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STATE OF NEW HAMPSHIRE
SITE EVALUATION

October 16, 2017 - 9:05 a.m. DAY 47
49 Donovan Street MORNING Session ONLY
Concord, New Hampshire

{Electronically filed with SEC on 10-30-17}

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

PRESENT FOR SUBCOMMITTEE/SITE EVALUATION COMMITTEE:
Chrmn. Martin P. Honigberg Public Utilities Comm.
(Presiding as Presiding Officer)

Cmsr. Kathryn M. Bailey Public Utilities Comm.
Dir. Craig Wright, Designee Dept. of Environ. Serv.
Christopher Way, Designee Dept. of Resources &
Economic Development
William Oldenburg, Designee Dept. of Transportation
Patricia Weathersby Public Member
Rachel Dandeneau Alternate Public Member

ALSO PRESENT FOR THE SEC:
Michael J. Iacopino, Esq., Counsel to the SEC
(Brennan, Caron, Lenehan & Iacopino)

Pamela G. Monroe, SEC Administrator

(No Appearances Taken)

COURT REPORTER: Susan J. Robidas, NH LCR No. 44

I N D E X

1
2
3 WITNESS PANEL: MICHAEL BUSCHER
4 (RESUMED) JAMES PALMER
5 JEREMY OWENS
6

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

2 CHAIRMAN HONIGBERG: Good
3 morning, everyone. This is Day 47. Counsel
4 for the Public's aesthetics panel is still in
5 place. Mr. Needleman has repositioned
6 himself to continue his questioning.

7 Mr. Needleman, you may
8 proceed.

9 Oh, wait. Ms. Connor, you
10 have something you'd like to say? If so, sit
11 and speak into the microphone, please.

12 MS. CONNOR: So hard to get
13 used to. I wanted to raise a process
14 question which we raised with --

15 CHAIRMAN HONIGBERG: People in
16 the back can't hear you.

17 MS. CONNOR: I wanted to raise
18 a process issue that we raised with Attorney
19 Needleman, and it has to do with the exhibits
20 he will be using today for cross-examination
21 which Counsel for the Public does not have.
22 It has been represented that they have marked
23 those exhibits, but they're not uploading
24 them because they think it would give us an

1 unfair advantage. The problem is, that means
2 we also will not have the exhibits for
3 redirect, because I anticipate that will be
4 later today. And the process is, we got
5 their exhibits from Thursday on Friday
6 morning. So I will be forced to redirect
7 without ever seeing the exhibits, and you
8 will be asked to do your questioning without
9 seeing the Applicant's exhibits. And
10 similarly, the witnesses will only see those
11 portions of the exhibits that are shown to
12 them and not the exhibits in their entirety.
13 And we think that procedurally that's unfair,
14 and it's having a greater impact on Counsel
15 for the Public, because when the Applicant
16 presented cross on their earlier witnesses,
17 there was a substantial amount of time in
18 which to get our exhibits -- actually, not on
19 their cross. They did their direct. We did
20 our cross. They got our exhibits. All the
21 intervenors asked questions, and then they
22 did their redirect. That's now been
23 condensed with respect to us, and we're
24 basically going from cross to your questions,

1 to redirect without the advantage of ever
2 seeing their exhibits. And we would like an
3 opportunity to have their exhibits before we
4 do our redirect.

5 MR. NEEDLEMAN: Mr. Chair,
6 this issue was specifically addressed prior
7 to the time the Committee issued its first
8 procedural order back in April. The initial
9 order was going to require every party to
10 provide its exhibits in advance. I think
11 every party in this case, including the
12 Applicant, and including Counsel for the
13 Public, objected to that process and asked
14 that exhibits not be required in advance.
15 And the Committee acquiesced and issued an
16 order that doesn't require that. We've now
17 gone through the entire proceeding with
18 people not furnishing their exhibits in
19 advance. Counsel for the Public indicates
20 that in some cases they did. I never had
21 them in front of me when I was prepping my
22 witnesses, and my witnesses never had them in
23 front of them. So, to change that process
24 now seems patently unfair. I appreciate what

1 Ms. Connor is saying. And we committed to
2 providing our exhibits immediately after
3 we're done and are prepared to do so. But to
4 be required to do otherwise just would not be
5 reasonable, given where we are.

6 (Off-the-record discussion between SEC
7 counsel and Chairman.)

8 CHAIRMAN HONIGBERG: Mr.
9 Needleman, Ms. Connor indicated or said that
10 she thought you would show people portions of
11 exhibits and that there would be -- that she
12 wouldn't know what else there is as part of
13 that exhibit. Are there situations where
14 you're going to show one paragraph out of a
15 10-page document or something like that?

16 MR. NEEDLEMAN: Well, not that
17 I can recall, off the top of my head.
18 Certainly not today, as far as I can recall.
19 If there's a specific example, I'm happy to
20 hear what that is.

21 CHAIRMAN HONIGBERG: I guess,
22 Ms. Connor, if there's something that you
23 want to see, you'll be given an opportunity
24 to see it. And if there's something specific

1 that comes up that you feel you're not able
2 to do, you're going to need to make an
3 explanation at that time as to why you can't
4 proceed because that is how everything else
5 has gone to date. You have whatever happened
6 from the previous day. Neither you nor I
7 knows what's going to come during this
8 session. So if there's something that comes
9 up and you have a problem with a particular
10 exhibit or a couple of exhibits, we'll talk
11 about them then when they're not
12 hypothetical.

