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I N D E X

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

2 CHAIRMAN HONIGBERG: Good morning,
3 everyone. It's Day 41. We're continuing with
4 Ms. Widell and Dr. Bunker. And the questions
5 will be taken up by Ms. Boepple.

6 (Continuation of the witness
7 panel of ***Cherilyn Widell and***
8 ***Victoria Bunker.***)

9 MS. BOEPPLE: Thank you, Chair. Good
10 morning, Ms. Widell, Dr. Bunker.

11 WITNESS BUNKER: Hi.

12 WITNESS WIDELL: Good morning, Ms.
13 Boepple. Nice to see you this morning.

14 MS. BOEPPLE: You, too. Just for the
15 record, Beth Boepple, for the associate Society
16 for the Protection of New Hampshire's Forests.

17 My questions this morning will
18 primarily focus on the Programmatic Agreement.
19 I have a few general questions about the
20 Cultural Landscape Reports. But, to get us
21 started, if you could make sure you have in
22 front of you the Programmatic Agreement, that
23 would be great.

24 WITNESS WIDELL: I do have it. Thank

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1 you.

2 BY MS. BOEPPLE:

3 Q So, my first question -- I'm going to refer
4 back frequently, as we go through these
5 questions, to your testimony when you were last
6 here. Not earlier this week, but the first
7 go-around. And, if you don't recall some of
8 the questions that were asked of you, I believe
9 I have all of the pages from the transcripts
10 from that time. So, we can put those up on the
11 ELMO and remind you of the sequence of
12 questions and answers.

13 So, the first question I have for you is
14 in response to a sequence of questions that
15 came from Commissioner Way. And your
16 testimony, in response to a question that he
17 asked you having to do with the Programmatic
18 Agreement, he alluded to the Programmatic
19 Agreement as a "joint venture" to carry the
20 Project through completion and then operation.
21 Do you recall that sequence of questions?

22 A (Widell) Not precisely.

23 Q Do you generally remember those questions?

24 A (Widell) Generally, I remember, certainly,

[WITNESS PANEL: Widell|Bunker]

1 answering questions about the Programmatic
2 Agreement, yes.

3 Q Okay. And specifically from Commissioner Way?

4 A (Widell) The specifics, as I said, I do not
5 remember precisely.

6 Q Do you remember Commissioner Way asking you
7 questions?

8 A (Widell) Yes, I do.

9 Q Okay. Great. That's a good start. So, some
10 of his questions, let's go to a page from the
11 transcript of that exchange. So, can you see
12 at the bottom, toward the bottom of the page,
13 where it's highlighted, and let's see if I can
14 zoom in.

15 ADMIN. MONROE: Beth, I'll help you.

16 MS. BOEPPLE: Thank you, Pam.

17 BY MS. BOEPPLE:

18 Q So, now can you see that clearly?

19 A (Widell) Yes.

20 Q And it says "I imagine, over the lifetime of
21 the Project, there will be changes that might
22 have to occur to that Programmatic Agreement?"

23 A (Widell) Yes.

24 Q And you see that. And do you recall him

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1 asking -- him making that statement and asking
2 that question?

3 A (Widell) Yes. You have refreshed that. Thank
4 you.

5 Q Okay. Great. Do you remember what your answer
6 was?

7 A (Widell) Clearly, I said "yes".

8 Q Yes, you did. And, then, do you also see --

9 A (Widell) I would like to see the rest of it,
10 the top of it, the top of -- on the top of the
11 next page, I believe my answer continues.

12 Q You see that?

13 A (Widell) Yes. And it indicates that I also
14 said that "making changes and amendments. And
15 it has a duration as well."

16 Q Yes. And, then, do you also see where
17 Commissioner Way continued and said "Who
18 instigates it?" and "where is the
19 responsibility?" in the --

20 A (Widell) Yes. "Who motivates those changes?
21 Who instigates it? Where is the
22 responsibility?" Yes.

23 Q Right. And do you see what your answer was?

24 A (Widell) Yes. It's clearly delineated in the

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1 document.

2 Q Okay. And, so, I'm going to ask you to pull up
3 the Programmatic Agreement and tell me where in
4 the Programmatic Agreement that is delineated
5 and documented?

6 A (Widell) I don't understand the question, as
7 far as what that means. Are you referring to
8 Resolution of Effects? Amendments to the
9 Agreement? The Dispute Resolution provision?
10 Which part of it do you want me to indicate is
11 responsible for when there is need for a change
12 or amendment? There's actually a provision for
13 making amendments as well.

14 Q I believe the questioning had to do with, if
15 the Programmatic Agreement itself had to be
16 changed. That's my understanding of the
17 sequence of the questions. Was that your
18 understanding?

19 A (Widell) Well, a programmatic agreement can be
20 changed in different ways, depending on the
21 needs of the parties who are part of that
22 agreement. So, there are different provisions
23 for making an amendment, for all sorts of
24 different things. So, those are all delineated

[WITNESS PANEL: Widell|Bunker]

1 in different parts of the Programmatic
2 Agreement.

3 Q And, so, my question is, where in the
4 Programmatic Agreement is that delineated and
5 where is the detail in the Programmatic
6 Agreement?

7 A (Widell) Shall I just take, under Stipulation
8 XVI, which provides, and it's on Page 44, it
9 provides for how amendments are made to the
10 Programmatic Agreement.

11 Q Right. And doesn't that specifically deal with
12 amendments to the document itself?

13 A (Widell) Yes.

14 Q Okay. And who are the signatories to this
15 document?

16 A (Widell) The signatories are the Vermont SHPO,
17 the New Hampshire SHPO, the Advisory Council on
18 Historic Preservation, and the Department of
19 Energy.

20 Q Right. Not the SEC, correct?

21 A (Widell) That's correct.

22 Q Okay. And, if something were to occur that
23 requires a change to this document, who is
24 likely to be the instigator of making an

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1 amendment to the Programmatic Agreement?

2 A (Widell) It is the signatories who have the
3 authority to instigate any amendment to the
4 Agreement.

5 Q And, again, so that wouldn't come from the Site
6 Evaluation Committee, correct? They're not a
7 signatory, correct?

8 A (Widell) They are not a signatory. A
9 Consulting Party may approach the Department of
10 Energy with a concern. There is a provision
11 for that. And the general public may even go
12 to the Department of Energy and indicate a
13 concern, which may be entertained by the
14 Department of Energy.

15 Q That's the Department of Energy, correct?

16 A (Widell) Yes.

17 Q That's not the same thing as the Site
18 Evaluation Committee, correct?

19 A (Widell) Yes.

20 Q Okay.

21 A (Widell) That's correct.

22 Q I just want to be very clear about what
23 entities are parties to this Agreement, and
24 what responsibilities lie with the different

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[WITNESS PANEL: Widell|Bunker]

1 entities. So, let's talk about the Department
2 of Energy. I've put up a section of the
3 Programmatic Agreement. And this is Applicants
4 Exhibit 204, APP68671. And I'm going to draw
5 your attention to Paragraph 18, that begins
6 "whereas".

7 A (Widell) Yes, I see it.

8 Q Do you see that?

9 A (Widell) Uh-huh.

10 Q And do you see what that says?

11 A (Widell) Yes.

12 Q Okay. So, let's -- could you read that please?

13 A (Widell) Yes. "Whereas, this Programmatic
14 Agreement addresses the planning and
15 construction activities of the proposed
16 Project; this Programmatic Agreement also
17 addresses operations and maintenance activities
18 of the proposed Project as reasonably
19 foreseeable effects; this scope is limited
20 because operation and maintenance activities
21 are outside Department of Energy's
22 jurisdiction."

23 Q Okay. So, in light of this, would it be
24 accurate to say that it's unlikely that the

[WITNESS PANEL: Widell|Bunker]

1 Department of Energy will be the one -- will be
2 one of the parties monitoring the Project?

3 A (Widell) Yes, that is true. They will not be
4 monitoring. But, since there will be a
5 Historic Properties Treatment Plan that they
6 have been part of developing, as will also the
7 other signatories as well, they will have had
8 an opportunity to participate in the
9 development of that Historic Properties
10 Treatment Plan, which will oversee the
11 operations and maintenance and construction
12 stage of the Project.

13 Q So, where is that Hydro-Quebec Historic
14 Properties Treatment Plan in the Programmatic
15 Agreement?

16 A (Widell) I will have to look it up. Give me a
17 moment here.

18 Q Take your time.

19 A (Widell) I'm asking my colleague as well, who
20 is very familiar with the document.

21 It's on Page 27, under C, looks like
22 Stipulation V.C, "Resolution of Adverse
23 Effects".

24 Q Right. Where's the detailed Historic Treatment

[WITNESS PANEL: Widell|Bunker]

1 Plan in that section? Is that a detailed plan
2 that's incorporated within this section of the
3 Programmatic Agreement?

4 A (Widell) I'm going to take that question in two
5 parts. It is a very detailed plan.

6 Q Excuse me. I just want to focus on the plan
7 that you've made reference to, and ask you is
8 it within this document, the Programmatic
9 Agreement?

10 A (Widell) May I please answer your first
11 question? The Historic Property Treatment Plan
12 is a very detailed plan, which is directed to
13 be done with party participation in that
14 creation and part of this Programmatic
15 Agreement.

16 Q Has that been drafted yet?

17 A (Widell) Portions of it have been drafted, yes.

18 Q Do we have that in front of the Site Evaluation
19 Committee?

20 A (Widell) No.

21 Q And it's not actually detailed within the
22 Programmatic Agreement, correct?

23 A (Widell) It certainly -- the pieces and parts
24 that need to be included are discussed in the

[WITNESS PANEL: Widell|Bunker]

1 Programmatic Agreement. Such as unanticipated
2 discoveries, monitoring a training plan for the
3 work -- construction workers, that sort of
4 thing. So, what is going to be in that
5 Historic Properties Treatment Plan is
6 definitely part of the Programmatic Agreement.

7 It is not common to include the entire
8 plan in such an agreement document in my
9 professional experience.

10 Q And I believe, in fact, your prior testimony
11 was that the details and the specifics for this
12 particular Project would be incorporated into a
13 totally separate document. That it's not part
14 of the Programmatic Agreement as a detailed
15 plan?

16 A (Widell) Yes.

17 Q Okay. I'm also going to ask you to take a look
18 at another paragraph within the Programmatic
19 Agreement. At the top, Paragraph 16, could you
20 read that please.

21 A (Widell) I'm following along in my copy. Thank
22 you. "Whereas", number 16, "the Department of
23 Energy has determined that the undertaking has
24 the potential to adversely affect historic

[WITNESS PANEL: Widell|Bunker]

1 properties listed in or eligible for listing in
2 the National Register of Historic Places".

3 Q So, that describes, does it not, what the
4 Department of Energy's jurisdiction is over the
5 types of historic properties, does it not?

6 A (Widell) I'm not sure I understand your
7 question. Can you clarify it for me?

8 Q Yes, I can. Sure.

9 A (Widell) So that I can make sure I answer it
10 accurately for you.

11 Q Absolutely. That paragraph identifies what the
12 Department of Energy's undertaking is with
13 respect to historic properties, is that
14 correct?

15 A (Widell) Basically, it states that the
16 Department of Energy has determined that this
17 type of undertaking is one that has the
18 potential to adversely affect historic
19 properties.

20 Q Which are listed in or eligible for listing on
21 the National Register, correct?

22 A (Widell) Yes. That's what the definition of an
23 historic property is in a Section 106 document.

24 Q Right. Now, are you familiar with New

[WITNESS PANEL: Widell|Bunker]

1 Hampshire's definition of "historic
2 properties"?

3 A (Widell) If I can clarify that, the New
4 Hampshire Department of Historic Resources --
5 Division of Historic Resources' definition of
6 "historic properties" under Section 106 would
7 be identical.

8 Q No. That wasn't my question.

9 CHAIRMAN HONIGBERG: Yes.

10 Ms. Widell, I'm going to ask you to listen to
11 the questions carefully. That was a "yes" or
12 "no" question.

13 WITNESS WIDELL: Okay.

14 CHAIRMAN HONIGBERG: And I believe
15 your answer was "yes", because you gave a whole
16 lot of information about something. And all
17 she had asked you was "are you familiar with",
18 right?

19 WITNESS WIDELL: Okay.

20 CHAIRMAN HONIGBERG: Okay. So,
21 please listen to the questions carefully.

22 WITNESS WIDELL: Thank you, Mr.
23 Chairman.

24 BY MS. BOEPPLE:

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1 Q Okay. Are you familiar with New Hampshire's
2 definition of "historic property"?

3 A (Widell) Yes.

4 Q Then, if I put this up, you'll understand that
5 I'm showing you a section of New Hampshire's
6 statute where the definition of "historic
7 property" is down under Section VI. Do you see
8 that?

9 A (Widell) Yes.

10 Q And what does that say?

11 A (Widell) "'Historic property' means any
12 building, structure, object, district, area, or
13 site that is significant in the history,
14 architecture, archeology, and culture of this
15 state, its communities, or the nation."

16 Q Would you say that that definition is broader
17 than the definition that we find in the
18 Programmatic Agreement that the Department of
19 Energy uses for defining an "historic site",
20 which is that it's eligible for or is listed on
21 the National Register?

22 A (Widell) It is different, but it's not
23 necessarily broader.

24 Q Well, why don't we take a look at "historic

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1 resource" and the definition for that under New
2 Hampshire statute.

3 MR. WALKER: Mr. Chair, I'm going to
4 object. We've had this -- we've covered this
5 topic in prior hearings. And I'm not sure
6 where she's going with this, but we've
7 discussed this at length with Ms. Widell.

8 CHAIRMAN HONIGBERG: Ms. Boepple.

9 MS. BOEPPLE: So, the whole point of
10 this line of questioning is to try and get at
11 how the Programmatic Agreement is responsive to
12 New Hampshire's requirements under both the
13 statute for its definition of "historic
14 properties", as well as protection for those
15 resources.

16 If the Department of Energy -- so, in
17 brief, if the Department of Energy has entered
18 into an agreement, and their scope of
19 properties is limited to properties that are
20 eligible for or listed on the National
21 Register, what about all those properties that
22 would otherwise be defined as an historic
23 property under New Hampshire's statute?

24 CHAIRMAN HONIGBERG: And it's all

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1 tied to the Programmatic Agreement, correct?

2 MS. BOEPPLE: That's correct.

3 CHAIRMAN HONIGBERG: Overruled. You
4 can continue.

5 BY MS. BOEPPLE:

6 Q So, could we take a look at "historic
7 resources" under the statute please.

8 MS. DORE: And can you identify the
9 statutes we're looking at?

10 MS. BOEPPLE: And we're looking at,
11 as it states, Title XI [Title XIX?], Public
12 Recreation, Chapter 227-C, Historic
13 Preservation, Section 227-C:1, Section VI and
14 Section VII.

15 BY MS. BOEPPLE:

16 Q So, "historic resource", what does that say,
17 Ms. Widell?

18 A (Widell) "Any historic property which has been
19 listed in the New Hampshire state register of
20 historic places or has been determined eligible
21 for the New Hampshire state register of
22 historic places by the division of historical
23 resources or which had been -- has been listed
24 in the National Register of Historic Places or

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1 has been determined by the keeper of the
2 register to be eligible for the National
3 Register using the criteria for evaluation in
4 36 C.F.R. Part 800 [sic]."

5 Q Thank you. So, if New Hampshire intended their
6 definition of "historic property" to be limited
7 strictly to properties that are eligible for or
8 are actually listed on the National Register,
9 why would they waste all that language in
10 paper? Isn't it intended to cover a broader
11 range of properties?

12 A (Widell) I can't answer that. I don't know
13 what this particular statute, the purpose of it
14 is for.

15 Q The words themselves indicate that there are
16 other properties beyond those listed on the
17 National Register, does it not?

18 A (Widell) It states that for this particular
19 statute, in this set of definitions, yes.

20 Q Thank you. I'm going to ask you if you know or
21 can point to any section of the Programmatic
22 Agreement that defines "historic properties"
23 that are covered by the Programmatic Agreement
24 and uses the New Hampshire definition? Is

[WITNESS PANEL: Widell|Bunker]

1 there a place in the Programmatic Agreement
2 that does that?

3 A (Widell) No.

4 Q Okay.

5 A (Widell) There certainly is a part of that
6 statute, which is the 36 C.F.R. Part 800 which
7 is referenced in the Programmatic Agreement.

8 Q So, I'd also like you to take a look at
9 Paragraph 15. Again, this is in the
10 Programmatic Agreement. And if you could read
11 that paragraph please.

12 A (Widell) "Whereas, portions (the majority) of
13 the proposed Project will also require state
14 siting authorization from the New Hampshire
15 Site Evaluation Committee (NH SEC), in
16 accordance with NH RSA 162-H; NH SEC's review
17 of NPT's October 19, 2015 application filing is
18 pending (NH SEC Docket Number 2015-06); the NH
19 SEC review is conducted as a separate,
20 independent process from the federal review
21 under Section 106 and is governed by New
22 Hampshire state law, and, as part of the New
23 Hampshire SEC review, the New Hampshire
24 Division of Historical Resources (NH DHR)

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1 executed a Memorandum of Understanding with
2 Northern Pass Transmission on December 4th,
3 2016 (available at...)", and it gives a link.

4 Q Right. And the language I want you to focus on
5 again is the line that says "the NH SEC review
6 is conducted as a separate, independent process
7 from the federal review". That's what it says,
8 correct?

9 A (Widell) Yes.

10 Q Right. So, since the SEC has to conduct a
11 separate review, again, the Programmatic
12 Agreement was intended -- strike that. The
13 Programmatic Agreement addresses the Section
14 106 process, does it not?

15 A (Widell) Yes.

16 Q Okay. And the SEC is focused on its
17 jurisdiction as established by New Hampshire
18 statute, correct?

19 A (Widell) Yes.

20 Q Okay. I'm going to ask you if you recall when
21 Mr. Roth was asking you questions?

22 A (Widell) Yes.

23 Q Okay. And do you recall, in his questioning,
24 he said "I'm not asking -- I'm not asking you

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1 whether there's going to be an adverse effect
2 or whether it can be mitigated. My question is
3 simply, with what remains to be done" -- do you
4 that? I can show you a copy of the transcript,
5 if that helps.

