procedure, which is new to all of us. And that is why we support the longer time frame proposed by the Forest Society. Thank you.
CHAIRMAN HONIGBERG: Understood. I saw Ms. Birchard's hand up.

MS. BIRCHARD: Very briefly, Mr. Chairman. There's been some discussion of the complexity of the Application itself. I believe it's over 27,000 pages. By the time we're done, I would expect it to be at least 3,000 [30,000?] pages of information that we all have to review and consider. In addition, there are 25 or 26 witnesses put forward by the Applicant itself. This, you know, doesn't consider any other witnesses that may be involved in the proceeding.

But, apart from the Application, you know, a lot of people's hands go up in the room, and that's because there are a lot of people who care about this case, and a lot people who want to meaningfully participate. And the unfortunate reality is that meaningful participation in a case as complex as this one does take time.

I hope that the Committee will consider that in reviewing its decision on the time frame. Thank you.
CHAIRMAN HONIGBERG: Who else who filed supporting documents? I see you, Ms. Fillmore. I'm going to come to you last, because I can see you best.

Mr. Cunningham, and then over here. Mr. Cunningham, you have a microphone there, so you can stay right where you are.

MR. CUNNINGHAM: Thank you, Mr. Chairman. I have two things I want to talk about with respect to the procedural schedule.

The first is, the proposed procedural schedule put forth by the Applicant is restrictive. And let me explain what I mean by that. And I filed an objection to it for this purpose.

CHAIRMAN HONIGBERG: Mr. Cunningham, the pending question is "whether to suspend the time frames?" That's the question before us right now. Not interim deadlines within an overall schedule that gets us to a completion at one point or another.

MR. CUNNINGHAM: With respect, Mr. Chairman, I think, if you hear me out, you'll understand why the time frame should be
suspended.

In that restriction, in that restriction in the procedural schedule, it is clearly suggested that only the Counsel for the Public can hire an expert or experts at the expense of the Applicants. RSA -- the Site Evaluation Committee statute does not prohibit others, others, including other intervenors, from asking for that relief. Let me explain what I'm talking about.

I read -- I've very carefully read the outlines made by the Counsel for the Public's excerpts. I have some difficulties with it. With respect to Mr. Pappas and with respect to Mr. Roth, they didn't define a couple things I think are critical in terms of the public interest. They didn't tell us who the public is and they didn't define what the "public interest" is.

And my concern about that is multifold. One, is the public -- are the people in the public the existing PSNH distribution and transmission ratepayers? Are the people in the public the property owners
over which this huge project will go? Or are they just talking about the public in general? I think we need to know what the public is and what the public interest is.

And let me explain why. There's pending before the Public Utilities Commission two critical dockets. Docket DE 15-459, in that docket, Northern Pass has asked for public utility status for that entity. If you look at the Petition in that docket, it does not tell anybody why they want that status. So, the question I have, in terms of their existing ratepayers, distribution and transmission ratepayers, is the purpose of that docket to offload costs of this project onto the transmission and distribution ratepayers? The Counsel for the Public did not address that issue.

Another critical docket that's pending, of course, is the lease docket. In that docket, PSNH proposes to lease all of this critical right-of-way, that's in-dispute property rights, that proposes to lease that, that critical right-of-way corridor to NPT for
less than $1 million a year. That docket is critical to understanding the public interest in this docket, and let me explain why.

The proposed experts by Counsel for the Public did not even mention the Transmission Service Agreement. If you look at the Transmission Service Agreement that's been approved by FERC, that Transmission Service Agreement allows Northern Pass Transmission, the entity, to pass all of its costs onto Hydro-Quebec, and then, on top of that, they earn a net 12.56 percent. If you take the $2 billion figure that they propose this thing is going to cost, that will earn Northern Pass Transmission somewhere in the neighborhood of $250 million. My concern there is, $250 million to Northern Pass Transmission, less than a million dollars to PSNH, and presumably some benefit to the ratepayers, my concern is that the experts proposed by Counsel for the Public do not address these issues. Sure, I hope they do, with respect to Mr. Roth and Mr. Pappas, I hope they do.

But what I'm saying here, and the
relief I'm asking and my objection, is that ordinary intervenors in this case get to ask for an expert, once they see what these expert opinions are going to be. And ordinary intervenors ought to be able to ask for expert testimony at the expense of the Applicant to ensure that the public interest is satisfied in this case.

So, that, Mr. Chairman, will add to the time. And I think it's critical for this Committee to understand that the public interest involve not just some amorphous public here, but it involves ratepayers, it involves property owners, and others who would be impacted by this project.

So, that's why I support the extension of this time frame.

CHAIRMAN HONIGBERG: Mr. Cunningham, have you filed a motion seeking authority to retain experts at the expense of the Applicant?

MR. CUNNINGHAM: I have not. Not yet.

CHAIRMAN HONIGBERG: And, so, what you're suggesting is that, after you've seen
what Counsel for the Public does, if you're not satisfied with their work, you intend to file a motion at that time seeking authority to retain experts at the Applicant's expense to complete the job that you believe Counsel for the Public should have done?

MR. CUNNINGHAM: That's correct.

CHAIRMAN HONIGBERG: And what you're suggesting further then, with respect to the schedule, is that built into whatever schedule is created, the Committee should account for the possibility that you'll want to file such a motion?

MR. CUNNINGHAM: That's correct, Mr. Chairman.

CHAIRMAN HONIGBERG: Thank you.

MR. CUNNINGHAM: And let me say one more. I do not think that intervenors, small intervenors, who have no resources, should be stuck with the expert opinion of the Counsel for the Public's experts if they don't satisfy the public interest.

CHAIRMAN HONIGBERG: I understand that to be your position.
Ma'am.

MS. DRAPER: My name is Gretchen Draper. And I'm here with the Pemigewasset River's Local Advisory Council. And we have put in a motion to suspend the time frame, to extend it as well. And it seems to me that the time frame has already been pushed or breached. And what I'm talking about is the actual number of intervenors has surprised everyone in this whole case. There's been difficulties getting information out over email and internet and there's been delays in that. There's also -- we've been waiting for information to be posted at times.

And that, when we talk about the Applicant versus the rest of us and time frames, Northern Pass transmission lines have been planned since like 2008, you know, up in Montreal and with Hydro-Quebec and all. We're all starting from December.

So, I would like all of that kind of information to also be taken into consideration. Thank you.

CHAIRMAN HONIGBERG: Thank you.
Anyone else who filed on the suspension need to add anything?

[No verbal response.]

CHAIRMAN HONIGBERG: All right. Oh, right. Ms. Fillmore, I forgot about you. I'm sorry about that.

MR. IACOPINO: She's right in front of you.

MS. FILLMORE: The one time I didn't raise my hand.

CHAIRMAN HONIGBERG: I can see her so well. I'm sorry, Ms. Fillmore.

MS. FILLMORE: Thank you very much, Mr. Chairman. My name is Christine Fillmore. And I'm speaking on behalf of the Middle Municipal Group, which is Easton, Franconia, Sugar Hill, Woodstock, and Plymouth. I represent Sugar Hill, Easton, Franconia, Bristol, Whitefield, and Northumberland. And I'm also speaking today on the City of Concord and Attorney Whitley's clients, Bridgewater, Littleton, New Hampton, Woodstock, and the Ashland Water and Sewer District, and Deerfield.
We filed -- ten towns initially filed a motion supporting both the motions of Counsel for the Public and the Forest Society. And, in particular, our motion supported the schedule that the Forest Society put forward. And what I'd like to talk to you today is not anything that anybody else talked about. I'd like to focus on interest -- in the public interest so far as it relates to municipalities. The municipalities who are intervenors were granted intervenor status based on the fact that they had some kind of interest, right or privilege that was going to be perhaps affected by the project.

And I'd like to also note that, in the Committee's rules, 202.11(e), it says that "any limitations that are imposed on intervenors shall not be so extensive as to prevent such intervenor"

[Court reporter interruption.]

CHAIRMAN HONIGBERG: Hold on, Ms. Fillmore.

MS. FILLMORE: I'm sorry.

CHAIRMAN HONIGBERG: When you're
going to read, slow down.

MS. FILLMORE: Didn't want to take up too much time.

COURT REPORTER: I'm here all day. Sorry.

MS. FILLMORE: When limitations are placed on intervenors, the limitations "shall not be so extensive as to prevent such intervenor from protecting the interests that form the basis of the intervention."

And it's our contention that, by not permitting all of the parties in this case to have sufficient time to do everything that needs to be done, that the interests of the municipalities will be infringed upon.

One of the purposes of the Site Evaluation Committee, in RSA 162-H:1, is for the project to be treated as "a significant aspect of land use planning in which all environmental [and other issues are tackled] in an integrated way." And that goes to the heart of what municipalities are concerned about.

The municipal intervenors in this have specific challenges that don't apply to
most of the other intervenors, which you have heard about at the last hearing. Most of them are governed by a governing body, not one official. They have to take any action they take by meeting and making a decision at a meeting, which is most likely public, has public notice, the public can be there. They can't respond and do things that a corporate officer or governing board can do, they can't respond as quickly, even when they have counsel. And, trust me, we have been trying.

