

STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE

September 21, 2017 - 9:00 a.m. DAY 37  
49 Donovan Street Morning Session ONLY  
Concord, New Hampshire

{*Electronically filed with SEC 09-28-17*}

IN RE: SEC DOCKET NO. 2015-06  
NORTHERN PASS TRANSMISSION -  
EVERSOURCE; Joint Application of  
Northern Pass Transmission LLC and  
Public Service of New Hampshire d/b/a  
Eversource Energy for a  
Certificate of Site and Facility  
(Hearing on the Merits)

**PRESENT FOR SUBCOMMITTEE/SITE EVALUATION COMMITTEE:**

<b>Chmn. Martin Honigberg</b> ( <i>Presiding Officer</i> )	Public Utilities Comm.
<b>Cmsr. Kathryn M. Bailey</b>	Public Utilities Comm.
<b>Dir. Craig Wright, <i>Designee</i></b>	Dept. of Environ. Serv.
<b>William Oldenburg, <i>Designee</i></b>	Dept. of Transportation
<b>Patricia Weathersby</b>	Public Member
<b>Rachel Dandeneau</b>	Alternate Public Member

**ALSO PRESENT FOR THE SEC:**

Michael J. Iacopino, Esq. Counsel for SEC  
(*Brennan, Caron, Lenahan & Iacopino*)

Pamela G. Monroe, SEC Administrator

*(No Appearances Taken)*

**COURT REPORTER:** Cynthia Foster, LCR No. 14

**I N D E X**

**WITNESS**

**ROBERT W. VARNEY**

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**P R O C E E D I N G S**

**(Hearing resumed at 9:00 a.m.)**

PRESIDING OFFICER HONIGBERG: Good morning, everyone. Welcome to Day 37 of the adjudicative hearings. Before we resume the questioning of Mr. Varney, I understand that there's a scheduling matter or a timing issue that the parties have been discussing and have something to talk about with us. Mr. Whitley, am I recognizing you for this?

MR. WHITLEY: Yes, you are, Mr. Chair. So we've had some discussion amongst the parties and also with the Applicant, and we've come to an agreement whereby tomorrow's deadline is going to be moved back to October 2nd, and there's also going to be a second deadline of October 13th, and I believe we're going to roughly split up the witnesses between those two deadlines with the caveat being if there's a scheduling issue that prevents one witness from being in that first round, then they get pushed to the second, but that's the basic kind of parameters of the agreement.

PRESIDING OFFICER HONIGBERG: Mr.

1 Needleman?

2 MR. NEEDLEMAN: Mr. Whitley has that  
3 correct, and we would agree to that. I would  
4 just add that one of the premises underlying our  
5 agreement was that the parties would work to do  
6 their best to shuffle witnesses around so that  
7 there would minimize scheduling problems going  
8 forward, and I understand that's going to  
9 happen.

10 PRESIDING OFFICER HONIGBERG: Thank you  
11 both. Does anyone else have anything to add on  
12 this topic? Ms. Schibanoff?

13 MS. SCHIBANOFF: I have the question of  
14 which witnesses will be due October 2nd. Some  
15 of us have to do this this weekend.

16 PRESIDING OFFICER HONIGBERG: Mr. Whitley?

17 MR. WHITLEY: And I think the arrangement  
18 is that we're going to roughly split the  
19 witnesses in half. So the first half would be  
20 due that first deadline and then the latter part  
21 of witnesses would be due the October 13th  
22 deadline.

23 PRESIDING OFFICER HONIGBERG: Mr. Whitley,  
24 it doesn't have to be done this second, but

1 perhaps between now and lunch someone could draw  
2 up a list for Ms. Schibanoff and others, and,  
3 frankly, for us, for Ms. Monroe, Mr. Iacopino,  
4 as to who we're expecting to see in the first  
5 wave.

6 MR. WHITLEY: Certainly, Mr. Chair. We can  
7 do that.

8 PRESIDING OFFICER HONIGBERG: Yes. Ms.  
9 Crane?

10 MS. CRANE: My question was essentially the  
11 same one. Perhaps with the addition of if  
12 there's a theme to the way they're going to be  
13 divided topic-wise or whatever, as opposed to  
14 just, okay, this is our regular order, and we  
15 are going to chop it in half here. Thank you.  
16 I intend to, I'm not going to quarrel with the  
17 end result. It just would be useful to know  
18 which direction it's headed.

19 PRESIDING OFFICER HONIGBERG: I'm not sure  
20 I would say anything different in response to  
21 that than what I just said. If between now and  
22 lunch someone can draw up the list with whatever  
23 input people need to glean from each other, that  
24 makes the most sense to me. Anything else on

1 this topic? Yes.

2 MS. BRADBURY: Jo Ann Bradbury. Deerfield  
3 Abutters. So will the Chair rule after the list  
4 is produced at lunch on the dates or are these  
5 dates going to be acceptable?

6 PRESIDING OFFICER HONIGBERG: The dates are  
7 fine.

8 MS. BRADBURY: So if the dates are fine,  
9 the 2nd and the 13th of October, then the  
10 Deerfield Abutters will withdraw their Motion to  
11 Reconsider the Order.

12 PRESIDING OFFICER HONIGBERG: All right.  
13 Thank you. That's on the record and clear.  
14 Anything else with respect to this matter?

15 All right then. I think we're ready to  
16 resume questioning then of Mr. Varney. Ms.  
17 Meyer, are you ready to go?

18 MS. MEYER: Yes, I am.

19 PRESIDING OFFICER HONIGBERG: You may  
20 proceed.

21 MS. MEYER: Thank you.

22 **CROSS-EXAMINATION**

23 **BY MS. MEYER:**

24 Q Good morning, Mr. Varney.

1 A Good morning.

2 Q I hope you're feeling well.

3 A Thank you. I appreciate that.

4 Q I am Barbara Meyer, and I'm part of the Abutting  
5 Property Owners from Bethlehem to Plymouth so  
6 that makes me part of the underground route that  
7 goes near our property. So to further define  
8 that a little bit, it's the underground route as  
9 it goes through Franconia and Easton on 112/116.

10 A Right. Okay.

11 Q So even though I led up with I'm on the  
12 underground portion of the route, I want to  
13 start out with questions about the aboveground  
14 wires.

15 First of all, do you agree that  
16 historically high voltage transmission lines  
17 like the Northern Pass have always been run  
18 aerially in New Hampshire?

19 A Yes. I'm not aware of any except there may be  
20 some undergrounding in the Seacoast area. A  
21 very short segment in that area. I'm not a  
22 hundred percent sure, but other than that,  
23 generally, correct. Yes.

24 Q And when we see electric poles, you know, some



1 people call them telephone poles, along the  
2 sides of our State roads, those are distribution  
3 lines, right?

4 A Yes. They're carrying electricity. Yes.

5 Q And they're distribution lines, they're lower  
6 voltage than the high voltage transmission  
7 lines, and they're bringing power to our  
8 neighborhoods, to our local homes, that kind of  
9 thing?

10 A Yes.

11 Q Okay. Do you agree that RSA 231:160 is the  
12 state statute that allows power companies to put  
13 those poles along the roadside to carry those  
14 distribution lines?

15 MR. NEEDLEMAN: Objection. Calls for a  
16 legal conclusion.

17 PRESIDING OFFICER HONIGBERG: Ms. Meyer?

18 MS. MEYER: The company's lawyers have  
19 presented to us as Intervenors that that's the  
20 statute they're using to justify, and so if it's  
21 been presented in their Application and their  
22 information to me as an Intervenor, I would  
23 think somebody that's very familiar with the  
24 industry and with the company would be able to

1 answer that question.

2 PRESIDING OFFICER HONIGBERG: Ask him what  
3 he did and why he did it. If he did it because  
4 he believes that's what's required by state law,  
5 then that's what you're looking for.

6 MS. MEYER: Well, how about if I avoid  
7 mentioning 231:160 and ask the question  
8 generally?

9 PRESIDING OFFICER HONIGBERG: Try a  
10 question. Let's see how it works.

11 MS. MEYER: Okay.

12 BY MS. MEYER:

13 Q All right. So regardless of what you know about  
14 231:160, do you agree that the power poles we  
15 see running along the sides of the road are  
16 running distribution lines and they're not  
17 running transmission lines, billion-watt  
18 transmission lines like Northern Pass?

19 A The distribution lines are much, are more common  
20 than transmission lines, and they are a major,  
21 major use along our state highways throughout  
22 New Hampshire, and there are, it's common to see  
23 electricity and poles and electricity moving  
24 along state highways. That's very common.

1 Q Okay. So then let me ask. Do you understand  
2 this to be the first time that the regulations  
3 used for siting distribution lines are being  
4 used, they're being interpreted to allow  
5 transmission lines down state roads?

6 MR. NEEDLEMAN: Objection. Calls for a  
7 legal conclusion.

8 PRESIDING OFFICER HONIGBERG: It does. Do  
9 you want to try and rephrase that?

10 MS. MEYERS: Okay, I'm going to try again  
11 then.

12 BY MS. MEYERS:

13 Q Mr. Bowes, when he was testifying, actually if  
14 you could put this up for me? That is not  
15 marked as an exhibit yet. I didn't intend to  
16 use it. But it will have to be marked. It's  
17 from the transcript of this hearing so does that  
18 get considered as an exhibit?

19 PRESIDING OFFICER HONIGBERG: If you marked  
20 it up as you have, it probably makes sense for  
21 you to mark it as an exhibit for yourself.

22 Q Okay. So I believe that would be Exhibit 17 for  
23 our group. The APOBP group. We'll add that in.

24 Now, what is highlighted there is my

1 question to Mr. Bowes, same question basically,  
2 and he said that, well, I said, first of all,  
3 that this is the first time that high voltage  
4 transmission lines are being run along a New  
5 Hampshire State road relying on 231:160, is that  
6 correct? And he answered, it's certainly the  
7 first time Eversource companies have done that.

8 Now, given your broader industry exposure,  
9 can you answer that, take it beyond just the  
10 Eversource companies and say generally is that  
11 true across all power companies in New  
12 Hampshire?

13 A I'm not sure.

14 Q Okay. Can you agree with Mr. Bowes's statement?

15 A I don't have any reason to disagree, but I  
16 haven't explored that issue as a specific  
17 question.

18 Q Okay. So then let me try it a different way and  
19 say, if this is the first time that a statute  
20 that's intended to site distribution lines were  
21 used to site transmission lines, that could have  
22 a significant effect on Orderly Development in  
23 New Hampshire, couldn't it?

24 MR. NEEDLEMAN: Same objection.

1 MS. MEYER: It's a hypothetical. He  
2 doesn't have to draw any legal conclusions at  
3 all.

4 PRESIDING OFFICER HONIGBERG: Your  
5 hypothetical makes an assumption about law. It  
6 contains within it an assertion of what a state  
7 law is or does. I think if you want him to  
8 assume that's what's required by that statute,  
9 then you can ask the question as a hypothetical.

10 MS. MEYERS: Okay.

11 PRESIDING OFFICER HONIGBERG: To be clear,  
12 your assertion of what state law is or does  
13 wasn't part of your hypothetical. Your  
14 hypothetical was another part of the question.  
15 If you want to make it all hypothetical, you can  
16 do that.

17 MS. MEYER: Right. So I thought what I  
18 just asked left out his interpretation of the  
19 statute. Well, I'll make it even more general  
20 and just say --

21 Q If this is the first time that wherever we've  
22 got distribution lines we're going to say now we  
23 can site transmission lines there, would that  
24 have an effect on Orderly Development in New

1 Hampshire?

2 A No, because it would not result in a change in  
3 land use to abutting properties nor would it  
4 adversely affect the economy and jobs in the  
5 region which is the SEC definition of Orderly  
6 Development.

7 Q Okay. Where I see these distribution lines, I  
8 mean, they seem practically, well, all right.  
9 I'll ask it as a question.

10 Once you've established the precedent that  
11 all state roads in New Hampshire are potentially  
12 transmission line corridors, what's the impact  
13 of that on Orderly Development? There are a lot  
14 of State roads in New Hampshire.

15 A Each Project needs to be looked at individually  
16 by the SEC according to the statute and the SEC  
17 rules.

18 Q Okay. Thank you.

19 One of the things that the state  
20 legislature has done that limits the development  
21 of this Project is establishing rules about  
22 eminent domain. Is it your understanding that  
23 because Northern Pass is not a Reliability  
24 Project, that means it's not required to keep

1 the lights on, that it does not have access to  
2 using eminent domain in siting its Project?

3 A Eminent domain issues was not part of my  
4 analysis.

5 Q Okay. So you have no opinion about --

6 A I focused on Land Use and Orderly Development  
7 and did not examine anything associated with  
8 eminent domain that is addressed through state  
9 legislation and other venues.

10 Q Okay. But you agree that Northern Pass can't  
11 use eminent domain in siting this Project? Or  
12 you --

13 A I'm not making any legal interpretation.

14 Q You have no idea about that. Okay.

15 If Northern Pass needed to cut across some  
16 territory of land where they didn't have an  
17 easement currently, they would have to contact  
18 property owners along that path and negotiate  
19 with each of them to either acquire an easement,  
20 to buy the land, is that your understanding?

21 A Again, I wasn't involved in that process.

22 Q If there was a part of the route that became not  
23 available for some reason, and they had to go a  
24 different route where there wasn't an existing

1           easement, what would they do?

2       A     I don't know. That would be a question for  
3           Eversource management.

4       Q     Okay. If we take this into the realms of  
5           hypotheticals then, if there was a pathway that  
6           they didn't have access to that they needed to  
7           in order to finish up their line of Northern  
8           Pass, wouldn't it be easier rather than  
9           negotiating with an individual property owner to  
10          buy an easement or to buy the land, wouldn't it  
11          be easier to just if they had access to State  
12          roads to where we see these distribution lines  
13          running up and down the side of every State  
14          road, if they could use that as an alternative,  
15          wouldn't that be an easier way to develop their  
16          Project?