6 A (Widell) Yes. I remember.

7 Q Okay. So, this is Mr. Roth's questioning.
8 He's saying "I'm not asking" -- "I'm not asking
9 you" -- excuse me -- "I'm not asking you
10 whether there is going to be an adverse effect
11 or whether it can be mitigated. My question is
12 simply, with what remains to be done," -- I
13 think the "to" should be a "do", "do you
14 believe that there is a tremendous amount of
15 work that remains to be done to do all that?"
16 Do you see your response?

17 A (Widell) Yes.

18 Q And he said "and it has" -- and then you go on
19 and he says "okay", and then you said "and it
20 has, and they have outlined how that will be
21 accomplished through a programmatic agreement."
22 Correct?

23 A (Widell) Yes.

24 Q That's what you said?

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1 A (Widell) Uh-huh.

2 Q Okay. And, again, so, you've pointed to the
3 Programmatic Agreement, and said that the
4 mitigation and the steps to protect New
5 Hampshire's historic properties are going to be
6 controlled and mitigated and protected through
7 this Programmatic Agreement. Is that correct?

8 A (Widell) Through the Agreement and Historic
9 Properties Treatment Plan that is developed
10 through this Programmatic Agreement, yes.

11 Q All right. So, I'm trying to understand how
12 the Committee can have an assurance that this
13 document and this treatment plan, that they
14 don't have in front of them and hasn't been
15 completely written yet, is going to protect New
16 Hampshire's resources? Can you explain that?

17 A (Widell) It is my understanding that a
18 programmatic agreement a memorandum of
19 agreement has been the vehicle that this body
20 has used for a number of projects in the past,
21 where all of the work had not yet been
22 completed.

23 Q My question was, with respect to this Project,
24 the Project that's before the Site Evaluation

[WITNESS PANEL: Widell|Bunker]

1 Committee, that's subject to their review
2 today, how does this Programmatic Agreement
3 address those concerns of New Hampshire's
4 historic resources?

5 A (Widell) In a number of ways, I'd be happy to
6 illustrate a couple, and then I would be happy
7 to go into further. I think the most important
8 one is what we just mentioned, which is the
9 development of specific mitigations for
10 specific adverse effects, and the creation of a
11 specific mitigation plan, which will be
12 documented and written in an Historic
13 Properties Treatment Plan.

14 Q Okay, "which will be". It's not done yet,
15 correct?

16 A (Widell) Yes.

17 Q So, it's not in front of the Committee. They
18 can't look at that and say "Wow, I'm so
19 relieved. I don't have to worry about historic
20 properties anymore. I know that there is a
21 plan in place that's going to protect them."
22 Correct? They don't have that, right?

23 A (Widell) No. They do not have it.

24 Q That was my question. They just -- they don't

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1 have it in front of them, right? And I don't
2 have it. So, I can't ask you questions about
3 whether it's adequately protecting New
4 Hampshire's resources, right?

5 A (Widell) No, not exactly. And let me explain.
6 Traditionally, it has always been the Division
7 of Historic Resources, which is the appointed
8 body for protecting New Hampshire's cultural
9 resources, historic resources. And they will
10 be -- they will not only be at the table, they
11 will have a review authority and approval
12 authority on that mitigation plan. And it will
13 be in writing, and it will have oversight not
14 just even by the Division of Historic
15 Resources, but the other parties that have
16 signed the Agreement. And there will be an
17 opportunity for the Consulting Parties, and
18 even the public, to see that mitigation plan.
19 That is beyond what might be put together by
20 just a separate group of individuals
21 representing a project.

22 So, I have, from my professional
23 experience, extraordinary amount of confidence
24 in this document, that not only will the

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1 mitigation for these historic properties be
2 completed, I think it will be done in a very
3 careful way that not only cares for the
4 individual properties, but benefits the State
5 of New Hampshire.

6 Q Ms. Widell, that's all well and good that you
7 have great confidence. It's really the Site
8 Evaluation Committee that has to have the
9 confidence. They're the ones who have to make
10 the decision here. And they need to look to
11 something and say "I know, we've looked, and
12 our resources are going to be protected."

13 Are you aware of whether the Division for
14 Historic Resources has exercised its authority
15 under New Hampshire statute to seek input and
16 provide input to the Site Evaluation Committee?

17 A I'm not sure I understand the question. Can
18 you help me understand it, so I can answer it?

19 Q I'm going to show you a statute. I'm showing
20 you a section of Title XII Public Safety and
21 Welfare, Chapter 162-H, Energy Facility
22 Evaluation, Siting, Construction and Operation.
23 This is Section 162-H:7-a, Role of State
24 Agencies. Do you see the first line?

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1 A (Widell) Yes.

2 Q "State agencies having permitting or other
3 regulatory authority may participate in
4 committee proceedings as follows:" Do you see
5 that?

6 A (Widell) Yes.

7 Q And you see where there's a variety of ways in
8 which State agencies can participate. Do you
9 see that?

10 A (Widell) Yes.

11 Q And, to your knowledge, has the Division for
12 Historic Resources sought involvement in this
13 proceeding under this statute?

14 A (Widell) I don't know the definition of "sought
15 involvement". I do know that DHR has
16 communicated a number of times with the SEC
17 informing them of progress, concerns,
18 information related to this Project. And I
19 have seen those letters.

20 Q And they've all qualified that they're doing it
21 under the Section 106 process, have they not?

22 A (Widell) I would have to refer back to the
23 letters precisely.

24 Q I can show you at least the most recent letter

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1 from Commissioner Boisvert, where the Division
2 has repeatedly made it clear that their role is
3 in the Section 106 process. Would you like me
4 to show you that letter? We spent a lot of
5 time on that the last time.

6 A (Widell) Is that the August 25th letter?

7 Q Yes.

8 A (Widell) I have it before me.

9 Q If you look at the end of that letter, I think
10 you will find that he has qualified the
11 Division's role is in the Section 106 process.

12 A (Widell) I'm sorry. The first, and if you have
13 a copy of it, could you put it up please?

14 Q Sure.

15 A (Widell) No. I asked for the first page.

16 Q Oh.

17 A (Widell) The letter refers specifically to the
18 docket number. It is addressed to the members
19 of the Northern Pass Transmission Subcommittee.
20 And it says "The purpose of this letter is to
21 present the members of the Site Evaluation
22 Subcommittee for the Northern Pass Transmission
23 Project (Docket 2015-06) a summary and status
24 of the historical resources identification and

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1 effects evaluation process."

2 Q And then it goes on to say "The DHR has the
3 responsibility to review this project under
4 Section 106 of the National Historic
5 Preservation Act". Correct?

6 A (Widell) No. On the fourth line it also says
7 "and under New Hampshire RSA 227-C:9". So, my
8 understanding is that there has been quite a
9 bit of information and dialogue between DHR and
10 SEC related to historic resources
11 identification and effects evaluation.

12 Q Okay. I read the letter, and I've read all
13 communications between DHR and the SEC, where
14 the qualification has always been that they are
15 conducting a review pursuant to the Section 106
16 process. Do you agree with that?

17 A (Widell) No.

18 Q Okay. Why do you disagree with that?

19 A (Widell) I specifically have also reviewed a
20 memo that clarified resources to be concerned
21 with related to the SEC process. And I do not
22 have that memo here. But I think that that is
23 the clarification that, to the SEC, about what
24 historic resources are and how they should be

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1 considered.

2 Q But you can't point to that document, can you?

3 A (Widell) It is not up here in my materials.

4 WITNESS WIDELL: Mr. Chairman, may I
5 ask?

6 CHAIRMAN HONIGBERG: May you ask?

7 WITNESS WIDELL: To get a copy of it?

8 CHAIRMAN HONIGBERG: If you need a
9 document to respond to a question?

10 WITNESS WIDELL: I don't need it.

11 But my questioner is not familiar with it.

12 CHAIRMAN HONIGBERG: If you need --

13 BY MS. BOEPPLE:

14 Q I'm tell you what. Rather than waste time
15 having you look for a document, my questions
16 really have to do with the -- you disagree.
17 You think that the DHR, and this is a simple
18 question, your position is that DHR has
19 exercised its right, as an agency, under the
20 statute, under New Hampshire statute, to advise
21 the SEC. Is that correct?

22 A (Widell) I can't speak to the legal aspects of
23 it. But, yes, they certainly have communicated
24 and informed the SEC about the progress on the

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1 identification and evaluation effects of
2 historic properties for the SEC.

3 Q In the Section 106 process, right?

4 A (Widell) No.

5 Q Okay. We'll agree to disagree, and we'll move
6 on.

7 Do you recall, during your testimony when
8 you were last here, not this week, before that,
9 that I asked you some specific questions about
10 your prefiled direct testimony. And I asked
11 you to read a section of your prefiled
12 testimony in which you stated "the Section 106
13 process will require that any adverse effects
14 will be mitigated." Do you remember that line
15 of questioning?

16 A (Widell) Yes. Vaguely, yes.

17 Q Okay. And do you remember -- so, I asked you
18 that specific question. And do you remember
19 what your response was?

20 A (Widell) No. Not sitting here right now.

21 Q Okay. So, my question is at the top of the
22 page, the bottom of this page and the top of
23 the next. You see that? And you see your
24 answer?

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1 A (No verbal response).

2 Q And what was your answer?

3 A (Widell) I'm reading through it. Thank you.

4 Q Let's read it allowed for the record. "The

5 Section 106 process will require that any

6 adverse effects will be mitigated" -- that

7 was -- I was quoting from your testimony, "and

8 that is done in the Programmatic Agreement."

9 That's what you said, correct?

10 A (Widell) Yes.

11 Q In your prefiled testimony?

12 A (Widell) Yes.

13 Q And then your response to my question was what?

14 "So, I'm going to go back to the letter from

15 DHR from this morning." That was your

16 response, correct? That's what the transcript

17 says, correct?

18 A (Widell) Actually, it indicates that that's a

19 question.

20 Q I'm sorry. Sorry. I apologize. You read from

21 your testimony "the Section 106 process will

22 require that any adverse effects will be

23 mitigated", correct?

24 A (Widell) Yes.

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1 Q And then you said "And that is done in the
2 Programmatic Agreement." Correct?

3 A (Widell) Yes.

4 Q Okay. So, again, I'm going to ask you to go
5 back to the Programmatic Agreement and tell me
6 where in the Programmatic Agreement the adverse
7 effects are addressed? How are they mitigated?
8 Does the Programmatic Agreement define how
9 those mitigation efforts will be undertaken?

10 A (Widell) I'll answer your questions in a couple
11 parts. The Resolution of Adverse Effects in
12 the Programmatic Agreement is on Page 26. The
13 standard and way that mitigation is done for
14 resolution of adverse effects, and much of this
15 is boilerplate from programmatic agreements
16 used elsewhere for projects of this size, is to
17 develop a plan for the mitigation of adverse
18 effects that are identified in Stipulation --

19 Q Let's read one paragraph from that.
20 "Resolution of Adverse Effects", what does that
21 first paragraph say? Let's read it allowed
22 please, for the record.

23 A (Widell) "Resolution of adverse effects on
24 historic properties from the undertaking will

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1 be considered in the preferred order of
2 avoidance, minimization, and mitigation. The
3 plan for resolution of adverse effects will be
4 documented in the Historic Properties Treatment
5 Plan. DOE will encourage Northern Pass
6 Transmission to make every effort to avoid
7 adverse effects when implementing the Northern
8 Pass project."

9 Q Thank you. So, it's not detailed in the
10 Programmatic Agreement, correct?

11 A (Widell) No. And that's very typical. That's
12 normal.

13 Q Whether it's typical or normal, I just want
14 to -- I'm just trying to get into the record
15 that it's not detailed in the Programmatic
16 Agreement, correct?

17 A (Widell) Correct.

18 Q Thank you. Do you recall Attorney Pacik
19 questioning you as well the last time you were
20 here?

21 A (Widell) Yes.

22 Q Okay. Again, this is from the transcript. And
23 do you see, toward the bottom of the page,
24 where Attorney Pacik says "But let's talk about

[WITNESS PANEL: Widell|Bunker]

1 the Programmatic Agreement." And then she goes
2 on and says "Say hypothetically there's a
3 determination that there is going to be an
4 adverse effect to an historic resource. Then
5 you're going to have a Programmatic Agreement.
6 And in the Programmatic Agreement they're going
7 to want, first, at least to be some sort of
8 avoidance or minimization to the historic
9 resource, right?" And then your response was
10 "yes"?

11 A (Widell) Yes.

12 Q Correct? And, again, not to be a dead horse,
13 but we don't have a detailed plan in the
14 Programmatic Agreement, do we?

15 A (Widell) No.

16 Q Thank you. And we don't have an avoidance or
17 minimization plan in the Programmatic Agreement
18 either, do we?

19 A (Widell) No.

20 Q Do you recall Attorney -- excuse me,
21 Commissioner Weathersby asking you some
22 specific questions, and this is addressed to
23 you, Dr. Bunker. And her questions had to do
24 with the potential discovery of human remains.

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1 A (Bunker) Yes.

2 Q Do you recall that?

3 A (Bunker) Yes, I do.

4 Q And, specifically, she asked you how that would
5 be handled. And do you remember giving her an
6 answer?

7 A (Bunker) I remember.

8 Q Do you remember what your answer was?

9 A (Bunker) That there was -- there's sequences
10 and steps, a protocol, to identifying the
11 burials and addressing them immediately.

12 Q Let's look at what the answer was that you gave
13 in the transcript. And there you said "In the
14 case of unanticipated human remains, we have a
15 policy and a protocol for that. And, in fact,
16 that's part of the Programmatic Agreement."
17 Correct? That's what you said?

18 A (Bunker) That's what you've shown me, yes.

19 Q This is a transcript from the hearing. Are you
20 saying that the transcript is not an accurate
21 recording of what you said?

22 A (Bunker) I did not say that.

23 Q So, do you agree that this is an accurate
24 recording of what you testified to?

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1 A (Bunker) Yes, I do.

2 Q Okay. So, you see that that's what you said,
3 correct?

4 A (Bunker) Yes.

5 Q Does the Programmatic Agreement set forth in
6 detail a process and protocol for dealing with
7 undiscovered human remains?

8 A (Bunker) No.

9 Q Thank you. Does the Committee have a protocol
10 and procedure before it to consider today for
11 undiscovered human remains?

12 A (Bunker) Not written as such. The Committee
13 has reference to other materials.

14 Q But they don't have a specific plan, protocol
15 or procedure in front of them, correct?

16 A (Bunker) Correct.

17 Q Thank you. Ms. Widell, do you recall
18 Commissioner Oldenburg asking you questions?

19 A (Widell) Yes.

20 Q Do you recall that he asked you some questions
21 regarding bridges and structural supports for
22 bridges?

23 A (Widell) Yes.

24 Q Okay. So, do you see the "Q" that's

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1 highlighted here? This is Commissioner
2 Oldenburg's question. And he says "And,
3 typically, they just don't sit on the river.
4 There's piles, basically, you know, metal
5 I-beams that they pound into the ground, you
6 know, 20, 30, 50 feet, until they hit bedrock.
7 So, there's a structure underneath the bridge.
8 And how do you know that this drilling isn't
9 going to hit those structures or affect those
10 bridges? And are there any measures that could
11 be done to protect those?" You see that?

12 A (Widell) Yes.

13 Q And you see your answer. And you said "And
14 that is, and with bridges, in the example
15 you've just given me, that would be a -- a
16 vibration would be a direct effect in the
17 underground portion, and could affect its
18 significance from an engineering standpoint.
19 So, it should be taken into consideration."
20 Correct?

21 A (Widell) Yes.

22 Q Do you recall two days ago when Attorney Aslin
23 was asking you questions about the vibration
24 effects?

[WITNESS PANEL: Widell|Bunker]

1 A (Widell) Yes.

2 Q And do you recall that you were quite certain
3 that there wouldn't be an impact, because the
4 engineers would make sure that that didn't
5 happen? Do you recall that was your testimony?

6 A (Widell) No. I do not believe that that's
7 exactly my wording. I said that the Project
8 has committed to following the New Hampshire
9 Department of Transportation, I believe it's
10 211, which is vibration monitoring, for
11 underground resources that might be affected by
12 vibration.

13 Q And, again, is there something in the
14 Programmatic Agreement that addresses that and
15 says that that's what's going to happen?

16 A (Widell) That specific citation is not in the
17 Programmatic Agreement.

18 Q All right.

19 A (Widell) But it is in the Effects Tables. So,
20 it is something that would be taken into
21 consideration in determining how to avoid,
22 minimize, or mitigate adverse effects.

23 Q I'm going to take you back to your testimony
24 the last time you were here. And, according to

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1 the transcript, what you said was, when
2 Commissioner Oldenburg said "Vibration
3 monitoring or whatever?", you responded with
4 "And that would also be part of the
5 Programmatic Agreement...which will have a
6 Historic Preservation Treatment Plan...to make
7 sure any of the resources, whatever they be,
8 along the way are protected during the
9 construction phase." That was your testimony,
10 correct?

11 A (Widell) Yes. I believe I said "Historic
12 Properties Treatment Plan", but I may have made
13 that error to say "Historic Preservation". But
14 I intended to say "Historic Properties
15 Treatment Plan", if that is the point of
16 confusion.

17 Q That wasn't the point of my question.

18 A (Widell) Oh, okay.

19 Q But thank you for clarifying that from you
20 testimony.

21 A (Widell) All right.

22 Q I thought that's what you intended to say.

23 A (Widell) Thank you.

24 Q Not "Preservation".

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1 A (Widell) Thank you.

2 Q My question goes to the fact that you said that
3 it "would also be part of the Programmatic
4 Agreement". Did you not say that? That's what
5 the transcript indicates was your testimony,
6 correct?