If you multiply this situation by at least five, which is the number of municipalities in most of the intervenor groups at this point, the problem is magnified even further, and not all of those municipalities are represented by counsel. So, the technical difficulty of coordinating, I can say now with the basis of experience, dealing with the data requests is extremely difficult. The difficulty is very high. And we are doing everything that we can to meet the deadline.

Also, in this case, since motions were filed on this issue, all of the issues...
that have been talked about today, we've had a lot more experience with the process. Without a clarifying order regarding the intervenor groups and exactly how they are supposed to operate, based on the April hearing, which was now almost five weeks ago, we have still been without the guidance that we needed five weeks ago, which we asked for. So, we've been doing the best that we can in the interim. But it has been a very slow and difficult process.

Without a more complete schedule, the intervenors have no way to determine whether additional or follow-up data requests are going to be required, or whether they would be granted if they were required. And the Committee is under the same obligations that our municipal governing bodies, to meet and deliberate in public. And that makes sense, but it also slows the process down. You can't meet and make decisions any faster than you can.

As we continue, it seems evident that we are going to continue to experience delays in this case. And we believe that it makes
more sense to set a sensible schedule now, up
front, rather than to grant piecemeal
continuations and delays as we go along. That
would be more fair to everyone.

And, aside from all of the other
challenges, this Subcommittee is going to be
called on to receive, digest, and understand
and evaluate an incredible amount of
information. And, if you can do that within 12
months, I will be very impressed. And I have
no doubt that you will do your very best.

But, for the sake of the Committee
and the public and the municipalities that we
represent, we strongly suggest that you adopt
the Forest Society's suggested schedule. Thank
you.

CHAIRMAN HONIGBERG: Thank you.
Mr. Needleman, will you be speaking to this?
You have the floor.

MR. NEEDLEMAN: Thank you, Mr. Chair.
Let me start by saying that I understand what
everybody in this room has been saying and
thinking. This is a big project. It's a
complicated project. We get that. We get that
it puts burdens on these people, we get that it puts burdens on you. It's not lost to us.

But that point notwithstanding, I want to go to something you said a moment ago, Mr. Chairman. You said "why not do as much as you can do as fast as you can do it?" And that's what we've been asking for and that's what we think you need to use as a departure point here when you try to figure out what kind of schedule you want to adopt to drive this procedure forward.

Now, a moment ago Mr. Iacopino pointed to the DES letter, which came in on Monday, I realize some people haven't seen it. I read it. It's a long letter. For anybody who has ever dealt with a Shoreland Protection Permit or a Terrain Alteration Permit, a Wetland Permit, I will tell you that, although there is a lot of requested information there, it was entirely predictable from our perspective. They're asking us for a lot, and we've already started to work on it. There's nothing there that I would say was a surprise. And, in fact, I think it illustrates that the
process is working exactly the way it's supposed to work.

And I would even suggest that, if you think for a minute about all of the agencies here that have some sort of permitting role in the context of this proceeding, it may well be that DES has one of the heaviest lifts as it relates to actual issuance of permits. And they were able to meet this schedule. They were able to ask for this additional information. We will get them the information they requested. And they're saying they can act in a timely way.

So, I think what Mr. Iacopino was saying a moment ago really illustrates the point that we can move this process forward in the way it was envisioned in the statute. Can we do it the whole way and get there within the time frames? I don't know. It seems like it may be a big lift. But I think doing all that we can, as fast as we can, as diligently as we can, as early as we can, is something that we should do, and I think it's really something that the statute demands.
I want to point out something else as well. There hasn't been a single person in this room who has pointed you to a critical provision of the "Purpose" section of the statute. But we did in our memo, and I want to remind you of. One of the things that the statute says is that it's the role of this Committee, in implementing its authority, to "avoid undue delay in construction of new energy facilities". So, at the same time that you're trying to balance all of the other interests that have been raised here, you have to balance that interest as well.

Now, I'm not going to repeat everything we said in our October -- in our April 7th objection. You have that. I'm sure you've read it. I want to hit a couple of critical points.

We all know that the old version of this statute used to have a nine month time clock, and the Legislature extended it to 12 months. They did so in 2014. There can't be any question that they did so after a careful deliberation and with a great deal of public
input. Is there any place in there that says "we are doing this because of Northern Pass"?
No. Of course, there isn't.

But nobody can deny that, at the time this was all going on, one of the critical features that was driving that debate, one of the critical features that was driving the reconstitution of this Committee, the SB 99 process with respect to your change in rules related to this project. And, so, to suggest that that wasn't part of the backdrop when the Legislature was contemplating revising the statute, I just don't think it's a credible way to view this.

Now, we've also pointed to other decisions or other dockets that you've had in the past where you have suspended your deliberations. I would say that, as far as I can figure out, in every case where you suspended deliberations, and you didn't always do it, there are plenty of dockets that you got through in a timely manner. But, in every case where you suspended deliberations, it came near the end of the process. It didn't come at the
beginning of the process. I don't believe that
there is a single time in the history of this
Committee where you suspended deliberations,
and I keep using that word, because that's the
phrase, at this early point in the process.

Now, I want to turn to this handout
that Mr. Pappas gave you. Let's look at the
title. What's the title of H:14 as amended?
"Temporary Suspension of Deliberations".

"Temporary Suspension of Deliberations". There
are a lot of words in here that I think the
Committee is going to have to struggle with as
it tries to figure out --

MR. IACOPINO: Which document are you
referring to?

MR. NEEDLEMAN: The one that
Mr. Pappas handed out, showing the old version
and the new version of H:14.

MR. IACOPINO: Okay.

MR. NEEDLEMAN: The Legislature
talked about the "temporary suspension of
deliberations". Three words of that are
critical that you're going to have to think
about: "Temporary", "suspension", and
"deliberations". I think that, if the Legislature wanted to write this in the way that Mr. Pappas was saying you should interpret it, it really could have easily done so. I mean, I sketched it out as I was sitting there. It would have said "the Committee may extend any of the time frames", plural, "in H:7 at any point if it finds it's in the public interest to do so." That would have been crystal clear and we wouldn't be having this discussion. It didn't say that. It said something different. And I think you're obligated to look carefully at that language to try to figure out "what did they mean? Why did they use the words "temporarily"?"

If you do what Mr. Pappas is asking you to do or you do what SPNHF is asking you to do, there is nothing temporary about that. You are rewriting the entire statutory schedule. That's one critical point.

Another critical point relates to the use of the words "deliberations and time frames". Why would the Legislature have included the words "deliberations" and the word
"time frame", not "frames", if it didn't intend this to be more limited and used in a much more sparing way, the way you have used it every single time you have implemented this in the past.

Let me turn to our schedule. I think, with each passing day, it's probably fair to look at the schedule we proposed and say "Boy, this schedule is going to be harder and harder to implement." I understand that. I don't -- you know, I wouldn't dispute that. But what I would say, where I would end is where I started. Which is, the Committee has put a temporary schedule in place. It's got us going on the discovery process. We have already received discovery requests from Counsel for the Public. We got a set of discovery requests yesterday from one of the intervenor groups. We are working hard on it. We are going to work hard starting all weekend as we get a new round of requests.

Let's keep moving forward with the process you've put in place. If you think it's appropriate at this point to put some
additional milestones in place that keep us moving forward, then I think you should do that. But I think that it is absolutely premature, and I sincerely question whether you even have the authority at this point to say "Out with the whole schedule. Let's pick a time next summer or the end of next year where we'll get to these hearings, and let's just go with that." I don't think it's an appropriate way to do it. And I'm really not certain that you have the authority to do it.

I would be happy to take any questions.

CHAIRMAN HONIGBERG: All right. Who has questions for Attorney Needleman?

[No verbal response.]

CHAIRMAN HONIGBERG: I do. I want to talk about the "temporary" -- the word "temporary" in that suspension provision. If the Legislature had drafted the statute that you outlined, wouldn't the Committee be permitted to suspend a project permanently? Isn't "temporary" there to be the opposite of "permanent"? That you can suspend for a time,
but you can't spend forever?

MR. NEEDLEMAN: No. I don't think so at all. Because that would be inconsistent with the totality of the statute. Ultimately, you have an obligation to review an application that's been provided and to make some sort of decision about it. And I think all this provision is saying is, "if you can't meet those timelines, and it's in the public interest to do so, you're allowed to temporarily extend some of those timelines." I don't think it's a back door saying that "you don't have to decide".

CHAIRMAN HONIGBERG: No, clearly, it's not. But, if you didn't have the word "temporary", wouldn't that be the argument? That this one -- "this one isn't viable, we should suspend it indefinitely"?

MR. NEEDLEMAN: No. Well, I think I think somebody could make that argument. I don't think it would be credible when you read the statute as a whole. And I don't have to tell you that one of the Canons of Statutory Construction is you have to read the statute as
a whole, you can't read pieces in isolation.

CHAIRMAN HONIGBERG: Is it your view that the use of the word singular of "frame" limits the time frames or the time periods specified in Section 7 that we can deal with?

MR. NEEDLEMAN: You know, I'll be honest, that's a challenge. It's hard to read this whole provision and make clear sense of it. I mean, the best I can do, when you talk about the words "temporarily", "deliberations", and "time frame", is to put it together in the context of what you have previously done. You moved the project through the process. You've gotten as far as you can go. You're not going to meet that final deadline that's in the statute to issue a decision. And, so, you can temporarily suspend that time frame and your deliberative process in order to make a decision.