17       A     I don't know. That wasn't part of my  
18           responsibility in looking at Land Use and  
19           Orderly Development and would be better posed to  
20           the Applicant.

21       Q     Okay. So you didn't consider the impact on  
22           orderly development of a whole bunch of  
23           alternative routes available in essence for free  
24           across the state of New Hampshire? That didn't



1           come into orderly development at all?

2       A     There were multiple alternatives considered in  
3           this process.  If you review the Final EIS, if  
4           you review the White Mountain National Forest  
5           Supervisor's recent Draft Record of Decision,  
6           you'll see reference to the many alternatives  
7           that were considered in this Project, and the  
8           State DES also considered alternatives in its  
9           normal course of business in terms of permitting  
10          for Wetlands and Water Resources.

11       Q     What about specifically if companies like  
12           Northern Pass could now use every State road in  
13           New Hampshire, use the right-of-way along every  
14           State road in New Hampshire to site transmission  
15           lines that they don't have to pay a cent to use  
16           the land, you don't think that there would be an  
17           increase in the use of those routes?

18       A     Again, I didn't conduct any analysis that was  
19           specific to that issue, and as it relates to  
20           that issue overall, that could be a legislative  
21           issue as well as an issue with agencies of  
22           jurisdiction.

23       Q     Does it pose an issue in terms of disorderly  
24           development?

1 A If the Project is within an existing disturbed  
2 corridor like an existing right-of-way for an  
3 electric line or placing it in a disturbed  
4 roadway area, those existing corridors and the  
5 use of those existing corridors is considered a  
6 sound planning principle. It reinforces  
7 traditional and/or normal patterns of  
8 development and is generally considered and has  
9 been considered in the past consistently by  
10 multiple Site Evaluation Committees on multiple  
11 projects that use of existing corridors  
12 represents orderly development of the region  
13 from the standpoint of land use and economy and  
14 employment.

15 Q Okay. So then you would say to anyone else in  
16 the state of New Hampshire that owns land on a  
17 state highway that there is the potential for  
18 that land to be developed, not just under the  
19 roadway, but for the full right-of-way. So for  
20 maybe 20 feet or something, there's the  
21 potential for that full right-of-way to be  
22 developed with transmission lines? Every  
23 homeowner who lives along a State road in New  
24 Hampshire should understand that?

1 A Again, that wasn't the subject of my Prefiled or  
2 Supplemental Testimony.

3 Q Something else that the state legislature has  
4 done which should provide some guidance in the  
5 development of the Project is to establish I-93  
6 as an energy corridor. In terms of orderly  
7 development, would it make more sense to route  
8 an industrial project like the Northern Pass  
9 power line in an industrial corridor like an  
10 interstate or would it make more sense to route  
11 it down any number of roads through the state of  
12 New Hampshire?

13 A As I indicated previously, many alternatives  
14 were considered with respect to this Project,  
15 and if you examine the EIS that's been developed  
16 or examined, the recent letter from the White  
17 Mountain National Forest Supervisor, you will  
18 see a wide range of alternatives that were  
19 evaluated and considered. And in the case of  
20 the Forest Supervisor, as I'm sure you know, he  
21 felt that it was a reasonable use of that  
22 corridor for this Project through the White  
23 Mountain National Forest.

24 Q All right. And I understand there are a number

1 of reasons why the company prefers not to use 93  
2 and using it as an energy corridor is optional,  
3 but from a standpoint of orderly development, it  
4 just seems -- doesn't it seem to you to be  
5 intuitive that locating an industrial project on  
6 an industrial corridor makes for more orderly  
7 development than saying, opening up any State  
8 road in New Hampshire to the Project?

9 A Again, I didn't, as part of my analysis, I  
10 didn't evaluate the range of all those  
11 alternatives. That was done through the EIS  
12 process and through the State permitting process  
13 so I don't have enough information to evaluate  
14 each and every alternative that was considered  
15 and led up to the proposed Project as is  
16 currently before the SEC.

17 Q I wanted to call your attention to a brochure  
18 that's been put out by Hydro-Quebec about this  
19 Project, and that's the, what you see up there  
20 now is the cover page of their brochure. This,  
21 by the way, is our Exhibit 12. APOBP Exhibit  
22 12. So that's the cover page. But what I  
23 wanted you to take a look at was on page 2, up  
24 in the corner where it says location criteria

1 for the line, do you see the one, the second  
2 item where it says avoid siting near homes as  
3 much as possible?

4 A Yes.

5 Q Do you think it's a good idea in general in  
6 terms of orderly development to avoid siting  
7 near homes?

8 A There will always be some residential  
9 development along a potential, every almost  
10 potential corridor, and minimizing impacts is  
11 always a goal of a project.

12 Q Can you suggest other reasons why they might not  
13 want to site near homes?

14 A Well, there are many, your question is related  
15 to a Project where the Applicant is placing the  
16 proposed Project within existing corridors, and  
17 there was significant input throughout this  
18 process about trying to underground at least a  
19 portion of the route which the Applicant has  
20 done. They listened and they have proposed 60  
21 miles of undergrounding. So as it relates to  
22 siting near homes, there are many homes that  
23 have been built along transmission line  
24 corridors, and so if you have an existing

1 corridor in and you're using that existing  
2 corridor, which is a sound principle, then you  
3 may be siting your project within your  
4 right-of-way, and there may be some homes that  
5 have been constructed along the corridor that  
6 may be adjacent to the corridor, and there are  
7 many, many examples throughout New Hampshire of  
8 homes that are built with the full knowledge  
9 that it's an existing transmission corridor that  
10 they're abutting.

11 Q I would suggest to you that in Franconia, for  
12 example, there are homes that date back to the  
13 1790s that have been in place long before this  
14 Project came along, and they just happen to have  
15 the bad luck of being located on a state  
16 highway. There was no easement or no, you know,  
17 potential notification that something like the  
18 Northern Pass might go through there.

19 Do you think that one of the possible  
20 reasons, a possible reason why they would avoid  
21 siting near homes is that there's less impact on  
22 property values so that they have less conflict  
23 with abutters like me?

24 A Again, I don't know. I can't speculate about

1           what HQ was thinking. And I would also point  
2           out that this relates to their development in  
3           Quebec.

4       Q     Yeah, it is the Canadian portion that they're  
5           talking about.

6                     Do you think, in general, the Projects that  
7           have less conflict with private property owners  
8           get approved faster.

9       A     Hard to speculate. There are so much factors  
10          involved in the siting process, and sometimes  
11          when you address one issue, you may raise  
12          another. So it's hard to generalize.

13      Q     I have one final question, and it's based on  
14          your resume, not on the Orderly Development  
15          part, but it's based on your resume that was  
16          attached to your Prefiled Testimony.

17                    One thing that's mentioned is you're  
18          nationally recognized for your efforts regarding  
19          clean water. So kudos for that. That prompts  
20          me to ask the question, has the fluidized  
21          thermal backfill which contains coal fly ash  
22          been tested as safe for use in contact with  
23          drinking water?

24      A     My understanding is that the process will be

1 meeting all of the State DES and/or EPA  
2 requirements that are associated with that use.

3 Q Do you have any suggestions as to how to satisfy  
4 the SEC that this Project will not result in  
5 groundwater contamination, and, therefore,  
6 drinking water contamination?

7 A To insure that the construction is carried out  
8 consistent with the requirements of New  
9 Hampshire DES, the Army Corps of Engineers,  
10 other federal agencies as well as the New  
11 Hampshire DOT.

12 Q I appreciate that. I would hope that you could  
13 take it beyond just this bit of conversation and  
14 actually make some recommendations because the  
15 use of this product, if it's been approved in  
16 past construction projects, a lot of those are  
17 in urban environments. This is in an  
18 environment where our drinking water is sourced  
19 feet from where this stuff is being put into the  
20 ground. So if we can avoid some sort of  
21 catastrophe happening. I think it would be  
22 helpful.

23 So, again, I don't know if you have  
24 anything else to add in terms of your



1 recommendation to the group here as to what kind  
2 of studies need to be done, what specifically  
3 can we do and follow through on to satisfy  
4 everybody here, not just the SEC, that we're not  
5 creating a groundwater contamination problem.

6 A I don't off the top of my head have any  
7 recommendations other than following the  
8 guidelines and the requirements of agencies of  
9 jurisdiction on this issue, and I would also  
10 note that there is a recognition, a strong  
11 recognition on the part of the Applicant that  
12 they need to insure that Best Practices are  
13 followed and that they are in full compliance  
14 with all of the requirements. They don't want  
15 to have issues raised later in the process.  
16 They want to make sure that it's done well, too.  
17 It's in their own interest to make sure that  
18 it's done properly.

19 Q Right. Right. And I'm kind of concerned that  
20 the state of New Hampshire has given approval to  
21 use the hazardous waste in these kinds of  
22 construction projects, apparently because it's a  
23 highway construction project. But this is  
24 different in that it's being applied in a

1 situation where we're close to wells and  
2 people's drinking water.

3 PRESIDING OFFICER HONIGBERG: Ms. Meyer?

4 MR. NEEDLEMAN: Objection.

5 PRESIDING OFFICER HONIGBERG: You're having  
6 a different conversation with this witness. Not  
7 appropriate for now.

8 MS. MEYER: I'll get off my pulpit. Thank  
9 you.

10 Q That's all I have. Thank you, Mike.

11 A Thank you.

12 PRESIDING OFFICER HONIGBERG: According to  
13 my list, we're going to circle back to the  
14 Deerfield Abutters group. Ms. Bradbury?

15 MS. BRADBURY: Yes.

16 PRESIDING OFFICER HONIGBERG: You may  
17 proceed.

18 MS. BRADBURY: Thank you, Mr. Chairman.

19 **CROSS-EXAMINATION**

20 **BY MS. BRADBURY:**

21 Q Good morning, Mr. Varney.

22 A Good morning.

23 Q I am Jo Anne Bradbury. I live in Deerfield.

24 Okay. So I would like to start with asking you

1 if you are aware that in respect of Orderly  
2 Development, the SEC is to consider the extent  
3 to which the siting, construction and operation  
4 of the proposed facility will affect land use,  
5 employment and the economy of the region?

6 A Yes, along with decommissioning and municipal  
7 and regional views.

8 Q Yes. Thank you. Are you familiar with the  
9 department formerly known as DRED? The  
10 Department of Resources and Economic  
11 Development?

12 A Yes.

13 Q And you must be aware that the DRED structure  
14 has recently changed, and it's now two  
15 departments?

16 A Yes.

17 Q I'll be asking you some questions with respect  
18 to the New Hampshire Department of Business and  
19 Economic Affairs, which is one of the two  
20 departments, and one of its divisions, the  
21 Division of Travel and Tourism. Okay? Are you  
22 familiar with Visit NH? It's the website for  
23 the Division of Travel and Tourism?

24 A Yes.

1 Q You've seen it?

2 A Yes.

3 Q Okay. Would you agree that in today's world, an  
4 online presence is essential for marketing and  
5 developing a state's travel and tourism  
6 industry?

7 A I believe almost every state, I'm sure every  
8 state has a website promoting their state. Yes.

9 Q And you agree that it's important?

10 A Yes. I think promoting tourism is important to  
11 every state.

12 Q Okay. So what you're seeing there is a  
13 screenshot from the Visit NH website.  
14 Unfortunately, the photos are pretty small.  
15 We'll try to focus in on one or two of them in a  
16 minute. Are you familiar with Instagram?

17 A My wife is.

18 Q But you've heard of it.

19 A I have a real job so I'm not that familiar with  
20 it.

21 Q Oh, brother. Okay. What you have before you  
22 open there on ELMO is the Visit NH Instagram  
23 page.

24 A Okay.

1 Q Would you agree that, even though you have a  
2 real job, that a tool such as Instagram that  
3 allows people to share their photos and videos  
4 of the things that they love about New Hampshire  
5 is effective way to promote and develop tourism  
6 and travel?

7 A Yes.

8 Q Back in the day, we used surveys. But something  
9 like this, Instagram usage, gives residents and  
10 visitors an authentic perspective of our state,  
11 correct?

12 A Yes.

13 Q And the state can use that information for  
14 market research because it shows the passions  
15 and interest of our visitors and our citizens,  
16 correct?

17 A Yes.

18 Q You'll note there that on the first page right  
19 up there near the top it states that Visit NH,  
20 their Instagram account has almost 36,000  
21 followers. You see that, correct?

22 A Yes.

23 Q 35.8k the date I took this picture.

24 Would you agree that such a level of

1 interest provides the state with valuable  
2 marketing information?

3 A I haven't assessed its value, but I would assume  
4 it is. Yes.

5 Q Okay. So we're going to take a look at the  
6 photos from the first four pages of the Visit NH  
7 Instagram account, and they're all small, but if  
8 you can see them, would you agree that the great  
9 majority of these pictures from the Visit NH  
10 Instagram account are scenic photos of beautiful  
11 New Hampshire landscapes with the occasional  
12 town or city thrown in there?

13 A Yes. On this source, that appears to be view  
14 oriented, yes.

15 Q And would you agree that these photos do not  
16 show a landscape with lattice towers or high  
17 voltage power lines?

18 A Not on this exhibit that you've presented.

19 Q Okay. But they do reflect the scenic beauty of  
20 New Hampshire and visitors and residents  
21 enjoying that beautiful landscape, correct?

22 A Yes.

23 Q Bob, can you make the very first picture bigger?  
24 Is there a way to make the very first picture a

1 little bit bigger so people can see it? And hit  
2 the focus button? Better. Okay.

3 So that's one of those. Okay. Are you  
4 aware that the New Hampshire Business Review  
5 recently reported this Visit NH website was  
6 recognized within the travel industry for its  
7 effective use of photographs, including a  
8 rotating gallery of Instagram photos?

9 A I was not aware of that.

10 Q Can we put Deerfield Abutter Exhibit 146, Bob?

11 It's the article about how great this  
12 website is. You see that there? So you'll see  
13 at the very top, if you just take, pull it out,  
14 if you see at the very top. I can't see -- I  
15 can't read the verbage from the top from here?  
16 Can you read that? So you can see it so you can  
17 see that, right?