7 A (Widell) Yes. And the development of the
8 Historic Properties Treatment Plan is part of
9 the Programmatic Agreement. It is part of that
10 work, which will be accomplished as part of
11 that document.

12 Q We've already established it's not in the
13 document itself.

14 A (Widell) The plan has not been finalized.

15 Q Vibration monitoring is also not in the
16 Programmatic Agreement, correct?

17 A (Widell) No.

18 Q Thank you. Do you recall in Commissioner Way's
19 questioning about stone walls, and asking about
20 impact of the Project on stone walls?

21 A (Widell) Yes.

22 Q And do you recall your response to those
23 questions?

24 A (Widell) No, not precisely.

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1 Q Want to take a guess as to what it might have
2 been?

3 A (Widell) No. I don't want to take a guess.

4 Q Would it surprise you if you said it was the
5 Programmatic Agreement that was going to
6 address those issues?

7 A (Widell) Not at all, because that is the
8 case, --

9 Q And where --

10 A (Widell) -- absolutely, to avoid, minimize, and
11 mitigate any adverse effects.

12 Q And, again, we don't have an avoidance,
13 minimizing, and mitigation plan encompassed
14 specifically for this Project within the
15 Programmatic Agreement, do we?

16 A (Widell) No. And that is typical for the
17 development of programmatic agreements. In
18 memorandums of agreements sometimes it is
19 possible to put the precise mitigations for the
20 precise resources, because usually that covers
21 smaller projects. This is a large project.
22 So, you normally develop a mitigation plan for
23 the resources.

24 Q This is a very large project, isn't it?

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1 A (Widell) Yes.

2 Q One hundred ninety-two (192) miles. Potential
3 impacts on resources in New Hampshire are huge,
4 aren't they?

5 A (Widell) No.

6 Q They're not?

7 A (Widell) My testimony has indicated repeatedly
8 that the adverse effects on historic resources
9 of this Project are not large. They are of a
10 small number and of minimal impact to the
11 historic resources.

12 Q Okay. That's your opinion. But the Site
13 Evaluation Committee can only evaluate based on
14 what they have in front of them. And some of
15 what they don't have in front of them are
16 things you are saying they can rely on that
17 will protect the resources that may not even be
18 identified as part of the Section 106 process,
19 correct?

20 A (Widell) No. The Site Evaluation Committee,
21 and I have stated this before, so I won't make
22 it in a summary, that has an extremely large
23 amount of information, frankly, extraordinary,
24 even documents that are new to the State of New

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1 Hampshire in the form of cultural landscapes
2 reports, that show precisely where the historic
3 properties are, the type of effects that will
4 occur, be they underground or aboveground, and,
5 frankly, as I just stated, the small number of
6 resources that will be affected by this
7 Project.

8 Q We'll talk about the cultural landscapes,
9 actually, I think other questioners will ask
10 you about those. So, I'll leave that for now.
11 I think there may be an disagreement of opinion
12 on that.

13 So, Dr. Bunker, I'd like to ask you a
14 couple of questions. And ask if you recall
15 Commissioner Way asking you some specific
16 questions that have to do with what happens
17 during the construction process. Do you
18 remember that?

19 A (Bunker) Yes.

20 Q Okay. And one of your questions, I believe one
21 of the statements you said was, at the top of
22 the page of the transcript that you have in
23 front of you, "Part of our planning process
24 that will go forward as part of the

[WITNESS PANEL: Widell|Bunker]

1 Programmatic Agreement is training of
2 construction personnel." Do you remember --

3 A (Bunker) Yes.

4 Q -- testifying to that? Is there a written
5 training plan in place yet?

6 A (Bunker) No.

7 Q Okay. And I believe you also testified during
8 his questioning that there would be monitors
9 put in place. Do you recall that?

10 A (Bunker) Yes.

11 Q Again, is there a plan for those monitors
12 that's already written?

13 A (Bunker) No.

14 Q And that's not in front -- and, therefore, the
15 Site Evaluation Committee doesn't have that in
16 front of them, correct?

17 A (Bunker) Not as such, no.

18 Q Thank you. And, in fact, you testified to that
19 specifically when Commissioner Way asked you
20 "What happens if you find a game-changer? How
21 do you handle that?" Do you remember him
22 asking you that?

23 A (Bunker) Somewhat.

24 Q He did. At the bottom of the page, you see

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1 highlighted "What happens if you find a
2 game-changer?" The last highlighted sentence
3 on the page.

4 A (Bunker) I don't see my name on the last
5 sentence. Am I reading the wrong page?

6 Q No. You're reading the correct page.

7 Commissioner Way said "What happens if you find
8 a game-changer, that is something that could
9 have impacted" -- I know he's asking Ms. Widell
10 the question. And then he goes on to say "that
11 is something that could have impacted your
12 judgment, Ms. Widell, ahead of time, or,
13 Ms. Bunker? How do you handle that?" And then
14 Ms. Widell talks about the Programmatic
15 Agreement. But further on, Dr. Bunker, your
16 testimony is that you talk about "the monitors"
17 and "the training programs".

18 A (Bunker) I would agree that that's the
19 direction it took, yes.

20 Q Okay. Thank you. And would you also agree
21 that those plans and those processes and those
22 procedures have not been finalized?

23 A (Bunker) I would agree.

24 Q Thank you. Ms. Widell, do you recall

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1 Mr. Iacopino asking you questions?

2 A (Widell) Yes.

3 Q And do you recall where he specifically asked
4 you, and again I'm showing you a page from the
5 transcript of your testimony, "And other than
6 the Effects Tables for the underground section,
7 is there anything else other than that and, of
8 course, the cultural landscapes that are
9 pending?" And your response was "Not to my
10 knowledge, no. No." You see that was your
11 response?

12 A (Widell) Yes. I don't see the original
13 question, however.

14 Q So, his questioning, I may not -- I don't have
15 all of his line of questioning, but he was
16 asking you "what else needed to be provided",
17 and he was asking you about the Effects Tables.
18 You see that?

19 A (Widell) "Other than the Effects Tables", yes.

20 Q Okay.

21 A (Widell) Uh-huh.

22 Q Okay. And he went on to say -- you said -- he
23 asks you "have those cultural landscape reports
24 actually gone over to the DOE yet or are they

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1 still somewhere in between?" You see that?

2 A (Widell) Yes.

3 Q Okay. And what was your answer?

4 A (Widell) "Yes, they have, except for one, that
5 is being delivered -- tomorrow's Friday."

6 Q And then he goes on and he says "This is maybe
7 too deep into the weeds, but why is there some
8 sort of hesitation, in terms of where is it
9 going once you're done with it? I mean, I
10 figured you would be the last person before it
11 goes to DOE?" Right? Do you remember that
12 exchange?

13 A (Widell) Vaguely.

14 Q Okay. I'll show you what you responded to,
15 what you're response was. And you explain the
16 reason for your hesitation.

17 A (Widell) Uh-huh.

18 Q Your answer begins at the bottom of the page on
19 your left, you see what that says? And you say
20 "I am. I just reviewed the cultural landscape
21 report that will be delivered Friday",
22 *etcetera*. Then you talk about a consultant, do
23 you see that?

24 A (Widell) Yup.

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1 Q Okay. And Mr. Iacopino asks you "So, you're
2 waiting for staff to actually put the stamp on
3 it or however it gets filed with DOE?" You see
4 that? Down toward the bottom of the page?

5 A (Widell) Yes. Yes.

6 Q Okay. And he then asks you "how long it
7 typically takes for the DOE once they have
8 received these things to issue them to the
9 State Historic Preservation Officer and invite
10 the comments?" Do you see that?

11 A (Widell) Yes.

12 Q Okay. And your response was "I'm sorry, I
13 can't --" Correct? You see that?

14 A (Widell) Yes.

15 Q And Mr. Iacopino said "Well, you've been a
16 State Historic Preservation Officer. I think
17 you might have an idea of what the typical
18 timeframes are." Correct?

19 A (Widell) Yes.

20 Q And your response was?

21 A (Widell) "Thirty days".

22 Q "Normally, normally, that would be done in
23 thirty days".

24 A (Widell) Yes.

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1 Q So, --

2 A (Widell) That is the case, I believe, with this
3 Programmatic Agreement. We could go directly
4 to it, yes.

5 Q I'm talking about the cultural landscape
6 reports. That's what those questions were, and
7 the Effects Tables. Have those been -- do you
8 know if DOE has completed their review and sent
9 those to DHR yet?

10 A (Widell) I do not know if they have completed
11 their review and sent them to DHR yet. I do
12 know that they are all with the Department of
13 Energy.

14 And thirty days is consistently the review
15 time that is called for in this Programmatic
16 Agreement, except where there is a concern
17 about resolution of a disagreement.

18 Q So, do you know what the date of your testimony
19 was, which you've said that it would be
20 about -- it would be thirty days, based on your
21 experience?

22 A (Widell) It's the week of August 28th.

23 Q So, the date of that testimony was August 31st.
24 Do you know what the date is today?

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1 A (Widell) Thirty days hath September, and
2 tomorrow is October 1st.

3 Q I do that, too. So, it's been about thirty
4 days, correct?

5 A (Widell) If they were, in fact, all at the DOE.
6 I said I believe that was the case. It was not
7 my responsibility to deliver them. So, I can
8 not speak precisely to the date that they
9 received them.

10 Q Okay. So, would it surprise you to learn that,
11 as of this morning, DHR still has not received
12 those from DOE?

13 A (Widell) Once again, in my experience, the
14 federal agency gives them to you at the last
15 possible moment. But, like most of us, we
16 complete our work just in time to meet the
17 deadline. Now, that's not any statement on
18 DOE, but it is something that I have
19 experienced.

20 Q So, it wouldn't surprise you, is what you're
21 saying?

22 A (Widell) Depending on the date that they
23 received them, and I don't know precisely the
24 date that they received them.

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1 Q So, you're not surprised that DHR still has not
2 received the Effects Tables from DOE or the
3 cultural landscape reports that you filed,
4 correct? You're not surprised by that, is that
5 what you're saying?

6 A (Widell) I am surprised if none of them have
7 been received yet.

8 Q DOE has not sent anything, that last batch, the
9 cultural landscape reports or the Effects Table
10 have not gone from DOE to DHR as of this
11 morning. That's typical, is that your
12 testimony?

13 A (Widell) What do you mean by "typical"?
14 Meaning, they don't meet their thirty-day
15 deadlines? No, that's not typical. In my
16 experience, when you have a programmatic
17 agreement with specific review times, the
18 parties work in good intentions and do meet
19 their thirty-day deadlines.

20 Q But they haven't in this case?

21 A (Widell) I don't know that, because I do not
22 know the date that the material was received by
23 DOE. It was -- the Programmatic Agreement had
24 just been signed.

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[WITNESS PANEL: Widell|Bunker]

1 Q Okay. Just a couple more questions. During
2 Attorney Aslin's questioning, you said several
3 times that you had great confidence in the
4 Programmatic Agreement process, you had great
5 confidence in avoidance of these very few,
6 apparently somewhat insignificant historic
7 resources in the State of New Hampshire, and
8 impacts or effects on those, if I've
9 mischaracterized this, I'm sure you'll correct
10 me. But that you, yourself, have great
11 confidence that any mitigation will occur and
12 will be put in place. And that the
13 implication, it seemed to me anyway, and if
14 this is wrong, please correct me, that somehow
15 the engineers will participate in this process
16 and make sure that the route design manages to
17 avoid, and, if it can't avoid, there will be
18 mitigation measures put in place. Is that
19 roughly accurate?

20 A (Widell) Yes, with one very important
21 correction. And that is I never said that the
22 "New Hampshire historic properties were
23 insignificant".

24 Q Thank you for that correction. And I apologize

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1 for mischaracterizing your statement. So, I
2 just want to understand what your continued
3 role is then with respect to this Project?

4 A (Widell) I do not have a continuing role that
5 I'm aware of. I may continue to be pulled in
6 by the Project Applicant. But I have no role
7 specifically in the Programmatic Agreement.

8 Q Okay. So, your confidence is just your
9 confidence in a process. It's not something
10 that the Committee can rely on, because you're
11 not going to continue to be involved, as far as
12 you know at this point, correct?

13 A (Widell) No. That is not an accurate
14 characterization. I do have great confidence
15 in this blueprint for dealing with the
16 continued identification, assessment of
17 effects, and resolution of effects. I have
18 great confidence in the professionals that have
19 been involved in this, from the Department of
20 Energy, from the Division of Historic
21 Resources, from the White Mountain National
22 Forest, from the National Park Service, which
23 has signed this document, the Consulting
24 Parties, who have continued to stay engaged as

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1 the public. So, my confidence comes from the
2 professionalism that I have seen, their
3 knowledge of how to identify effects and
4 historic properties and take them into
5 consideration, and the public, which continues
6 to watch over that process.

7 Q I understand that.

8 A (Widell) So, my confidence, though I could say,
9 comes from having worked with dozens of
10 programmatic agreements, not just in
11 California, but elsewhere. But I have been
12 working on this Project in New Hampshire for
13 over two years. And I have seen and met the
14 individuals involved in this. And they are
15 excellent professionals.

16 Q I understand that's where your confidence comes
17 from. I understand that. My question had to
18 do with where the Site Evaluation Committee's
19 confidence should come from? And you seem to
20 be implying that it should come from you,
21 correct?

22 A (Widell) No. I think that they can feel very
23 confident in those who have been participating
24 in this process in good faith for years now.

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1 Q Okay. Despite the fact that the controlling
2 document doesn't do anything of the sort, other
3 than say "some plans should be written",
4 correct?

5 A (Widell) No. I have to disagree with that. As
6 I have stated before, the SEC has used a
7 programmatic agreement from the Section 106
8 process or a memorandum of agreement from the
9 Section 106 process as a vehicle to continue
10 this iterative process as it moves forward
11 through to completion. And I think that this
12 is another example where that would be an
13 appropriate thing to consider by the SEC body.

14 MS. BOEPPLE: Okay. No further
15 questions.

16 CHAIRMAN HONIGBERG: Mr. Plouffe,
17 you're next on my list.

18 WITNESS WIDELL: Mr. Chairman, may I
19 take a brief bio break?

20 CHAIRMAN HONIGBERG: Sure.

21 WITNESS WIDELL: Thank you.

22 CHAIRMAN HONIGBERG: Let's break for
23 ten.

24 WITNESS WIDELL: Thank you.

[WITNESS PANEL: Widell|Bunker]

1 (Recess taken at 10:10 a.m. and
2 hearing resumed at 10:22 a.m.)

3 CHAIRMAN HONIGBERG: Mr. Plouffe, you
4 may proceed.

5 MR. PLOUFFE: Thank you, Mr.
6 Chairman. Ms. Widell, I'll re-introduce
7 myself, --

8 CHAIRMAN HONIGBERG: Microphone.

9 MR. PLOUFFE: Thank you. Ms. Widell,
10 I'll re-introduce myself. I'm Bill Plouffe.
11 And I'm an attorney representing the
12 Appalachian Mountain Club.

13 WITNESS WIDELL: Good morning, Mr.
14 Plouffe.

15 MR. PLOUFFE: Good morning. Good to
16 see you back again.

17 WITNESS WIDELL: Thank you.

18 MR. PLOUFFE: And Attorney Boepple
19 asked a lot of the questions that I was
20 thinking of asking, so that will abbreviate my
21 questioning of you.

22 BY MR. PLOUFFE:

23 Q So, I want to start by trying to understand
24 just what your position is with respect to the

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1 role of the Programmatic Agreement and the
2 decisions that need to be made under the SEC
3 rules by the Subcommittee. And I'm going to
4 put up for you Site 301.14(b) on the ELMO. And
5 this is the Site rule which pertains to the
6 "Criteria Relative to Findings of Unreasonable
7 Adverse Effects". So, at the end of this
8 adjudicative process, as you know, the
9 Subcommittee needs to deliberate and determine
10 whether or not this Project will have
11 unreasonable adverse effects on various issues,
12 and one of those is historic resources.

13 And you see, in Subsection (b), it says
14 that "In determining whether a proposed energy
15 facility will have an unreasonable adverse
16 effect on historic sites, the committee shall
17 consider:", and then subsection (4) of that
18 talks about the "Findings and determinations by
19 the New Hampshire division of historical
20 resources", and I'll abbreviate and say
21 essentially the 106 process, what New Hampshire
22 division of historical resources says about the
23 106 process, "and", and it does use the word
24 "and", "(5)", and I've highlighted that, "The

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1 effectiveness of the measures proposed by the
2 applicant to avoid, minimize, or mitigate
3 unreasonable adverse effects on historic sites
4 and archeological resources, and the extent to
5 which such measures represent best practical
6 measures."

7 So, is it your position that the
8 Programmatic Agreement that we've been talking
9 about here this morning suffices for this
10 Committee's review under both Subsection (4)
11 and Subsection (5)?

12 A (Widell) No. In my previous testimony, I need
13 to clarify that, although I took into
14 consideration all of these criteria, I do not
15 believe that this Project will cause an
16 unreasonable adverse effect on historic
17 resources. What I -- to further clarify, there
18 are adverse effects, and I agree with that, and
19 I've talked about that in great length in my
20 testimony and supplemental testimony. And the
21 Programmatic Agreement will provide a vehicle
22 for avoiding, minimizing, and mitigating
23 adverse effects.

24 Q So, I guess I'll repeat my question, because

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1 I'm not sure I understood your answer as being
2 responsive to my question.

3 Does the Programmatic Agreement suffice
4 under Subsection (4) and Subsection (5)?

5 A (Widell) I answered the question. Let me
6 answer it again.

7 Q Well, that's okay.

8 A (Widell) No, because I did not find that there
9 are any unreasonable adverse effects. The
10 Programmatic Agreement is specific to dealing
11 with adverse effects to historic properties
12 under the Section 106 process. So, it deals
13 with (4).