13 MS. CONNOR: Could the
14 Applicant at least produce the exhibits used
15 today, today, before redirect as opposed to
16 tomorrow?

17 CHAIRMAN HONIGBERG: I think
18 he just said they're going to be provided
19 immediately when he's done.

20 Is that what you said, Mr.
21 Needleman?

22 MR. NEEDLEMAN: Yeah,
23 absolutely.

24 MS. CONNOR: Because that

1 wasn't done on Thursday.

2 MR. NEEDLEMAN: I thought it
3 was --

4 CHAIRMAN HONIGBERG: Whatever
5 happened or didn't happen on Thursday isn't
6 relevant right now. Mr. Needleman's
7 committed to doing it when he's done with his
8 direct -- I mean his cross, and it shall
9 happen.

10 MS. CONNOR: Thank you.

11 CHAIRMAN HONIGBERG: All
12 right. Mr. Needleman, you may proceed.

13 MR. NEEDLEMAN: Thank you.

14 CROSS-EXAMINATION (CONT'D)

15 BY MR. NEEDLEMAN:

16 Q. Good morning, gentlemen. At this point in
17 time, I want to go back to one quick issue
18 that we talked about last week and see if
19 you've got some additional information on
20 this.

21 When I was asking you about the
22 vegetated maps, and I asked you what was
23 provided to Mr. Kavet and Mr. Rockler, you
24 said you didn't know, but you would check.

1 I'm curious to know whether you checked and
2 whether you made that determination over the
3 weekend.

4 A. (Palmer) We have not talked to them. I
5 believe that we have found a spreadsheet that
6 was provided them that gave the area of
7 visibility. And I can't really say more than
8 that.

9 Q. Okay. I did not recall when I was
10 questioning you on Thursday that there was a
11 footnote in their report where they sounded
12 like they described what they received. So I
13 want to call the footnote up and ask you to
14 take a quick look at it. This is what they
15 described in their report as what they
16 received. If you could read that and tell me
17 whether that clarifies for you what they got.

18 (Witness reviews document.)

19 CHAIRMAN HONIGBERG: Mr.
20 Needleman, what is that document? I see that
21 it's labeled.

22 MR. NEEDLEMAN: I think it's
23 Counsel for the Public Exhibit 148. It's the
24 Kavet supplemental report, Footnote 48, on

1 Page 57.

2 (Witness reviews document.)

3 A. (Palmer) So the bottom of this highlighted
4 section refers to, I'm assuming, the draft
5 technical report, but something on the DOE
6 web site. The highlighted area describes the
7 data that were used for the elevation and
8 screening. And we think that this comes from
9 an e-mail communication that was had with
10 them, but, you know, there is no way for us
11 to know for sure.

12 Q. So do these sounds like they used their
13 ground maps or they used the vegetated maps?

14 A. (Palmer) They used a screened visibility map
15 that only screened for forest cover, per se,
16 not forested wetlands or other kinds of
17 vegetative covers. So it's bare earth and
18 assigning a fixed height of, is it 45 feet --
19 I can't look at it and talk to you, too --
20 just to the forest cover. So it's very
21 conservative since the forest cover's
22 typically higher than that height.

23 Q. So it sounds to me what you're saying is,
24 still, as we sit here today, we don't know if

1 Kavet used those vegetated maps that we
2 looked at the other day which do not
3 accurately depict Northern Pass, the maps in
4 Plymouth, Sugar Hill, maps like that. We
5 don't know; right?

6 A. (Palmer) That's correct.

7 A. (Buscher) Could you repeat that question,
8 please?

9 Q. Yeah, I'm just trying to see if we can get a
10 clear understanding of which maps Kavet used.
11 And the other day we established that the
12 vegetated screening maps that you included
13 for places like Plymouth, Sugar Hill and so
14 forth, didn't accurately depict the way
15 Northern Pass would look on those maps.

16 A. (Buscher) I would disagree with that. And I
17 believe you used the word "incorrect," and I
18 would wholeheartedly disagree with that.
19 What it includes is visibility of the
20 corridor, whether it's proposed or existing
21 structures.

22 Q. All right. And we don't need to quibble
23 about that. That's in the record. I simply
24 want to understand. We don't know whether

1 Kavet used those maps or other maps.

2 A. (Palmer) That's correct.

3 Q. Okay. So, another topic that was discussed
4 with respect to that issue was the cost of
5 data. And I think that it was you, Mr.
6 Palmer, or could have been Mr. Buscher, we
7 talked about the high cost of obtaining data
8 to do the vegetated screening maps. Do you
9 recall that?

10 A. (Palmer) Yes.

11 Q. Am I correct that either directly or
12 indirectly in this case, the Applicants paid
13 for all of the NEXTMap data or Intermap data
14 that you did use in this project?

15 A. (Buscher) Through bill-back, yes.

16 Q. And that data was used from out to 1.5 miles
17 from the Project; is that right?

18 A. (Buscher) The screen visibility analysis that
19 was prepared as part of the EIS used that
20 data out to 1.5 miles, which is what we used
21 for our viewshed represented within our SEC
22 report.