18 A Yes.

19 Q So it was rated among the world's top 25  
20 websites, and it recognized for its compelling  
21 visuals and curated recommendations. So you can  
22 see that that's received that honor, correct?

23 A Yes.

24 Q Okay. Okay. So you would agree that the state

1 promotes New Hampshire's scenic beauty, and on a  
2 smaller level, that scenic beauty is also  
3 promoted by entrepreneurs across our state,  
4 correct?

5 A Yes.

6 Q I'm referring to photographers, artists, tour  
7 guides that make their living here relying on  
8 the scenic beauty. Okay.

9 So we're going to hand you out Deerfield  
10 Abutter's Exhibit 147, and I'd like you to just  
11 take a quick look at it, and we have one for  
12 everybody, and I will put it up on ELMO.

13 So can you just take a look at the pictures  
14 there? Up on ELMO you have the better, they're  
15 bigger, they're nicer, because they're bigger.

16 Please take a look at that. Would you  
17 agree -- I'll give you a minute. I'll give you  
18 a minute to take a look. Let me know when  
19 you've looked at it.

20 Would you agree that these are beautiful  
21 scenic photographs of New Hampshire?

22 A Yes.

23 Q Okay. And would you agree that the purpose of  
24 something like this is to market the beauty of



1           our state and to bolster the number of visitors  
2           to New Hampshire?

3       A     Yes.  That's part of the strategy, yes.

4       Q     And to promote the work of entrepreneurs such as  
5           photographers?  Correct?

6       A     I don't know if that's a goal, but I believe  
7           every state has similar calendars that focus on  
8           scenic beauty.

9       Q     Yes.  Okay.  Do you see any high voltage power  
10          lines or lattice structure towers in these  
11          photographs?

12      A     No.  I do not.

13      Q     Okay.  Would you agree that entrepreneurs are  
14          particularly important to the economy of the  
15          rural communities across the state?

16      A     I don't know.  I haven't assessed the  
17          contribution of the entrepreneurs who are  
18          photographers and their role in the economy.

19      Q     Well, are you aware that the UNH Cooperative  
20          Extension works with local entrepreneurs to  
21          develop and grow their businesses?

22      A     Yes, which are a wide range of types of  
23          businesses.  Yes.

24      Q     Well, are you familiar with the Deerfield Arts

1 Tour held every fall across the town of  
2 Deerfield?

3 A I have not been to it, but I've heard of it and  
4 I've seen this brochure.

5 Q Okay. This very one, the 2017? I just got it.

6 A No, the brochure that I've seen at, I believe it  
7 was one of the rest areas.

8 Q Okay. Good. Good. We're going to pass those  
9 out. I would like you, when you receive your  
10 copy -- I'll just let them pass them out. Just  
11 take a second.

12 Would you take a quick look at the map  
13 that's part of that brochure? Let me get that  
14 map up while Bob hands those out.

15 Okay. So would you agree from looking at  
16 the map that businesses all across the town of  
17 Deerfield are on the Arts Tour?

18 A I can see what's in the brochure.

19 Q Um-hum. And you will see that, well, just for  
20 your information, the Northern Pass will cross,  
21 and you'll see these roads on that map, Mt.  
22 Delight Road, Thurston Pond Road, Haynes Road,  
23 Church Street, Route 43/107 also known as North  
24 Road, Mountain Road, and Nottingham Road. Do

1           you see that there?

2       A     Yes.

3       Q     And many of the local entrepreneur artists will  
4           be affected by the siting and construction of  
5           Northern Pass, correct?

6       A     I don't agree with that statement, no.

7       Q     Well, would you agree that construction on  
8           Saturdays from 7 a.m. to 7 p.m. would have a  
9           negative impact on that annual event?

10      A     My experience is that the DOT and contractors  
11           involved in projects that may affect a local  
12           community will examine special events that may  
13           occur, whether it's undergrounding in a state  
14           highway or whether it's crossing of a highway as  
15           part of their project, and they will try to be  
16           aware of those special event dates and try to  
17           avoid them if they can in terms of not affecting  
18           the flow of traffic and those types of things.

19      Q     Well, is there, well, if it cost a million  
20           dollars to shut everything down on let the  
21           Deerfield Arts Tour proceed, would Northern Pass  
22           agree to something like that?

23      A     I don't think it would be a million dollars to  
24           have a pause during a special event. So I can't

1 speculate. I can't answer your question. I  
2 don't have the information.

3 Q Okay. All right. Are you familiar with the  
4 Deerfield Fair?

5 A Yes.

6 Q You have been?

7 A I have. Yes.

8 Q Good. Good. I'd like to place up on ELMO  
9 Deerfield Abutter Exhibit 149. There's an  
10 article about the Deerfield Fair that came out  
11 recently. This is a recent article in the  
12 Concord Monitor about New Hampshire fairs  
13 including the Deerfield Fair.

14 Are you aware that the Deerfield Fair draws  
15 an average of 150,000 visitors?

16 A I didn't know what the specific numbers were,  
17 but when I did attend the fair, it was very  
18 crowded.

19 Q I guess it wasn't raining when you were there.

20 A It was -- yeah.

21 Q Are you aware that it brought in 1.8 to 2.1  
22 million in revenue per year in recent years?

23 A Again, I'm not aware of the statistics, but I  
24 know that the Deerfield Fair is a fair that has

1           been active for many, many years, and I'm not  
2           surprised that they would have a lot of visitors  
3           and a lot of positive impact on the economy.

4       Q     Well, you would agree that roughly \$2,000,000 in  
5           a year is pretty good for the rural community  
6           and the state, right?

7       A     Yes.

8       Q     Okay. Do you agree with the fair spokesperson  
9           that the fair is -- that's on, I think, Bob,  
10          that's on the last page.

11                But the fair spokesperson Mr. Richard  
12           Pitman notes that the fair is 90 percent  
13           agricultural and 10 percent everything else.

14                Would you agree with, having been there,  
15           would you agree with that?

16       A     I can't answer that.

17       Q     Okay. So all right. But you're aware that  
18           that's what the spokesperson for the fair  
19           thinks.

20       A     I don't have any reason to disagree with it. I  
21           just can't affirmatively say that I agree.

22       Q     Are you aware that the fair has expanded its  
23           investment, the Deerfield Fair Association, has  
24           expanded its investment by adding two

1 state-of-the-art animal barns?

2 A I'm reading that now. Yes.

3 Q Okay. So would you turn to the end of the  
4 article where the spokesperson states, "We've  
5 been around for 140 years, and it's always been  
6 about agriculture. I don't see that changing  
7 any time soon."

8 So would you agree that this agricultural  
9 identity clashes with industrial lattice towers  
10 and high voltage lines?

11 A No.

12 Q Well, they aren't really compatible, are they?

13 A Well, I can give you an example of where it  
14 does. And it's not that, not that far from you,  
15 and that would be in Londonderry, New Hampshire,  
16 where they have a scenic byway called the Apple  
17 Way, and it's to promote agricultural products  
18 and apple orchards in the community of  
19 Londonderry. And that Apple Way  
20 state-designated Scenic Byway was created to  
21 link several major orchards and agricultural  
22 operations, one of which is Elwood Orchards, and  
23 the existing Hydro-Quebec Phase II line passes  
24 over that farm, and I've seen several

1            photographs taken of that farm with the  
2            transmission line in the photographs. So they  
3            coexist, and it was, I believe, considered  
4            scenic enough to be designated as a Scenic Byway  
5            even though a large transmission corridor passes  
6            across, the Scenic Byway crosses underneath that  
7            existing transmission line.

8            Q     Right. Let me just ask you this. How tall are  
9            those towers?

10          A     I would need to, I would need to check, but it's  
11          a Hydro-Quebec line that's there in addition to  
12          the recently approved 345 kV Merrimack Valley  
13          line, and it runs across Elwood Orchards and  
14          across the agricultural land.

15          Q     Yeah. How many 150-foot Northern Pass towers  
16          will pass through Londonderry?

17          A     I was simply giving an example of where there  
18          was existing agricultural use coexisting, and I  
19          believe that was your term, coexisting with  
20          agriculture. And the line has not interfered  
21          with the ongoing agricultural operations.  
22          There's actually crops that are grown and even  
23          some fruit trees that are grown under the  
24          transmission lines, and I've seen various

1 examples of that, and there are examples all  
2 across the country.

3 Q Actually, I didn't ask you if it could coexist.  
4 I asked you if those kinds of highway voltage  
5 towers and transmission lines would clash with  
6 an agricultural identity.

7 But let me ask you another question.

8 Deerfield has roughly 4,000 citizens,  
9 residents. How many residents live in  
10 Londonderry? Londonderry is a town, a big town,  
11 not just a rural area, right?

12 A Yes.

13 Q Okay.

14 A And they enjoy many of the same things and have  
15 many of the same values that others have in  
16 other southern New Hampshire communities.

17 Q I guess they might be some of the people that  
18 you encountered at the fair the day it was  
19 really crowded.

20 Okay. Are you aware of the horse shows,  
21 dog shows, sheep shows, things like that that  
22 happen all summer long at the fairgrounds in  
23 Deerfield?

24 A Many of the fairs have 4-H events and other uses



1 as a way to continue using the property and to  
2 generate revenue.

3 Q Yes. That's right. Generating revenue. Maybe  
4 not the two million but it is an ongoing revenue  
5 generator.

6 A As is the transmission line.

7 Q Would you agree that 7 a.m. to 7 p.m.  
8 construction six days a week with all of the  
9 accompanying traffic delays will have a negative  
10 impact on the Deerfield Fair and other events  
11 held at the fairground?

12 A I don't believe that it would because I think  
13 there would be an effort made to work carefully  
14 with local officials and state officials to  
15 minimize the impacts and to try to avoid special  
16 events and traffic, any traffic delays that are  
17 avoidable.

18 Q So every Saturday through the summer, the  
19 fairgrounds are pretty much well-used. So would  
20 the Northern Pass refrain from construction on  
21 all the Saturdays in the summer?

22 A I don't know, but these issues are usually  
23 addressed with an MOU between a town and the  
24 utility, the Applicant. That's typically the

1 approach that's taken where they sit down and  
2 work through those issues to ensure that the  
3 impacts are minimized.

4 Q That wasn't really my question.

5 Based on your knowledge, your personal  
6 experience with Eversource and the Northern Pass  
7 Project, would they agree to not do anything on  
8 Saturdays through the summer in Deerfield?

9 A I don't negotiate for Eversource so it would be  
10 improper for me to comment on that.

11 Q Okay. Well, given the impact on local  
12 entrepreneurs, the scenic landscape and our  
13 agricultural identity, would you agree that the  
14 siting and construction and operation of  
15 Northern Pass will interfere with the orderly  
16 development of the region?

17 A No. I do not believe that it will.

18 Q Thank you for your time.

19 A Thank you.

20 PRESIDING OFFICER HONIGBERG: According to  
21 my list, Mr. Whitley is next. Off the record.

22 (Discussion off the record).

23 PRESIDING OFFICER HONIGBERG: Mr. Whitley,  
24 you may proceed.

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**CROSS-EXAMINATION**

**BY MR. WHITLEY:**

Q Good morning, Mr. Varney.

A Good morning, Steve. How are you.

Q I'm Steven Whitley. I'm counsel for a number of towns along the route. I'll name them for you just so you're aware: Deerfield, Pembroke, New Hampton, Littleton, and the Water and Sewer Department of the town of Ashland.

A Okay.

Q I'm going to ask you some questions first, just some broad more general ones, and then I'm going to go into a little more detail about some of the towns that I represent.

So I'm going to start off with just some of your CV resume issues. You've worked on several Regional Planning Commissions, isn't that right?

A Yes.

Q Okay. And that experience helps you in part to evaluate Orderly Development as part of your opinion; is that right?

A My background is helpful in terms of understanding local communities, understanding the planning process, and also having had length

1 of experience in seeing projects that were,  
2 where there were concerns expressed during the  
3 process and then seeing the result of that  
4 project after the fact. So I have a good  
5 perspective on that, having worked with so many  
6 communities.

7 Q Okay. But the background that you alluded to,  
8 that included your time serving on a Regional  
9 Planning Commission, correct?

10 A When I was on the Regional Planning Commission,  
11 I believe the only major transmission line  
12 project that I was aware of was the proposed  
13 Hydro-Quebec Phase II line which was not in my  
14 region but was near it.

15 Q And, Mr. Varney, I'm not necessarily speaking to  
16 any particular projects that may have come  
17 before you while you were sitting on those  
18 Regional Planning Commissions. Again, I'm just  
19 speaking in a general sense. So I'll give you  
20 an opportunity to answer again with that  
21 clarification that I just provided.

22 Do you want me to restate the question?

23 A Sure.

24 Q In a general sense, you stated that you served

1 on Regional Planning Commissions.

2 A Yes.

3 Q My question is that that experience helped you,  
4 helps you formulate your opinion on Orderly  
5 Development here before the SEC?

6 A Yes.

7 Q Okay. Have you also served on a local board  
8 like a planning, zoning or selectboard?

9 A Yes.

10 Q And which one of those have you served on?

11 A Town of Ashland.

12 Q But which board?

13 A Planning Board.

14 Q Okay. And did that role also help you in part  
15 to evaluate the Orderly Development and your  
16 opinion regarding Orderly Development? Again,  
17 in an generic sense?

18 A Perhaps but not significantly.

19 Q Okay. As part of your opinion, I believe you've  
20 testified that you reviewed both master plans  
21 and zoning ordinances for the host communities  
22 along the route; is that correct?

23 A Yes. In the 28 communities. Although for the  
24 record I should state that there are no zoning

1           ordinances in Pittsburg, Clarksville,  
2           Stewartstown, Stark, Dalton or Woodstock, and  
3           there are no master plans in Clarksville,  
4           Stewartstown or Stark, and I mentioned yesterday  
5           that the town of Pittsburg developed a master  
6           plan in 1992 that I reviewed, but the Planning  
7           Board was abolished two years later so I'm not  
8           sure how to characterize that status.