14 Q Okay. Deals with (4). You think it deals with
15 (4). Okay. And what about (5)?

16 A (Widell) There -- I found that the Project did
17 not have an unreasonable adverse effect on
18 historic properties. So, there have been
19 certainly work to avoid and minimize and
20 mitigate the adverse effects for this Project
21 already, and that has been laid out in the
22 methodology of the assessment report that was
23 provided to the SEC two years ago.

24 Q Well, where in the record, as it stands now,

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1 can we find for the SEC information for it to
2 make a determination of unreasonable adverse
3 effects? Where can we find information
4 concerning the effectiveness of the proposed
5 measures by the Applicant to avoid, minimize,
6 or mitigate unreasonable adverse effects?

7 A (Widell) As I just stated in -- certainly, in
8 the assessment form and report that was
9 provided to the SEC at the time of the
10 Application, there is a list of a number of
11 structures that were changed in location and
12 design, obviously, also in undergrounding the
13 Project through the White Mountain National
14 Forest, avoided well over 250 historic
15 properties.

16 Q But I -- I thought, under the 106 process that
17 you're now going through, and it appears to be
18 something that is a work in process, that
19 falling out of that process we will get an
20 Historic Properties Treatment Plan, is that
21 correct?

22 A (Widell) Yes. It is part of the Programmatic
23 Agreement for the Section 106 process, to
24 complete a Historic Properties Treatment Plan,

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1 to address adverse effects that cannot be
2 mitigated.

3 Q And those treatment plans will spell out the
4 specifics of what the Applicant has to do in
5 order to avoid, minimize, or mitigate the
6 adverse effects?

7 A (Widell) Yes.

8 Q But we don't have those treatment plans before
9 the Subcommittee now?

10 A (Widell) It's one plan. And, no.

11 Q And we don't know when we would have those?

12 A (Widell) No. But --

13 Q Or, that plan, I'm sorry.

14 A (Widell) -- a draft -- an initial draft has
15 been done. And I would think it would be as
16 soon as possible, because that's in the best
17 interest of all, the Applicant and all those
18 participating in the review process.

19 Q So, would you agree with me that the
20 Subcommittee really can't address Subsection
21 (5) of the rule until it has the Historic
22 Properties Treatment Plan?

23 A (Widell) No.

24 Q You don't agree with me?

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1 A (Widell) No.

2 Q Okay.

3 A (Widell) Because, in my testimony, I have
4 stated that I do not believe that this Project
5 will cause an unreasonable adverse effect as a
6 project on historic properties.

7 Q Okay. So, now, I want to move to kind of a
8 very practical day-to-day thing about this and
9 about the Project and effect on historic
10 properties. Let's hypothetically assume we're
11 in a position where we have the Historic
12 Properties Treatment Plan has been issued, and
13 the Project has been given a certificate and
14 it's moving ahead. You with me?

15 A (Widell) Yes.

16 Q Okay. So, and we're out in the field, and I
17 understand that there will be monitors supplied
18 by the -- or, paid for by the Applicant, who
19 have been trained in the field, monitoring this
20 Project as it moves forward and its effects on
21 historic properties, essentially monitoring
22 compliance with the Treatment Plan?

23 A (Widell) Yes.

24 Q So, hypothetically, I'm not saying this will

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1 happen, but, hypothetically, we're in the
2 field, and they run into something where the
3 people in the field doing the construction say
4 "we're not going to do that", and they go ahead
5 and do something that doesn't comply with,
6 let's say, a minimization strategy that's in
7 the Treatment Plan. What happens then?

8 A (Widell) We could go to find specifics in the
9 Programmatic Agreement, if you would like, as
10 to how about that occurs.

11 Q You're an expert. Maybe you can just tell me
12 in shorthand, in practical language, what
13 happens?

14 A (Widell) Well, the first thing I would want to
15 know, as a professional, is it an aboveground
16 effect or mitigation, --

17 Q Well, let's say it's a --

18 A (Widell) -- or is it archeology, because there
19 would be somewhat different approaches.

20 Q Okay. Well, let's assume it's an underground,
21 it's a burial situation.

22 A (Widell) Then, I'm going to refer to my
23 colleague --

24 Q Well, I'm sorry. I'm sorry. Okay. Let's make

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1 it easier. So, we don't want to involve
2 Dr. Bunker if she doesn't have to be. Let's
3 say it's aboveground. Makes no difference to
4 my hypothetical to me.

5 A (Widell) Okay.

6 Q What happens in an enforcement situation?

7 A (Widell) I'm going to speak generally, --

8 Q Yes.

9 A (Widell) -- because I don't know that we need
10 to go precisely. But, generally, the monitor
11 would immediately contact, obviously, the
12 Project Applicant's cultural resources person,
13 which Northern Pass has Mark Doperalski, who is
14 a qualified archeologist, but also would be
15 handling aboveground resources, would contact
16 the DHR, depending on the severity of the
17 situation, the Advisory Council on Historic
18 Preservation, who has oversight over any
19 federal agency's compliance with Section 1 of
20 the National -- 106 of the National Historic
21 Preservation Act. And, initially, that's what
22 would happen.

23 Depending on the severity, if it was an
24 unanticipated discovery of a historic resource

[WITNESS PANEL: Widell|Bunker]

1 we didn't know about, underground or
2 aboveground, that would be identified,
3 documented, it would be determined whether it
4 was eligible for the National Register, and a
5 mitigation process would be dealt with,
6 avoidance/minimization first, and then
7 mitigation, if that's not possible.

8 Q Well, let me --

9 A (Widell) So, I'm just giving you --

10 Q Okay.

11 A (Widell) -- Broadly from my experience in a
12 project like this. But there is a precise
13 process in the Programmatic Agreement right now
14 that begins to talk about some of that. And
15 then the Historic Preservation -- Properties
16 Treatment Plan would have more things, as
17 specific as telephone numbers and all of that,
18 and deadlines. Okay?

19 Q Well, thank you for that.

20 A (Widell) All right.

21 Q I read through the Programmatic Agreement. And
22 I'll just -- I guess I'll cut to chase here to
23 save time. Who has authority, if the Treatment
24 Plan is being violated, to stop the Project and

[WITNESS PANEL: Widell|Bunker]

1 impose fines, if necessary? I couldn't find
2 that.

3 A (Widell) Any of the signatories can bring to
4 the attention of the Department of Energy, who
5 is the lead federal agency, that they have a
6 concern. It could be about something that was
7 found in the field and not dealt with. It
8 could be one agency isn't getting -- meeting
9 review times very well. Any of those sorts of
10 things.

11 Q My hypothetical is a flat-out violation.

12 A (Widell) Okay. So, --

13 Q That's my hypothetical. A flat-out violation
14 of what the Treatment Plan calls for, in terms
15 of minimization or avoidance or --

16 A (Widell) Then, there would be consultation,
17 once again, I'm not going to the precision in
18 the Programmatic Agreement there, but there is
19 consultation between the parties and
20 resolution. If there is not an ability to get
21 resolution, say, between a invited signatory,
22 the Applicant and the DHR, the Department of
23 Energy then can go to the Advisory Council on
24 Historic Preservation and provide all the

[WITNESS PANEL: Widell|Bunker]

1 information from all the parties and ask them
2 to adjudicate it.

3 Q Adjudicate it how? They consult with each
4 other?

5 A (Widell) They would provide information and a
6 decision on how they believe that it should be
7 carried out.

8 Q Okay.

9 A (Widell) And that is the Resolution of, let's
10 see, excuse me, Dispute Resolution, which is in
11 Stip XIII, Page 42.

12 Q Okay. Do they have authority to stop the
13 Project?

14 A (Widell) The Advisory Council on Historic
15 Preservation could.

16 Q How do they do that? How do they go about
17 doing that?

18 A (Widell) They would inform the head of the
19 federal agency. I've had experience where that
20 has happened, well, in the end, the head of the
21 federal agency got involved and changed it.
22 But, yes. That can occur under Section 106, if
23 there is disregard for historic properties,
24 once there has been resolution through an

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1 agreement document.

2 Q That's not in the Programmatic Agreement,
3 though. That's why I didn't find it there?

4 A (Widell) It would be in the federal regulations
5 that are carrying out Section 106 of the
6 National Historic Preservation Act. It is a
7 responsibility of every federal agency to take
8 historic properties into consideration in their
9 projects, and they must show evidence that they
10 have done that.

11 Q Perhaps you could follow up and your counsel
12 could send a CFR citation to us --

13 A (Widell) It would 36 C.F.R., Part 18 -- I mean,
14 yes, Part 800, excuse me.

15 Q Do you have the precise citation?

16 A (Widell) 36 C.F.R., Part 800. That's it, for
17 sure.

18 Q Okay. I saw in your prefiled testimony, on
19 Page 12, that you requested that the SEC, this
20 Subcommittee, "delegate to DHR monitoring and
21 compliance authority with respect to historic
22 resources". Do you know whether or not -- and
23 that's the end of the quote. Do you know if
24 the SEC can legally delegate compliance

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1 authority to DHR?

2 A (Widell) Can you tell me again? I'm sorry. I
3 was looking for the passage that you were
4 referencing, --

5 Q Yes.

6 A (Widell) -- and then I'd be happy to answer
7 your question.

8 Q We can put it up on the ELMO for you, if you
9 want. It's on Page 12, Lines 15 through 17.

10 A (Widell) Oh, this is in my testimony.

11 Q Yes.

12 A (Widell) I thought you were referring to the
13 Programmatic Agreement.

14 Q No, no.

15 A (Widell) Forgive me.

16 Q I'm sorry.

17 A (Widell) Okay.

18 Q Your prefiled testimony.

19 A (Widell) Uh-huh. Yes. And your question?

20 Q My question was, are you still asking, is it
21 still your position that this Subcommittee
22 should delegate to the DHR the monitoring and
23 compliance authority with respect to historic
24 resources? Is that still your position? And,

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1 if so, do you know whether or not the SEC can
2 legally do that?

3 A (Widell) Yes, it still is my opinion. I am not
4 an attorney, but I do understand that, in the
5 past, the SEC has used the Section 106 process
6 to deal with issues related to historic
7 property resolution in the issuance of the
8 permit certificate.

9 Q And, if they did that, do you think -- so, does
10 DHR have enforcement authority? Going back to
11 my hypothetical, can DHR stop a project because
12 it's not complying with protection of historic
13 resources?

14 A (Widell) I have to admit I do not know --

15 Q Okay.

16 A (Widell) -- DHR's legal authority under state
17 law. I can tell you that DHR would definitely
18 be in a position with this Project, and from
19 what is laid out in this agreement document, to
20 go to the Advisory Council on Historic
21 Preservation. And, once again, as we talked
22 about, they would be in a position to question
23 the Department of Energy. And, in the most
24 severe situations, it is possible for the

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1 Advisory Council on Historic Preservation to,
2 yes, stop a project.

3 Q And you've seen that happen?

4 A (Widell) I know that that has happened, yes.
5 It has only been close in any of my experience,
6 but I know that it has happened.

7 Q How long does the process take, do you know?

8 A (Widell) That I don't know.

9 Q Do you know whether the project gets stopped in
10 the meantime?

11 A (Widell) Yes, normally. Absolutely, yes.

12 Q And who issues that "stop work" order?

13 A (Widell) That depends, once again, it depends
14 on the Historic Preservation Treatment Plan.

15 Q I'm going to move on to your cultural resources
16 submissions that you made. And I asked you
17 some questions last time when I was here,
18 asking you about the North Country and whether
19 or not that could be a cultural resource and so
20 forth. And I guess I might ask you, you've
21 been involved, you said, for two years in this
22 process, why didn't you identify cultural
23 resources when you started out? They seem to
24 be late to the game.

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1 A (Widell) No. I think what you're referring to
2 is "cultural landscapes"?

3 Q Yes.

4 A (Widell) Okay.

5 Q I'm sorry.

6 A (Widell) No. We included cultural landscapes
7 in the Assessment Report that was provided to
8 the SEC in October of 2015, as part of the
9 Application to the SEC. Some examples of those
10 cultural landscapes that were identified are
11 the North Road Agricultural District, which is
12 over a thousand acres; Weeks State Park, which
13 I think is close to 400 acres. And those are a
14 couple of examples. So, we absolutely did look
15 at cultural landscapes in the very beginning.

16 Through what the Department of Energy did,
17 in the completion of its project area forms, it
18 also identified cultural landscape study areas
19 for the Pemigewasset River Valley and the
20 Suncook River Valley. And, so, the areas to be
21 identified were expanded at that time. And,
22 then, as I think you know, they were expanded
23 again in January of 2017, with the addition of
24 three more study areas.

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1 MR. PLOUFFE: I'm sorry.

2 BY MR. PLOUFFE:

3 Q "Any building, structure, object, district,
4 area or site that is significant in the
5 history, architecture or culture of this state,
6 its communities, or the nation." So, would you
7 agree with me that, for example, that Harvey
8 Swell cultural landscape qualifies under the
9 SEC rules as an historic site?

10 A (Widell) Yes.

11 Q And would you agree with me that it has -- that
12 the Harvey Swell landscape has scenic values?

13 A (Widell) Yes.

14 Q And it has a so-called "scenic quality".

15 MR. PLOUFFE: Yes. Great. That's
16 all I have, Mr. Chairman. Thank you,
17 Ms. Widell.

18 WITNESS WIDELL: Thank you.

19 CHAIRMAN HONIGBERG: I have Mr. Baker
20 up next.

21 MR. BAKER: Thank you, Mr. Chair.
22 Good morning, Ms. Widell.

23 WITNESS WIDELL: Good morning.

24 MR. BAKER: I'm Bob Baker. I think

[WITNESS PANEL: Widell|Bunker]

1 you may recall, I represent four landowners
2 with properties in the Great North Woods. And
3 they have property that is relatively close to
4 two of the cultural landscapes that we've been
5 looking at. One is Harvey Swell, and the other
6 is the Upper Ammonoosuc River. I have those
7 documents in front of me, and I would like to
8 bring them up on the screens, if we can now.

9 BY MR. BAKER:

10 Q And this is the Harvey Swell cultural
11 landscape.

12 A (Widell) I'm sorry to interrupt you. I don't
13 have a signal at this point.

14 Q I'm sorry, I put --

15 A (Widell) I think I've got it now. There's a
16 little blue thing in the middle of it. But I
17 have a copy of it, too. I'm fine. Thank you.

18 Q Okay. Thank you. And I had a number of
19 questions about this, some of which have just
20 been covered.

21 But am I correct that your determination
22 on the Harvey Swell cultural landscape is that,
23 while the Northern Pass Project could have an
24 effect, that it has been determined that the

[WITNESS PANEL: Widell|Bunker]

1 effect is not adverse?

2 A (Widell) Yes.

3 Q And that's a recommended finding that will be
4 dealt with by others, is that correct?

5 A (Widell) Yes.

6 Q So, that may or may not be the final
7 determination?

8 A (Widell) Yes. That's possible.

9 Q Okay. With respect to the Harvey Swell
10 determination, and I'm paging down now through
11 the document, there is a paragraph at the top
12 of what I think is Page APP -- whoops -- I'm
13 going to go down to the bottom of it and make
14 sure I have it right. APP 83092.

15 Though, I've outlined in yellow before
16 you, at the very top of the page, can you tell
17 me who wrote that?

18 A (Widell) The Preservation Company and myself
19 certainly was involved in the review of the
20 precise words that were used to describe the
21 potential adverse effect.

22 Q Am I correct that this paragraph at the very
23 top of that page is sort of the essence of the
24 reasons why there was a determination that it

[WITNESS PANEL: Widell|Bunker]

1 had no adverse effect?

2 A (Widell) No. I would say the last paragraph
3 probably is the essence of it.

4 Q Okay. And, if this refreshes your
5 recollection, can you outline for us, just very
6 briefly, the major reasons that you and your
7 cohorts determined to recommend "no adverse
8 effect"?

9 A (Widell) Well, some of it is in here. That in
10 our evaluation of what is potentially visible
11 from the viewshed mapping, which the maps are
12 in there, that they're limited views,
13 intermittent views from Bear Rock Road, that
14 the tops of some of the overhead structures
15 that will be within that forest area above, I
16 believe it's Heath Road, might be possible.
17 There also might be very, very distant views of
18 over three miles, I believe, in Sugar Hill.
19 That ninety percent of the Harvey Swell
20 cultural landscape lies outside of the Area of
21 Potential Effect, so unlikely that there would
22 be effects to the cultural resources in and
23 around that area.

24 And, so, the final determination was, and

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1 I'm doing this very quickly, but there is very
2 precise information in here that the
3 visibility, three miles in the distance, and
4 the views of a couple of the structures within
5 the forest half a mile to a mile away, would
6 not cause the significance of the cultural
7 landscape or the integrity of the cultural
8 landscape to be diminished. Which, if you go
9 back to the very beginning of this, on Page 2,
10 the Criteria of Adverse Effect, you can see
11 that that is the criteria that needs to be
12 applied. Will it diminish the integrity of the
13 properties, --

14 Q Okay.

15 A (Widell) -- different integrity measurements?
16 So, that's about as short, I think, with giving
17 you some detail.

18 Q Yes. No, and I appreciate that.

19 A (Widell) Okay.

20 Q This is detail, it's an effort to justify the
21 determination that there's no adverse effect.
22 Is there any reason that you did not mention
23 the number of structures that would be visible
24 from the area within the APE in this cultural

[WITNESS PANEL: Widell|Bunker]

1 landscape?

2 A (Widell) Yes. Because there are no structures
3 that would have visibility of the Project
4 within the area in the APE. There is one,
5 basically, we would call it almost an
6 "archeological feature", because it is the
7 foundation of a bank --

8 *[Court reporter interruption.]*

9 **CONTINUED BY THE WITNESS:**

10 A (Widell) -- what we might call almost an
11 "archeological feature", because it's a
12 foundation of a bank barn. The name of which
13 is in here, but I don't think we need that.