23 Q. And then beyond 1.5 miles you did not have
24 the Intermap data; is that right?

1 A. (Palmer) For the draft, we had areas in the
2 White Mountain National Forest that were
3 Intermap data. Those were areas where we
4 anticipated having visibility based on a
5 preliminary analysis. And for the final
6 visibility analysis, we had NEXTMap data for
7 a large part of Concord.

8 Q. Okay. And so the other day when you were
9 saying you didn't have a sufficient data set
10 to prepare those vegetative screening maps
11 for the SEC process, it sounded like what you
12 were saying is you didn't have sufficient
13 Intermap data; is that right?

14 A. (Palmer) We didn't have any Intermap data for
15 the SEC analysis.

16 Q. And you did have access, though, to NED data,
17 the National Elevation Data; right? That's a
18 free data set.

19 A. (Buscher) That's correct.

20 Q. And you also had access to NLCD data, which
21 is the Natural Land Cover data, which is also
22 a free data set; right?

23 A. (Buscher) That's correct. But both of those
24 data sets have much less accuracy associated

1 with them.

2 Q. Those are data sets, though, that you do
3 typically rely on in other projects you do;
4 right?

5 A. (Buscher) That's our -- I would categorize
6 that as a last resort, yeah.

7 Q. And of course you could have asked the
8 Applicants for the Intermap data, to pay for
9 it just like they did in other circumstances;
10 is that right?

11 A. (Buscher) We had -- if my recollection is
12 correct, we had a discussion. We already had
13 our proposal submitted. We already had our
14 budget approved. And looking at the benefits
15 and looking at -- I think the other thing we
16 talked about was the time constraints,
17 because when we finally got information, we
18 were on a very, very tight deadline, that the
19 decision was made that, with an exception to
20 a little bit of overlap, the ends were
21 undergrounded through the White Mountain
22 National Forest, that the data we had was
23 sufficient.

24 Q. Okay. I want to move to a different topic.

1 When Ms. Connor was questioning you on
2 Thursday, I think there was a point where you
3 said that the railroad bridge in Ashland and
4 certain private historic properties had,
5 quote, "visual access," close quote. Do you
6 remember saying that, Mr. Buscher?

7 A. (Buscher) Yes.

8 Q. Is it your understanding that the SEC rules
9 require people in your profession to consider
10 impacts for a view of a resource and not
11 exclusively from a scenic resource?

12 A. (Buscher) I think there's discretion that
13 needs to be undertaken when assessing impact
14 on a resource, such as the fact that when we
15 look at scenic byways, we're not looking at
16 the asphalt that the cars are traveling on;
17 we're looking at the view from that resource.

18 Q. Understood. But are we clear that you're
19 only assessing views from scenic resources
20 and not views of scenic resources?

21 A. (Buscher) I would say that it's not clear in
22 the SEC rules. I think it's impacts to a
23 scenic resource. So I don't think that is
24 necessarily saying a view from a scenic

1 resource. That's not how we interpreted it.

2 Q. I went back over your December 30th, 2016
3 report, and I didn't see a mention anywhere
4 of this concept of "visual access." Does
5 that surprise you?

6 A. (Buscher) That doesn't surprise me.

7 Q. I want to call up an exhibit.

8 MR. NEEDLEMAN: Dawn, what'
9 the number?

10 BY MR. NEEDLEMAN:

11 Q. Okay. So this is not actually an exhibit
12 number. It's just a compilation of various
13 sections of the SEC rules.

14 This is four pages. It's not
15 exhaustive. But every place where there is
16 yellow highlighting, these are examples of
17 where it says in the rules that an analysis
18 should be done, or whatever is being done
19 should be done from a scenic resource.

20 A. (Buscher) We're having a problem with one of
21 our monitors.

22 Q. Okay. Let's pause for a minute and get that
23 fixed.

24 (Pause in proceedings)

1 MR. NEEDLEMAN: All set?

2 So, Dawn, I think we may
3 actually want to mark this later, but we can
4 deal with that afterwards.

5 BY MR. NEEDLEMAN:

6 Q. So I don't want to rush you, but I'm just
7 going to ask Dawn to quickly skim through the
8 pages.

9 So, Page 2, in the middle of that page
10 it actually talks about photo simulations
11 from the resource. And I will represent that
12 every place where it's bolded, we put that
13 bolding in just to highlight it for
14 illustrative purposes.

15 Next page. That's the criteria the SEC
16 applies which talks about -- this is from the
17 proposed facility. And then the last one,
18 two notations from effective resources.

19 So my only question to you is with
20 respect to the point you made a moment ago
21 about there being discretion. Did you have
22 all these rules references in mind when you
23 made that point?

24 A. (Buscher) I don't think that these -- what's

1 the word I'm looking for? I would say that
2 of course there's importance of views from a
3 scenic resource. That goes without saying.
4 But is it limited to views from a scenic
5 resource? The first page you showed was
6 specific to the identification of scenic
7 resources, even though it talked about the
8 view from that resource. It was about the
9 identification. I mean, I think we could
10 have a really long conversation about this.
11 And I'd want to, you know, refresh and look
12 specifically, because I don't think we
13 have -- to answer this question, I think we
14 need to read the rules with the concept that
15 you just read in mind.

16 Q. Did you do that before you undertook your
17 work here and think about this before you did
18 your work here?

19 A. (Buscher) I mean, we're looking at impacts.
20 We're looking at scenic impacts. And you
21 just presented it looking at it in a very
22 specific way of looking at those impacts.