9           Q    No. That's fair. You've answered the question.  
10           So thank you.

11                     If a Town Planner or a board member was  
12           involved in creating or amending a town's master  
13           plan, you'd agree that that person would have  
14           the credibility to opine about the orderly  
15           development within that municipality, wouldn't  
16           you?

17           A    The question before us is orderly development  
18           within the region.

19           Q    I know, but I'm asking you about a Town Planner  
20           or board member that's involved in creating or  
21           amending the town's master plan. I'm asking you  
22           whether you agree that that person has the  
23           credibility to opine about the orderly  
24           development within that municipality.

1 A No. I disagree. Because the definition of  
2 Orderly Development before the Site Evaluation  
3 Committee is more than just local planning.

4 Q Okay. Well, same question, sir, but instead of  
5 thinking of the specific criteria that the SEC  
6 has to consider, wouldn't a Town Planner or  
7 board member be able to opine about consistency  
8 with the master plan or the zoning ordinance  
9 within that particular municipality?

10 A They would be certainly free to express an  
11 opinion about their master plan.

12 Q And would that opinion be credible? Would they  
13 have the credibility to speak about consistency  
14 with the zoning ordinance or master plan?

15 A In a general sense, yes.

16 Q Okay. Similarly, a member of a Conservation  
17 Commission, wouldn't you agree that they have  
18 the credibility to speak about the prevailing  
19 uses within their municipality and various  
20 natural resources that they have identified  
21 within that municipality?

22 A Yes. In fact, they're consulted through the  
23 Wetlands permitting process.

24 Q A Town Administrator would similarly have

1           credibility to render an opinion about  
2           consistency with a master plan, the Project's  
3           consistency with the master plan or the zoning  
4           ordinance within their respective municipality?

5       A     They would have the ability to express an  
6           opinion, yes.

7       Q     And, again, it would be a credible one. I'm not  
8           asking you to agree with the substance.

9       A     Credibility is a judgment which takes into  
10          account many factors so I would prefer not to  
11          use that term. I think the core question is do  
12          they have a right to offer their opinion on a  
13          particular Project, and they do. And their  
14          ability to know all of the factors involved that  
15          have to be considered by the Site Evaluation  
16          Committee under Orderly Development may or may  
17          not be within their area of expertise.

18      Q     But doesn't a Town Administrator generally have  
19          the knowledge and experience regarding their  
20          specific municipality to render an opinion about  
21          whether the Project is consistent with that  
22          municipality's master plan or zoning ordinance  
23          or site plan?

24      A     They, as I've stated three times, they have the



1 ability to offer an opinion.

2 Q But just so I understand correctly, you're not  
3 saying that they don't know or don't have  
4 knowledge about their particular municipality  
5 where they work. I believe I hear you that  
6 you're saying that you may ultimately disagree  
7 with what their opinion is due to the things  
8 that you've just listed.

9 A As I stated, there are many factors that are  
10 considered by the Site Evaluation Committee  
11 under Orderly Development, and that includes  
12 issues that you've already heard about in this  
13 proceeding with property values and positive  
14 benefits for jobs and the economy, prevailing  
15 land use, tax benefits, air quality benefits,  
16 greenhouse gas benefits. There are many factors  
17 that are considered under economy and job  
18 creation.

19 Q I understand that, and I think what you're  
20 speaking to is kind of the cost/benefit analysis  
21 that maybe the SEC is going to have to consider  
22 in rendering an opinion. And my question was  
23 kind of focused on consistency with a town's  
24 zoning ordinance and master plan.

1           So I'm going to ask you again if you think,  
2           if you'll agree with me that a Town  
3           Administrator has the knowledge and the  
4           background and the experience, generally, to  
5           speak to whether or not the project is  
6           consistent or not with that town's master plan  
7           and zoning ordinance and other planning  
8           documents there may be in existence?

9           MR. NEEDLEMAN: Objection. Asked and  
10          answered.

11          PRESIDING OFFICER HONIGBERG: You can give  
12          it one more try, Mr. Varney.

13        A    They have the right to offer their opinion about  
14          how the project may relate to their master plan,  
15          and then, hopefully, provide detailed  
16          information about the basis for that opinion.

17        Q    A town official or a town board member, they may  
18          do analysis in their head on the question of  
19          consistency with the master plan or the zoning  
20          ordinance, but they may not put that analysis  
21          down into a written report. But they've still  
22          done the analysis in their head, haven't they?

23        A    I would say that they can reason, they have  
24          their own reasoning, perhaps, but that doesn't

1 mean that it's based in factual information.  
2 It's opinion-related and the reasoning for their  
3 opinion which may or may not be supported by the  
4 facts.

5 Q You're correct, and I think that some of our  
6 towns would take the same view of your opinion,  
7 but they've still done a analysis, haven't they?

8 A No. I haven't seen any analysis from the towns.

9 Q Okay. And we'll get into that in a little bit.

10 But your opinion about there not being  
11 analysis is based on the substance of what the  
12 towns have stated and not because it wasn't  
13 reduced to writing. Is that correct?

14 A Well, it's based on the fact that as it relates  
15 to master plans that their master plans don't  
16 specifically address electric transmission  
17 lines, and that the master plan is a broad  
18 vision statement for the communication, not to  
19 be applied to specific projects, which they're  
20 trying to do here. And I scoured the 28 master  
21 plans for the host communities as well as  
22 abutting communities, and there were no  
23 references to transmission lines as a major  
24 planning consideration, as an issue, as a

1 concern or mentioned in any way other than  
2 perhaps as one component of existing land use  
3 that there's an utility corridor in the  
4 community. In most cases it represents less  
5 than one percent of land use in the community.

6 Q Thank you. I want to turn your attention now to  
7 some of the testimony that was given to this  
8 Panel by the Applicant's construction experts.

9 In addition to permanent infrastructure,  
10 Northern Pass is going to require laydown areas  
11 for a year or two during the construction  
12 seasons, isn't that correct?

13 A Yes. That's my understanding.

14 Q Okay. And do you recall Mr. Kayser testifying  
15 that laydown areas would be needed along the  
16 entire 192-mile route and that these laydown  
17 areas would be between five and 50 acres in  
18 size?

19 A I wasn't here for that discussion. I'm seeing  
20 this for the first time, but I don't have any  
21 reason to disagree. I can read it.

22 Q I've put on the screen here, Mr. Varney, this is  
23 the transcript of a portion of the Construction  
24 Panel's testimony.

1 A Okay.

2 Q This is Day 6 in the morning, and this is page  
3 116 into 117, and you can see, and I'll go up to  
4 the question here. Just before the highlighted  
5 portion. It says, "establishing yards for  
6 laydown areas" and then the question is, "The  
7 laydown areas are expected to be between five  
8 and 50 acres," and Mr. Kayser agrees. Do you  
9 see that?

10 A Yes.

11 Q And a little lower, on page 117, pardon me.  
12 Later on page 118 you see that highlighted  
13 portion there. And in there, Mr. Kayser agrees  
14 that they're going to be required along the  
15 entire route, you see that?

16 A Yes.

17 Q Okay. Mr. Kayser estimated roughly 10 to 20  
18 laydown areas, and Mr. Johnson estimated roughly  
19 25 laydown areas. Do you recall or have you  
20 heard about those estimates?

21 A No.

22 Q Okay.

23 A Again, I'm aware that there are laydown areas.  
24 My knowledge isn't precise in terms of exactly

1           how many will be needed.

2           Q     Sure.

3           A     And I'm not sure they have fine-tuned it yet  
4           either.

5           Q     I've put up, Mr. Varney, on also Day 6 in the  
6           morning, this is page 119 of the transcript.  
7           You see in the top there the question, likely  
8           require up to 20, and a little further down,  
9           Mr. Kayser says, you know, he agrees with that  
10          rough estimate and says between 10 and 20. You  
11          see that?

12          A     Yes.

13          Q     Okay. Mr. Kayser testified that PAR would be  
14          responsible for choosing the laydown sites,  
15          isn't that correct?

16          A     I believe so. Yes.

17          Q     And Mr. Johnson testified that Quanta would be  
18          responsible for choosing the laydown sites,  
19          right?

20          A     Apparently. If that's in the record. I  
21          previously stated that I wasn't here.

22          Q     You see here, this is Day 10, testimony from Day  
23          10 in the morning, I believe. Yes, in the  
24          morning. This is page 93, and you see the lower

1 half of that highlighted portion starting on  
2 line 17, the question was about Quanta's  
3 responsibility to find and acquire marshalling  
4 and laydown areas and Mr. Johnson responds in  
5 the affirmative, you see that?

6 A Yes.

7 Q So regardless of whether it's PAR's  
8 responsibility or Quanta's responsibility, I'm  
9 not asking you to work out that inconsistency  
10 here, wouldn't you agree that Northern Pass has  
11 not located all of those 10 to 25 laydown areas  
12 as of this time?

13 A I don't know. I know that there was an  
14 evaluation of potential sites, and that I  
15 believe the Environmental Panel indicated that  
16 they had done some screening of some potential  
17 sites as part of their work effort to ensure  
18 that the sites were selected that were gravel  
19 pit areas and similar types of sites and to  
20 ensure that there wouldn't be any sensitive  
21 resources that potentially could be affected.

22 Q And Mr. Kayser on Day 6, he testified that three  
23 laydown areas had been identified at that time,  
24 and he mentioned there was one in Clarksville

1 and two in Millsfield. Are you aware of that?

2 A No.

3 Q So you don't have any ability to describe the  
4 Clarksville laydown area site?

5 A No.

6 Q Similarly, no ability to describe the two  
7 Millsfield laydown sites?

8 A No, other than they will be material storage  
9 areas, and it's a very common practice for the  
10 DOT and other construction projects.

11 Q And you have a similar lack of knowledge about  
12 the remaining laydown areas, the specifics of  
13 the remaining laydown areas that may be required  
14 along the route?

15 A I know that there will be several laydown areas.  
16 I know that they are trying to identify areas  
17 that are environmentally sound and in many cases  
18 are placed in locations where there has been  
19 activity such as sand and gravel operations,  
20 either currently or in the past.

21 Q I'm turning now, Mr. Varney, to your October  
22 2015 report, and you state at the bottom of that  
23 page, which is page 4 again, and just for the  
24 record, this is Applicant's Exhibit 1, Appendix



1 41. You say, you see there in the highlighted,  
2 "most of the temporary laydown yards will be  
3 located at existing gravel pits." Do you see  
4 that?

5 A Yes.

6 Q But it sounds like the three that have been  
7 identified so far may or may not be in gravel  
8 pits, and you don't have any specific knowledge  
9 as to the location of the remaining laydown  
10 areas or whether they will or will not, in fact,  
11 be in existing gravel pits; isn't that true?

12 A I already answered this question which is that I  
13 know that there had been a significant amount of  
14 screening effort to identify potential sites  
15 that exist in relative proximity to the Project,  
16 and that several of the sites that they have  
17 been considering are existing gravel pits that  
18 would be used for storage of materials.

19 Q When you wrote this highlighted section here,  
20 did you have any specific laydown areas in mind?

21 A Only what I heard from environmental staff who  
22 were doing screening who said that most of the  
23 sites that they were looking at were existing  
24 gravel pit type locations.

1 Q Okay. So this statement is not based on any  
2 knowledge that you had about specific sites.  
3 It was based on what you had been told by the  
4 Environmental Panel about where they would hope  
5 to locate these laydown areas.

6 A Yes. It's a process that is under way.

7 Q Are you aware of any requirements that Northern  
8 Pass has imposed on PAR or Quanta to require  
9 them to locate laydown areas in existing gravel  
10 pits?

11 A No. I don't know anything about their  
12 contracts.

13 Q Other than your statement in your report that  
14 we've highlighted there, you didn't analyze the  
15 impacts to orderly development from laydown  
16 areas that may not be located in existing gravel  
17 pits, did you?

18 A I was aware of them when I wrote the report,  
19 that there would be several laydown areas that  
20 would be necessary. And that the effort was, an  
21 effort was being made to locate them in  
22 locations that were relatively consistent with  
23 past use and locations that were environmentally  
24 sound.

1 Q And it sounds like you came to the conclusion  
2 that if the laydown areas were in existing  
3 gravel pits, those criteria would be satisfied;  
4 is that a fair statement to make?

5 A Every site is different. That's why they were  
6 screening them and evaluating them, and I knew  
7 that process was under way and it was being done  
8 in a logical, thoughtful manner, but I didn't  
9 have any final site selections to evaluate.

10 Q So is it possible that an existing gravel pit  
11 may not be suitable as a laydown area because it  
12 doesn't meet that criteria you just described?

13 A There are many factors involved with the  
14 location of a laydown area.

15 Q So that's a yes, it is possible then?

16 A So I don't know.

17 Q I want to turn now to your Direct Testimony.  
18 One second. My apologies. This is Applicant's  
19 Exhibit 20. This is your Direct Testimony,  
20 correct, Mr. Varney?

21 A Yes. I believe so.

22 Q Okay. And I'm pointing you to the highlighted  
23 portion at the end of page 7 on to page 8 where  
24 you make the statement that operation of the

1 line will not place any new demands on local or  
2 regional services or facilities. You see that?

3 A Yes.

4 Q You didn't do any investigation or independent  
5 analysis to support this statement, did you?

6 A I didn't produce a separate study, but I  
7 considered the issue very carefully and looked  
8 at the services that are typically associated  
9 with an existing electric utility right-of-way  
10 and what types of services or what types of  
11 impact that may have on a community. And then I  
12 compared that to other types of land uses that  
13 are permitted uses within the community. For  
14 example, a residential development which  
15 increases traffic, which requires police and  
16 fire services, which puts children in the school  
17 system, uses backyard mowers and chainsaws and  
18 has activity with cars coming and going.