CHAIRMAN HONIGBERG: Taking on something Mr. Pappas said, and you've alluded to the change, but not really responded to his suggestion about why the change was made or the effect of the change, to say that any time an
application is before us, that change from "during deliberations", and it now says "at any time". Isn't that hugely significant to our authority to do it? And wasn't the Legislature telling us "craft a rational schedule, once you've seen what you've got"?

MR. NEEDLEMAN: I'm not sure I would read it that way. I'll confess that, when it inserts the phrase "at any time", it certainly makes this more challenging to understand, and that's what I was saying a moment ago. I don't think I could stand here and tell you "This is clearcut. This is how you must read it."

That's not what I'm saying. What I'm saying is, when I look at that, and then I look at the rest of this, and I try to read this in totality and make some sort of sense out of it collectively, the best I can come up with, given that they use "time frame", given that they talk about "deliberations" and "temporarily", is that, even in the context of using that other language, there is an inherent limitation in this provision. It's not carte blanche to just throw it all out.
CHAIRMAN HONIGBERG: And how would you respond to Mr. Pappas's and I think Ms. Manzelli's, and a few other people made the point, that it would be better, we would have a better process, if we were to plan out or give more time right now and lay out a more rational schedule?

MR. NEEDLEMAN: I've never been involved in a litigated case that I can think of where regardless of what process you laid out at the beginning stuck. And, so, I think it's a fallacy to say "we can come up with a schedule today, and that we can take comfort in the fact that that will be the schedule and we'll stick to it."

I think it's a far better approach to do what I suggested. Which is to take this in some small pieces for now, figure out what we can do in the near term to drive this forward as aggressively as we can, and do all we can to try to meet these timetables. And, if the day comes where we decide we can't, so be it.

But I don't think we're at that day, and I don't think we should cross that bridge.
right now.

CHAIRMAN HONIGBERG: Do you have any response for Ms. Fillmore or the others who are concerned about their ability to move quickly and nimbly within the system that currently exists?

MR. NEEDLEMAN: I'm sympathetic to it. It's not the first time I've heard a concern like that in these proceedings. I don't -- I'm not disregarding it. We, as the Applicant, have volunteered to do whatever we can within reason to try to help with that. I think we have in some circumstances. But I think, again, I think it's the obligation of every party in this proceeding, notwithstanding whatever difficulties they may encounter, to do all they can to try to push this forward as aggressively as possible. And, if we find out we truly can't, then, as I said, we'll cross that bridge when we come to it.

CHAIRMAN HONIGBERG: All right. Who else has questions for Attorney Needleman?

Commissioner Bailey.

CMSR. BAILEY: You say we're "not at
that day yet”. How long did it take for the Applicants to prepare the testimony that they filed?

MR. NEEDLEMAN: It's a hard question to answer, because the nature of different parts of the Application changed over time. So, you know, for example, that, in August of last year, we announced -- I think it was August, we announced the new route with the additional underground. And, you know, that changed aspects of it. So, I could take it perhaps piece-by-piece and try to recall. It took some time. It was a lot of work.

CMSR. BAILEY: Six months? Maybe more?

MR. NEEDLEMAN: I think that's probably fair.

CMSR. BAILEY: Okay. And did you hear Counsel for the Public say that their experts needed "five to six months to get testimony filed"?

MR. NEEDLEMAN: Yes. I heard that.

And let me take that point up for a minute. I wasn't going to say anything about that, but,
since you raised it, I will.

We have tried hard to work with Counsel for the Public. And, I think, in many respects, we have done a good job of that. We have a good, cooperative relationship.

We have not hidden the fact that we were frustrated and concerned with the pace with which they sought and disclosed their experts. And I understand it's a large task, and I think that they probably did go about it diligently. And we certainly appreciate their effort to find people who they think are competent and that can also do this work at what they perceive to be a fair price.

That said, I really believe that it could have been done faster. I mean, at a bare minimum, certain experts could have been identified, motions could have been put in front of you, and we could have been doing this in a serial way earlier. Now, that's water under the bridge. I mean, there's not much point in arguing about that at this point. But I would disagree with their characterization at least with that respect.
CMSR. BAILEY: Okay. Well, whether or not that be the case, in your schedule, you suggest that their testimony be filed on August 5th, and they just got information today that their consultants are going to be -- their motion to hire consultants will be granted. So, take today as day one. I mean, what's the -- what is a reasonable amount of time to allow them to prepare their case?

MR. NEEDLEMAN: I don't have the schedule in front of me. I would say the reasonable amount of time, our schedule has sort of been eclipsed by events. And, so, what I would do is, I would go back to whatever date in our schedule contemplated the approval of their experts, and I would say that's a reasonable time.

And I would also say that I think it's very important for the Committee to consider exactly what sort of work these experts are going to be doing. We have a very specific burden of proof under the statute that we have to meet. We're the Applicant. And, if we don't meet that burden of proof, we lose.
They don't have that same burden of proof. And that doesn't mean they don't have a lot of work to do. It doesn't mean that they don't have experts who have to do a fair bit. But they don't have to do what we did, and they don't have to do it in the manner that we did it.

And, so, I think trying to compare the amount of time it took us to put things together that meet the completeness requirements of this Committee, and that meet the very detailed burden of proof under the statute that we have to demonstrate, I think is very different than what they have to do here. And I think that has to be considered.

CMSR. BAILEY: Okay. And one final area of questions. You suggest in your schedule that technical sessions on witnesses can be conducted, I think, twice in three days, in three days. Is that --

MR. NEEDLEMAN: I think --

CMSR. BAILEY: I mean, I've been involved in complicated cases with far fewer witnesses than this that took more time than that. So, --
MR. NEEDLEMAN: I think we phased those. I think we had several sets of technical sessions. One set that was intended to deal with their first round of discovery, hoping that they would introduce experts sooner, and then a second set of technical sessions that came later.

CHAIRMAN HONIGBERG: Right. But it's a total of six days.

MR. NEEDLEMAN: I think it's longer than that in our schedule.

MR. WAY: No.

(Short pause.)

MR. WAY: Eight days.

MR. NEEDLEMAN: Yes, I think it was eight or nine days.

CMSR. BAILEY: Okay. Eight or nine days. And that -- what is the last -- the last one, which is for the Counsel for the Public and the other witnesses. So, I was speaking just about your witnesses.

MR. NEEDLEMAN: Right.

CMSR. BAILEY: So, you propose six days just for your 30 -- how many?
Thirty-eight?

MR. NEEDLEMAN: Twenty-five witnesses.

CMSR. BAILEY: Twenty-five witnesses? That seems like a short amount of time, for 25 witnesses.

MR. NEEDLEMAN: I understand why you would say that.

CMSR. BAILEY: So, your point that got me thinking about all this was, you know, "there's no reason to suspend now, let's keep trying to go with the dates that we have", doesn't seem to me realistic. Because I think that the dates that we have right now already don't -- we already can see that they don't work.

MR. NEEDLEMAN: Well, again, I'm not sure that's the case. Why don't we resolve the issues today about discovery, get discovery completed on us. Set a realistic deadline for others parties to provide their testimony to us and set discovery deadlines there, and then see where that takes us.

CMSR. BAILEY: Okay. Thank you.
CHAIRMAN HONIGBERG: Other questions for Attorney Needleman?

Attorney Iacopino.

MR. IACOPINO: Mr. Needleman, am I correct to understand that one part of your argument regarding the statute is that the Committee has to be in the deliberation phase in order to suspend?

MR. NEEDLEMAN: Well, I'm not quite sure what "deliberations" could mean, if you weren't interpreting the deliberation phase. For example, I'm not quite sure how one could interpret the discovery phase as "deliberations".

So, again, the best that I can make of that is that it was complicated we would be getting near the end of the process.

MR. IACOPINO: But you did review the prior cases where the Committee has, in fact, suspended, correct?

MR. NEEDLEMAN: I can't say I reviewed every one of those cases. But I reviewed a good handful of them and cited them in our motion.
MR. IACOPINO: But, in none of those cases, except for maybe one, was the Committee actually deliberating on the case, isn't that correct?

MR. NEEDLEMAN: Again, you were near the end of the process. All the discovery --

MR. IACOPINO: That's not my question. That's not my question. My question was, was the Committee actually deliberating when they suspended? Was the record closed and were they deliberating?

MR. NEEDLEMAN: Oh, no. No. If that's how you're interpreting "deliberations", no.

MR. IACOPINO: And can you tell me why using the singular word "time frame", in reference to Sections -- the singular term "time frame" used in Section 14, referring back to Section 7, why doesn't that reflect all of the dates as a single time frame, being 150 days, 240 days, 365 days? Isn't that what a time frame is?

MR. NEEDLEMAN: I think you could read it that way. I don't think that's the
best way to read it.

MR. IACOPINO: Thank you.

CHAIRMAN HONIGBERG: Are there any other questions for Attorney Needleman?

[No verbal response.]

CHAIRMAN HONIGBERG: It would seem not. Thank you.

MR. NEEDLEMAN: Thank you.

CHAIRMAN HONIGBERG: Yes. I think we're going to need to take a ten-minute break, so the stenographer's fingers can cool off.

(Recess taken at 3:04 p.m. and the hearing resumed at 3:23 p.m.)