23 A. (Owens) I think it's worth mentioning that
24 some scenic resources, such as a historic

1 building or that bridge that we're talking
2 about, are visible from roads which we
3 consider to be scenic resources. So
4 regardless of whether or not we're talking
5 about that specific resource and whether or
6 not -- we're still looking from a publicly
7 accessible road which has a visual quality in
8 particular because those resources are
9 visible in the landscape.

10 Q. I want to move on to a different topic.

11 My understanding is that the purpose of
12 conducting a VIA is to reach conclusions and
13 offer professional opinions about the
14 potential effect that a project might have
15 based on the criteria in 301.14 in order to
16 aid the Committee in reaching its ultimate
17 decision. Is that your understanding?

18 A. (Buscher) No, that's not. My understanding
19 is that the criteria in 301.14 is for --
20 that's rules that the SEC is supposed to
21 follow.

22 Q. Right. But the purpose of conducting the VIA
23 is to reach conclusions and offer
24 professional opinions about visual impacts;

1 right?

2 A. (Buscher) As defined under 301.05.

3 Q. Okay. And when Attorney Connor was
4 questioning you the other day, and actually
5 when you were providing your answers the
6 other day, there were multiple occasions
7 where you said that you didn't do a VIA here.
8 What you did was review the work DeWan did;
9 is that correct?

10 A. (Buscher) That's correct.

11 Q. In your report, you offer a specific
12 evaluation of 41 resources. And in 29
13 particular cases you find that those specific
14 resources would experience an unreasonable
15 adverse effect; is that right?

16 A. (Buscher) That's correct.

17 Q. So it seems to me that you're trying to have
18 it both ways here. On the one hand, when it
19 comes to being criticized for your resource
20 identification and screening, you're saying
21 you didn't do a VIA; but on the other hand,
22 you're offering specific conclusions about
23 aesthetic impacts on resources that under the
24 SEC rules only come as a logical endpoint

1 through the VIA process. So how do you
2 reconcile that?

3 A. (Buscher) How do we reconcile it? I think
4 it's very clear in our report that those 41
5 resources are a simple sample, and we're
6 looking to understand whether, if we took a
7 small portion of what we feel would be scenic
8 resources, and I think we've been very clear
9 that one of the enormous downfalls of the VIA
10 is that the number of resources out there are
11 much more numerous than what were provided
12 within the Northern Pass VIA, what we wanted
13 to see, taking some of those resources --
14 actually, many of those resources weren't
15 even considered resources in the NPT VIA, but
16 see where we came out. And we were acting as
17 both a consultant conducting the VIA and if
18 we were offering an opinion in the role of
19 the SEC as well. So it was just -- again, I
20 think it was extremely clear, and we tried to
21 make that very clear, a sample of scenic
22 resources that we were bringing to the
23 evaluation.

24 And I disagree that you have to do all

1 that upfront work just to look at what the
2 impacts on a couple of the scenic resources
3 would be.

4 A. (Palmer) So in particular, we were -- we
5 commented on every criterion. So we didn't
6 eliminate a whole bunch of identified scenic
7 resources using the "significance" cultural
8 criterion that is supposed to be reserved for
9 the Committee. We talked about that. But we
10 talked about all the criteria in both 301.05
11 and 301.14.

12 A. (Buscher) And that's shown in both, what I'll
13 call the form-based evaluation which is the
14 41, as well as the more descriptive
15 evaluation that included the 29 that we found
16 to be unreasonable.

17 Q. So, just to be clear, what you're saying here
18 is that under the SEC rules, experts like you
19 can come in and offer their opinions about
20 specific resource impacts without ever doing
21 a VIA.

22 A. (Buscher) We were hired to do a review. We
23 were not hired to do a VIA. So part of doing
24 our review -- and I think it would be

1 uncommon for a consultant hired by the
2 Counsel for the Public to do a completely
3 independent VIA -- it would be our role to
4 review it. That we have the flexibility to
5 come in using our professional understanding
6 to test certain components of that VIA that
7 we were reviewing, and that is what we were
8 doing by evaluating some of the scenic
9 resources.

10 Q. Let me go back again and ask the question
11 again because I don't think you answered it.

12 The question was: So you're saying that
13 under the SEC rules, experts like yourselves,
14 for an visual impact assessment, can come in
15 and offer their opinion about effects on
16 specific resources to the Committee without
17 ever actually doing a VIA?

18 A. (Buscher) Not if you're the Applicant.

19 Q. But if you're you, you can do that?

20 A. (Buscher) If you're in a role where you're in
21 a review situation, yeah, I think that's
22 appropriate.

23 Q. With respect to the process here, to do your
24 work, my understanding is that in order to

1 reach judgments about effects on resources,
2 you went through the criteria that the SEC
3 needs to apply in 301.14(a); is that right?

4 A. (Buscher) Yes. Or actually I think it's --
5 is it A?

6 Q. The seventh criteria.

7 A. (Buscher) Okay. Yeah.

8 Q. And as part of doing that, you made judgments
9 about how those criteria applied to specific
10 resources; right?

11 A. (Buscher) Yes.

12 Q. And you looked at things like prominence and
13 dominance; right?

14 A. (Buscher) Yes.

15 Q. And up to this point, you'd never done this
16 in New Hampshire before; is that right?

17 A. (Buscher) Yes.

18 Q. So I want to look at the 29 resources that
19 you found to have experienced unreasonable
20 adverse effects.

21 And first of all, 13 of these are public
22 roads; is that right?

23 A. (Buscher) I don't know the number, right off
24 the top of my head. I would have to go

1 through. But if that's what you're saying,
2 I'll assume you're correct.