19 And so in a very, it's common sense to  
20 think of what services would typically be  
21 required of an existing continuous vegetative  
22 corridor, transmission line, as compared to  
23 other uses that are allowed in a community, and  
24 it was clear to me, very clear to me and it

1           didn't warrant a detailed study because it was  
2           so obvious that it would not place significant  
3           demands on a community, and it would generate  
4           tax revenues for the community as well.

5       Q     I understand that that's your opinion, and my  
6           question though was, you know -- actually,  
7           strike that.

8                     I understand that's your opinion, but you  
9           didn't provide any sort of work product that I'm  
10          aware of that demonstrates the analysis that you  
11          just described. Did you?

12                    So there's no way, in other words, for the  
13          SEC and the parties to evaluate that opinion, is  
14          there?

15       A     I believe the Applicant may have addressed it  
16           with some of the towns as an issue that I  
17           believe I saw. But no, there was no specific  
18           analysis. I didn't think it was necessary --

19       Q     Okay.

20       A     -- to do so because it was so obvious, and it is  
21           such a relatively simple issue.

22       Q     Okay. Did you have conversations with Dr.  
23           Shapiro on this point at all?

24       A     I reviewed her Prefiled Testimony.

1 Q And I don't think you answered the question  
2 though. You may have reviewed, it and I think  
3 your materials state that you did. Did you have  
4 discussions with her about this specific part of  
5 your opinion? The fact that operation doesn't  
6 place new demands on local or regional services?

7 A Perhaps. We were at some meetings together and  
8 attended public hearings and talked. So I would  
9 guess that we did talk about it, but I can't  
10 recall when or where. Nothing specific.

11 Q Nothing specific as you sit here today?

12 A Right.

13 Q All right. Thank you. Off the record.

14 (Discussion off the record)

15 Q Mr. Varney, I want to turn now to your  
16 Supplemental Testimony. One second. Sorry.  
17 You'll see on the screen there your Supplemental  
18 Testimony which is Applicant's Exhibit 96. Do  
19 you see that there?

20 A Yes.

21 Q And I want to turn now to this question and  
22 answer which is on page 2 of that Supplemental  
23 Testimony, starting at line 10 and going down to  
24 line 22, and you touched on this a second ago.

1 But the question was asking you to respond to  
2 concerns expressed by Intervenors about the  
3 Project being incompatible, and you can read it  
4 just as well as I can, but your response  
5 starting on line 20 states that, "The  
6 Intervenors that expressed concerns didn't  
7 provide information to support their claims."

8 And I wanted to ask you about your answer  
9 in light of the fact that many towns and many  
10 other parties, I think, would take the view that  
11 they've provided a great deal of information,  
12 and in the town case, you know, towns have  
13 provided portions of the master plan and the  
14 zoning ordinance and the site plan regs that  
15 they believe are relevant. They've provided  
16 warrant article votes from town meetings that  
17 they believe are very relevant. Residents from  
18 those municipalities have provided public  
19 comments, and the local officials and board  
20 members have provided testimony on this issue of  
21 consistency. And yet your response here is that  
22 concerns did not provide information to support  
23 their claims. And that's not really an accurate  
24 statement, is it?

1 A No, I believe it is an accurate statement.

2 Q So that list that I just ran through, not  
3 support for their claims.

4 A When I hear concerns that are expressed about  
5 master plans, for example, I look at the master  
6 plan itself. I look objectively at what the  
7 master plan says. And the master plan does not  
8 speak to electric transmission lines as a  
9 planning consideration in terms, as it relates  
10 to preventing or being detrimental to future  
11 economic growth and development. There were  
12 claims being made that it would halt development  
13 near the transmission line, and I disagreed with  
14 that and sought to take a look at some other  
15 communities where development had occurred as  
16 some examples of development.

17 Q I understand, sir, what you did, but my question  
18 was you stated here that information was not  
19 provided to support their claims. And that's  
20 simply not true. I mean, you may disagree,  
21 which I understand, but there was certainly  
22 information that was provided to support the  
23 claims; was there not?

24 A As it relates to the issue of being detrimental



1 to future economic growth, I did not see any  
2 credible information that was provided that  
3 would enable the SEC to conclude that a  
4 transmission line is detrimental to future  
5 economic growth and development.

6 Q Okay.

7 PRESIDING OFFICER HONIGBERG: We'll take a  
8 ten-minute break.

9 (Recess taken 10:35 - 10:50 a.m.)

10 PRESIDING OFFICER HONIGBERG: Mr. Whitley,  
11 you may continue.

12 MR. WHITLEY: Thank you, Mr. Chair.

13 BY MR. WHITLEY:

14 Q Mr. Varney before we left for a little break,  
15 you responded to a question I asked about  
16 information provided by the various parties.  
17 And I believe your answer was that you deemed  
18 that information not credible. Is that your  
19 recollection?

20 A No.

21 Q Would you like to remind me what your response  
22 was then?

23 A They provided opinions about the Project and why  
24 they felt it was inconsistent with the broad

1 vision in the master plan, and then looking  
2 beyond that, I looked for information that would  
3 describe exactly how there was an adverse  
4 unreasonable adverse effect on orderly  
5 development, and I didn't see that level of  
6 information submitted.

7 Q Okay. And does that answer extend as well to  
8 information submitted regarding impacts on  
9 conservation and recreation?

10 A There was some information submitted on that  
11 which I reviewed and considered.

12 Q But was your thought process and how you  
13 reviewed it the same for that information as  
14 well?

15 A As I stated in my Supplemental Prefiled  
16 Testimony, I disagreed with some of the  
17 statements.

18 Q And you reached that conclusion at the time that  
19 you wrote your October 2015 report?

20 A No. I was referring to the Supplemental  
21 Testimony that was prepared in response to  
22 information.

23 Q Thank you.

24 A And opinions.

1 Q I want to turn now to the town of Pembroke, and,  
2 Dawn, if you could turn me back on, please?

3 Great.

4 I've put up on the screen here, Mr. Varney,  
5 some town meeting warrant articles from the town  
6 of Pembroke, and there are two here, and let me  
7 just state for the record that this is Joint  
8 Muni 149, Bates 6557 through 6561, and I believe  
9 it's your testimony that you've reviewed all of  
10 these warrant articles. Isn't that correct?

11 A I believe I've seen most, if not all of them.

12 Q Let me tell you that, just for the record, the  
13 one before you here was from 2011, and it was,  
14 as you can see as I scroll down here, passed by  
15 the town residents. And there was a later one  
16 from 2014 which is also highlighted and that one  
17 was also passed by the town residents. Are you  
18 familiar with these two specific articles?

19 A I don't remember them specifically, but I'm  
20 refreshing my memory now by looking at them.

21 Q Sure. Sure. Just let me know once you've had a  
22 chance to look at them.

23 A Okay.

24 Q In your testimony, your Direct Testimony, you

1 described these warrant articles at the bottom  
2 of page 6 and this is Applicant's Exhibit 20,  
3 starting at line 26, your position on them is  
4 that they've been passed over the years, but you  
5 did not view them as definitive actions. Am I  
6 reading that correctly, sir?

7 A Yes.

8 Q Okay. So the vote of a majority of residents is  
9 not a definitive action in your mind?

10 A The warrant article that you showed earlier was  
11 related to the earlier part of the Project prior  
12 to its submission of the Application. If you  
13 could go back to that, there was information in  
14 there that alleged economic problems associated  
15 with the Project, that it would harm the  
16 economy, as part of the assumption that was  
17 provided in the warrant article. If you'd just  
18 go back to that for a moment for illustration?

19 Q Just so we're clear, and I'll go back to it in a  
20 second, your response is that both the 2011 and  
21 the 2014 warrant articles predate when the  
22 Project may have changed; is that correct?

23 A Yes, but that's not a major factor in Pembroke  
24 as a segment that is entirely overhead within an

1 existing developed utility corridor.

2 Q I want to go back to my question though that you  
3 deemed these warrant articles which were passed  
4 by a majority of town residents to be not a  
5 definitive action; isn't that true?

6 A Yes, and what I meant by that is that the  
7 Project was still under development. The towns  
8 had expressed concerns about the Project. Many  
9 expressed a preference for burial as Pembroke  
10 did, and this was at an earlier point in time,  
11 and also doesn't reflect any mitigation that may  
12 have occurred. Since then some of those things  
13 were described I believe in the visual expert's  
14 testimony as well as MOUs or other things that  
15 perhaps are being negotiated with the town.

16 Q Are you aware, sir, of what the town residents  
17 may have reviewed before they rendered their  
18 vote or not?

19 A I was referring to the language that was in the  
20 warrant article that, if you could, again, go  
21 back to that? That would be, I think, helpful  
22 for the Committee.

23 Q And so by, if I'm understanding your responses  
24 correctly, if the warrant articles were voted on

1 after the Project was revised, perhaps to  
2 address, purportedly to address some of these  
3 concerns, would you then consider a vote to be a  
4 definitive action?

5 A At that moment in time, when they took the  
6 action, it is their action, but the Project was  
7 evolving is my point. And that a number of  
8 changes have occurred, mitigation has occurred,  
9 outreach efforts to the towns to negotiate an  
10 MOU that have been undertaken by Eversource.  
11 Basically trying to work through the issues.

12 Q And if that's the case Mr. Varney, then wouldn't  
13 you expect to see the warrant article in 2014  
14 not pass? If maybe they had those concerns in  
15 2011 and they were addressed by these changes,  
16 wouldn't the one in 2014 not pass?

17 A Again, if I can finish my answer which is that  
18 these efforts have been undertaken. They are  
19 still in process. They have not completed  
20 negotiations on MOUs with the communities and  
21 when these votes were taken, it may have been,  
22 for example, prior to some mitigation measures  
23 being taken to lessen impacts. It also doesn't  
24 take advantage of the expertise that's been

1 provided in this proceeding to have visual  
2 experts evaluate potential visual impacts in the  
3 community. There's no --

4 Q Mr. Varney --

5 A Again, if you can let me answer. And it doesn't  
6 take into account the economic studies that have  
7 been done, the property value studies, the tax  
8 impact studies, tax benefit studies, that  
9 weren't necessarily presented to the voters at  
10 that time. So that's my point in saying that  
11 it's not a definitive vote or action.

12 Q Mr. Varney, do you understand that the parties,  
13 including the towns, you know, have reviewed  
14 that information and take a different view of it  
15 than the one that you're stating here, right?

16 A I was referring to the dates where these actions  
17 were taken, and the substantial amount of  
18 testimony and cross-examination and supplemental  
19 information that has been provided in this  
20 proceeding.

21 Q So your descriptor of these warrant articles not  
22 being a definitive action is because they  
23 perhaps misunderstood the Project and how the  
24 Project was going to address their concerns?

1 A My point is that it's not clear to me that all  
2 of the facts were presented to the voters at the  
3 time of the vote.

4 Q Do you have any knowledge of what information  
5 they had at the time of the vote?

6 A I don't, but I know that some of these votes  
7 were taken --

8 Q Sir, so you're making an assumption of what they  
9 knew and didn't know, aren't you?

10 PRESIDING OFFICER HONIGBERG: Whoa, whoa,  
11 whoa. You can't talk over each other, and he is  
12 in the middle of an answer about what he does  
13 know.

14 MR. WHITLEY: I'm sorry.

15 A And that some votes were taken prior to the  
16 filing of Prefiled Testimony, prior to the  
17 filing of the Application itself that addresses  
18 the Application requirements and the criteria  
19 that the SEC members need to review as it  
20 relates to the review of this Project. There  
21 was a significant amount of information that was  
22 not necessarily available at that time and so  
23 there may have been information presented on the  
24 docket that would contradict, perhaps, what was



1 explained to the voters at the time of the vote.

2 Q If a Town chose to amend their master plan after  
3 seeing the most recent iteration of the Project,  
4 and being aware of all the mitigation measures  
5 that you just spoke to, that would be a  
6 definitive action, wouldn't it?

7 A No. A master plan is a broad guidance document.

8 Q Same question. Instead of amending a master  
9 plan, a vote at town meeting on a similar  
10 warrant article with the benefit of the most  
11 recent iteration, and knowledge of all of the  
12 mitigation measures that you just spoke to,  
13 would that be a definitive action?

14 A That would express their view of the Project  
15 that needs to be considered by the Site  
16 Evaluation Committee, and they, in turn, would  
17 try to dig into the basis for their concerns,  
18 and that's part of what we're doing here in this  
19 proceeding.

20 Q But would you consider that sort of a town  
21 meeting vote to be a definitive action?

22 A I think you're too hung up on the term  
23 "definitive action."

24 Q I'm just using your words, sir.

1 A And I've explained to you what I meant in that  
2 text.

3 Q I think I heard you just state when you asked  
4 the hypothetical about amending the master plan  
5 that if a town did that, I think your answer was  
6 it was a broad kind of aspirational document.  
7 Am I remembering that correctly?

8 A Yes.

9 Q Okay.

10 A It's not a regulatory document, and it's not a  
11 document that should, that would be addressing  
12 proposed projects.

13 Q But isn't it your testimony elsewhere that one  
14 of the reasons why the Project is consistent  
15 with these master plans is because they don't,  
16 the master plans don't specifically address the  
17 Project?

18 A That's part of it. Part of my testimony.

19 Q Okay. So in addition to that, so even if the  
20 master plan did specifically address the  
21 Project, it sounds like your opinion is that the  
22 Project is nonetheless consistent because it's a  
23 broad policy document?

24 A My review was focused on orderly development of

1 the region and the finding that the SEC is  
2 required to make which is that the Project would  
3 not unduly interfere with the orderly  
4 development of the region considering existing  
5 land uses, economy, jobs, and municipal views  
6 and decommissioning.

7 Q And don't municipalities express their views in  
8 part by what they enact into a master plan?

9 A They do. Some of those master plans are 10 or  
10 15 years old. Some are newer. They're broad  
11 statements, and I've explained in the testimony  
12 some of the areas where there is some  
13 consistency while also noting that very few even  
14 mention any electric transmission lines as an  
15 issue in their town. Other than that it's a  
16 very small percentage of local land use, usually  
17 less than one percent.