DELIBERATIONS

CHAIRMAN HONIGBERG: All right, folks. We've heard both from the Parties and Intervenors regarding the question about suspending the time frame or time frames established under RSA 162-H:7.

Would anyone like to offer their comments or make a motion?

(Short pause.)

CHAIRMAN HONIGBERG: Don't all speak
at once. Commissioner Bailey.

CMSR. BAILEY: Come on you guys, help me out. I don't see any way that we can get this done by the end of this year. And I think that there are many important, very important issues that we have to get through. And I don't think that we would be doing justice to the process if we try to rush through as much as we can and then get a whole bunch of motions to suspend the schedule later that we all have to get back together to discuss.

Every time we get a motion, we have to get together to discuss it, unless it's purely procedural and the Chairman can make the decision by himself.

So, I think -- I think that, in order to fairly adjudicate all the issues, we should suspend the time frame, but we should put a limit on it, and I think it should be a realistic limit that we stick to going forward. So that, whatever happens in the future, if we give people a good amount of time now, and also keeping in mind the Applicant's desire to actually build this project, and I think they
wanted to start it in the next construction season, so, a year from now, I think we need to keep that in mind. But I think we need to suspend. That's my opinion.

CHAIRMAN HONIGBERG: Are there other thoughts or comments?

DIR. WRIGHT: Yes. I'll make a couple of thoughts here. This issue of suspending the time frame is something that weighs pretty heavy on me. I've spent the last 28 years as a regulator at DES, and living with time frames and meeting time frames, whether they're legislative or administrative rules, basically, it's what we do every day, it's inherent that we meet those time frames.

Similar to what Commissioner Bailey said, though, I do think in the public interest. This is a unique case, I think, given the complexity of the case, the size of the case, just the simple geographic nature of the case.

And, also, similarly, I think, if we do suspend the time frame at the end of the day here, I think we really need to put a realistic
schedule in place, with something that is still at a somewhat accelerated pace, and, certainly, I don't think going out another year beyond what's envisioned in the statute is reasonable. I think that's way outside the realm of what I would consider to be reasonable.

CHAIRMAN HONIGBERG: Mr. Wright, what you've said causes me to ask a question of Attorney Iacopino. You said something about "putting a realistic schedule in place". Attorney Iacopino, is it necessary that the Subcommittee lay out the specifics of a schedule? Or is it sufficient, legally, for the Subcommittee to suspend and identify a new end point, and then authorize the reluctant Chair, working with Administrator and Counsel, to develop a specific schedule?

MR. IACOPINO: I do not believe that it is necessary for the Committee, if they are inclined to suspend the time frame, to then provide a complete procedural schedule for the parties. I think that is something that the Committee -- Subcommittee, if it wishes, can leave to the discretion of the Chair. Under
the statute, the Chair generally makes all of
the procedural decisions, unless the
Subcommittee, in its discretion, chooses to
make them.

So, that is something that could be
left to the Chair to decide. And, when I say
that, for the folks who aren't used to our
procedures, as you know, you've seen a
temporary schedule in this case, where we talk
about things like data requests and responses
to data requests, technical sessions and things
like that. Those things don't need to be
addressed by the Subcommittee as a whole,
unless the Subcommittee, in its discretion,
chooses to do that. It can be delegated to the
Chair.

CHAIRMAN HONIGBERG: All right.
Thank you. Other thoughts or comments?

Mr. Way.

MR. WAY: I just also wanted to say
as well that I agree that this process has to
reasonable and achievable for all parties that
are involved with this. And I think we've
heard from several that it's just not a goal
that's easily met.

The question I would have is, and I -- well, first off, I would say that I'm comfortable with the Chair then tackling the date issue. And I'm wondering if we can wrap that, if you'd be willing to amend your motion to do that? Or do we have a separate motion?

CMSR. BAILEY: I haven't made a motion.

MR. WAY: You haven't made a motion. But can we suspend and include the delegation of that, of the date creation, in one motion?

MR. IACOPINO: Yes. I think you can do that in one motion. But I also think that it would be advisable to say what the temporary time that you're suspending the deliberation for -- the new time frame is for is, so that you have a date that your Chairman can then work back from to schedule things.

MR. WAY: Very good.

CHAIRMAN HONIGBERG: Other thoughts? Comments?

Ms. Weathersby.

MS. WEATHERSBY: First, I'd like to
say that I think that it's fairly clear that suspension of the time frame is allowed by the statute. And I do believe that it is in the public's interest to suspend the time frame. It's a complex and significant project. It's going to affect many either way it's decided. The number and the complexity of issues will require significant time, a large number of parties, large number of witnesses, require a lot of time to conduct discovery, brief issues, etcetera. The case seems to be unprecedented in recent memory.

So, I would be in favor of suspending the time frames. And I would think that the Counsel for the Public's proposed scheduling order, with the shorter time frame than the Forest Society's, would be the better initial approach. That has us starting the deliberations and decision-making on June 26, meaning that we'll go through the summer. And, given holidays, etcetera, vacation schedules, it seems as though a September 30, 2017 deadline might be achievable.

I'm just throwing that out there for...
a discussion. And, if that -- with that date, or whatever date we decide, we could vote on, and then authorize the Chairperson to develop a procedural schedule counting backwards from there.

CHAIRMAN HONIGBERG: Other thoughts? Comments?

MS. WHITAKER: I actually have a question. So, if we suspend our end of the time frame, do the time frames for the state agencies also change? I think that was mentioned a couple times, but I'm still confused about that.

MR. IACOPINO: I believe that that's one of the dates that the Chair could rearrange, assuming that the time frames have been suspended.

MS. WHITAKER: Okay.

CHAIRMAN HONIGBERG: Would it be necessary, Attorney Iacopino, for the action by the Subcommittee to specify that that's part of what it wants the Chair to do? Because, if it is within the statute, as I think it probably is, given what I think is a better reading of
the statute, it does appear perhaps to be something that is -- that the Subcommittee has to do.

MR. IACOPINO: It's probably the better course for the Subcommittee to do that and to actually take a vote to do that. But, you know, the issue, the legal issue revolves around the word "time frame", and whether it references just the end date or whether it references the total time frames, starting with the acceptance of the Application, going through all of the other times listed in Section 7 in the statute.

I'm comfortable that, in my interpretation of it, that it refers back to the statute as a whole, and to no individual section of the statute. So, even if you did just make a generic suspension of the time frame, it would be suspending the 150-day and 240-day times as well.

CHAIRMAN HONIGBERG: Other thoughts or comments? Does someone want to make a motion?

CMSR. BAILEY: I have a question.
DIR. WRIGHT: Yes.

CHAIRMAN HONIGBERG: Commissioner Bailey, then Mr. Wright.

CMSR. BAILEY: So, the 150-day time date has already passed, I believe.

MR. OLDENBURG: Yes.

CMSR. BAILEY: And I don't know about DES, but they didn't ask for an extension. And, so, I'm wondering if we should give the Chair authority to extend those deadlines, if the state agencies ask for those time frames to be suspended, or, you know, and within reason, obviously. Maybe, if you get such a request, to follow the cadence that Ms. Manzelli articulated. Otherwise, maybe they can get the work done in the time that the statute contemplated, and then the parties will have that information available and we will have that information available.

So, I'm willing to give the Chair discretion to extend those time frames, if the agencies ask for them to be extended. I don't know if we can do that.

MR. IACOPINO: I suppose there's a
way a motion could be crafted to do that.

DIR. WRIGHT: I guess, in my mind, what I'm still just trying to figure out is how long are we actually extending the deadline to at this point. I think that's the question we really need to answer. Am I wrong?

CHAIRMAN HONIGBERG: Well, that's one question. And, I think, if answered in the affirmative with a particular date, it does lead to the second question.

DIR. WRIGHT: Okay.

CHAIRMAN HONIGBERG: What about those, the agency deadlines that are also contained in Section 7 of RSA 162-H?

I'm all in favor of getting an answer to the first question, though.

DIR. WRIGHT: Okay.

CHAIRMAN HONIGBERG: Should we suspend and, if so, to what date?

Ms. Weathersby has suggested September 30 of 2017 as the new end point.

Mr. Way.

MR. WAY: I'll make a motion. I would make a motion that the current time frame
be suspended with a new end date established as September 30th, 2017. And, then, further request the Chair to create a new time structure, including new time frames for agency response, as requested -- if so requested by state agencies.

CHAIRMAN HONIGBERG: Is there a second for that motion?

MS. WHITAKER: I'll second.

CHAIRMAN HONIGBERG: Any discussion of Mr. Way's motion?

DIR. WRIGHT: I guess, Mr. Chairman, my question would be, is that too far out into the future? Does the deadline -- could the deadline be shorter than that? Could it be more in lines with something in between what the Applicant had suggested, which was December of 2016, and what Counsel for the Public had suggested, which was I think June of 2017. I didn't know -- I wasn't quite prepared to go as far out as November '17, but --

CMSR. BAILEY: September.

DIR. WRIGHT: September.

CHAIRMAN HONIGBERG: Well, the
September date is actually -- is Counsel for the Public's end date, when you look at what they propose for the beginning of deliberations at the end of June.

DIR. WRIGHT:  Okay.

CHAIRMAN HONIGBERG:  And I think we all recognize I think the Applicant's proposed schedule and the Society's proposed schedule each contain multiple months for deliberations and preparation of a final order. And I think, when asked, I think Counsel for the Public confirmed that.