14 BY MR. BAKER:

15 Q Okay.

16 A (Widell) That was the only structure that was
17 within the Area of Potential Effect that might
18 possibly have Project visibility. But, of
19 course, --

20 Q I have asked --

21 A (Widell) -- that value wouldn't be important to
22 that particular structure.

23 Q I have asked the question badly. And it's not
24 your fault that you misunderstood what I was

[WITNESS PANEL: Widell|Bunker]

1 trying to get at.

2 A (Widell) Okay.

3 Q I was talking about the number of Northern Pass
4 lattice or monopole structures that would be
5 visible from the area within the APE. Do you
6 know how many others have estimated would be
7 visible?

8 A (Widell) I have no idea what others have
9 estimated. If you go to Page 4, under
10 "Relationship of the Project", you will see the
11 distance, and then --

12 Q Do I have the right page in front of you now?

13 A (Widell) No. That's the viewshed mapping.

14 Q Uh-huh. I'm not sure which page you're
15 referring to as "Page 4".

16 A (Widell) Keep going up. It's in the written
17 portion of it. Go -- no, the other way.

18 Q Am I getting warmer?

19 A (Widell) No. The other way. You see that said
20 "Page 7". No, you're going toward Page 8.

21 Go -- no, the other way. No. No. No.

22 CHAIRMAN HONIGBERG: Let's go off the
23 record.

24 *[Brief off-the-record discussion*

[WITNESS PANEL: Widell|Bunker]

1 Q All right. Well, the tops of the structures
2 are part of the structures, correct?

3 A (Widell) Yes.

4 Q Okay. And do you know how many structures are
5 in the transmission line between Transition
6 Station 4 and the Dixville border, at the top
7 of Sugar Hill?

8 A (Widell) I cannot tell you that now. But I can
9 tell you that we would have looked at that
10 precisely at the time that we wrote this.

11 Q Okay. Well, the Project maps will tell us
12 that.

13 A (Widell) Yes.

14 Q We don't have to get into that. I'd like to
15 now take you to Appendix 17 -- whoops. Oh,
16 dear. I'm praying that this will come up now.

17 I'm going to simply make reference to the
18 fact that, in Appendix 17 to the Applicants
19 Exhibit 1, which is the DeWan visual analysis,
20 there are charts of this area showing that,
21 within the APE, the number of structures that
22 are visible. And, if I'm reading it correctly,
23 and, again, we can reference that later, I
24 can't pull it up now, it talks about 25

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[WITNESS PANEL: Widell|Bunker]

1 structures.

2 A (Widell) The Area of Potential Effect for the
3 visual impact analysis for DeWan & Associates
4 is different than the Area of Potential Effect
5 for historic resources.

6 Q I understand that's your position. But there
7 are 25 structures, according to Mr. DeWan. And
8 I don't want to argue with you.

9 The next question is, assume for a moment
10 that there are 25 structures visible, whether
11 it's the tops of them or half of them or all of
12 them in this area. What are the reasonable
13 mitigation steps or techniques that this
14 Committee should consider, if it determines
15 that the protection of the Harvey Swell
16 cultural landscape is an important thing to do?

17 A (Widell) Is that specific to the Harvey Swell
18 cultural landscape?

19 Q I'm asking you what mitigation could be done to
20 reduce the impact of 30 visible structures from
21 the Harvey Swell cultural landscape?

22 A (Widell) There is not an adverse effect, and
23 there is not 30 structures visible from the
24 cultural -- the Harvey Swell cultural

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[WITNESS PANEL: Widell|Bunker]

1 landscape. So, there is not a need for
2 mitigation, because it does not diminish the
3 significance or integrity of that cultural
4 landscape.

5 Q Let me -- I'm sorry, maybe I'm
6 misunderstanding. I thought that your
7 determination that there was no effect is a
8 recommended determination, not one which is
9 final?

10 A (Widell) Yes, that is true. But I am
11 professionally absolutely convinced that there
12 is no adverse effect to this cultural landscape
13 and stand by that recommendation.

14 Q If this Committee were to have a concern that
15 the cultural landscape of the Harvey Swell be
16 protected, what mitigation options are there
17 for it to consider?

18 A (Widell) Lowering of the height of the
19 structures; perhaps continuing the underground,
20 if it felt, and I believe the SEC would want to
21 base that on the recommendation of
22 professionals in the field of historic and
23 cultural resources.

24 Q All right. You could -- one of the things --

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1 one of the things you could do is move
2 Transition Station 4 to over the crest of Sugar
3 Hill and keep it underground until you reach
4 that point, correct?

5 A (Widell) I can't answer that, because I don't
6 know where Structure 4 is precisely.

7 Q That's fair enough. But it's something -- it's
8 something that you might wish to investigate if
9 you were looking at reasonable options,
10 correct?

11 A (Widell) If it had been determined it was an
12 adverse effect, moving structures is certainly
13 one of the things that we have done in other
14 places. But, once again, I, professionally,
15 and my colleagues agree, that there's not an
16 adverse effect to this cultural landscape.

17 Q Do you know how many miles it is from the
18 proposed location of Transition Station 4 to
19 the Dixville boundary with Stewartstown?

20 A (Widell) No, I do not.

21 Q Okay. Would it surprise you if it was
22 approximately three miles?

23 A (Widell) I don't know how far it is. So, I
24 can't speak to that.

[WITNESS PANEL: Widell|Bunker]

1 Q All right.

2 A (Widell) I'm sorry.

3 Q I understand. I understand. We can easily
4 determine that from the Project maps, however,
5 correct?

6 A (Widell) Yes.

7 Q Okay. Are there any other mitigation steps
8 that might be taken with respect to the
9 structures that are proposed along the area
10 from Transition Station 4 to the Dixville
11 boundary?

12 A (Widell) Once again, I do not believe that
13 there is an adverse effect. So, there is not a
14 need for mitigation to prevent an adverse
15 effect on historic resources.

16 Q Okay. We're now looking on the screen at the
17 Upper Ammonoosuc River cultural landscape
18 results of the effect evaluation. And, again,
19 the evaluation is that it could have an effect,
20 correct?

21 A (Widell) No. Our evaluation was a recommended
22 finding is that it does have an adverse effect,
23 in answering your question.

24 Q Right. I was going to --

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[WITNESS PANEL: Widell|Bunker]

1 A (Widell) Yes.

2 Q I was going to get that. But the initial
3 evaluation is that the Project could have an
4 effect, and then we go into the evaluation,
5 correct?

6 A (Widell) Yes. That's where you begin, yes.

7 Q And I've now paged down to the recommended
8 finding that you've just referenced. And the
9 adverse effect that's determined, it states
10 that it's primarily with respect to the
11 Ammonoosuc River crossing in the North Side
12 Road area, and a view from Route 110, I assume
13 that's the intersection of Route 110 and the
14 Stark Road, towards the Project, is that
15 correct?

16 A (Widell) Yes.

17 Q Okay. What I have on the screen before you now
18 is an Exhibit CS 94A. Have you been to the
19 Ammonoosuc River crossing of the Coos Loop,
20 where the Project proposes to replace the Coos
21 Loop structures and add the high-voltage direct
22 current structures for the proposed facility?

23 A (Widell) I have been along the route as it is
24 accessible. But I cannot say specifically I

[WITNESS PANEL: Widell|Bunker]

1 have been to the location you are speaking of.

2 Q Okay. I will represent to you that this is the
3 crossing of the Coos Loop over the Ammonoosuc
4 River. In looking at this, what possible
5 mitigation could be done with respect to the
6 proposed structures, which are approximately
7 twice as high as the existing structure that
8 you see in this photograph?

9 A (Widell) I don't know what the proposed
10 structures will be in this location, the
11 height.

12 Q Well, let's assume that the height of the
13 structures are twice as high as the existing
14 structure that you see in this photograph, and
15 that they're proposed to be placed on
16 monopoles. Should they be silver or is it
17 better to have them mud brown?

18 A (Widell) You know, is this -- this is a
19 conjectural question for this particular site,
20 because I don't believe that this is related to
21 a particular contributing element of the
22 cultural landscape, is it?

23 Q Well, this is the exact location on the Upper
24 Ammonoosuc River where you said that this

[WITNESS PANEL: Widell|Bunker]

1 Project will have an adverse effect.

2 A (Widell) The area that is depicted in the
3 Effects Tables talk specifically about the
4 "alluvial fields", which is a contributing
5 element to the significance and integrity of
6 the cultural landscape. In that location, the
7 mitigation that -- or, not "mitigation", excuse
8 me, the minimization that was proposed was the
9 use of weathering steel monopoles, spread as
10 far as possible away from one another. And
11 that is part of the proposed Project in that
12 location. And I believe that there is a
13 photosimulation to show that to you.

14 Q All right. There is not a photosimulation that
15 I'm aware of this site. So, the question that
16 I have is, do you have any other
17 recommendations, other than weathering steel
18 monopoles, for this location?

19 A (Widell) No.

20 Q Okay. If there is a dispute amongst the
21 Consulting Parties and parties to the
22 Programmatic Agreement as to what to do at this
23 location, how is it resolved again?

24 A (Widell) If this is part of the area where

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1 there is an adverse effect, which is determined
2 through the consultation process, then it
3 would, if it was deemed that this particular
4 part of the Project was causing a visual
5 adverse effect to a cultural landscape, then
6 they would look at maybe lowering structures, a
7 different type of structure, moving the
8 structure.

9 Q Okay. I'm just assuming there's a dispute
10 amongst the parties as to what to do here.
11 Some might say "don't come here at all", "take
12 it outside of this area, bring it down Route
13 3". I mean, there's all kinds of
14 possibilities. My question is, assuming a
15 dispute, and I'm asking you to assume there's a
16 dispute, how is it resolved? Who is going to
17 be the final arbiter of what gets done here?

18 A (Widell) It would go under the Dispute
19 Resolution provision in Stipulation XIII.

20 Q Right. It's in the Programmatic Agreement.
21 And isn't it the DOE that makes the final
22 determination?

23 A (Widell) No. No, not necessarily. It's also
24 possible that, depending, and I'm not looking

[WITNESS PANEL: Widell|Bunker]

1 at the precise language, so, once again, as I
2 stated previously, in some cases, the Advisory
3 Council provides input to the Department of
4 Energy for a final. But that would -- that
5 would unlikely be for the type of structure
6 that was used for avoidance or minimization. I
7 would think, once again, as I stated, the
8 professionals who have much experience on this
9 would be able to resolve that between
10 themselves.

11 And, so, that's -- I think it would be
12 resolved between the professional parties, the
13 signatories.

14 Q Let me ask it a different way, and this is a
15 different question. I have four clients, none
16 of whom are members of the Consulting Party
17 group. Do they have any say in this?

18 A (Widell) Yes. The public does have say in
19 this. I could refer, if you would like, I will
20 find precisely the section that --

21 Q No. It's okay.

22 A (Widell) And that is a really important part of
23 this. That it is not just limited to those who
24 have signed this Agreement.

[WITNESS PANEL: Widell|Bunker]

1 Q Okay. Well, --

2 A (Widell) The public continues to have an
3 opportunity to participate, if it chooses to.

4 Q If they wish to?

5 A (Widell) Yes.

6 Q And they get to write a letter. Do they have a
7 role in the dispute resolution process as well?

8 A (Widell) No. Not once they have provided their
9 dispute.

10 MR. BAKER: Okay. I have no further
11 questions. Thank you.

12 WITNESS WIDELL: Thank you. Mr.
13 Chairman, unfortunately, I need to take another
14 break.

15 CHAIRMAN HONIGBERG: All right.

16 WITNESS WIDELL: Forgive me. Thank
17 you.

18 CHAIRMAN HONIGBERG: Let's take a
19 short break.

20 *(Recess taken at 11:08 a.m. and*
21 *hearing resumed at 11:15 a.m.)*

22 CHAIRMAN HONIGBERG: All right. Ms.
23 Percy, are you ready to go?

24 MS. PERCY: I am.

[WITNESS PANEL: Widell|Bunker]

1 CHAIRMAN HONIGBERG: You may proceed.

2 MS. PERCY: Okay. Hello, Ms. Widell.

3 WITNESS WIDELL: Good morning, Ms.

4 Percy.

5 MS. PERCY: How are you?

6 WITNESS WIDELL: Good. Thank you.

7 MS. PERCY: I only have a few

8 questions.

9 WITNESS WIDELL: Okay.

10 MS. PERCY: And only because, I think

11 as all of us go through this process, we learn

12 more and more and more, and so we have more and

13 more questions. But I'm going to limit it to a

14 few.

15 BY MS. PERCY:

16 Q So, did you, in your participation with the New

17 Hampshire DHR on cultural landscapes, did you

18 visit the designations considered important?

19 Did they add any extras?

20 A (Widell) Your question is, first, did I -- I

21 didn't -- I was not involved with DHR on the

22 cultural landscapes.

23 Q You didn't participate at all?

24 A (Widell) Not with DHR, no.

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1 Q So, am I asking that question incorrectly? Did
2 you participate with someone else?

3 A (Widell) Well, certainly, with PAL, which is
4 the consultant who prepared the cultural
5 landscapes based on the guidance from DHR. And
6 I am familiar with that guidance, and also was
7 involved in and reviewed the materials, and
8 also certainly visited the cultural landscapes.

9 Q And, so, did you -- you know that Stark,
10 because you helped me, you told me that Stark
11 was going to be listed as a cultural landscape
12 or a piece of it was. Did you visit all the
13 locations in Stark?

14 A (Widell) Pretty well, yes. And in the public
15 areas of the Percy Summer Club as well, yes.
16 But not the buildings.

17 Q Right. Sorry about that. So, in the Stark
18 Cultural Landscape Report, that's the Woodland
19 Heritage Scenic Byway.

20 A (Widell) Uh-huh.

21 Q Is that right?

22 A (Widell) There is one -- a couple of
23 photosimulations for the Woodland Scenic Byway.

24 Q Yes. The Ammonoosuc River, which runs through

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1 Stark?

2 A (Widell) The Upper Ammonoosuc River cultural
3 landscape, yes.

4 Q Thank you. Devil's Slide?

5 A (Widell) Uh-huh.

6 Q South Pond, and the Stark Church, Christine
7 Lake, --

8 A (Widell) Uh-huh.

9 Q -- Nash Stream Forest, the Kauffman Forest,
10 Percy Forest, Percy Summer Club, a small
11 sampling. But a fairly impressive list, don't
12 you think?

13 A (Widell) Yes. Those are all what we would call
14 "contributing elements".

15 Q Right. And can you just help me understand
16 the -- there are all these natural elements
17 that make up the cultural landscape in Stark
18 that contribute to the overall impact of that
19 community. Is that considered in your cultural
20 landscape evaluation?

21 A (Widell) Natural features are considered part
22 of it. And that's why it's called the "Upper
23 Ammonoosuc cultural landscape", because there
24 were two corridors that were important to

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1 identifying those contributing elements. One
2 was the river, which provided the rich alluvial
3 soils, where the farmers then settled and
4 used, --

5 Q Uh-huh.

6 A (Widell) -- and adjacent to Stark Village. And
7 then the railroad corridor, --

8 Q Right.

9 A (Widell) -- which provided ability for
10 lumbering, for the settlement of the Town of
11 Stark, and even for recreation for the Percy
12 Summer Club.

13 Q So, the first map please. So, this is -- are
14 you familiar with this map?

15 A (Widell) Yes. It's upside-down.

16 MS. PERCY: Art and I are a team.

17 MR. CUNNINGHAM: Sorry.

18 MS. PERCY: And eventually we'll get
19 this ELMO thing right.

20 MR. CUNNINGHAM: We'll get it figured
21 out.

22 BY MS. PERCY:

23 Q And does this map include the Nash Stream
24 Forest?

[WITNESS PANEL: Widell|Bunker]

1 A (Widell) Let me --

2 Q So, when you look at the boundary line that's
3 drawn?

4 A (Widell) You mean, is it identified or does it
5 include it? It does include certainly part, if
6 not all of it, yes.

7 Q It doesn't stretch it out for the -- so, in
8 this map, the district is "condensed". Would
9 that be a good way to reference that?

10 A (Widell) Well, I don't want to -- but we've got
11 several districts in the cultural landscape.
12 We've got the Percy Summer Club as a district,
13 we've got --

14 Q Stark.

15 A (Widell) -- Stark as a district, and Northside
16 Road. So, is it condensed?

17 Q Well, in the cultural landscape map that is
18 right here, there is an outline that details
19 what is included in the Cultural Landscape
20 Report, is that right?

21 A (Widell) Yes. I'd like to go to my copy of it,
22 so I can see it slightly better.

23 Q Okay.

24 A (Widell) Just give me a minute please. Much

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1 better. Thank you very much for waiting. And
2 your question?

3 Q The Nash Stream Forest isn't included in its
4 full -- I'm specifically looking at the Victor
5 Head, Bald Mountain, Long Mountain, Percy
6 Peaks. So, that is left out, is that correct?

7 A (Widell) Yes.

8 Q And can you tell me why?

9 A (Widell) Certainly, the report will give you
10 that in detail. The way cultural landscapes
11 were identified were based on direction. One,
12 certainly, the overall direction is how the
13 National Park Service has identified and set
14 boundaries. I think that's specifically in the
15 very beginning of each Cultural Landscape
16 Report. And the specific report is 16A. But,
17 also, a guidance came from a document entitled
18 "Identifying and Evaluating Historic
19 Landscapes", from Caltrans, from 1999, which
20 was chosen by the Division of Historic
21 Resources as kind of a overall guiding
22 document, and they gave more precise direction
23 from that document. So, the boundaries are
24 established by using the information and

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1 direction from those guidance documents.

2 Q Okay. Just for my help, would -- do you
3 believe that the Victor Head, Bald Mountain,
4 Percy Peaks have significance to the Town of
5 Stark?

6 A (Widell) Certainly, they have significance.
7 But they have not --

8 Q Okay.

9 A (Widell) -- they were not included in the
10 cultural landscape, based on the criteria
11 established.

12 Q Okay. So, I think we go to the next map. So,
13 in -- oh, wait. Stay with that map a second.
14 I'm sorry.

15 In the Percy Summer Club area, and within
16 the cultural district outline that is in there,
17 Potters Ledge is included in that as a -- in
18 that outline. Would you know that?