3 Q. So roads, for example, where you found these
4 unreasonable adverse effects were places like
5 Boyce Road, Hall Stream Road, Loudon Road,
6 places like that; right?

7 A. That's correct.

8 Q. And none of these roads I believe were
9 actually designated scenic resources; is that
10 right?

11 A. (Buscher) They wouldn't fall under the --
12 some of these would not fall under the first
13 category definition of scenic resource.

14 Q. And I think we've already established that
15 none of them were tourist destinations; is
16 that right?

17 A. (Buscher) Sure.

18 Q. Okay. With respect to Apple Hill Farm, that
19 was another location you found to have an
20 unreasonable adverse effect --

21 A. (Buscher) Actually, I don't think we did find
22 that to have an unreasonable adverse effect.

23 MR. NEEDLEMAN: Okay. Why
24 don't we pull that one up, Dawn. I thought

1 we did. Adam, do we have a reference for
2 that?

3 BY MR. NEEDLEMAN:

4 Q. Okay. I will circle back to that. I thought
5 you did. But if you didn't, that's fine.

6 What I want to do is look more closely
7 at a couple of the sites beyond those ones
8 that we just talked about of the 29. And I
9 don't intend to go through all of them. I
10 think that would be too time-consuming. But
11 I just want to look at a few.

12 The first one is Bear Brook State Park.
13 That's a location where you determined there
14 was an unreasonable adverse effect; is that
15 right?

16 A. (Buscher) I believe that's correct.

17 Q. And Bear Brook State Park is the largest
18 developed park in New Hampshire, with over
19 10,000 acres and 40 miles of trails; is that
20 right?

21 A. (Buscher) Off the top of my head, I know that
22 they're substantial. I don't know if those
23 numbers are a hundred percent accurate. But
24 I would agree with it in general terms.

1 Q. And for your assessment, you relied on
2 DeWan's photo simulations; is that right?

3 A. (Buscher) That's correct.

4 Q. And DeWan did photo simulations from the top
5 of Catamount Hill on Catamount Trail; right?

6 A. (Buscher) I believe that is correct.

7 Q. And I think there are two overlooks from the
8 Catamount Trail that would have visibility of
9 the Project. Does that sound right?

10 A. (Buscher) Yes.

11 Q. And the existing transmission lines are
12 somewhat visible from those overlooks today;
13 is that right?

14 A. (Buscher) I believe that is correct.

15 Q. And I think in your work you said that views
16 from the trail typically consist of the
17 forest vegetation growing on the hillside,
18 with the exception of the overlooks. Does
19 that sound right?

20 A. (Buscher) I would agree with that.

21 Q. Did any of you personally visit the Catamount
22 Trail and hike to those overlooks?

23 A. (Owens) I did.

24 Q. Good. So you're then specifically familiar

1 with it, Mr. Owens?

2 A. (Owens) Yes.

3 Q. Am I right that three structures might be
4 visible when looking northwest from DeWan's
5 simulation?

6 A. (Buscher) Can we bring up the simulation?

7 Q. Sure. So I believe that's existing
8 conditions.

9 MR. NEEDLEMAN: And then let's
10 bring up the simulation, Dawn.

11 BY MR. NEEDLEMAN:

12 Q. And I believe that's the simulation.

13 A. (Owens) I think there's also another
14 simulation from here of leaf-off conditions.

15 Q. Right. We can go to that one, too, if you'd
16 like.

17 A. (Owens) Okay. Just making sure that's known.

18 Q. We can go to both. In fact, I think you said
19 as many as 90 structures could be visible
20 from these locations in the terrain viewshed;
21 is that right?

22 (Witness reviews document.)

23 A. (Buscher) Can you let me know where you're --

24 Q. Yeah, it's Page 9, CFP 005168.

1 A. (Owens) Yes, that's what it says.

2 Q. And when you're talking about these 90
3 structures being visible again, that's bare
4 earth; right?

5 A. (Owens) The terrain viewshed, yes, that's
6 what stayed.

7 Q. So you could only see those if all the trees
8 were gone.

9 A. (Owens) That's the potential for visibility
10 of up to 90 structures if all the trees were
11 gone, yes.

12 Q. And you predicated a portion of your analysis
13 here on that assumption; is that right?

14 A. (Owens) I don't know that it's necessarily
15 predicated. Basically it's reporting what
16 the terrain viewshed shows as the maximum
17 number of potential visible structures from
18 that location.

19 Q. When you say there's an unreasonable adverse
20 effect in this location, are you in any way
21 factoring in your bare earth view from the
22 location?

23 A. (Owens) On the bottom of our Page F11, we
24 talk about why we specifically considered it

1 to be unreasonable. I'd have to read that to
2 refresh my memory of whether or not that had
3 anything to do with the maximum number, but
4 I'm expecting it has to do with some other
5 things as well.

6 MR. NEEDLEMAN: So I want to
7 go back to the photo simulations. I want to
8 show the existing and the simulation with
9 leaf-on, if you could do that, Dawn.