18 Q Okay. I want to move on to the town's zoning  
19 ordinance. You did consider each municipality's  
20 zoning ordinance, correct?

21 A Yes. I read every ordinance in the communities  
22 that had zoning.

23 Q And we're talked about which ones did and  
24 didn't, so yes.

1 A Yes.

2 Q I want to turn back to your October 2015 report,  
3 and, again, this is Applicant's Exhibit 1,  
4 Appendix 41, and I want to turn to the portion  
5 of that that dealt with --

6 PRESIDING OFFICER HONIGBERG: Off the  
7 record.

8 (Discussion off the record)

9 Q So I put on the screen here, Mr. Varney, the  
10 portion of the report where you discuss the  
11 zoning ordinances in the municipalities that  
12 have them. Do you see that there?

13 A Yes.

14 Q And just for the record, we're on page 30 of  
15 your October 2015 report. At the bottom is kind  
16 of your conclusion with regard to zoning  
17 ordinances, correct? It's highlighted there?

18 A Yes.

19 Q And you state that the Project's not subject to  
20 local zoning, and then you have a statement  
21 regarding use of existing corridors and new  
22 right-of-way and areas that are used primarily  
23 for forestry, correct?

24 A Where is the forestry?

1 Q The very last line in the middle of that  
2 highlight.

3 A Yes. Okay.

4 Q You see that there?

5 A Yes.

6 Q Are you familiar with the concept of  
7 grandfathered rights in that you can expand or  
8 add to a pre-existing use to the point that you  
9 no longer enjoy those grandfathered rights?

10 A Broadly. I haven't dealt with that issue in a  
11 long time.

12 Q Okay. Did that form the basis of your  
13 conclusions with regard to use of existing  
14 corridors at all?

15 A No. My conclusion is that use of existing  
16 corridors is a sound planning practice. It  
17 reinforces existing patterns of development, and  
18 keeps them -- in this case the Project is within  
19 the corridor and so there's no change in land  
20 use.

21 Q The Project is adding an additional line so  
22 there's going to be new towers, and those towers  
23 that are added or replaced are going to be  
24 larger. Wouldn't you agree?

1 A Yes. There'll be an incremental height  
2 increase.

3 Q Well, I don't think that the parties would agree  
4 with the incremental part, but that's okay. I  
5 don't want to get hung up on that.

6 Doesn't your analysis assume that because  
7 the use of the existing corridor is already in  
8 existence that the Project is, therefore,  
9 consistent with the master plan and zoning?

10 A As it is described in my testimony as well as in  
11 the report that by locating the Project within  
12 an existing corridor, it's typically, it helps  
13 with respect to the issue of environmental  
14 impact. Typically, there's less impact when  
15 using an existing corridor, and, again, it  
16 reinforces existing patterns of development and  
17 also maintains other parcels that are open space  
18 areas that are not affected because you've  
19 limited your effect to that existing corridor.

20 Q And because it's an existing corridor,  
21 therefore, it's consistent with the town's  
22 master plan and zoning.

23 A Again, looking at the broad goals of the town  
24 and keeping it within the existing corridor, it

1           made sense to me that this was reinforcing the  
2           existing land use pattern in the town, locating  
3           it with other structures and that it would be  
4           compatible with those existing uses within the  
5           corridor and for those along the corridor their  
6           land uses that already abut a transmission line.

7           Q    I want to go back to kind of the specific zoning  
8                in Pembroke, and I've put up here, this will be  
9                marked as Joint Muni 280. This is your review  
10              of zoning ordinances and site plan regs. Do you  
11              recognize this, sir?

12          A    Yes.

13          Q    Okay. And what's on the screen is the zoning  
14                map of the town of Pembroke, and you see there,  
15                and just for the record, sorry, this is page 108  
16                of that document. Joint Muni 280. And what's  
17                on the screen there is the town zoning map with  
18                the Project corridor superimposed over it,  
19                correct?

20          A    Yes.

21          Q    Okay. And wouldn't you agree that the majority  
22                of the Project is in that, let's say, tan zoning  
23                district there?

24          A    Yes. Within the existing transmission corridor.

1 Q That's correct. And wouldn't agree or are you  
2 aware that that tan corridor is the R3 zone in  
3 Pembroke?

4 A Yes, and I would also -- just two other points  
5 if I could. One is that I reviewed every zoning  
6 ordinance and summarized every zoning  
7 ordinance --

8 Q Mr. Varney, I understand -- you're going to have  
9 a chance to provide explanation. You answered  
10 the question. I hadn't posed another one.

11 A It was related to your question. I'm sorry.

12 Q Understood, but you'll have a chance on redirect  
13 to respond to those sorts of things.

14 So you acknowledge that much of the Project  
15 is in that R3 zone. Are you aware that per the  
16 town zoning that utilities require special  
17 exception?

18 A Where they have jurisdiction.

19 Q But you're aware of that requirement, assuming  
20 there's jurisdiction?

21 A Yes. Again, I prepared a summary of the town's  
22 zoning ordinance.

23 MR. IACOPINO: Mr. Whitley, is it possible  
24 for you to expand Joint Muni 280 a little bit so



1 that we can see it better? Thank you. And if  
2 you can go down to the legends?

3 MR. WHITLEY: Sure. Let me expand it a  
4 good bit so you can see it.

5 MR. IACOPINO: Thank you.

6 PRESIDING OFFICER HONIGBERG: See it but  
7 not read it.

8 MR. IACOPINO: Nice try.

9 MR. WHITLEY: That's the best I can do, I'm  
10 afraid, with the computer.

11 BY MR. WHITLEY:

12 Q As part of your analysis, Mr. Varney, you didn't  
13 do any sort of analysis about what would be  
14 required to obtain a special exception in  
15 Pembroke, did you?

16 A I believe that I simply stated uses that were  
17 permitted uses and then uses that were permitted  
18 by special exception.

19 Q I'm going to go now to a summary of the Town  
20 Zoning Ordinance for the town of Pembroke, and  
21 this is page 104 of Joint Muni 280. You see  
22 there in the middle there's the R3 zone,  
23 correct?

24 A Yes.

1 Q Okay. And I tried to highlight this and I  
2 couldn't so I'm sorry there's nothing to direct  
3 you here, but you mention in there, middle of  
4 the paragraph, the sentence starting with  
5 country clubs, that public utilities do require  
6 special exception, correct?

7 A Could you repeat the question? I was reading  
8 the text.

9 Q You've already actually agreed with me so I  
10 don't think we need to do that.

11 Do you have an opinion of whether or not  
12 the Project could meet the special exception  
13 criteria?

14 A I simply reviewed the fact that it was permitted  
15 by special exception while at the same time  
16 recognizing that it was not jurisdictional for  
17 the town.

18 Q Are you aware that in the town of Pembroke one  
19 of the criteria that has to be satisfied is that  
20 the use not impair the integrity or character of  
21 the district or the adjoining zones?

22 A I can't recall.

23 Q Do you acknowledge, Mr. Varney, that the R3 zone  
24 is largely made up of open space?

1 A Yes.

2 Q I want to turn your attention now to the  
3 Supplemental Testimony of Ms. Verdile who is the  
4 Town Planner in the town of Pembroke, correct?

5 A Yes.

6 Q And this is Joint Muni 147, and I'm turning your  
7 attention to page 4 of her testimony beginning  
8 on line 12. Do you see that highlighted portion  
9 there?

10 A Yes.

11 Q She describes some of the characteristics of the  
12 R3 zone, and I don't want to read it into the  
13 record because it's right there, but do you have  
14 any reason to disagree with her description of  
15 the R3 zone?

16 A I disagree with her conclusion.

17 Q But don't disagree, just so the record is clear,  
18 do you disagree with her descriptors of the R3  
19 zone?

20 A Yes, and would note that there are many  
21 transmission projects throughout the state that  
22 are located in relatively undeveloped areas.

23 Q And I understand you want to get to disagreeing  
24 with the conclusion, but let me say it a

1 different way. On line 12 and 13, there's that  
2 first sentence. Do you disagree with what she  
3 states in that first sentence?

4 A No.

5 Q Okay. Thank you. The next sentence there she  
6 mentions that these are popular outdoor  
7 year-round recreation areas for the residents  
8 and the public.

9 Do you disagree with that statement, sir?

10 A No, and I would add that the utility line is  
11 identified in the Town's master plan as a  
12 recreational asset because it's a continuous  
13 vegetated corridor that runs through the town  
14 and helps connect other trails in the town to  
15 expand the townwide trail system.

16 Q The popularity of this zone for outdoor  
17 year-round recreation, wouldn't you agree that's  
18 due in part to that area's visual quality?

19 A I'm sure it's one of many characteristics.

20 Q So if the Project were to impair that visual  
21 quality, it's conceivable that the  
22 characteristics of that district could suffer,  
23 couldn't they?

24 A Not necessarily.

1 Q And assuming that the Project did impair those  
2 visual qualities, how would the characteristics  
3 of the zone not be impacted?

4 A The Project is located within an existing  
5 corridor where structures already exist.

6 Q The town of Pembroke's Master Plan contains a  
7 Community Survey. Did you review that survey?  
8 Are you familiar with that?

9 A I can't recall.

10 Q One second. Let me, it's part of Ms. Verdile's  
11 Supplemental Testimony so this is still Joint  
12 Muni 147, but I'm going to turn you to, this is  
13 page 6 of Ms. Verdile's Supplemental Testimony,  
14 and I want to direct you to the highlighted  
15 portion there which begins on line 15. Do you  
16 see that?

17 A Yes.

18 Q Do you disagree with Ms. Verdile's statement  
19 about what the town of Pembroke values in the R3  
20 zone?

21 A I agree that that's -- yes, I have no reason to  
22 disagree with that.

23 Q Okay. Are you aware that there are Class VI  
24 roads as well as range roads in that R3 zone?

1 A Yes. I've been on them. I'm relatively  
2 familiar with the area.

3 Q And are you also aware that this zone is made up  
4 of large tracts, undeveloped land, conserved  
5 lands -- I'll just stop there. Are you aware of  
6 that, sir?

7 A Yes.

8 Q Okay. And wouldn't you agree that those types  
9 of land that I just described, they're all part  
10 of the R3 zone's visual and aesthetic value to  
11 residents, would you agree with that?

12 A Could you repeat the question?

13 Q Sure.

14 A I'm reading text at the same time.

15 Q No, no, no. I meant to turn to this so this may  
16 help a little bit.

17 So this is page 7 of Ms. Verdile's  
18 Supplemental Testimony. You see there's a  
19 highlighted portion there.

20 A Yes.

21 Q Okay. And my question again was the large  
22 tracts, the undeveloped land, the conserved  
23 land, the range roads, all of those things are  
24 part of the R3 district's visual and aesthetic

1 value to residents. Wouldn't you agree?

2 A Yes. And as I mentioned earlier, obviously this  
3 is an area that already has an existing  
4 transmission corridor in it, and it's highly  
5 valued as an area even with transmission lines  
6 already there.

7 Q I want to turn your attention now, sir, to the  
8 bottom of that page starting on line 17, and  
9 this is a question that was posed to town of  
10 Pembroke, and you see the question highlighted.  
11 I won't, actually I'll read it now. Sorry.

12 The question was what one special place in  
13 Pembroke is most important to permanently  
14 conserve. Are you familiar with this question  
15 or the responses that were received?

16 A I can't remember off the top of my head.

17 Q Okay. I'm just going to walk through a couple  
18 of them because they're all bulleted and they  
19 take up a couple pages, but just to give the  
20 Committee the flavor, some of the items that  
21 were provided in response: upland areas, the  
22 range roads, the lands along the Class VI roads,  
23 you see a lot of range road references, R3  
24 upland area, conservation land, and on and on.

1           There's quite a list actually.

2                        Wouldn't you agree that the R3 area means a  
3           great deal to the residents of Pembroke from  
4           these responses?

5   A    Yes.  I'm sure it does.

6   Q    Okay.  But you didn't, but you didn't consider  
7           whether the visual impact of the Project will  
8           endanger the values that the residents place on  
9           this area, correct?

10  A    I'm not the visual expert.

11  Q    Right.

12  A    But at the same time, I don't see any reason why  
13           these continued uses can't continue.

14  Q    No.  I understand that's your testimony.  Off  
15           the record.

16                        (Discussion off the record)

17  Q    Mr. Varney, I hope your screen is functioning  
18           again.  Do you have some testimony up on the  
19           screen there?

20  A    Yes.

21  Q    Okay.  I want to turn now to the town of New  
22           Hampton, and what I've put on the screen here is  
23           the Supplemental Testimony of Mr. Irvine which  
24           is Joint Muni 124, and I've highlighted here



1           some goals from the town's Master Plan. Are you  
2           familiar with the goals expressed there from the  
3           town of New Hampton?

4       A     Yes. And the Master Plan is a bit dated, I  
5           believe.

6       Q     In short, the town's Master Plan, I'm just  
7           paraphrasing, but they want to preserve the  
8           rural landscape, they want to retain the  
9           historic rural character, and they want to  
10          preserve scenic views and ridgelines; is that a  
11          fair kind of summary of those goals?

12      A     Yes.

13      Q     Okay. And the town of New Hampton also did or  
14          has done a community survey, and that's also  
15          referenced here on page 7 of Mr. Irvine's  
16          testimony. Do you see that starting at line 110  
17          there?

18      A     Yes.

19      Q     And the question that was posed is what's the  
20          best thing about New Hampton, and the responses  
21          that are included here are its peaceful,  
22          charming rural atmosphere, the natural beauty;  
23          do you see that there, sir?

24      A     Yes.

1 Q Would it be fair to say that the residents of  
2 New Hampton don't want the community that they  
3 know and love to change or to become too  
4 industrialized?

5 A Yes. They would like to keep it as it is which  
6 includes a large electric transmission line  
7 going through the community.