19 A (Widell) I would have to review the specific
20 write-up of the Cultural Landscape Report.
21 Obviously, there is a lot of material, as you
22 well know, in each one of them.

23 Q Right.

24 A (Widell) So, it is not on the map. So, --

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1 Q Okay. But would you trust me that Potters
2 Ledge is included in the district?

3 A (Widell) I believe that you are familiar with
4 the area. So, yes.

5 Q Thank you. So, now, we go to the next page --

6 MS. PERCY: Oh, no. I'm sorry, Art.
7 Yes.

8 BY MS. PERCY:

9 Q So, this is a view of Potters Ledge overlooking
10 the lake. What it doesn't do, I didn't put it
11 to the -- it is looking east towards the Town
12 of -- or, the Town of Dummer. And it is -- has
13 a tiny piece of the south side of where the
14 transmission corridor will go. The
15 transmission corridor runs along the south
16 side.

17 In all the viewsheds from Potters Ledge,
18 except for one tiny area, the towers are
19 visible. You wouldn't know that, because you
20 didn't climb Potters Ledge, right?

21 A (Widell) I did not climb Potters Ledge.

22 Q Okay. And, so, at the second picture, the
23 bottom picture, is -- and I apologize for these
24 pictures, they're terrible -- but the

[WITNESS PANEL: Widell|Bunker]

1 structures are visible at the east end of the
2 lake, coming down from Dummer. Can you see
3 that? You could probably see the right-of-way,
4 is that correct?

5 A (Widell) The photographs aren't identified. I
6 am assuming you're talking about the lower
7 photograph?

8 Q Yes. That's the east end.

9 A (Widell) And the cut through the -- for the
10 right-of-way, --

11 Q Yes.

12 A (Widell) -- I can see that in that particular
13 picture. But, obviously, --

14 Q Now you're going to have to trust me on the
15 tower thing again.

16 MS. PERCY: So, thank you. Next one,
17 Art.

18 BY MS. PERCY:

19 Q So, I'm getting to the last pieces of it. So,
20 Potters Ledge is a significant viewpoint. That
21 I think Mr. DeWan sent someone up there, and he
22 might still be lost, but I don't know. We're
23 hoping not. We've hiked it a number of times
24 since then. But we don't have any viewsheds

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1 looking from Potters Ledge over to the White
2 Mountain National Forest, is that correct, in
3 any of your analysis?

4 A (Widell) Not in any of the photographs of our
5 Effects Table, no.

6 Q Okay. Great. So, just moving on, in
7 evaluating the transmission corridor itself,
8 did you base -- and this is the transmission
9 corridor that runs all the way through Stark.
10 Did you base your analysis in the Cultural
11 Landscape Report on the 150 feet right-of-way?

12 A (Widell) I'd have to look at the Effects Table.

13 Q Okay. Great. And just as you're looking at
14 that, I'll just tell you that this picture is
15 done by DOE, and it's a photosimulation of the
16 Cohos Trail, or where the Cohos Trail
17 intersects with the right-of-way in the Town of
18 Stark.

19 A (Widell) On Page 5 of the Effects Table, in the
20 first sentence of the second paragraph, it is
21 150-foot wide corridor, which was acquired in
22 1946 and '47.

23 Q Great. And, so, would you say this is a fair
24 representational view of the corridor?

[WITNESS PANEL: Widell|Bunker]

1 A (Widell) The corridor immediately below the
2 Percy Summer Club on the piece of property that
3 is related to access to the water rights, yes.

4 Q Okay. So, if I told you that the corridor is
5 actually not cleared to 150 feet, would that
6 change your analysis in this area?

7 A (Widell) No. No. Because, when we looked at
8 making an assessment, the areas that would be
9 cleared for the Project were identified in a
10 particular color on the mapping. So, that was
11 taken into consideration.

12 Q Okay. Next, last picture. This is a picture
13 of the right-of-way at Christine Lake. And
14 this is looking, oh, towards Stark, the Town of
15 Stark, running south of Christine Lake. Would
16 you agree that -- can you trust me that this is
17 where it is?

18 A (Widell) I have seen this. I have been to this
19 location. This is, once again, below the lake
20 and outside of any view of that contributing
21 element.

22 Q Right. So, --

23 A (Widell) And it is visible from the -- it's
24 Christine Road there, right? Yes.

[WITNESS PANEL: Widell|Bunker]

1 Q Someday I'm going to tell everyone about
2 Christine, but --

3 A (Widell) Excuse me, "Christine". Forgive me.
4 You should know. I'm so sorry.

5 Q Oh, no. That's --

6 *[Multiple speakers at the same*
7 *time.]*

8 BY MS. PERCY:

9 Q That's okay. So, going back to this, though,
10 the Applicant has identified that an additional
11 40 feet will be cleared in order to accommodate
12 the new structures. Would that be significant
13 in your view?

14 A (Widell) It certainly should be taken into
15 consideration, yes. And, as I stated, we did
16 take that into consideration in our assessment
17 of visual adverse effects and direct effects.

18 Q And, so, what's the mitigation then?

19 A (Widell) There's not an adverse effect. There
20 is not an adverse effect. And that, in this
21 contributing element of the cultural landscape,
22 there would not be mitigation required.

23 Q So, on a drive to Christine Lake, you have
24 to -- you pass under this corridor that will be

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1 now cleared an additional 40 feet on either
2 side of the road. You don't think that's
3 significant?

4 A (Widell) No, but let me speak to that. Once
5 again, this --

6 Q Actually, --

7 A (Widell) The existing roadway to the Percy
8 Summer Club --

9 Q Uh-huh.

10 A (Widell) -- goes through this area, it has gone
11 through this area since I think at least the
12 '50s, because the property has been a
13 right-of-way for a transmission corridor since
14 that time period.

15 Obviously, we thought it could possibly
16 have an adverse effect on cultural or natural
17 -- or, not historical resources in this
18 particular case. And, so, it was taken into
19 consideration in our assessment.

20 Could there be some plantings that would
21 help along the sides of the road? Yes. I
22 would agree with that, yes. Yes. But there is
23 not an adverse effect from this right-of-way on
24 a historic resource, specifically, the Percy

[WITNESS PANEL: Widell|Bunker]

1 Summer Club here.

2 Q Well, I'm actually thinking that the adverse
3 effect is more from all the mountains that are
4 used by the public. And, so, all those
5 viewsheds are now impacted not only by higher
6 towers and structures, but by also a widened
7 right-of-way, and widened only to the extent
8 that the right-of-way legally is able to go to
9 150 feet. But, for what you've agreed to, is
10 that this representation is not 150 feet, is
11 that correct?

12 A (Widell) The clearing of the right-of-way is
13 not to its full 150 feet --

14 Q Right.

15 A (Widell) -- in this photograph, and that will
16 occur as part of the Project.

17 Q And, so, could that occur all the way through
18 Stark?

19 A (Widell) It could. I don't know. That's just
20 conjecture. I don't know. I can't speak
21 without looking at the vegetation clearing
22 maps.

23 Q And, so, just one final question, because I am
24 puzzled by the fact that the right-of-way

[WITNESS PANEL: Widell|Bunker]

1 through Stark is established at 150 feet.
2 However, there are multiple reports from the
3 Applicant that say the clearing on this
4 right-of-way will be at the minimum 10 feet and
5 maximum 40. So, all the way through the
6 right-of-way through Stark that we've been
7 talking about, including Mr. Baker's recent
8 view from the Ammonoosuc, that we don't know
9 what it is right now that we're looking at.
10 So, how much more should we be expecting in
11 terms of that impact?

12 A (Widell) The vegetation clearing maps I'm sure
13 are available on the Northern Pass Project
14 website. So, I would suggest, for specifics on
15 that, I would look at that. And I would also
16 further state that the contributing element of
17 Stark is not adversely impacted by this
18 Project.

19 MS. PERCY: Thank you. No further
20 questions.

21 CHAIRMAN HONIGBERG: Ms. Menard is
22 next on my list. Off the record.

23 *[Brief off-the-record discussion*
24 *ensued.]*

[WITNESS PANEL: Widell|Bunker]

1 CHAIRMAN HONIGBERG: Ms. Menard, you
2 may proceed.

3 MS. MENARD: Thank you. Good
4 morning, ladies.

5 WITNESS WIDELL: Good morning.

6 BY MS. MENARD:

7 Q I'd like to ask you about the Section 106
8 Programmatic Agreement, and how it ties to the
9 Section 106 process. And I'd like to put up a
10 flow chart that was generated by the Advisory
11 Council for Historic Preservation Act. Can you
12 see that okay?

13 A (Widell) Yes.

14 Q So, you're familiar with this flow chart?

15 A (Widell) Yes.

16 Q And you're aware that a link to this document
17 is found on the Northern Pass website, on a
18 page titled "Consultations Section 106", and
19 there's a notation of that on the bottom?

20 A (Widell) I haven't seen it on that particular
21 website. But I'm familiar with this flow chart
22 from the Advisory Council.

23 MS. MENARD: And I will, for the
24 record, this will be listed as "Deerfield

[WITNESS PANEL: Widell|Bunker]

1 Abutter Exhibit 151(a)".

2 BY MS. MENARD:

3 Q So, back to the flow chart. Would it be
4 correct to state that the ACHP, the
5 organization that generated this flow chart, is
6 responsible for administration of the -- for
7 the Section 106 regulations?

8 A (Widell) Yes. They have oversight. But it
9 also is carried out in each state by the State
10 Historic Preservation Office --

11 Q Correct.

12 A (Widell) -- and the federal agencies.

13 Q Uh-huh.

14 A (Widell) I would say that those are three
15 primary parties.

16 Q So, given that -- so, "yes" is the answer?

17 A (Widell) Yes.

18 Q Thank you. So, given that this 106 flow chart
19 was developed by the federal entity responsible
20 for its administration, you would accept it to
21 be accurate in describing the steps in the 106
22 process?

23 A (Widell) Yes.

24 Q So, I'd like to go briefly through a few of

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1 these steps. And, first, representation, Step
2 1, we can skip, basically, the federal
3 undertaking, and that there is a plan to
4 involve the public, has already been moved
5 through.

6 But, regarding Step 2, the identification
7 of historic properties, there is a
8 back-and-forth between the Applicant and DHR to
9 identify historic properties, correct?

10 A (Widell) In the Section 106 process, it
11 actually, technically, is between the federal
12 agency and the State Historic Preservation
13 Officer, and the Applicant usually is providing
14 that information to the federal agency.

15 Q Yes.

16 A (Widell) And that is what has happened here.

17 Q Okay.

18 A (Widell) Yes.

19 Q So, the federal agency --

20 A (Widell) Yes.

21 Q -- to DHR?

22 A (Widell) Yes. Yes. Yes. Yes. And the
23 Applicant provides the information.

24 Q Yes. And, so, Step 3 is the same process,

[WITNESS PANEL: Widell|Bunker]

1 correct? The Applicant does its analysis,
2 submits its Effects Tables, and then -- to the
3 federal agency, then DHR. They review, and an
4 agreement is presumably reached, correct?

5 A (Widell) Yes.

6 Q So, Step 4, the property -- if the properties
7 are adversely affected, the Applicant works
8 with DHR to agree on the mitigation measures,
9 and commits them to writing in some form of
10 agreement, correct?

11 A (Widell) Yes.

12 Q So, regarding the Northern Pass Project, we
13 know that there is a Programmatic Agreement,
14 and it was executed last month, to govern the
15 Section 106 process, correct?

16 A (Widell) Yes.

17 Q So, I'd like to look at the page from the PA
18 that is the "Table of Contents". And I'll put
19 it up on the screen for just one quick comment.

20 So, this -- you recognize this as the
21 Table of Contents?

22 A (Widell) Yes.

23 Q And it was touched on earlier that Sections
24 III, IV, and V, would you agree that these

[WITNESS PANEL: Widell|Bunker]

1 chapters, if you will, or topics, correspond to
2 the Section 106 Flow Chart?

3 A (Widell) They are the same function, yes. Yes.

4 Q Okay. Thank you. So, what I have up before
5 you is labeled "Deerfield Abutter Exhibit 152,
6 Section 2" -- excuse me, "151(b)".

7 So, the checkmarks represent that only
8 Step 1 has been completed. It shows that each
9 of these four steps has two parts. And the
10 Applicant's submitting information, and the
11 review by DHR. Do you see that each step has
12 two boxes that --

13 A (Widell) Yes. I see the two boxes.

14 Q -- that are contained here?

15 A (Widell) I see the two boxes, uh-huh.

16 Q Okay. So, would you agree that it is accurate
17 to say that the rest of the process will be
18 completed under the terms of the PA? Would you
19 agree with that representation?

20 A (Widell) Are you saying that as a general
21 statement or referring to the box that you --
22 the boxes that you've --

23 Q To the process, we're talking the process here.

24 A (Widell) The process --

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1 *[Court reporter interruption -*
2 *Multiple parties speaking at the*
3 *same time.]*

4 **BY THE WITNESS:**

5 A Yes. The continuation of the Section 106 is
6 now a part of the Programmatic Agreement.

7 BY MS. MENARD:

8 Q Okay. So, I'd just like to refer back to rules
9 that were cited earlier today. And this is the
10 excerpt that shows that the SEC shall consider
11 the DHR's determination of effects to historic
12 properties in its deliberations on unreasonable
13 adverse effects. So, you'd agree that this
14 excerpt is from the SEC rules? Site 301.14(b)?

15 A (Widell) Yes. It is from the -- yes, Site
16 301.14(b). Uh-huh.

17 Q So, this, citing here, does not say that the
18 SEC can or should use a programmatic agreement
19 for this purpose, is that correct?

20 A (Widell) It does not say that, right. It does
21 not say that it can or should.

22 Q Do you believe that the SEC should suspend its
23 rules, specifically Site 301.14(b)(4), and
24 proceed with deliberations on unreasonable

[WITNESS PANEL: Widell|Bunker]

1 adverse effects using a PA?

2 A (Widell) No, but let me clarify that. In past
3 cases, Section 106 has been depended upon to
4 continue the process after the issuance of a
5 certificate in other SEC deliberations.

6 Q Is it your understanding that the Section 106
7 review process requires a federal agency to
8 consider measures to avoid, minimize, and
9 mitigate adverse effects?

10 A (Widell) Yes.

11 Q In this language, "to consider measures to
12 avoid, minimize, and mitigate", is this
13 language in the Northern Pass PA?

14 A (Widell) "Avoid, minimize, and mitigate", yes.
15 I'd want to see precisely. But, yes, from
16 my --

17 Q Is it your --

18 A (Widell) Let me look at Resolution of Adverse
19 Effects, if you want me to be precise about it.
20 But, yes. I believe that is standard language
21 for dealing with adverse effects on historic
22 resources.

23 Q Is it your understanding that the Section 106
24 review process, the PA, in this case, can

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1 result in design changes for projects?

2 A (Widell) Yes.

3 Q What is your understanding would happen, if
4 following the PA for the Northern Pass resulted
5 in design changes to the Project, after the SEC
6 review process has closed?

7 A (Widell) I'm not an attorney, so I can't speak
8 to that. I would, with dependence on the PA to
9 avoid, minimize, mitigate resources, historic
10 resources, could be depended upon, even if
11 there does have to be changes to the design of
12 the Project.

13 MS. MENARD: Thank you. I have no
14 further questions.

15 CHAIRMAN HONIGBERG: Off the record.

16 *[Off-the-record discussion*
17 *ensued.]*

18 CHAIRMAN HONIGBERG: Ms. Merritt, are
19 you ready to go?

20 MS. MERRITT: Yes.

21 CHAIRMAN HONIGBERG: You may proceed.

22 MS. MERRITT: Elizabeth Merritt, with
23 the National Trust for Historic Preservation.

24 If Ms. Widell says "yes" to a lot of my

[WITNESS PANEL: Widell|Bunker]

1 questions, perhaps I'll be finished early, too.

2 I am going to ask a number of
3 questions that are specific to the Programmatic
4 Agreement. And I'm going to try to use the
5 projector by putting pieces of paper there.

6 BY MS. MERRITT:

7 Q I wanted to ask you first, though, you
8 referred, in your testimony earlier this
9 morning, to a situation that you'd been
10 involved in in the past where the head of the
11 agency got involved and changed the project.
12 Do you remember that reference earlier this
13 morning?

14 A (Widell) Oh, yes. And you're going to ask me
15 which, I believe -- yes. I believe the Long
16 Beach, the Navy, the Long Beach Naval Yard.

17 Q Okay.

18 A (Widell) Yes.

19 Q I was just curious which project you were
20 referring to.

21 A (Widell) Yes. Yes.

22 Q I have another background question for you
23 regarding the Programmatic Agreement, before I
24 start putting provisions on the screen. Did

[WITNESS PANEL: Widell|Bunker]

1 you work with the Applicant on reviewing drafts
2 of the Programmatic Agreement and preparing
3 comments?

4 A (Widell) Very early on I saw copies of the
5 Programmatic Agreement.

6 Q So, you had seen some drafts before the final
7 Programmatic Agreement --

8 A (Widell) Yes.

9 Q -- was issued?

10 A (Widell) Yes, I have.

11 Q Okay. And you were aware generally that some
12 revisions were made?

13 A (Widell) Yes.

14 Q Did you -- never mind, I'll ask this later.
15 Let me start with Page 12. I'm going to skip
16 the "whereas" clauses. Now, I have to use
17 this. In the Paragraph I.D, you see it refers
18 to the fact that the Applicant can propose to
19 implement the Project "in geographically-based
20 segments prior to [beginning] construction
21 within each geographic area", correct?

22 A (Widell) Yes.

23 Q And what is your understanding about how those
24 segments will be divided? I'm going to put up

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1 on the screen Page 61, which is an exhibit in
2 the Programmatic Agreement. Is it your
3 understanding that the -- that the Project
4 would be divided into geographic segments like
5 that or do the Applicant's planned segments
6 have no relationship to this map?