10 BY MR. NEEDLEMAN:

11 Q. So that's existing, correct, Mr. Owns?

12 A. (Owens) Yes. Yes, that looks like existing.

13 Q. And then the simulation from there. And
14 that's the simulation; correct?

15 A. (Owens) That's right.

16 Q. And then you wanted to see leaf-off.

17 MR. NEEDLEMAN: Could we go to
18 those please, Dawn?

19 BY MR. NEEDLEMAN:

20 Q. So that's existing; is that correct?

21 A. (Owens) That's what it says.

22 Q. And then leaf-off. And that's the
23 simulation?

24 A. (Owens) Yes.

1 MR. NEEDLEMAN: And these are
2 all in Applicant's Exhibit 2, for the record.

3 Dawn, can you pull up
4 Applicant's 339.

5 BY MR. NEEDLEMAN:

6 Q. So this is a compilation of the photos that
7 DeWan took from their visit to Bear Brook
8 State Park which were produced during the
9 course of discovery. I assume you've seen
10 all these?

11 A. (Owens) I've seen those, as well as been to
12 the park. So I've personally seen a lot of
13 that as well.

14 Q. The four on top with the yellow highlighting
15 are the four locations we just talked about
16 where there's this potential visibility.
17 Does that look familiar to you?

18 A. (Owens) Yes. It also looks like there's an
19 additional photo further down on the right
20 side. Bottom says "Photo merge of east
21 vista."

22 Q. Hmm-hmm. And you would agree that
23 considering vegetative screening the Project
24 would not be visible from most of Bear Brook

1 State Park?

2 A. (Owens) That's right. There's a lot of
3 forest there. So when you are on the trails
4 and you get to these open areas, it becomes
5 that much more important for views from those
6 specific points of visibility of the
7 landscape.

8 Q. So, for a majority of this resource, a
9 visitor's experience is that there would
10 actually be no visibility of the Project; is
11 that right?

12 A. (Owens) Yes. Basically the same thing that I
13 just said. It's more important --

14 A. (Buscher) So I think what we're getting into
15 here is we were really looking at the impact
16 from this viewpoint, which is sort of a
17 celebrated situation. It's what you hike to
18 go see, in large part. And there's not a
19 whole lot of scenic overlooks down in this
20 part of the state. I think what you're
21 suggesting is because of the size overall of
22 Bear Brook State Park, then we're looking at
23 a minor impact. But maybe if the park was
24 oriented just about this one viewpoint, then

1 it could be. And it's sort of the dilution
2 of an impact because of the size of a
3 resource. And we might not consider all of
4 Bear Brook State Park, the resource. We
5 might be looking at specifically this one
6 celebrated component of Bear Brook State
7 Park.

8 Q. With respect to the components, the
9 overlooks, do we agree that the northwest
10 view would potentially see structures from
11 about 1.1 to 1.2 miles away?

12 A. (Buscher) We would agree with that.

13 Q. And we agree that from the east overlook, it
14 would 1.4 to 3.4 miles away?

15 A. (Buscher) That generally sounds correct.

16 Q. So, picking up on what you just said, Mr.
17 Buscher, it sounds like your conclusion is
18 that the Project would have an unreasonable
19 adverse effect on this resource, which, as we
20 talked about, is 10,000 acres and 40 miles of
21 trails, based on the two view sims we just
22 looked at.

23 A. (Buscher) I think that's the conversation I
24 was trying to get at, that the resource that

1 we're looking at is a celebrated viewpoint
2 within the park.

3 Q. I want to turn to Coleman State Park. And in
4 your analysis you said Coleman State
5 Park/entrance was a place that would
6 experience an unreasonable adverse effect.
7 Do you recall that?

8 A. (Buscher) I do.

9 Q. And you focused on the entrance. But again,
10 all of Coleman State Park is about
11 1500 acres. Would you agree with that?

12 A. (Buscher) I would agree with that.

13 Q. And I think you indicated that four
14 structures would be visible from the
15 locations near the Coleman State Park
16 entrance; is that right?

17 A. (Buscher) That sounds correct.

18 Q. And the structures would be about 1.4 to
19 about 1.75 miles away.

20 A. (Buscher) Sounds correct.

21 MR. NEEDLEMAN: All right. So
22 let's pull up those view sims.

23 BY MR. NEEDLEMAN:

24 Q. So do you recognize this?

1 A. (Buscher) I do.

2 Q. That is the existing conditions from the
3 entrance of Coleman; is that right?

4 A. (Buscher) That is.

5 Q. And that's Applicant's Exhibit 71, and I
6 think it's Page 36159, which is existing.

7 MR. NEEDLEMAN: And then if we
8 could pull up the view sim.

9 BY MR. NEEDLEMAN:

10 Q. And that's the view sim; is that correct?

11 A. (Buscher) That is correct.

12 A. (Owens) Just one note. It looks like the
13 labels on those two sheets are reversed. So
14 the existing is the proposed, and the
15 proposed is the existing.

16 Q. Okay. Thank you for pointing that out.

17 And the proposed is 36160; correct?

18 A. [No response]

19 MR. NEEDLEMAN: Dawn, could we
20 put those up side by side?

21 BY MR. NEEDLEMAN:

22 Q. While Dawn is putting that up, I'm just going
23 to ask. I think you rated the potential
24 visual impact here as "medium"; is that

1 right?