So, when you add that time to Counsel for the Public's proposed schedule, you do get to the early fall.

Commissioner Bailey.

CMSR. BAILEY:  I have the same concerns as Mr. Wright. And maybe we can look at Counsel for the Public's proposed schedule. For instance, the second -- second round of data requests from the Counsel for the Public and Intervenors proposed in the schedule isn't until July 1st, and we're at May 15th. So, you know, I'm wondering if we could move
September 30th up a few months. And I know we'd have to amend the motion. But, you know, to keep -- to keep some emphasis on the fact that we're trying to balance here, you know, we're trying to give people the opportunity to meaningfully participate, and ourselves time to fully consider and deliberate appropriately, but also to give some balance to the Applicant's schedule -- requested schedule.

CHAIRMAN HONIGBERG: Other thoughts or comments? Go ahead.

MR. WAY: I was just going to -- I mean, it doesn't sound like we have a real basis for an end date. But, if it would make sense, I could amend my motion to say "August". But, I mean, we're accepting that there's somewhat -- it's somewhat of an arbitrary date at this point, but, you know, it does set a little bit more of an aggressive schedule. But, in terms of September, I think we -- we put that out there. But, in terms of the Counsel's projected schedule, that has us at, I think, September, or maybe August, September.

CMSR. BAILEY: End of September.
MR. WAY: End of September. The Society had us, I believe, at November.

CMSR. BAILEY: Yes. But I think the Society's schedule had a lot of -- a lot of extra time.

MR. WAY: I agree. And that's why, if it would be helpful, we could back it up a little bit.

CMSR. BAILEY: Maybe by the end of July?

[Audience interruption.]

CMSR. BAILEY: That's more than a year from now.

CHAIRMAN HONIGBERG: Other thoughts or comments?

MS. WEATHERSBY: Mr. Chairman?

CHAIRMAN HONIGBERG: Yes.

MS. WEATHERSBY: Why I had thrown out the September 30 date, just recognizing that we may not want to all be in hearings the complete months of July and August, that there may be personal matters that people might want to tend to, like family vacations. And maybe there is a way to tighten it, so that it's done by
June 30, or else we are going to go through the
summer. And I would recommend that people have
a chance to take a little break in between.
The September date may be more realistic.

CHAIRMAN HONIGBERG: My own opinion
on that is that -- well, let me preface this by
saying, I come from the same lawyer background
as a number of the other lawyers in the room,
Mr. Pappas, Mr. Needleman, and Ms. Manzelli,
and Mr. Roth, of litigation, that always
slides. And schedules that are set get broken
all the time. And it's frustrating for those
who want to get things completed and bring
cases to resolution.

That said, it is equally frustrating
when an unrealistic schedule is set. And I
agree with the folks up here that this -- that
trying to get this done by the end of 2016 is
just not realistic. And I think, given the
realities of what needs to be done, mid next
year is the right time to try to resolve this.

Now, once we get to mid 2017, if
we're done with hearings in June, and are
deliberating and trying to get an order issued,
September 30th is actually probably the right date. If we get to hearings on the merits next spring, we're probably looking at 30 hearing days or so over an eight or nine week period. That's just what -- that's what's going to have to happen. So, there's going to have to be other things that happen during those eight or nine weeks. There's going to have to be other things happening during the period of deliberations and preparation of the order. I think that the September 30th date is a more realistic one, and one that we are much more likely not to have to move again.

I wouldn't -- and I wouldn't -- I mean I might support an earlier date, but I don't -- I think the September 30th date is probably correct. I'd be prepared, I'm probably going to vote in favor of the motion as it is, I want to add a couple of thoughts.

I agree with what Ms. Weathersby said about the reading of the statute. I would recognize the charge in Section 1 of RSA 162-H, to "avoid undue delays", but the word "undue" is in there for a reason. "Undue" is ones that
are not necessary. And the scope of this project, the word "unprecedented" gets thrown around a lot. You know, maybe there is, maybe Seabrook -- maybe Seabrook Station is a precedent for this. But Seabrook Station, even as controversial and as large as it was, was in one place. It generated opposition from all over, but it was only in one place. This is -- this goes up and down the center of the state, and has triggered the activity and participation of folks all along the line.

I'm sympathetic to the concerns raised by Ms. Fillmore and others. But I'm not that sympathetic. Because, ultimately, in order to participate meaningfully in one of these projects or one of these proceedings, it requires some real serious time commitment, and compromising on what you would otherwise like to do. And that's true for us, it's true for everyone involved in this.

So, people are going to have to work hard going forward. Whether the deadline is the end of this year or the deadline is the end of next year, or somewhere in between, there's
a lot of work that going to need to get done.

So, my intention is to vote in favor of Mr. Way's motion, with September 30th as the date, although I could easily be convinced that it should be a date earlier.

Other thoughts or comments?

[No verbal response.]

CHAIRMAN HONIGBERG: I sense you're ready for the question. All in favor of Mr. Way's motion, please say "aye"?

[Multiple members indicating "aye".]

CHAIRMAN HONIGBERG: Are there any opposed?

[No verbal response.]

CHAIRMAN HONIGBERG: All right. The ayes have it.

Now, that leaves the question, Mr. Iacopino, the temporary scheduling order, is what we've just done affect the temporary scheduling order in any way? I will say I think the answer to that is "no".

MR. IACOPINO: No, it doesn't.

CHAIRMAN HONIGBERG: So, I think that
order stays in the effect, unless -- oh, yes, Ms. Manzelli?

    MS. MANZELLI: Thank you, Mr. Chairman. I'd like to be recognized for a moment to make an oral request to extend the deadline for data requests. May I do that?

    CHAIRMAN HONIGBERG: You're already there. Go for it.

    MS. MANZELLI: All right. So, as the Subcommittee may know, the group of intervenors -- one group of intervenors has a deadline of tomorrow to propound data requests. Many of the parties have been working diligently, we could meet that deadline. But, if we do, we will waste several data requests. Because the Department of Environmental Services' letter that came just this morning, which many of us have not had a chance to read yet, would make -- would obviate many of the data requests we were planning to make. So, we would like an additional few days to cull through our data requests, remove the ones that would be duplicative of the information the Department of Environmental Services already
asked for.

And, therefore, I'm making an oral motion to request the Forest Society, and everybody else probably would make the same request, to extend for one week. So, from tomorrow through to the next Friday.

I did seek the Applicant's assent, and they were not able to provide assent on that motion. Thank you.

CHAIRMAN HONIGBERG: Would I be correct that virtually everyone would support Ms. Manzelli's request? If you would, by a show of hands, the intervenors and other parties who would support that request?

(Show of hands.)

CHAIRMAN HONIGBERG: All right. Mr. Needleman, would you like to respond? Let the record show that everybody raised their hand, except for the Applicants. So, on behalf, Mr. App -- Mr. Needleman, sorry. Sorry. Mr. Needleman, your response.

MR. NEEDLEMAN: I'm getting accustomed to that.

Obviously, we're opposed to the
motion. Let me start by saying, again, what I said before. There's nothing unexpected. The information that they have requested may not have been available to people in this room, but everybody knew that that was the deadline for DES to provide their letter, and they met that deadline. And, if people wanted additional time, they should have come to the Committee a long time ago knowing that that was going to happen, and they didn't. And I think now, at the eleventh hour, to take another week and slip in the discovery, frankly makes no sense to us. And, at the very -- what I'm concerned about is, every time we have an event that gives rise to somebody saying "well, we should be allowed to see this before we serve this discovery", "we should be allowed to see this person going before we serve discovery", we're going to keep slipping. It's the thing that I talked about before and I was concerned about.

At the very least, if the Committee is inclined to entertain this, then I would urge you, Mr. Chairman, and the Committee to take careful note of the admonition that you
just gave a moment ago, which is "this going to
require some hard work". Let's get these
requests on Monday. You know, let's not lose
another week.

CHAIRMAN HONIGBERG: Ms. Manzelli, I
know you want to respond. But one of the
questions I'm going to ask you is, what would
be wrong with serving what you have prepared,
and letting Mr. Needleman know in a week "I'm
withdrawing Data Requests 17 through 35, in
light of the information that's been provided
to me"?

MS. MANZELLI: Thank you, Mr.
Chairman. I hadn't thought about that
possibility. Certainly, it's your discretion
to make that order. I think it would be more
efficient to allow a mere few business days to
get one clean set of data requests, rather than
having 20 different parties propound 20
different sets of data requests, and then
having 20 different sets of withdrawals of
questions.

It seems to me cleaner to just do it
once and do it right. But, you know, we're at
your discretion, and I appreciate that.

CHAIRMAN HONIGBERG: There was something else I think you wanted to say, though.

MS. MANZELLI: I understand that the Applicants and several others were copied on the Department of Environmental Services at the time that it came out, which I understand was Monday. But that letter was not available to me, and I don't think it was available to most of the people in this room until this morning.

So, had we had it on Monday, we would have had about a week to do this process that I'm talking about, but we didn't. We just got it this morning. So, it's certainly unfair to expect us to have absorbed this 20 to 30 page document before tomorrow or by tomorrow. Thank you.

MR. NEEDLEMAN: Mr. Chair?

CHAIRMAN HONIGBERG: Yes.