7 A (Widell) I do not know.

8 Q Okay. So, you don't know which portion of the
9 Project the Applicant is planning to initiate
10 first, --

11 A (Widell) No.

12 Q -- in terms of construction?

13 A (Widell) No.

14 Q Okay. I'd like to next go to Page 14 of the --
15 thank you -- of the Programmatic Agreement.
16 And focus on Paragraph b.iii here, regarding
17 the "Cultural Landscape Inventories". And it
18 requires completing the cultural landscape
19 inventories "prior to commencement of
20 construction", correct?

21 A (Widell) Yes.

22 Q And is it your understanding that that refers
23 to construction within the segment that is
24 currently under review? So that they wouldn't

[WITNESS PANEL: Widell|Bunker]

1 be required to complete everything before
2 constructing Segment 1, but that each segment
3 would be reviewed -- could be reviewed
4 separately?

5 A (Widell) Yes. But it does not state that in
6 this location. I believe it is in another
7 location in the Programmatic Agreement that
8 states that's possible, but --

9 Q Okay. I'd next like to turn to Page 20. Thank
10 you. And, on Page 20, first, I'd like to look
11 at Stipulation III.D.2 [III.C.2?], up at the
12 top of the page, which I have not highlighted.
13 And it's -- let's see, --

14 A (Widell) Bring it down a little. Other way.
15 Thank you.

16 Q Okay. And it says, "After the required
17 identification investigations...are
18 completed...DOE", I'm translating the acronyms
19 here, "DOE, the Forest Service, and the Army
20 Corps shall initiate the process for evaluating
21 identified properties, in consultation with
22 SHPO and" -- "the SHPO...to confirm or
23 determine their National Register eligibility."
24 Is that a fair translation of what it says?

[WITNESS PANEL: Widell|Bunker]

1 A (Widell) Yes.

2 Q Translating the acronyms. And, then, in
3 Paragraph D.3 [C.3?], we -- actually, hang on a
4 second. One of the -- the thing I was going to
5 ask is, is there any time limit that you see in
6 the Programmatic Agreement for DOE to transmit
7 the documentation to the DHR? I heard you say
8 earlier that you "assumed there was a
9 thirty-day time limit". And I, frankly, can't
10 find it. There are other thirty-day time
11 limits, which we're going to go through. But,
12 if you see anything in the Programmatic
13 Agreement that requires DOE to pass on
14 documentation from the Applicant to the DHR
15 within thirty days, I can't -- I can't find it?

16 A (Widell) I believe, if you go to Page 21, under
17 D.3 --

18 Q I'm going to pull up 21 anyway. So, let's put
19 that up on the screen.

20 A (Widell) Under D.3, "Review of Documentation",
21 3.c talks about "30 days from receipt of the
22 draft documentation to provide comments to
23 DOE", and to prepare -- DOE will direct
24 Northern Pass to prepare drafts of all

[WITNESS PANEL: Widell|Bunker]

1 documentation. Is that on the -- yes, that's
2 up now, okay.

3 Q This refers to after DOE provides the
4 documentation to other agencies, specifically
5 the Forest Service, the Army Corps, and the
6 DHR. Again, I'm translating the acronyms. In
7 b, 3.b, it says "DOE", in the second sentence
8 "DOE will distribute the drafts to the Forest
9 Service, Army Corps, and SHPO", which is DHR.

10 A (Widell) And it has done that already,
11 Elizabeth. The inventory forms have been
12 provided by DOE to the Forest Service, the Army
13 Corps, and DHR. And the cultural landscapes
14 have also been provided to I know the Forest
15 Service, and I believe the National Park
16 Service as well, and the Effects Table. So,
17 this documentation of identification and
18 evaluation is considerably on its way.

19 Q The Cultural Landscape Reports have not yet
20 been provided to DHR, correct?

21 A (Widell) Yes. That's correct.

22 Q Okay. So, I want to walk through this
23 provision to make sure that we all understand
24 the process for resolving any disagreements

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1 about eligibility of properties for the
2 National Register and the process for
3 reviewing.

4 So, in Paragraph a, 3.a, it again refers
5 to the Applicant's ability to pursue this
6 process in separate geographical segments,
7 correct?

8 A (Widell) Yes. But the identification has been
9 completed for the entire Project.

10 Q So, in Paragraph b, that's where DOE provides
11 the documents to the other federal agencies and
12 DHR, correct?

13 A (Widell) Yes. And that has been done. The
14 inventory forms have been provided to DHR, yes.

15 Q With the exception of the cultural landscape
16 material --

17 A (Widell) Yes.

18 Q -- to DHR. In c, Paragraph c, it allows the
19 agencies thirty days to review the draft
20 documentation, correct?

21 A (Widell) Yes.

22 Q And then it says "Based on the comments
23 received, DOE...may require NPT", which is the
24 Applicant, "to revise the documentation".

[WITNESS PANEL: Widell|Bunker]

1 A (Widell) Yes.

2 Q And then it says "If NPT's revisions are
3 sufficiently substantive, DOE may request a
4 second 15-day review from the agency
5 reviewers".

6 A (Widell) Yes. That's what it says.

7 Q Okay. So, just putting that all together, in a
8 worst-case scenario, you'd have, once the
9 agencies get it, you'd have a thirty-day review
10 period, plus the time between the end of that
11 thirty-day review period when comments are
12 given to DOE, and DOE directing the Applicant
13 to make revisions. And then you'd have the
14 time required for DOE -- I mean, sorry, the
15 Applicant to make those revisions. And then
16 you might have a second fifteen-day review.

17 A (Widell) Yes.

18 Q Is that correct?

19 A (Widell) Basically, that's already occurred.
20 The cultural landscapes have already -- reports
21 have already been provided by DOE to the
22 federal agencies. So, the thirty-day time
23 period is, if not finished already, close to
24 finished.

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1 Q Is it your understanding that the federal
2 agencies, namely Forest Service and Corps of
3 Engineers have already had the cultural
4 landscape notebooks for thirty days?

5 A (Widell) I don't know that they have had them
6 for thirty days. I know that they have
7 provided comments to the DOE.

8 Q Okay. But DHR, their thirty-day period has not
9 begun yet, correct?

10 A (Widell) Yes. That's correct.

11 Q Okay. So, what I'm trying to lay out here is
12 the fact that, under the Agreement, for this
13 step in the process, you could have, let's say,
14 in a worst-case scenario, you could have more
15 than two months just for this step of the
16 process, because you'd have DHR's thirty days,
17 then you'd have the time required for DOE to
18 request that the Applicant make revisions, then
19 the time needed to make those revisions, and
20 then fifteen more days. And, as we have
21 repeatedly observed, DOE does not act quickly.

22 A (Widell) I believe DOE has already requested of
23 the Applicant some changes, and they were made
24 to the cultural landscapes.

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1 Q Oh. Are you aware of what those changes were?

2 A (Widell) Yes, some. Yes, some of them. Yes.

3 Q So, the notebook --

4 A (Widell) They were technical corrections,
5 basically. Formatting, that sort of stuff,
6 yes.

7 Q Do you know whether any changes were made in
8 the boundaries of any of the cultural
9 landscapes?

10 A (Widell) No. No, there were not.

11 Q So, once DHR receives the draft documentation,
12 this time period of thirty days, plus revision
13 time, plus fifteen days, will then go forward.
14 So, it could be as much as two months for that
15 step, once DHR receives the cultural landscape
16 documentation?

17 A (Widell) I see forty-five days there, but --

18 Q In addition to the time required for DOE to
19 direct the Applicant to make changes, and then
20 for those changes to be made. Do you know how
21 much time it took for the Applicant to make the
22 changes that were requested in response to
23 comments from the Forest Service and the Corps?

24 A (Widell) Not precisely, but very quickly. I

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1 would say, in a matter of a week or two.

2 Q Okay.

3 A (Widell) But that's just an estimate from my
4 understanding.

5 Q Okay. So, we could round it off at two months,
6 in a worst-case scenario. Then, we go to
7 Paragraph d. And, then, after that process we
8 were just discussing, DOE provides the draft
9 documentation to the Consulting Parties. And
10 the Consulting Parties have thirty days to
11 review and comment on the documentation. And,
12 again, DOE can require, in response to those
13 comments, that the Applicant revise the
14 documentation and can trigger a second
15 fifteen-day review period from the Consulting
16 Parties, correct?

17 A (Widell) Yes.

18 Q So, if we add together these two sequential
19 processes, that second one, in Paragraph d,
20 could again take another couple of months in a
21 worst-case scenario?

22 A (Widell) Yes.

23 Q Are you aware of the fact that the Applicant
24 objected to this process in the Programmatic

[WITNESS PANEL: Widell|Bunker]

1 Agreement?

2 A (Widell) No.

3 Q Okay. Now, going to Page 22, which is right
4 here. Oh, I think it's on the back. Okay.
5 Page 22. In Paragraph III.D.3.e, up at the
6 top. It says "Any agency or Consulting Party
7 may request an extension from DOE...explaining
8 the reasons why the extension is needed", and
9 DOE can grant that extension of time.

10 So, I just wanted to be sure we're all
11 aware of the fact that, even in addition to the
12 four months we've already outlined, additional
13 time could be granted by DOE, if requested and
14 if needed by another review party.

15 And, then, in Paragraph g, it says DOE
16 essentially makes the determination that the
17 identification of historic properties is
18 complete. But it also refers to -- let's see,
19 where is that cross-reference? There is a
20 procedure later in the Agreement for raising
21 objections or disputes regarding the
22 eligibility of properties for the National
23 Register. And I'm going to direct you to Page
24 43, and I'm going to put Page 43 on the screen.

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1 So, in Paragraph F, and this is
2 Stipulation XIII.F, it refers to "any disputes
3 or objections [regarding] eligibility of
4 properties for the National Register that can
5 be resolved by the Keeper of the National
6 Register", and it refers to the regulations.

7 I assume you're generally familiar with
8 that process for referring disagreements to the
9 Keeper of the National Register?

10 A (Widell) Yes. And I believe, as you know, it
11 is rarely used in my professional experience,
12 because the parties usually are able to come to
13 resolution.

14 Q And how much time does the Keeper of the
15 National Register have to engage in that review
16 under the regulations cited in the PA? Do you
17 recall off the top of your head?

18 A (Widell) I do not recall off the top of my
19 head, but it is in the regulations, I believe.

20 Q Yes. Does "45 days" ring a bell to you?

21 A (Widell) Oh, I can't remember. I'm sorry.

22 Q Okay. In your previous experience as a State
23 Historic Preservation Officer and Federal
24 Preservation Officer, have you been involved

[WITNESS PANEL: Widell|Bunker]

1 directly in any disputes that have been
2 referred to the Keeper of the National Register
3 or not?

4 A (Widell) Yes.

5 Q And what's an example?

6 A (Widell) It was regarding the eligibility of
7 Mount Shasta.

8 MR. IACOPINO: Of what?

9 BY MS. MERRITT:

10 Q Mount Shasta, in California?

11 A (Widell) Yes.

12 Q And what happened as a result of that? Did the
13 Keeper of the National Register disagree with
14 the agency's recommendations or --

15 A (Widell) No. It determined that it was
16 eligible for the National Register.

17 Q Was the agency involved the Forest Service?

18 A (Widell) Yes, it was.

19 Q Okay. So, take my word for it, the amount of
20 time the Keeper has to review a referred
21 disagreement is forty-five days. And, so, if
22 there were an unresolved disagreement about
23 eligibility, that could potentially add another
24 forty-five days onto the worst-case scenario,

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1 four months, that we've already walked through,
2 correct?

3 A (Widell) No, not necessarily. Because, if
4 there is disagreement, it wouldn't necessarily
5 be found the last day of all this consultation.
6 Might be found pretty early on. And, so, my
7 experience is that it would be done in parallel
8 time limitations.

9 Q Could you clarify that answer? Because your
10 reference to "parallel time" seems contrary to
11 the language in the PA itself, which the
12 Applicant fought hard to change, but DOE
13 refused to change. So, could you clarify that
14 answer?

15 A (Widell) You'll have to show me the part of the
16 PA you're referring to, I'm sorry.

17 Q Okay. You referred to "parallel" -- you
18 referred to the resolution of disagreements in
19 a "parallel" process. And the portion of the
20 PA that seems inconsistent with that answer
21 would be Page 21, which specifically calls for
22 a subsequent review, first, by the agencies,
23 and subsequently by the Consulting Parties.
24 And, so, DOE has prohibited that sort of

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1 parallel review.

2 A (Widell) Only if you take all thirty days.
3 Sometimes, in my experience, it becomes
4 apparent, and, like I said, I don't know why
5 we're specifically spending time, because this
6 is a very rare occurrence, a very rare
7 occurrence. In my experience, the federal
8 agencies and the SHPO come to agreement 99
9 percent of the time. But, if it is a property
10 that there is disagreement between the federal
11 agencies whether it's eligible or not, it is
12 possible that that review by the federal
13 agency, SHPO, and the Consulting Parties could
14 happen much more quickly on a particular
15 property. It wouldn't be necessarily at the
16 end of sixty days, Ms. Merritt.

17 Q Well, in this case, I'm thinking that reviewing
18 1,500 pages of Cultural Landscape Reports,
19 never mind the extensive documentation that has
20 already occurred, could well take the full
21 thirty days?

22 A (Widell) It could well, but it also could be
23 assumed eligible as well.

24 Q And I'm also assuming that, in this case, most

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1 of the issues, most of the disagreements
2 regarding eligibility would come from
3 Consulting Parties more than the agencies.
4 But, clearly, under the PA, the Consulting
5 Parties have specific rights to raise those
6 objections and to use the procedural mechanisms
7 for attempting to resolve those objections?

8 A (Widell) Yes.

9 Q So, I was going to do this later, but it might
10 be helpful for me to put up on the screen a
11 couple of examples of what I'm referring to.
12 Let's take, let's see, this is Page 82274, from
13 the cultural landscape notebooks. And what's
14 that exhibit number? 211? Applicants 211.

15 This is a map that shows some of the
16 cultural landscapes that were looked at, but
17 not pursued as cultural landscapes. In the
18 right-of-way, down towards the bottom of this
19 area of the map, we see the Peaked Hill Road
20 district, which is already identified as a
21 National Register district, correct?

22 A (Widell) It has been identified as a National
23 Register eligible district by DHR, in
24 consultation with DOE.

[WITNESS PANEL: Widell|Bunker]

1 Q And I believe it is one of your acknowledged
2 adverse effects?

3 A (Widell) Yes, it is.

4 Q Okay. So, if there were a Consulting Party
5 that wanted to raise issues about the
6 boundaries of this already National Register
7 eligible district, and wanted to argue that
8 additional areas should be included within the
9 district, that would be an issue that would be
10 raised under the procedures that we just walked
11 through, correct? It would be while the
12 Consulting Parties were going through their
13 thirty-day review of the identification
14 materials, and then they would raise comments
15 to DOE "we think these boundaries should be
16 expanded, and here's why". And then DOE would
17 take that into account, and perhaps require the
18 Applicant to do additional work, perhaps not.
19 But, then, the Consulting Party could
20 potentially raise that issue all the way to the
21 Keeper of the National Register, correct? I'm
22 just trying to use examples from the maps we
23 have.

24 A (Widell) I'm not sure of that, because,

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[WITNESS PANEL: Widell|Bunker]

1 Ms. Merritt, the determination of eligibility
2 has already been done by DHR for the boundaries
3 for that historic district. DOE provided a
4 recommendation for establishment of the
5 boundaries of that district through the Project
6 Area Forms. And, so, this is not our
7 recommendation alone for the boundaries of that
8 district, which were changed based on our
9 original assessment of the properties.

10 But this is consultation already concluded
11 between DOE and DHR regarding capture of the
12 essence of that historic resource. So, this
13 has moved forward before the Programmatic
14 Agreement was signed, as part of the regular
15 Section 106 process between DOE and DHR for
16 this Project.

17 Q But the Consulting Parties' thirty-day review
18 period has not yet occurred with respect to
19 these resources, correct?

20 A (Widell) This happened not under the
21 Programmatic Agreement.

22 Q Are you saying that some of these resources the
23 Consulting Parties would not be allowed to
24 comment on in that provision we just reviewed

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[WITNESS PANEL: Widell|Bunker]

1 concerning eligibility and boundaries?

2 A (Widell) No. I don't know how DHR would accept
3 those comments, since they have already
4 completed this stage of the identification
5 prior to the signature of the Programmatic
6 Agreement.

7 Q Under the Programmatic Agreement, didn't it say
8 the comments are to go to DOE, rather than DHR?

9 A (Widell) Once again, Ms. Merritt, this
10 identification of the boundaries for this
11 historic district were, and I'd have to look at
12 the Inventory Form, what is called the "green
13 sheet", and the green sheet process. The
14 Department of Energy provided this historic
15 resource to DHR in their regular review of
16 determination of eligibility of properties.
17 And, so, the boundaries were identified at that
18 time for the Peaked Hill Historic District.

19 Q Let me use another example from the Cultural
20 Landscape Report. This is Page 82011, from
21 Exhibit 211. And this is the Upper Ammonoosuc
22 River cultural landscape that you were just
23 discussing with Ms. Percy.

24 If there were -- if one of the Consulting

[WITNESS PANEL: Widell|Bunker]

1 Parties believed that the boundaries of this
2 proposed cultural landscape should be expanded,
3 for example, wouldn't that thirty-day review
4 period in the Programmatic Agreement that we
5 just talked through, on Page 21, wouldn't that
6 be the place for the Consulting Parties to make
7 that argument, to raise that issue and try to
8 persuade DOE?

9 A (Widell) Yes.

10 Q Okay. And, so, if -- that disagreement could
11 potentially go through the dispute resolution
12 process, as DOE decides how to respond to that
13 comment, correct?