8 Q Sorry. I didn't mean to interrupt you.

9 And the Master Plan goals are intended to  
10 see that what the residents value is protected  
11 and preserved.

12 A Yes, which is why using existing corridors is an  
13 important planning consideration.

14 Q And these Master Plan goals are relevant to your  
15 analysis of orderly development, are they not?

16 A In terms of considering the views of  
17 municipalities.

18 Q So you don't consider the substance of what's  
19 expressed in these goals?

20 A No. I reviewed their Master Plan carefully as I  
21 previously indicated and summarized their Master  
22 Plan in my report.

23 Q Okay. The town of New Hampton's, the goals that  
24 we've just gone over and the Community Survey

1 results, they weren't mentioned once in your  
2 four-page summary of New Hampton in your October  
3 2015 report. Isn't that true?

4 A I believe that's probably true. I, generally  
5 speaking, try to focus on the goals and  
6 objectives and recommendations in the plan as  
7 opposed to survey results.

8 Q And I'm going to turn now to that portion of  
9 your report which is Applicant's 1, Appendix 41,  
10 pages A 67 to A 70.

11 A You're describing the land use along the route  
12 as opposed to the Master Plan, correct?

13 Q Well, I'm just -- well, we'll move on. We'll  
14 move on.

15 Earlier in your report, and this is a  
16 statement that you made in reference to the  
17 local, regional and statewide plans that you  
18 evaluated, your response is that, and we talked  
19 about this a little bit earlier, the plans did  
20 not directly relate to the construction or  
21 operation of the Project. Do you see that  
22 there?

23 A Yes.

24 Q I want to turn now, Mr. Varney, to a little

1 later in your report. And this is also from  
2 your October 2015 report, and this is on page 11  
3 of that report. Do you see that highlighted  
4 section at the bottom there?

5 A Yes.

6 Q Okay. You mention there that the town's plans  
7 were reviewed and considered, and then you say  
8 to enhance Normandeau's understanding of the  
9 effect of the Project on land use and orderly  
10 development, correct?

11 A Yes. In the context of the goals and objectives  
12 that they've set for the community and within  
13 the context of their land use chapter which  
14 identifies existing land uses in the community,  
15 and, as you know, I tried to use local maps  
16 whenever they were available for existing land  
17 use and to look at the Project in the context of  
18 existing land uses as well as in the context of  
19 the broad goals that are contained in the master  
20 plans.

21 Q So you apparently had some understanding prior  
22 to doing any of this work, and then you  
23 confirmed that understanding by reviewing the  
24 towns' master plans; is that a fair statement?

1 A No. I began reviewing master plans very early  
2 in the process and then tried to update them in  
3 those communities that had master plan update  
4 efforts under way.

5 Q But it sounds like from this portion of your  
6 report that you had some sort of understanding  
7 before you looked at the master plans, and what  
8 I want to know is what was that understanding?  
9 Because you say that it enhanced your  
10 understanding.

11 A Yes. It enhanced my understanding as it relates  
12 to the local and regional plans, and I looked at  
13 the Project within the context of those local  
14 and regional plans on prevailing land uses, and  
15 then as we've discussed previously, orderly  
16 development includes benefits to the economy and  
17 jobs and considered all of that.

18 Q Prior to being retained to offer an opinion to  
19 the SEC for this Project, were you already of  
20 the opinion that placing a Project of this size  
21 and scope in an existing corridor would not  
22 unduly interfere with orderly development?

23 A I was mindful of the fact that the SEC has  
24 consistently stated that use of existing

1 corridors is preferred when possible, and that's  
2 embedded in several of their decisions. And as  
3 a former member of the SEC I was aware of that  
4 and during my time at DES and at EPA, we also  
5 tried to encourage Applicants to use previously  
6 disturbed areas if they were available as a  
7 reasonable practicable option.

8 Q Was that your opinion because you knew that it  
9 would likely be acceptable to the SEC?

10 A I looked at it very carefully as you can see in  
11 the materials that I reviewed and which were  
12 provided. I reviewed every master plan in  
13 detail, I reviewed every zoning ordinance in  
14 detail, calculated percentage of land area,  
15 described prevailing land uses along the  
16 right-of-way. Looked at it very thoroughly  
17 before reaching any final conclusions, and my  
18 final conclusions weren't completed until after  
19 the revised route was announced, and I needed to  
20 prepare expert testimony.

21 Q Was the Applicant aware of your understanding of  
22 the use of existing corridors prior to when you  
23 were retained?

24 A Yes. I think in the industry, in the electric

1 utility industry, it's generally regarded that  
2 use of existing transportation and electric  
3 corridors is a sound principle.

4 Q I want to turn now to a different page of your  
5 October 2015 report. This is on page 30. We're  
6 still on Applicant's 1, Appendix 41. This is  
7 your concluding kind of thoughts on your review  
8 of master plans, correct?

9 A Yes.

10 Q And this is the sum total of your analysis in  
11 your October 2015 report regarding consistency  
12 with the towns' master plans, isn't it?

13 A Again, I reviewed and described every single  
14 master plan along the Project route as well as  
15 abutting communities.

16 Q I understand that, but in terms of what was  
17 included in this October 2015 report, this two-  
18 or three-sentence highlighted portion is it;  
19 isn't that correct?

20 A No. There's a lot of text throughout the  
21 reports and in my expert testimony.

22 Q So it sounds like you're saying that other than  
23 this two or three-sentence section, there are  
24 other parts of your October '15 report that

1 contain analysis of master plans; is that what  
2 you're stating?

3 A I prepared a separate working document which was  
4 a summary of local master plans. It's about 150  
5 pages long. And tried to keep it brief and  
6 summarize it here for the benefit of the SEC  
7 members who would have to read all of it.

8 Q But that document wasn't submitted at the time  
9 this report was completed, was it?

10 A I don't believe so. I think it was provided  
11 later, and it's called a working document  
12 because, as you know, municipalities are in  
13 various stages of updating their plans and some  
14 may prepare one chapter a year or every other  
15 year or some may try to update the entire plan  
16 over a three or four-year period. So I tried to  
17 update the document as I went along so that I  
18 had an accurate up-to-date summary of the master  
19 plan goals, objectives and recommendations, and  
20 found that they, the Project would not interfere  
21 with the accomplishment of those goals and  
22 objectives and recommendations.

23 Q And I believe that document you're referring to  
24 has a date on it of, what, March 2017? Is that



1 correct?

2 A That was the latest update of it, I believe.

3 Yes.

4 Q Just for the record, I believe it's Applicant's  
5 Exhibit 201. Does that sound correct?

6 A I don't know.

7 Q Okay. We can come back to that.

8 So that document, though, is a working  
9 document wherein you, it sounds like you went  
10 into a little more specifics about a town's  
11 master plan, correct?

12 A Yes.

13 Q Okay. And had you completed that document at  
14 the time of your October 2015 report?

15 A Yes. I had a document, working document at that  
16 time that, again, the decision was made to not  
17 include it in the Application given the volume  
18 of materials that were coming in, and also with  
19 the recognition that going forward I would need  
20 to update it because it's not like describing a  
21 resource that is static and is still there in  
22 the future. It's constantly changing to a  
23 certain degree, and I just wanted to make sure  
24 it was up to date.

1 Q Do you know if that document as of October 2015  
2 was provided to the parties?

3 A I can't recall. We provided all of our  
4 information for discovery, every bit of  
5 information that we had, so I'm not sure what  
6 the Applicant did, but my guess would be they  
7 provided it.

8 Q Okay. So it's your recollection that whatever  
9 stage that document was in during discovery it  
10 was provided as part of discovery?

11 A Again, I can't speculate. All I can say with  
12 certainty is that we provided all of our  
13 information.

14 Q I believe it was mentioned in another Panel, and  
15 I forget which one, but this SEC proceeding is a  
16 show-your-work kind of deal, and the three  
17 sentences and the other portions that you recall  
18 in this report is really all there is as of  
19 October 2015, correct?

20 A Again, I don't know what was provided, but it's  
21 intended to be a summary of a section of local,  
22 regional and state planning.

23 Q And just kind of generally speaking in regards  
24 to community planning documents, you'd agree

1           that typically a municipality identifies a goal  
2           or a value it wants to preserve in a master  
3           plan, right?

4       A     Again, a broad vision statement.

5       Q     Sure.

6       A     And a land use chapter are the two mandated  
7           requirements for any master plan.

8       Q     And that's a future-looking goal; isn't that  
9           correct?

10      A     It's a, yes, a broad goal.

11      Q     And after a community identifies a value and  
12           articulates a goal, typically they're then  
13           placed in the context of a zoning ordinance or a  
14           site plan reg to really regulate what's allowed  
15           in a municipal municipality; would you agree  
16           with that?

17      A     Perhaps. I would also make it clear that I did  
18           not review site plan regulations. There were  
19           some instances where I may have inadvertently,  
20           but the statute is very specific about zoning  
21           ordinances and not subdivision regulations or  
22           site plan review.

23      Q     Okay. But I want to get back to my question.  
24           Do you want me to repeat it?

1 A Sure.

2 Q Okay. So wouldn't you agree that typically  
3 after a municipality identifies goals and puts  
4 them in a master plan the next step is to then  
5 take that goal and turn it into a restriction  
6 that's in a zoning ordinance?

7 A No. Many of the master plan recommendations  
8 have nothing to do with regulations. They're  
9 aspirational, and some may evolve into a  
10 regulation which may or may not fully address  
11 the goal that's been established. In fact,  
12 there are many zoning amendments in communities  
13 that have failed in front of the voters, even  
14 though on the face of it they may appear to be  
15 addressing a goal that's in the master plan. So  
16 it varies by community. Some are more  
17 regulatory oriented recommendations, but I would  
18 say that the vast majority of recommendations  
19 are, you know, we ought to consider looking at  
20 this or we ought to consider a regulation doing  
21 that, and then at some point in the future that  
22 may or may not happen.

23 Q But it sounds like you'd agree that at least in  
24 some communities, what's expressed in the master

1 plan does inform what's put into the zoning  
2 ordinance?

3 A Yes. It's intended to be one of potentially  
4 several actions that could be taken that would  
5 help address the broad goals and vision.

6 Q Wouldn't you also agree that that's the intent  
7 of how a master plan and zoning ordinance are  
8 intended to work together?

9 A As I've described it. Yes.

10 Q But your analysis doesn't mention or contain  
11 this sort of a step-wise analysis of what is  
12 first mentioned in a master plan and then is  
13 converted into something into a zoning  
14 ordinance, does it?

15 A No. That's a -- it's commonly known in the  
16 planning profession, Planning 101, and, again, I  
17 want to mention it's not solely a zoning  
18 ordinance. There are many, many recommendations  
19 in a plan that have nothing to do with zoning.

20 Q No. I understand that, sir. But I just wanted  
21 to make sure that the record is clear here.  
22 Your report and your analysis, it doesn't do  
23 that sort of a granular look at a particular  
24 community's master plan and then how that master

1 plan may have informed what ends up in a zoning  
2 ordinance; isn't that correct?

3 A I didn't evaluate the, I did not evaluate the  
4 extent to which the zoning ordinance partially  
5 addressed some of the goals in a master plan,  
6 but I did very carefully and thoroughly review  
7 and summarize every single town master plan and  
8 every zoning ordinance along the Project route.

9 Q Understood. Thank you.

10 I'm going to turn now to the Supplemental  
11 Testimony of Mr. Kettenring from the town of New  
12 Hampton and this is Joint Muni 120.

13 I want to turn your attention, Mr. Varney,  
14 to page 11 of his testimony. Do you see this on  
15 your screen there?

16 A Yes.

17 Q Okay. And he has excerpted several goals of the  
18 New Hampton Master Plan, and you see the first  
19 one starting at line 4 there of goal 3.1. Do  
20 you see that?

21 A Yes.

22 Q And summarizing it, it roughly states that the  
23 goal is to preserve the rural working landscape  
24 partly due to sustainability, correct?

1 A Yes. It's agricultural, encouraging  
2 agricultural uses.

3 Q Yes. Thank you. Thank you.

4 And you see on that same page on line 13  
5 the statement that the town adopted a zoning  
6 ordinance that allows agritourism by special  
7 exception, and the intent was to give farms an  
8 alternative source of income to maintain  
9 sustainability; do you see that?

10 A Yes. I do.

11 Q Do you have any reason to disagree with  
12 Mr. Kettenring's statement about the intent of  
13 that zoning ordinance amendment?

14 A I would say that I agree with his second  
15 sentence that says the intent is to allow  
16 existing and future farms to pursue an alternate  
17 source of income that will help them maintain  
18 sustainability and referring to usually  
19 commercial uses within the agricultural, in  
20 these agricultural locations. So it's  
21 commercialization usually with respect to that  
22 issue.

23 And then the next sentence about  
24 degradation of views would significantly reduce

1 the value of this option, I didn't see any  
2 substantiation of that statement. That there  
3 was a visual impact expert working on this  
4 Project. I did not review visual impact.

5 Q We're going to get to that in a little more  
6 detail, Mr. Varney.

7 A Okay.

8 Q So you'll have a chance. I promise you.

9 Would you agree that the zoning ordinance  
10 amendment that provides for agritourism as an  
11 alternative source of income helps to address  
12 the master plan goal of sustainability?

13 A As, yes, as I've previously stated, the zoning  
14 ordinance is one of several tools that help  
15 implement master plans.

16 Q If, Mr. Varney, the Project degrades the  
17 pastoral views from these farms and the  
18 agritourism is not a popular use, wouldn't that  
19 jeopardize the goals of the master plan?

20 A Again, it's speculation. I didn't conduct the  
21 Visual Impact Assessment for the Project, and  
22 the Project is within an existing transmission  
23 corridor.

24 Q Understood.



1 A And theoretically, if it is -- go ahead.

2 Q I'm sorry. And you stated this already, but you  
3 didn't do any sort of analysis on whether the  
4 visual impacts could undermine these master plan  
5 goals, correct?