MR. NEEDLEMAN: I'm certainly not suggesting they should have absorbed it. That's not what I meant. I think it's important for the Committee to understand, or,
if they do understand, to have in mind, that in
most other dockets that I can think of, these
types of requests from the agencies come either
during or after discovery is complete. And,
so, there's nothing particularly special about
these agency requests coming out now that
should somehow alter discovery here.

CHAIRMAN HONIGBERG: Yes, ma'am.

MS. CRANE: My name is Charlotte
Crane. I have not appeared in this forum
before.

CHAIRMAN HONIGBERG: Then, I'm going
to stop you right there. Where are you from?

MS. CRANE: I am part of the Southern
Non-Abutters Intervenor Group. I own property
in Bridgewater, with a Plymouth address.

CHAIRMAN HONIGBERG: Is there a
spokesperson designated for that group?

MS. CRANE: I -- to the extent it was
necessary for today, I believe that I was.

CHAIRMAN HONIGBERG: Okay. You may
proceed.

MS. CRANE: I would just like to
point out that, although my intervenor group's
data requests are not due until Tuesday, one of the -- or, is that the right date? I think so. Or Monday? Yes. Anyway, whatever the 23rd is. One of the things that seemed appropriate to me, as an intervenor compiling useful data requests, would be identifying those places where the materials that have already been filed by the Applicant overlook some of the things that I, as an affected landowner, my land is along the Pemi, don't think are adequately presented in what was already filed.

If the information that the agencies are now asking for will satisfy me, if answered in good faith, then I don't have to answer [ask?] those data requests. And I would think that that would be true for many of the groups whose data requests were due tomorrow.

And I find it baffling that we wouldn't want to make all of our data requests as rational and as organized as we possibly could. And this new information is not new information, it's new requests that don't need to be made. Thank you.

CHAIRMAN HONIGBERG: Ms. Birchard.
MS. BIRCHARD: Mr. Chairman, I apologize if I'm confused as to any of the details of the discovery time frames. But I wonder if this might not be an appropriate time to discuss some of the motions that are pending to request two sets of discovery, as opposed to one? Because, if the parties were allowed two sets, that might resolve some of the issues arising from concern about this late information that we've received.

CHAIRMAN HONIGBERG: I sense that there's some -- this is a completely -- this is an unrelated issue to that. It may well be appropriate to discuss multiple rounds, but I don't think in this context it is.

MS. BIRCHARD: The reason it rang a bell in my brain was because you were discussing withdrawing, you know, asking discovery requests and then withdrawing them. We would avoid perhaps that withdrawal process. There might be some potential to avoid that by simply cutting out all those questions, and not having to take the time to compare them to what DES has already requested. So, if you cut out
the entire tranche of questions that could overlap with DES, and then have the opportunity to ask those questions later, it will take less time to process that original data request. That being said, we're talking about a deadline of tomorrow. This is not, you know, --

CHAIRMAN HONIGBERG: You're always going to be fighting against new information. I mean, everyone of you is always going to be thinking "gee, I wish I had X" or "I wish I had it last week when I did what I did".

If we are going to try and micromanage every deadline based on something that just happened, we're always going to be, I don't know, chasing our tails. We're always going to be wrong if we try and do that.

MS. BIRCHARD: I defer to your discretion on this matter. However, I would, you know, recommend that we try and dispatch as many issues as possible, in as a sensible manner as possible now, rather than having these loose ends hanging around that will affect our further decisions.

And that would also include, for
example, the motion that our grouping has filed as regards the potential for some additional discovery requests. Thank you.

CHAIRMAN HONIGBERG: Mr. Roth.

MR. ROTH: I was considering saying something. But I was advised by Mr. Pappas to hold my tongue.

(Laughter.)

CMSR. BAILEY: I think the Applicants' proposed schedule contemplates a second round of discovery. And I think what Ms. --

CHAIRMAN HONIGBERG: Ms. Birchard.

CMSR. BAILEY: -- Birchard was suggesting is, if she knew there was going to be a second round or not, then she could ask data requests tomorrow and keep within the schedule.

CHAIRMAN HONIGBERG: Mr. Iacopino, is it necessary for the full Subcommittee to rule on Ms. Manzelli's motion or is this something that the Presiding Officer can do?

MR. IACOPINO: It's only necessary if the full Subcommittee believes they want to
exercise their discretion to do that. But you are authorized, under Section 4 of the statute, to rule on procedural motions, such as the one made by Ms. Manzelli, as Chairman.

CHAIRMAN HONIGBERG: What is the desire of the Subcommittee? Does the Subcommittee want to rule on Ms. Manzelli's motion? And, if so, we're probably going to need to do it soon. If not, you can say it will be dealt with by the Chair probably tomorrow.

CMSR. BAILEY: I think, Mr. Chairman, if you can deal with it by tomorrow, that would be adequate. I think the concern is they need to know today or tomorrow in order to know what to do.

CHAIRMAN HONIGBERG: We're going to take a five-minute break.

(Recess taken at 3:57 p.m. and the hearing resumed at 4:03 p.m.)

CHAIRMAN HONIGBERG: All right. We're going to go back on the record.

Mr. Needleman.
MR. NEEDLEMAN: Thank you. We talked at the break. And, in light of the Committee's decision about the broader schedule, we want to make a proposal about dealing with these short-term discovery issues.

The Committee's current order has a group of intervenors who are required to file their discovery tomorrow, May 20th. We would propose extending that deadline to Tuesday, May 31st. There is then a group of intervenors who has discovery due on this coming Monday, May 23rd. We would propose extending their deadline to Tuesday, June 7th. And, then, the last deadline would be the Counsel for the Public's expert discovery, which we would propose being Tuesday, June 14th.

CHAIRMAN HONIGBERG: Thank you, Mr. Needleman. Ms. Manzelli, I am guessing that that is a delightful proposal in your view?

MS. MANZELLI: Yes. For the record, on behalf of the Forest Society, we are delighted with that proposal. Thank you.

CHAIRMAN HONIGBERG: Can I get a show
of hands from folks? My expectation is a lot of hands are going to go up, that that's a good proposal for folks?

(Show of hands.)

CHAIRMAN HONIGBERG: All right.

MR. ROTH: Mr. Chairman, it is, from our perspective, everything, except the part that pertains to us, is acceptable.

CHAIRMAN HONIGBERG: Tell me about the part that pertains to you.

MR. ROTH: The part that pertains to us was that we would have our expert-based data requests by June 14. We had suggested in our papers that it be 30 days from the date by which the Committee enters the order authorizing me to engage those people, which would be basically 30 days from, I assume, today or tomorrow.

CHAIRMAN HONIGBERG: I don't believe it's necessary for us to deal with that right this second. So, I think we're not going to. But I understand what you're saying.

MR. ROTH: That's fine. But, in terms of the proposal that was just offered by
the Applicants, --

CHAIRMAN HONIGBERG: Understood.

MR. ROTH: -- the first two pieces are okay, the last one is not.

CHAIRMAN HONIGBERG: Okay. So, would the Subcommittee like to make a motion? Or, I'm sorry, Mr. Iacopino, did you have something?

MR. IACOPINO: I just want to say that you received notice today that your motions are granted. So, 30 days from today is like two or three days after the 14th, isn't it?

MR. ROTH: June 20th.

MR. IACOPINO: Does the six days really make that much of a difference to you?

MR. ROTH: It could. I'm going to be on vacation next week. So, that's part of it.

CHAIRMAN HONIGBERG: You've got two other lawyers sitting next to you.

So, setting aside the date related to Public Counsel, would someone on the Committee like to make a motion to amend the current temporary procedural schedule as proposed by
Mr. Needleman, with the first two dates for the folks who have data responses due tomorrow and Tuesday, I believe?

CMSR. BAILEY: So moved.

CHAIRMAN HONIGBERG: Is there a second?

MR. WAY: Second.

CHAIRMAN HONIGBERG: Any further discussion?

[No verbal response.]

CHAIRMAN HONIGBERG: Seeing none, all in favor say "aye"?

[Multiple members indicating "aye".]

CHAIRMAN HONIGBERG: Any opposed?

[No verbal response.]

CHAIRMAN HONIGBERG: All right. The ayes have it.

Mr. Iacopino, there are other pending motions related to the numbers of data requests. I believe the Applicant has responded to the one that was filed by the -- by Ms. Birchard's group. There is also one that I think was filed within the last 24 hours
from the Deerfield Group, but I don't think the Applicant has responded to that one yet.

    MR. IACOPINO: That's correct. There was a motion filed to be permitted to ask an additional 42 questions by I forget which Deerfield grouping it was, I believe it's abutters.

    CHAIRMAN HONIGBERG: I think there is just one Deerfield group, isn't there?

    MR. IACOPINO: I don't know. I'll have to pull out my sheet. But, yes, there is that one motion pending to ask 42 additional questions.

    And, then, the only other motion is, there was a motion filed by the Power Generators, but I'm not sure that's only about the number of things they were looking for more time in terms of, and, actually, for an entirely different date with regard to their data requests.

    CHAIRMAN HONIGBERG: And I don't think the Applicants have responded to that either.

    MR. IACOPINO: I haven't seen it.
CHAIRMAN HONIGBERG: Someone over here wanted to speak. Ma'am?

MS. CRANE: There are Deerfield residents in the Southern Non-Abutters Intervenor Group, which I am representing in this meeting.