2 A. (Buscher) That's correct.

3 Q. Notwithstanding that, you still concluded
4 that the effect was unreasonable in this
5 location; is that right, Mr. Owens or Mr.
6 Buscher?

7 A. (Buscher) Yes, that's correct.

8 Q. Okay.

9 A. (Buscher) So, making that determination,
10 there's several factors that come into play.
11 It's not just this particular view. We're
12 thinking about the experience of users coming
13 into this facility. It's one of more remote
14 state parks in the state. The fact that we
15 think about the visibility entering the park,
16 we think about the visibility using one of
17 the park's main attributes, and we think
18 about the existing conditions not just here
19 but in the overall setting and how people
20 expect to come to this location more or less
21 experience a sense of remoteness and
22 wilderness, and that the inclusion of power
23 lines sited on the very top of a ridge,
24 skylighted, that's going to be visible as you

1 maneuver around the entrance of the state
2 park, those are some of the reasons why we
3 came to that finding.

4 Q. So, like Bear Brook, essentially what you're
5 saying here is that, based on limited views
6 within the context of a large resource, the
7 Project will have an unreasonable adverse
8 effect on aesthetics?

9 A. (Buscher) We're saying there are views in
10 areas that have the highest concentration of
11 use in this park.

12 Q. You also looked at the Cohos Trail found that
13 to be an unreasonable adverse effect; right?

14 A. (Buscher) The crossing, yes.

15 Q. And that trail is about 165 miles long; is
16 that right?

17 A. (Buscher) It is.

18 Q. So would you agree that it might take an
19 average through-hiker 10 to 15 days to do
20 that trail?

21 A. (Buscher) I would say yeah, and that's why
22 we're not going to evaluate the trail in its
23 entirety. It would be -- it wouldn't follow
24 best professional standards to evaluate

1 impact on that trail by looking at the entire
2 length of that trail.

3 Q. And the place where the Project is going to
4 be constructed and the place where you found
5 there to be an unreasonable adverse effect
6 already has a transmission line crossing in
7 that area; is that right?

8 A. (Buscher) There is an existing transmission
9 line with wooden H-frame structures that are
10 proposed to be replaced with galvanized steel
11 lattice structures and single pole
12 structures.

13 Q. And hikers have to walk through that location
14 today and across the corridor today; is that
15 right?

16 A. (Buscher) Right, looking at structures half
17 the height.

18 Q. And on Page 111 of your report, you said,
19 quote, "For a hiker that simply hikes through
20 this location without stopping, duration
21 would be slightly less than one minute.
22 However, when backpacking, openings in forest
23 cover are many times a welcome break,
24 especially when it is sunny on a cool day,

1 and the duration could last for the extent of
2 the rest." Correct?

3 A. (Buscher) That's correct.

4 Q. And your conclusion for this resource is
5 based on that one trail crossing; is that
6 right?

7 A. (Buscher) We're evaluating the trail
8 crossing.

9 Q. And you said, quote, "The Project will have a
10 negative effect on the future use and
11 enjoyment of the Cohos Trail at this
12 location"; right?

13 A. (Buscher) Yup.

14 Q. So if you were walking the trail in its
15 entirety among the three crossings, you would
16 maybe see these structures for two to three
17 minutes over the course of 10 to 15 days; is
18 that right?

19 A. (Buscher) If you were walking the trail in
20 its entirety, which I would guess is probably
21 not representative of the majority of users
22 of the trail.

23 Q. And am I correct that in the report you
24 prepared and submitted, you didn't provide

1 any evidence to suggest that a project
2 crossing a trail of this length would have an
3 appreciable effect on the way it's currently
4 being used?

5 A. (Buscher) Did we -- I would have to read
6 through our review. But that would seem to
7 be an appropriate comment.

8 Q. And likewise, you provided no evidence on how
9 additional lines might affect future use
10 here; correct?

11 A. (Buscher) Future use. Hmm-hmm.

12 Q. And you list the current attractiveness of
13 the Cohos Trail as, quote, "ordinary"; right?

14 A. (Buscher) At this location.

15 Q. So you found this crossing of an ordinary
16 162-mile trail as an unreasonable effect; is
17 that right?

18 A. (Buscher) Could you repeat the question?

19 Q. Yup. You found this crossing of an ordinary
20 162-mile trail as unreasonable; is that
21 right?

22 A. (Buscher) We evaluated the Project as
23 proposed. We're thinking about the different
24 capabilities that the Applicant has to

1 propose the line at this location. And based
2 on their intention to build it with
3 galvanized lattice towers, galvanized single
4 pole mono towers, we felt that because of the
5 manner of the design that it would have a
6 negative effect on people's enjoyment and
7 would result in a significant reduction at
8 this location of the scenic attractiveness.

9 Q. You also evaluated the Moose Path Scenic
10 Byway; is that right?

11 A. (Buscher) That is correct.

12 Q. That byway is 98 miles long; is that correct?

13 A. (Buscher) That's correct.

14 Q. And you assessed this resource I think by
15 looking at DeWan's photo simulations?

16 A. (Owens) Yes.

17 Q. All right.

18 MR. NEEDLEMAN: So I'd like to
19 pull up a couple of those simulations, Dawn.

20 A. (Owens) Just to be clear, it wasn't just by
21 looking at the simulation. We also visited
22 that location and had our own photos and
23 looked at other types of information about
24 the proposed line. It wasn't just looking at

1 DeWan's simulation.

2 Q. So do you recognize this document?

3 A. (Owens) Yes.

4 Q. This is from Applicant's 71. This is the
5 existing conditions leaf on; is that right?

6 A. (Owens) It's a panorama of the existing
7 conditions. I think that's in the spring.

8 MR. NEEDLEMAN: And then,
9 Dawn, if we can go to the next one.

10 BY MR. NEEDLEMAN:

11 Q. And this is now a photo sim from that same
12 location; is that right?

13 A. (Owens) It's a panoramic photo simulation,
14 yes.

15 MR. NEEDLEMAN: Can we just
16 go, Dawn, once more back and forth between
17 the two, starting with existing and then go
18 to the sim?