6 A No. I did not look at it, but I also had the  
7 knowledge in reviewing the plan that this  
8 process would require visual impact analysis and  
9 assessment.

10 Q Understood. I want to turn to the next portion  
11 of this testimony which is on page 12 and you  
12 see highlighted beginning on line 1 is another  
13 goal of the master plan. This one just, I'm  
14 summarizing, to retain the unique and historic  
15 rural character. Do you see that?

16 A Yes.

17 Q And do you see that the sentence after that that  
18 says this is mainly a visual goal?

19 A Yes.

20 Q Do you accept, Mr. Varney, that the Project is  
21 going to add 62 new towers, each one of those  
22 towers being the tallest structure in the town  
23 of New Hampton?

24 A Again, I didn't conduct a visual assessment.

1 Q That's not what I asked you. Will you accept  
2 that the Project will add 62 new towers, each of  
3 which would be the tallest structure in town?

4 A Yes. There will be an increase in structure  
5 heights within the corridor.

6 Q Okay. And each of those structures will be the  
7 tallest structure in town.

8 A I don't know. I didn't evaluate other  
9 structures, whether they're cell towers or other  
10 structures. I don't know.

11 Q Understood. And that's fine. That's fine.  
12 Assuming that is true, Mr. Varney, you didn't  
13 consider whether that potential visual impact  
14 would degrade the town's rural character, did  
15 you?

16 A Again, by staying within an existing  
17 transmission corridor and knowing that a Visual  
18 Assessment was part of this process and that  
19 various means of mitigation were being  
20 undertaken and that there was an opportunity for  
21 the town to work with the Applicant to address  
22 any specific locations of concern, I understood  
23 the issue, I understood the concern and felt  
24 that there was a process in place that would

1 address those concerns under the jurisdiction of  
2 the Site Evaluation Committee.

3 Q I understand that. It's much easier if you can  
4 start your answer with a yes or no, and then you  
5 can provide that explanation. So I'm going to  
6 say to you that your answer is no with the  
7 caveat that you just put on the record, correct?

8 MR. NEEDLEMAN: Objection.

9 PRESIDING OFFICER HONIGBERG: Yes, I  
10 understand what you just tried to do,  
11 Mr. Whitley, and I'm sympathetic, but the way  
12 you just finished what you did was a little  
13 heavy-handed, I think. I think you can ask him,  
14 does that mean your answer is no. And I would  
15 say to you, Mr. Varney, certainly if possible,  
16 if you can say yes, let me explain or no, let me  
17 explain, I'm probably going to allow you to do  
18 that.

19 A Okay.

20 Q I'll state for the record, Mr. Varney, is your  
21 answer no then to my visual impact analysis  
22 question?

23 A I did not conduct a visual impact analysis for  
24 this Project which I've stated several times.

1 Q Thank you, sir. Off the record.

2 (Discussion off the record)

3 Q Further down this page, Mr. Varney, you see  
4 another goal of the master plan. This is at  
5 line 10, and I'm summarizing here, preserve  
6 scenic view areas and ridgelines, and there's an  
7 example of what would be a negative impact of a  
8 cell tower. Do you see that, sir?

9 A Yes.

10 Q And then you see starting on line 15 there is an  
11 excerpt from the town of New Hampton Site Plan  
12 Review regulations which states where  
13 appropriate installation of utilities shall be  
14 buried, correct?

15 A For projects that are within their jurisdiction,  
16 correct.

17 Q Correct. That's right. Okay. But you didn't  
18 do any sort of analysis to see if it might be  
19 appropriate or not to bury in New Hampton, did  
20 you?

21 A No.

22 Q Okay. I want to turn now, Mr. Varney, to your  
23 review of the New Hampton zoning ordinance on  
24 your screen there; do you see that, sir?

1 A Yes.

2 Q This is, again, Joint Muni 280, and this is page  
3 67 of that document.

4 Mr. Varney, would you agree that in New  
5 Hampton, the Project runs through the general  
6 residential district as well as the Pemi Overlay  
7 District; does that sound correct?

8 A Yes.

9 Q And I have on the screen here, this is Joint  
10 Muni 121, and this is the district regulations  
11 for the general residential district. Do you  
12 see that there, sir?

13 A Yes.

14 Q And following the top there, on the bottom is  
15 the Table of Uses which is where the -- well, do  
16 you see the Table of Uses, sir?

17 A Yes.

18 Q And you didn't consider whether or not the  
19 Project might fit with any of these uses, did  
20 you?

21 A I believe in the prior slide that it summarized  
22 all of the permitted and conditional uses and  
23 special exceptions within each district. It  
24 described them and listed them.

1 Q No, I understand that your summary did contain a  
2 description, but what I'm asking is did you  
3 evaluate whether the Project met any of the uses  
4 that were permitted in the district?

5 A No, and let me explain. That I was searching  
6 for information in addition to what is displayed  
7 in this table that I currently see, the types of  
8 uses that were allowed with conditional use or  
9 special exception where there was some extra  
10 review involved in addition to those Projects  
11 that are permitted uses. And so I did review  
12 them. I did consider them. But I didn't rely  
13 on that entirely.

14 Q So if I understand correctly, if the Project  
15 wouldn't fit within any of these uses and needed  
16 a variance, if it was jurisdictional, you didn't  
17 do any sort of analysis of whether the Project  
18 might be able to get a variance, correct?

19 A Correct, except for the fact that I did look at  
20 structure heights.

21 Q That's my next question is on the following page  
22 here, it sounds like you'd agree that there's a  
23 structure height limitation of 35 feet. Is that  
24 correct?

1 A Yes.

2 Q But I don't recall seeing any consideration --  
3 I'm sorry. Strike that.

4 Wouldn't you agree that the Project does  
5 not fit within any of the exception categories  
6 that's in this provision?

7 A No, but these are other structures that are  
8 generally not occupied by humans and typically  
9 where they allow for increased height, and a  
10 good example for New Hampton would be the  
11 wind-operated devices where New Hampton allows  
12 up to 150 feet or 35 feet above tree line to  
13 receive a special exception, given that they're  
14 jurisdictional for small wind projects.

15 Q I'm going to ask you to go back to my question  
16 because I don't know if I understood your  
17 answer.

18 So there are various exceptions described  
19 here, right?

20 A Yes.

21 Q Okay. And do you believe that the Project, if  
22 jurisdictional, would fit one of those  
23 exceptions or no?

24 A Utility structures are not in the list for

1 height regulations, and so I didn't see it and I  
2 didn't comment on it. Some deal with them in  
3 different ways. Some deal with them in  
4 definitions. And sometimes you have to go back  
5 and forth between the definitions and the uses  
6 that are listed, but I did look at structure  
7 heights primarily because that seems to be the  
8 greatest concern.

9 Q Every Project structure in New Hampton is going  
10 to exceed 35 feet, isn't it?

11 A Yes.

12 Q I want to turn now to, this is the Town of New  
13 Hampton Site Plan Regulations, Section 10, part  
14 E, and you see I've highlighted subparagraph 1  
15 there. Do you see that on your screen,  
16 Mr. Varney?

17 A Yes.

18 Q And you mentioned before you reviewed some towns  
19 site plan regs. Was New Hampton one of them?

20 A I can't recall.

21 Q Okay. Okay. You see here that this portion of  
22 the site plan regs requires a 50-foot buffer  
23 between nonresidential and residential uses,  
24 correct?



1 A Yes.

2 Q Would you agree with me that the Project is not  
3 a residential use?

4 A Yes, I would agree with you.

5 Q And you're not aware of any plan for 50-foot  
6 buffers in New Hampton between the Project and  
7 any residences, correct?

8 A I'm not aware of the discussions that the  
9 Project may be having with local property  
10 owners, but I will say that with other Projects  
11 that it's common for the Applicant to work with  
12 adjacent property owners on mitigation and  
13 trying to work with them on buffers and come up  
14 with something that works for everyone.

15 Q But as you sit here today, you're not aware of  
16 any 50-foot buffer between them?

17 A No. I'm not.

18 Q I want to turn your attention now to page 12 of  
19 Joint Muni 121, and just for the record, it's  
20 Bates Joint Muni 7292.

21 Mr. Varney, are you familiar with the Pemi  
22 Overlay District in New Hampton?

23 A Yes.

24 Q Would you agree with me that the district

1 extends 500 feet from the normal high water mark  
2 of the Pemi?

3 A Yes.

4 Q Would you also agree with me that the district  
5 has a setback requirement of 200 feet from that  
6 normal high water mark?

7 A I can't recall, but I'll take your word for it.

8 Q Well, I'll try to make it easier and I'll show  
9 you.

10 So this is the following page, so this is  
11 Joint Muni 7293, and you see V there. Do you  
12 see that, sir?

13 A Yes.

14 Q Okay. Would you agree with me that there's a  
15 setback requirement of 200 feet?

16 A Yes.

17 Q Thank you. Are you aware, sir, that at least  
18 four Project towers are within 200 feet of the  
19 Pemi River?

20 A Yes, I am.

21 Q And I'm going to show you now, what I've put on  
22 the screen, Mr. Varney, is the Project sheets  
23 for some segments that go through New Hampton.  
24 And what I want to draw to your attention is

1 the, or have you just agree with me on the  
2 Project towers that are within 200 feet of the  
3 Pemi. So this one, and I'll blow it up so we  
4 can see. And these are the most recently  
5 revised Project maps. So for the record, this  
6 is Applicant's 201, and do you see the, kind of  
7 the left-hand side of the screen there, and I'll  
8 blow it up one more time, sir, maybe twice. Do  
9 you see DC, structure DC 1120?

10 A Yes.

11 Q Okay. Would you accept that that structure is  
12 about 100 feet from the river?

13 A I'm not able to measure it, but if you have,  
14 then I'm sure you're correct.

15 Q Okay. I want to turn now to the same exhibit,  
16 this is Plan Sheet 129. Here I want to draw  
17 your attention to structure DC 1144. Do you see  
18 that? It's just to the left-hand side of the  
19 river.

20 A Yes.

21 Q Okay. And there's another structure here which  
22 is the relocated 115 and that is E 115-168. Do  
23 you see that structure?

24 A Yes.

1 Q And would you accept that both of those are less  
2 than 100 feet from the river?

3 A Yes.

4 Q And now I'm going to turn to Project Map 133,  
5 and you see on the right-hand side of the river  
6 there, there's two structures. There's DC 1175,  
7 do you see that, sir?

8 A Yes.

9 Q And then below it is the 115 line is structure  
10 122?

11 A Yes.

12 Q Would you agree with me that those are less than  
13 200 feet from the river?

14 A Yes.

15 Q But you didn't consider the Project's compliance  
16 in the Pemi Overlay District, did you?

17 A I was well aware of the Pemi Overlay District  
18 and also aware of the fact that the Project is  
19 subject to Army Corps and DES permitting with  
20 the Shoreline Protection Act and also aware that  
21 there are various design considerations for the  
22 crossing of a river that need to be taken into  
23 account by the design engineers and was also  
24 aware that the town had, was essentially silent

1 on the existing electric lines in the community.

2 Q So is that a no or a yes as to whether you  
3 considered the Project's compliance in this  
4 district?

5 A So yes, I did consider it.

6 Q You've testified earlier that you did a review  
7 of the zoning ordinance in each of the host  
8 communities, right?

9 A Yes.

10 Q I want to turn now briefly to the New Hampton  
11 zoning ordinance review. Here we are. So on  
12 your screen there, Mr. Varney, is your review of  
13 the New Hampton zoning ordinance, and for the  
14 record, this is Joint Muni 280, and we are  
15 looking at page 66 through 70 is the New Hampton  
16 portion of your review. Is that correct, sir?

17 A Yes.

18 Q This Zoning Ordinance Review, it fails to  
19 mention the Project not being a permitted use in  
20 the general residential district, doesn't it?

21 A It's silent, appears to be silent in the  
22 ordinance on electric lines.

23 Q And for the Pemi Overlay District, which is on  
24 the following page which I've just brought up

1 for you, there's no mention of structure  
2 setback, is there?

3 A No.

4 Q And further down, New Hampton was a town where  
5 you reviewed the site plan regs, correct?

6 A Yes. I just provided a brief reference to them  
7 given that there was some information that I  
8 thought would be helpful to the Project  
9 Applicant. Things like noise levels concerns  
10 and hours of the day and so on.

11 Q And this, your review or your summary fails to  
12 mention the provision we looked at earlier that  
13 states, where appropriate utilities must be  
14 buried, correct?

15 A My understanding is that that referred to  
16 distribution lines, not transmission lines. At  
17 least that was my understanding of it.

18 Q What's that understanding based on?

19 A Reading the language.

20 Q Does it say specifically distribution lines?

21 A No, but given that they don't have jurisdiction  
22 over large transmission lines, I assumed it was  
23 distribution.

24 Q Okay. This site plan section also doesn't

1 mention the 50 foot buffer between  
2 nonresidential and residential uses, does it?

3 A No, but again, in some cases there may already  
4 be a buffer there, and I'm aware that where  
5 buffers can remain that Applicants try to retain  
6 those existing buffers wherever they can.

7 Q If your review of the New Hampton zoning  
8 ordinance missed all those things, then why  
9 should the SEC place any weight on your analysis  
10 of the Project's consistency with the zoning  
11 ordinance?

12 A I didn't miss all those things. I simply  
13 provided a brief summary of site plan review  
14 regulations that are not even, it's not even  
15 required by the SEC in this process, but I  
16 wanted to note the regulation's existence in the  
17 report.

18 Q Off the record.

19 (Discussion off the record)

20 PRESIDING OFFICER HONIGBERG: We're going  
21 to break for lunch. We'll come back about 20  
22 minutes after 1.

23 (Lunch recess taken at 12:15  
24 p.m. and concludes the **Day 37**

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**Morning Session.** The hearing continues under separate cover in the transcript noted as **Day 37 Afternoon Session.**



C E R T I F I C A T E

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

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

Dated at West Lebanon, New Hampshire, this 27th day of September, 2017.

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Cynthia Foster, LCR