MR. NEEDLEMAN: Mr. Chair?

CHAIRMAN HONIGBERG: The only one that is queued up for a decision, really, I think is the one from -- that was filed by CLF and AMC and the other two groups that are -- the other two organizations that asked to increase -- an increase in their number of data requests to 100. And I believe that the Applicants' response was that they would agree to 80.

Does anyone want to discuss that, take that up, or do you want to have the Chair rule on that when he can get to it?

CMSR. BAILEY: Can the Chair get to it right now?

(Laughter.)

CHAIRMAN HONIGBERG: Mr. Needleman, refresh my memory. Why 80? Why not 100?
MR. NEEDLEMAN: Well, I think the better question is "why not 50?" We are trying to compromise. And I don't think there is a party in this room that wouldn't come up and make an argument that somehow they need more. And, I think at this point, with something like 20 adverse parties, we're potentially looking at a thousand data requests. And, I think, if we're talking about "unprecedented" things, that is completely unprecedented in SEC practice. And it may seem a little bit unfair of us on a case-by-case basis to push back and say "we don't think you're entitled to more". But, collectively, if everybody gets a little bit more, it's just going to add to what is already I think a pretty substantial burden.

CHAIRMAN HONIGBERG: Ms. Birchard. I know you want to say something, but I have a question that you can address as you're saying something.

What would be -- would it be a problem for you to share with the Applicant, and then, as part of your motion, identify the questions that you want to ask, and that way we
would all know what it is you are looking for that's on top of the 50? I mean, because, at this point, it's pretty hypothetical for me, because I don't know what it is you want to know.

MS. BIRCHARD: Right.

CHAIRMAN HONIGBERG: And, so, deal with that, but I'm sure there's something else you want to say as well.

MS. BIRCHARD: Yes, Mr. Chair. I guess, first my response would be that normally, it's my understanding that the Committee doesn't review or decide on the value of discovery that is lodged by the parties in a proceeding.

In any event, I don't have the discovery questions in front of me to share with you right now, and I apologize for that.

But I did want to, without repeating anything that we've said in our earlier filing, I wanted to briefly explain, as the members of our intervenor grouping, we're entering into the process of coordinating our data requests. It quickly became clear to us that our areas of
interest were divergent, and that the total number of discovery requests would substantially exceed 50. This is not entirely a surprise, because we knew that our groups had different interests at the outset.

But, in any event, we did discuss the number with the Applicants. And, unfortunately, didn't come to a consensus. I understand that they are willing to go as high as 80. With regard to the suggestion that no party in this room would say that they don't want more or that they, you know, wouldn't stand up here and ask for more, I actually don't see any other party in the room standing up here and asking for more. And, I'm not sure that any other party had, in fact, requested more.

CHAIRMAN HONIGBERG: There are a couple, but they haven't been responded to. What I think would be helpful, not all of the questions specifically, but you have made representations in your papers and you've repeated them here, that your group's interests are divergent in some ways. And the way -- I
think it would be helpful for me, and if the Committee were to get involved, the Committee to understand "Well, we want to ask 15 questions about X. Another member of the group wants to ask 23 questions about Y." So, there's some context to what's going on. I mean, I'm aware that there's a member of your group who has a very different interest. And, if they want to ask 50 questions on that one topic, that will inform us as to what the -- where the push-and-pull has to go. And, you know, without that information, it's pretty abstract.

And I'm very sympathetic to Mr. Needleman's point. There will inevitably be requests that come over and over again if these become routinely granted. There has got to be some showing that it makes sense to do.

MS. BIRCHARD: Right. And, of course, this is an exceptional proceeding. There -- to my knowledge, it is not standard process that you have this number of parties combined into, honestly, you know, unprecedented groupings. It's not that there's
never been any grouping of parties before. But my understanding is that this is entirely unprecedented, the scope of grouping here.

And that we've agreed and compromised to some extent on our own representation of our interests in order to expedite this proceeding and to increase the efficiency of this proceeding.

However, our interests still must be preserved to some degree of meaningful, you know, some meaningful level. And, --

CHAIRMAN HONIGBERG: I don't disagree, and I understand what you're saying. And I am sympathetic to that. And I'm inclined to agree with you. And I think the Company already recognizes that it is appropriate to be reasonable, and they have made a counteroffer to you.

But, without understanding what it is or at least the nature and the topics, and why it is that that's not enough, it's just not enough information, I think, for me to grant the request.

MS. BIRCHARD: You know, I haven't
discussed with the members of our group exactly, you know, what they would be willing to divulge as to their discovery requests in advance. But I can give you a sense, without having them in front of me. That, you know, it really goes back to what we've said all along, which is that Conservation Law Foundation has an interest in, you know, we have a variety of interests, but one of the things that distinguishes us from the other groups in our grouping, is that we are very interested in the energy markets and the energy future of this state. I do not believe that the other members of our grouping share that interest to the extent that CLF has it.

The Ammonoosuc Conservation Trust is very locally concerned. It does not have the broad interests of some of the other groups. It also doesn't have the same kinds of -- it is more historic preservation oriented, in my understanding. And, so, many of the questions may be oriented, in fact, closer to the historical preservation angle than the environmental or conservation angle that might
be pursued by an organization like Conservation Law Foundation.

In addition, you have the Appalachian Mountain Club. Their focus is on the enjoyment of the environment by outdoor activity participants, and, as such, I believe their focus is more heavily on the visual elements of the project. Conservation Law Foundation may also be concerned with that, but it is not our top priority.

And, so, as I look at the portion of data requests that might be allotted to my group, I would not prioritize that over my energy-related questions.

That kind of gives you a sense of the scope of the questions that we're dealing with. We're talking about energy markets and economics, the future of the state in the energy realm. We're talking about, you know, the views and the property values and the mountains of this state. We're talking about a very specific local area and its concerns. And, then, we're also talking about Sierra Club's concerns, which have another thrust
driven by their membership as a membership-based organization.

CHAIRMAN HONIGBERG: All right. Does any members of the Subcommittee have questions for Mr. Needleman or Ms. Birchard on this topic?

MR. NEEDLEMAN: May I just respond briefly?

CHAIRMAN HONIGBERG: Sure.

MR. NEEDLEMAN: Just a couple of points. First of all, I don't think that anybody should lose sight of the fact that, when we get through the data requests, that's not the end of discovery. We are as -- we are going to have technical sessions, and there's going to be significant opportunity for all these parties during those technical sessions to pursue discovery as well. So, to the extent they might not have been able to quite get all their questions in that they want to ask at this point, they're not foreclosed in this proceeding.

Second of all, we would welcome the opportunity to work with any of these parties
in advance. We got some discovery from one
group before their deadline, and, frankly, we
appreciate that. It just gives us a little bit
more time to deal with it.

If others want to do that, or they
want to work with us to try to deal with some
of these issues by showing us the questions
they're talking about, we'll sit down and talk.

And, frankly, I do think the other
benefit of that is going to be that I am
certain there are going to be disputes between
the Applicant and these parties about how to
count the number of questions when you get to
50. We've already seen that a little bit. And
we're going to try to be flexible, but only to
a limit. And, so, I think those sorts of
discussions beforehand will be beneficial in
that way as well.

CHAIRMAN HONIGBERG: Ms. Birchard,
you indicated something what you said about the
parties being "willing to disclose questions",
I think was the phrase, I don't exactly
remember how you put it. But that seems like a
very odd position.
MS. BIRCHARD: I simply don't have them in front of me, which is the bottom line. So, I apologize for that. But I don't have them in front of me to share with you. I have tried to give you a sense of the different focuses. And I would also emphasize that there's no one group that's trying to hog all the questions, if that's, you know, a concern that, you know, we're trying to ask 50 questions about one topic. We have tried to allot them proportionally to each group. And, yet, we are still running up against that top number there.

CHAIRMAN HONIGBERG: I mean, I'm inclined to tell you to work with the Applicant on the questions that you and your group want to ask, and see what can be crossed off. Because, once you compare the list, there actually is some overlap. What can be eliminated, what you think somebody else might be asking about. And seeing just how close the two of you can get, before seeking a ruling like this.

And, frankly, I would say to all of
you, and it's very common in litigation, that, especially talking about discovery in matters like this, to have to go through a full negotiation process to try to work out differences before you bring them to the decision-maker.

I'm not in any way suggesting that you didn't make an effort here, I just don't know. But it sounds to me like there's another discussion the two of you can have regarding the questions that you want to ask, and what the Applicant can do to accommodate the need for additional questions.

And, then, if a ruling has to be made, we'll make it, or I'll make it. But I don't think I'm going to make it right now.

MS. BIRCHARD: Okay. I appreciate that. Are we asking them to approve the specific -- I mean, in terms of coordination, we've already coordinated within our group. What coordination are you recommending exactly?

CHAIRMAN HONIGBERG: We would want to get answers to all of these questions. And, if they -- they may not object. They may look at
the 100 questions and say "we can do that". Or, they may look and say "No, this is just a little bit too much. We won't agree to all of them." And, then, you come and seek help.

But I think if you -- I think there's a chance. I'm not saying it will work. But there's a chance that, if you have them take another run at Mr. Needleman and his group, you might be able to find a place where you don't need a ruling at all.

And, ultimately, if you do need a ruling, it might be much narrower or much more precise than 80, 100, 60, whatever.