14 A (Widell) Yes. There would be consultation
15 probably prior to that, yes.

16 Q Okay. So, let's now go to the effects portion
17 of the Programmatic Agreement. After we -- we
18 were going through the portion that deals with
19 resolving the identification of resources.
20 And, so, my point was to try to make sure we
21 laid out the process for resolving
22 disagreements, whether those disagreements
23 relate to boundaries or relate to eligibility
24 at all. And that that process, in the extreme,

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1 could take months, four months, plus five
2 months, depending on whether the Keeper gets
3 involved.

4 Now, let's turn to the effects
5 determinations in the Programmatic Agreement.
6 And let's start with Page 23 -- wait a minute,
7 yes. Here's 23.

8 So, this comes after the identification
9 process is completed. And I want to just
10 clarify some references I heard you made
11 earlier. We've talked about the Effects
12 Tables, right? And I just want to clarify my
13 understanding that those represent the
14 Applicant's proposed determinations of effect,
15 but those determinations would still go through
16 the process in the Programmatic Agreement that
17 we're about to walk through for addressing any
18 potential disagreements with those
19 determinations, is that correct?

20 A (Widell) Yes. And I would add, the Effects
21 Tables formatting was developed by DHR, in
22 consultation with the Applicant.

23 Q Is that the same thing that is referred to as
24 the PAF or is the PAF just an identification

[WITNESS PANEL: Widell|Bunker]

1 document?

2 A (Widell) The PAF is a "Project Area Form". It
3 is a form that the New Hampshire State Historic
4 Preservation Officer uses to develop context
5 for a undertaking. So, the Department of
6 Energy, using consultants named "SEARCH"
7 developed Project Area Forms. And the key
8 thing, in addition to developing an historic
9 context, is it also enabled DOE to identify the
10 specific properties that might be affected by
11 the Project. And they were brought prior to
12 the signature of this Programmatic Agreement to
13 DHR for consultation. And that is how the
14 properties that were inventoried, the single
15 properties or multiple properties that were
16 inventoried, these are aside from the cultural
17 landscapes, were chosen and done in
18 consultation with DHR. And those have all been
19 completed and provided to DHR.

20 Q Okay. Turning back to the language of the
21 Programmatic Agreement, we have Page 23 on the
22 screen, Stipulation -- this is IV, IV.E,
23 "Consultation on Assessing Effects on
24 Identified Historic Properties". And we do

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1 anticipate, as we've already heard from the
2 questions this morning, that there may be some
3 disagreements regarding whether effects are
4 adverse or not, and that those disagreements
5 will need to be resolved through the process in
6 the PA, right?

7 A (Widell) Yes.

8 Q So, first, it says, in E.1.b, it says that "DOE
9 will direct Northern Pass", the Applicant, "to
10 host at least two in-person Consulting Party
11 meetings (one up in Whitefield and one in the
12 Laconia/Concord area)...to discuss the effects
13 of the Project on of the identified historic
14 properties." And "DOE...can determine whether
15 additional in-person meetings on conference
16 calls are needed". So, that alone will take
17 some time to schedule and arrange those
18 meetings, correct?

19 A (Widell) I can't speak to how much time it will
20 take. But it is a provision in the
21 Programmatic Agreement for inclusion of the
22 public and Consulting Parties.

23 Q So, farther down on this same page, in
24 Stipulation E.3.a, it says "DOE will distribute

[WITNESS PANEL: Widell|Bunker]

1 the draft Effects Documentation to Consulting
2 Parties...for 30 days to review", right?

3 A (Widell) Yes.

4 Q And, then, it says "Any disputes regarding
5 findings of effect [are] resolved in accordance
6 with Stipulation XIII." And, we already looked
7 at Stipulation XIII with respect to referring
8 eligibility disputes to the Keeper, but this is
9 the portion of Stipulation XIII that refers to
10 other dispute regulation.

11 We can come back to that. But let's just
12 keep going through this process and see what
13 happens next. Let's go to Page 24. Is that on
14 the other side of that?

15 ADMIN. MONROE: Yes.

16 **BY THE WITNESS:**

17 A (Widell) Yes.

18 BY MS. MERRITT:

19 Q Okay. So, then, in response to Consulting
20 Parties' comments, as happened before, DOE can
21 require the Applicant to make revisions to the
22 Effects Documentation. And I assume that the
23 Effects Documentation begins with the tables
24 that were put up on the screen earlier that we

[WITNESS PANEL: Widell|Bunker]

1 were looking at, right, in response to other
2 questioners?

3 A (Widell) Are you referring to the Cultural
4 Landscape Effects Tables? And, in my previous
5 testimony, we also had the individual inventory
6 form, property effects form.

7 Q I guess I was referring to what you've been
8 calling the "Effects Tables". So, DOE can
9 request that the Applicant make revisions, and
10 they can request a second fifteen-day review
11 period after that, if changes are sufficiently
12 substantive, right?

13 A (Widell) Yes.

14 Q So, then, after that Consulting Party review
15 occurs, then, in Paragraph 4, there's public
16 review of the Effects Documentation. The DOE
17 makes it available to the public for a
18 thirty-day review. And, again, there's the
19 reference to the dispute resolution procedure.
20 There's the ability of DOE to require the
21 Applicant to make revisions in response to the
22 comments. So, this is an additional period of
23 time, correct?

24 MR. WALKER: Objection, Mr. Chairman.

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[WITNESS PANEL: Widell|Bunker]

1 Mostly what Ms. Merritt is doing is going
2 through the document, having Ms. Widell confirm
3 what it says. I think the document speaks for
4 itself. And Ms. Widell would probably
5 stipulate that it says what it says.

6 MS. MERRITT: Can I respond to that?

7 CHAIRMAN HONIGBERG: You may.

8 MS. MERRITT: I noted that earlier
9 questioners were asking Ms. Widell to read the
10 PA. And I thought I would be more efficient by
11 reading it myself, but my --

12 CHAIRMAN HONIGBERG: Both are pretty
13 excruciating, I got to tell you.

14 *[Laughter.]*

15 MS. MERRITT: I know, I know. But
16 the purpose, what I'm trying to achieve here
17 is, none of the other questioners, of -- in
18 Tuesday or today, have gone through the
19 Programmatic Agreement in excruciating detail
20 like this. And I know that the Committee
21 members are interested in understanding what
22 this process is that magically solves all the
23 problems. And I'm trying to point out the
24 timing involved. The amount of time, if you

[WITNESS PANEL: Widell|Bunker]

1 add up what the different steps are, how long
2 that could take.

3 So, that's what I'm trying to get at.

4 CHAIRMAN HONIGBERG: I don't know if
5 there's a more efficient way to do what you're
6 doing. I think, if you ask her some leading
7 questions about what Section II.B.3 says, or
8 the timeline there, she may well agree with
9 you, without you having to read it or her
10 having to read it. And, if you don't get that
11 kind of answer, maybe then you'll go through
12 it. But that's just a suggestion.

13 I'm fairly certain, though, that, if
14 she has to agree with you, she'll agree with
15 you. And I think we've seen that from other
16 questioners.

17 MS. MERRITT: Well, it is also
18 something that we can certainly discuss --

19 CHAIRMAN HONIGBERG: And just to
20 finish the thought. I mean, Mr. Walker is
21 correct, the document says what the document
22 says. And having someone read it into the
23 record doesn't make the document say anything
24 different from what it says.

[WITNESS PANEL: Widell|Bunker]

1 So, why don't you try and lead her
2 through this timeline that you want to create.
3 And, if you can't connect with her on a
4 particular aspect of the timeline, draw her
5 attention to the section that you think says
6 what you think it says, and maybe you'll get on
7 the same page with her.

8 MS. MERRITT: Okay. Maybe what I'll
9 do is shift to a couple of specific examples,
10 if that would be helpful.

11 BY MS. MERRITT:

12 Q And, so, let me put a couple of maps on the
13 screen. This is Page 82067 of Exhibit 211.
14 This is the Harvey Swell cultural landscape
15 district. And there have been some earlier
16 questions today regarding the proposed
17 determination by the Applicant that there would
18 be no adverse effect on this district.

19 So, is it your understanding that those
20 members of the public or Consulting Parties who
21 disagree with that determination would then use
22 the process in the Programmatic Agreement to
23 raise those disagreements?

24 A (Widell) Yes.

[WITNESS PANEL: Widell|Bunker]

1 Q So, they would do their thirty-day review, and
2 then submit their comments to DOE disagreeing
3 with the proposed determination of adverse
4 effect, and they would argue why they think
5 that determination is wrong, given the
6 visibility and so forth?

7 A (Widell) There would be a variety of reasons
8 they might want to include. So, I can't say
9 why they would say that.

10 Q So, here's another map, which is -- oh, sorry,
11 that's the wrong one. This is Page 81576. And
12 it's a map of the Nottingham Road Historic
13 District. So, this map shows, from left to
14 right, the lines, they're not very dark, but
15 the lines where the transmission line would cut
16 through the district. And this has also been
17 determined by the Applicant to be proposed as a
18 "no adverse effect" determination, correct?

19 A (Widell) Yes. But this is not a cultural
20 landscape.

21 Q I understand that.

22 A (Widell) This is a -- this is a multiple
23 property inventory that was completed. And my
24 understanding that we were limited to talking

[WITNESS PANEL: Widell|Bunker]

1 about cultural landscapes today.

2 Q Well, my reason for putting this map on is that
3 my understanding is that, if Consulting Parties
4 or members of the public disagree with the
5 Applicant's proposed determination that this
6 will not be adversely affected, that they would
7 use that process in the Programmatic Agreement
8 to raise those disagreements. That's where
9 they would bring those disagreements about that
10 "no adverse effect" determination.

11 A (Widell) Yes.

12 Q And they would have the thirty-day period to
13 comment under the PA. And then, DOE, if it
14 felt -- if it agreed with them, DOE could
15 require a change, could trigger another
16 fifteen-day period, correct?

17 A (Widell) No. Once again, this is a historic
18 district, like Peaked Hill Road Historic
19 District, which was first identified by DOE in
20 the Project Area Form, recommended to DHR, DHR,
21 in their green sheet process, which is the
22 process for determination of eligibility and
23 identification of the resource and boundaries,
24 identified this as a historic district which

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[WITNESS PANEL: Widell|Bunker]

1 needed to be inventoried, and it has been
2 inventoried. So, that process of
3 identification is completed prior to the
4 Programmatic Agreement.

5 Now, for effects to it, yes. It would
6 follow the Programmatic Agreement now.

7 Q Okay. So, the Programmatic Agreement
8 prescribes the process for parties to challenge
9 that "no adverse effect" determination?

10 A (Widell) Yes.

11 Q And then -- hmm. I'm trying to figure out a
12 way to do this without putting more language
13 from the PA on the screen.

14 CHAIRMAN HONIGBERG: If you need to
15 do it, you need to do it. I mean, don't
16 hesitate to do what you feel you need to do to
17 examine the witness.

18 MS. MERRITT: I know it's
19 excruciating.

20 BY MS. MERRITT:

21 Q Okay. Let me just put one more provision. And
22 this is 40 -- here's Page 42. This is the
23 "dispute resolution" provision.

24 If there's a disagreement, so, for

[WITNESS PANEL: Widell|Bunker]

1 example, let's use Nottingham Road. If
2 Consulting Parties object to the "no adverse
3 effect" determination, first, there's the
4 process where DOE decides whether it agrees
5 with those comments. And, if the Consulting
6 Parties remain unhappy with DOE's response,
7 then they can invoke this dispute resolution
8 procedure, correct?

9 A (Widell) Who did you say precisely is
10 requesting this dispute? Is it a concurring
11 party or --

12 Q Let's say it's a concurring party, for
13 simplicity.

14 A (Widell) Okay. Thank you. Okay. Yes.

15 Q And, so, I just wanted to make sure my
16 understanding is correct, that this process
17 first requires a determination in B, a
18 determination by DOE "within thirty days
19 whether the objection can be resolved through
20 consultation". And, then, if not, under B.2.a,
21 there's a thirty-day process for getting
22 comments from the Advisory Council. And then,
23 on the next page, there's another thirty-day
24 process for DOE to make a decision, a final

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[WITNESS PANEL: Widell|Bunker]

1 decision on how to resolve that objection.

2 So, I guess I just wanted to point out
3 that there's another ninety days in which,
4 depending on the outcome of that dispute
5 resolution, you wouldn't know until the end
6 what the final decision is on even whether
7 there's an adverse effect under Section 106?

8 A (Widell) Yes. But I would point out, which we
9 kind of skipped over, under Stip XIII.A, --

10 Q What page is that?

11 A (Widell) It's on the same page right above
12 where you began reading, on Page 42, --

13 Q Uh-huh.

14 A (Widell) -- "Stip XIII Dispute Resolution, A.
15 Objections", that DOE is particularly here
16 directed to first consult with the party for
17 seven days. And, once again, much of this
18 Programmatic Agreement is boilerplate, is, as
19 you know, Betsy, having worked in this field
20 for a long time, that these are processes that
21 have been used for small and large projects
22 effectively. And consultation for seven days,
23 in my professional experience, almost always
24 moves the needle to some agreement, not always,

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[WITNESS PANEL: Widell|Bunker]

1 but more often than not. And, so, the
2 direction in this dispute resolution is first
3 to have DOE consult with the party. And I
4 think that's wise.

5 Q So, I guess the point I was trying to make by
6 using some of these examples was that, in
7 disputed situations, such as, for instance, the
8 Harvey Swell District that was discussed
9 earlier, districts where there's a proposed
10 determination of "no adverse effect", that
11 issue might not be resolved for months, if
12 you -- if the Consulting Parties invoke the
13 review procedure. And, in some cases, you may
14 also have boundary disagreements as well that
15 would need to be resolved first.

16 So, the point I was trying to just confirm
17 is that, even the determinations of adverse
18 effect, such as for the districts like Harvey
19 Swell, like Nottingham Road, like Franklin
20 Falls Dam, could take months to resolve before
21 we even know what the final federal
22 determination is regarding that adverse effect.

23 A (Widell) Is there a question?

24 Q Do you disagree with that?

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[WITNESS PANEL: Widell|Bunker]

1 A (Widell) Yes.

2 Q Okay. Explain.

3 A (Widell) Yes, it is possible, but I think
4 unlikely. And primarily because, once again,
5 the number of professionals that have prepared
6 these materials. PAL has a great deal of
7 experience applying the criteria for
8 identifying cultural landscapes. The others,
9 consultant -- contractors, we had eight
10 different contractors that work in the field of
11 historic resources preparing inventories,
12 identifying boundaries, not just Preservation
13 Company.

14 And, so, in my experience, with working
15 with a broad group of professionals who bring
16 decades of experience, that they have done
17 excellent work identifying these resources.
18 And, in what we have done so far through the
19 Section 106 process, in consultation and
20 working with DHR, they have agreed, they have
21 agreed with the majority of the identification
22 that has been accomplished through this
23 process.

24 Q I guess I'm focused more on the Effect

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1 Determinations, which have not been reviewed
2 yet. And isn't it -- isn't it fair to say that
3 the "no adverse" -- some of the "no adverse
4 effect" determinations could ultimately be
5 reversed through the dispute resolution process
6 or through DOE itself disagreeing?

7 A (Widell) Anything is possible, yes.

8 Q Okay. And we may not know for months.

9 MS. MERRITT: I think I'll cut short
10 my questions, in light of the hour and so
11 forth, and because of the fact that the
12 Programmatic Agreement does speak for itself
13 and does lay out these time limits. So, I
14 guess I'll, in light of the hour, go ahead and
15 end my questions.

16 CHAIRMAN HONIGBERG: All right. We
17 will break for lunch, and be back in an hour,
18 which is roughly 20 minutes to two.

19 (Lunch recess taken at 12:40
20 p.m. and concludes **Day 41**
21 **Morning Session.** Hearing
22 continues under separate cover
23 in the transcript noted as **Day**
24 **41 Afternoon Session ONLY.**)

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C E R T I F I C A T E

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

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

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

<p>ADMIN. MONROE: [2] 6/14 142/14 BY MR. BAKER: [3] 77/8 81/13 83/7 BY MR. PLOUFFE: [2] 58/21 76/1 BY MS. BOEPPLE: [6] 5/1 6/16 16/23 19/4 19/14 31/12 BY MS. MENARD: [3] 110/5 111/1 115/6 BY MS. MERRITT: [5] 118/5 131/8 142/17 146/10 149/19 BY MS. PERCY: [5] 95/14 98/21 102/7 103/17 106/7 CHAIRMAN HONIGBERG: [34] 4/1 16/8 16/13 16/19 18/7 18/23 19/2 31/5 31/7 31/11 57/15 57/19 57/21 58/2 58/7 76/18 82/21 83/1 83/6 94/14 94/17</p>	<p>94/21 94/24 109/20 109/24 117/14 117/17 117/20 144/6 144/11 145/3 145/18 149/13 154/15 MR. BAKER: [4] 76/20 76/23 83/3 94/9 MR. CUNNINGHAM: [2] 98/16 98/19 MR. IACOPINO: [1] 131/7 MR. PLOUFFE: [6] 58/4 58/8 58/14 58/17 75/24 76/14 MR. WALKER: [2] 18/2 143/23 MS. BOEPPLE: [7] 4/8 4/13 6/15 18/8 19/1 19/9 57/13 MS. DORE: [1] 19/7 MS. MENARD: [3] 110/2 110/22 117/12 MS. MERRITT: [9] 117/19 117/21 144/5 144/7 144/14 145/16 146/7</p>	<p>149/17 154/8 MS. PERCY: [10] 94/23 95/1 95/4 95/6 95/9 98/15 98/17 102/5 103/15 109/18 WITNESS BUNKER: [1] 4/10 WITNESS WIDELL: [21] 4/11 4/23 16/12 16/18 16/21 31/3 31/6 31/9 57/17 57/20 57/23 58/12 58/16 76/17 76/22 94/11 94/15 95/2 95/5 95/8 110/4 ' '47 [1] 104/22 '50s [1] 107/12 'Historic [1] 17/11 to [1] 141/12 0 052 [1] 1/24 06 [3] 1/7 21/18 29/23 1 1,500 [1] 133/18</p>
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