MS. BIRCHARD: Thank you. I apologize for taking your time on this matter.

CHAIRMAN HONIGBERG: No, don't apologize. It's perfectly appropriate.

Mr. Iacopino, are there any other motions that are queued up with responses from those who have filed?

MR. IACOPINO: No. But I did have a question for the Applicant on that Power Generators' motion. Did you get that and have you filed a response? I had not seen one.
MR. NEEDLEMAN: We got it, and we did file one. If you look at our May 12th filing, the caption of that motion is "Objection to various motions to reconsider", etcetera. And, if you look at Paragraph -- the beginning of Paragraph 7, on Page 3, you will see our response to New England Power Generators.

MR. IACOPINO: Okay. You said "Paragraph 7"?

MR. NEEDLEMAN: Yes.

MR. IACOPINO: Thank you.

MR. NEEDLEMAN: I have a hard copy here, if that would be easier?

CHAIRMAN HONIGBERG: Yes. We're not going to rule on that right now.

Ms. Manzelli.

MS. MANZELLI: The Forest Society has filed a motion to clarify the temporary procedural order. I believe that the Applicants have responded to that. So, I think it's "queued up". Although, I understand that the Chair has the ability to decide on his own, and there may be plans to do that at a different time.
CHAIRMAN HONIGBERG: That would be correct.

MS. MANZELLI: Thank you.

CHAIRMAN HONIGBERG: All right. I think, if there's nothing else we need to do right now, we will adjourn. The Subcommittee will be reconvening for a Public Comment Hearing at six o'clock. I will remind those who plan on attending that the subject matter of the public comment is the additional information filed by the Applicant at the end of February, and that's what we expect people to be commenting on.

I know that there's another common issue in both the PUC and historically at the SEC about whether intervenors are also in a position to provide public comment. Intervenors have other ways to convey their positions to the Subcommittee. I'm not going to -- we're not going to issue an order preventing intervenors from participating tonight. But I would ask you, if you are intervenors, to think long and hard about whether you want to stand in front of people waiting.
and take the turns of people, make others wait who are not, who do not have the status that you have in this proceeding.

       Yes, Ms. Menard.

       MS. MENARD: Thank you, Mr. Chairman. Just for a point of information. At the two other hearings that I've attended and the towns -- my fellow intervenors have attended, before motions were decided by the Committee, you had gone around and polled the various groups. And, so, I wrongly assumed that, before you were going to be making your decision regarding the wetlands waivers, that we were going to have an opportunity to weigh in.

       And, so, I understand that I was incorrect that, you know, I'll take responsibility for that. And, so, I'm struggling with how -- what is the best venue to present information that I feel very, very strongly does impact our concerns about the wetland waivers.

       CHAIRMAN HONIGBERG: There's a very specific -- there's a very specific answer
regarding the wetlands waivers and all of the waivers. The notice before the Loon Mountain hearing specified that those who had made written filings on the waivers were going to be allowed to participate and provide oral argument, as it were, on the hearings. And that all that we just did was continue the deliberations on a matter we had heard back when we were at Loon. So, that's a very specific answer to that.

When intervenors receive motions of any sort, from any of the parties, they have a right to respond in writing, and typically they have, I think, ten days, right?

MR. IACOPINO: Yes.

CHAIRMAN HONIGBERG: Ten days under our rules to respond. And the best way to respond to a written request from another party is to file a written response.

Then, if there is an oral -- an opportunity to argue orally to the Subcommittee, that those who have filed will be invited to speak. That's generally how it works. And, if you have chosen not to file a
written response, the assumption is that you don't have a position.

    MS. MENARD: Okay. Maybe --

    CHAIRMAN HONIGBERG: Because -- well, let me finish, actually. Because the Committee is not obligated to hold hearings on motions. There are certain things that may have to be heard orally, but virtually everything can be decided on what lawyers call "on the papers". When the motions and objections are filed, decision-makers can decide based on what's filed.

So, if parties choose not to make written filings, the assumption is they don't have a position.

    MS. MENARD: Okay. So, we missed the opportunity to -- am I understanding correctly that we had missed the opportunity to present information, because that should have happened back in Lincoln?

    CHAIRMAN HONIGBERG: It should have happened in a response to the motion --

    MS. MENARD: The motion.

    CHAIRMAN HONIGBERG: -- seeking the
waiver.

MS. MENARD: Okay. Thank you.

CHAIRMAN HONIGBERG: Uh-huh. All right. Yes?

MS. BRADBURY: Actually, I did file the objection to the request for the waivers on the 7th for the Deerfield people.

CHAIRMAN HONIGBERG: And were you -- did you have an opportunity to speak in Lincoln?

MS. BRADBURY: No. Not on the waiver. I didn't think that was the -- where we would -- I thought that was going to be decided here, on the waivers. I mean, that's what I thought was happening, because we -- I stayed till the end of that meeting -- oh, no, because I had to leave at six o'clock. But Ms. Menard stayed, and Ms. Menard has the maps that we've copied. But I did -- I'm on there, if you look at the April 7th date on the docket, you'll see that I concurred with the Forest Society request and also on the waivers.

CHAIRMAN HONIGBERG: Did you file a document that said anything other than "I
"concur"?

MS. BRADBURY: I don't recall it now.

CHAIRMAN HONIGBERG: I don't think you did.

MS. BRADBURY: Okay. Well, I'd have to go --

CHAIRMAN HONIGBERG: Here's the general rule, folks. If you want to respond to what someone has asked for, file something. I mean, that's how you get on the -- that's how you get your position on the record.

MS. BRADBURY: Okay. Well, --

CHAIRMAN HONIGBERG: And I gather you did. You said you "concurred" in what someone else said.

MS. BRADBURY: Well, yes, it was -- yes, with the request for the waivers. And I thought that that meant that that was a placeholder that we would be able to raise our issues at the appropriate time. And this is just an example of how, you know, --

CHAIRMAN HONIGBERG: I'm fairly certain we heard from a lot of people on the waivers when we were in Lincoln.
MS. BRADBURY: Well, I don't recall saying anything about the waivers in Lincoln.

CHAIRMAN HONIGBERG: It was late.

MS. BRADBURY: I thought that was coming later.

CHAIRMAN HONIGBERG: It was late.

MS. BRADBURY: Okay.

CHAIRMAN HONIGBERG: We got to the waivers late at Lincoln.

MS. BRADBURY: Okay.

CHAIRMAN HONIGBERG: And we went, as I recall, around the room. But --

MS. BRADBURY: Well, okay. I'll accept that. I mean, I'm sure that's true. I mean, it's just an example of the kinds of intervenors that you're dealing with here. We are new to this process. This is entirely -- we're learning this as we go. We just had -- we are making mistakes as we go.

CHAIRMAN HONIGBERG: I think there's a lot of people, however, who are actually fairly impressed with the level of attentiveness and activity in the intervenor groups. And, as the groups have worked
together now over a number of weeks, it is apparent, from my seat, that there's actual cooperation going on within the groups and across the groups. Lawyers make mistakes, too. And it happens all the time.

So, I wouldn't in any way apologize for how you've been participating in this docket.

MS. BRADBURY: Well, I didn't mean to apologize for it.

(Laughter.)

MS. BRADBURY: I'm sorry. We are deeply concerned about the wetlands. We really are. That's one of our highest concerns.

CHAIRMAN HONIGBERG: Well, you're going to have an opportunity as an intervenor to file testimony regarding the effect of the project on wetlands about what you're concerned. And that testimony will have -- there will be a deadline for that filing, and it will then be subject to data requests and discovery from the other parties. And, then, it will be the subject of one or more technical sessions.
And, then, when we get to a hearing on the merits, you'll present that testimony to the Subcommittee and be subject to questioning about it.

MS. BRADbury: Well, I think our big concern today is, how does the granting of the waiver on the wetlands affect our ability to do that? And we're very concerned about it.

CHAIRMAN HONIGBERG: Mr. Iacopino.

MR. IACOPINO: I would just point out that, at the hearing, if you look at the transcript on Page 370 of the hearing in Lincoln, during the discussion of the waivers, you specifically recognized Ms. Menard. And Ms. Menard did speak, said "Yes. The Deerfield abutters did file an objection to the waiver for historic, and I have no further information." So, it's not as though they weren't recognized at the time.

MS. BRADbury: We didn't know we were giving away rights by being there and having that happen.

CHAIRMAN HONIGBERG: When an order issues, a written order, confirming the grant...
of the waivers that we just did by vote earlier today, parties have a right to seek rehearing or reconsideration, if they are -- the word is "aggrieved", but that's not a meaningful word to nonlawyers, if people are unhappy and disagree with the order that's been issued.

At this point, I think we're done giving legal advice. But I think you can -- you should confer with any number of the lawyers here who can sort of outline the process and help you and some of the others work through the options, if you are unhappy with how things are coming out.

MS. BRADBURY: Okay. So, we should file a -- it would be what, a motion to reconsider the waiver?

CHAIRMAN HONIGBERG: I think that it would be best for you to speak with one of the other lawyers here when we're done.

MS. BRADBURY: Okay. Okay, thank you. Thank you very much.

CHAIRMAN HONIGBERG: All right. With that, we really are going to adjourn, until we open the six o'clock public comment hearing.
Thank you all.

*(Whereupon the hearing was adjourned at 4:35 p.m.)*