19 A. (Buscher) So, Jeremy, how close would
20 somebody have to be looking at this to really
21 get a sense of the proper perspective when
22 you're out in the field?

23 A. (Owens) So this is a panorama. So in order
24 to actually use it as a simulation, it would

1 need to be pretty close to your face and
2 curved because it's a series of images from
3 the viewer being rotated and then clipped
4 together. So it's not typically used to
5 represent a photo simulation. It's more for
6 context for when viewing the actual
7 simulation.

8 Q. And Mr. Owens, if the Committee had
9 proper-sized copies of these and they were
10 hard copies and they could hold them at the
11 correct distance from their eyes, then they
12 would be able to properly evaluate this the
13 way you just described?

14 A. (Owens) I believe we looked at the actual
15 simulation. So this is the panoramic. So it
16 would be ill-advised for you to try to put
17 that at a specific distance from your eyes
18 and try to curve the page. It wouldn't be a
19 very intelligent way to go about --

20 Q. But that wasn't my question. My question was
21 if the Committee had the photo simulations
22 from these various locations in hard copy and
23 could hold them up and look at them at the
24 proper distance, then they can make those

1 judgments; correct?

2 A. If you're referring not to these panoramic
3 simulations and the actual single-frame
4 simulations, then, yes, that's reasonable.

5 Q. And you also looked at this location leaf
6 off; is that correct?

7 A. (Owens) You mean did I go to that location,
8 or did I look at the simulation in leaf-off
9 condition?

10 Q. Well, when you did your evaluation of impacts
11 here, did you factor in the leaf-off
12 simulation?

13 A. (Owens) Yes.

14 MR. NEEDLEMAN: Could we look
15 at those for a minute?

16 BY MR. NEEDLEMAN:

17 Q. So this is existing conditions; is that
18 right?

19 A. (Owens) Again it's a panorama of the existing
20 conditions.

21 Q. Okay. And --

22 A. (Buscher) Can we look at the actual
23 simulations? Because these are cover sheets
24 for the simulations.

1 MR. NEEDLEMAN: Do we have the
2 actual simulations handy? Maybe we can flip
3 that around.

4 BY MR. NEEDLEMAN:

5 Q. So is this what you were talking about, Mr.
6 Owens?

7 A. (Owens) Yes, that's what Mike and I were
8 talking about.

9 Q. Okay.

10 MR. NEEDLEMAN: So, pause for
11 a minute, Dawn.

12 BY MR. NEEDLEMAN:

13 Q. What we've got on the screen is APP 36184.
14 And that is the photo simulation leaf off of
15 the Moose Path Scenic Byway; is that right,
16 Mr. Owens?

17 A. (Owens) Yes, that looks correct.

18 MR. NEEDLEMAN: And then if we
19 could flip back to existing conditions on
20 this one, Dawn.

21 BY MR. NEEDLEMAN:

22 Q. So that is APP 36183. And that, Mr. Owens,
23 would be the existing conditions; right?

24 A. (Owens) Yes.

1 Q. Okay. So is it correct, then, that the
2 Project would be only intermittently visible
3 for about a mile to a mile and a half for
4 somebody traveling in either direction?

5 A. (Owens) I note that that's what DeWan has
6 identified that as.

7 Q. Okay. And am I correct that if a motorist
8 traveling at, say 50 miles per hour, and you
9 even assumed a full view of the Project the
10 entire time without bends in the road or
11 trees, you might see the Project for a total
12 of about one and a half minutes over the
13 course of your drive on the Byway?

14 A. (Owens) I'm not sure about that. We'd have
15 to do some measurements in order to determine
16 that. I assume it would be different when
17 you're heading east versus heading west.

18 Q. In fact, duration of view is one of the
19 criteria the Subcommittee needs to apply.

20 A. (Buscher) Well, we wouldn't just be
21 considering motorists. We'd be considering
22 bicyclists, people walking, other types of
23 uses, cross-country skiing, you know, not
24 just drivers.

1 Q. And duration of view is one of the things the
2 Committee needs to consider; is that right?

3 A. (Buscher) It is.

4 Q. And your position is that, based on these
5 view sims at this location, this would be an
6 unreasonable adverse effect on this resource.

7 A. (Buscher) Duration isn't the only thing we're
8 considering here. We're considering context
9 of the area, sensitivity of the location. I
10 mean, you can read the full evaluation. I
11 think we have three or four pages in the
12 evaluation, and that's all those different
13 factors that go into our assessment of a
14 resource.

15 Q. Let's go to the next resource, Mountain View
16 Grand. This is another scenic resource that
17 you determined would experience an
18 unreasonable adverse effect; is that right?

19 A. (Buscher) That's correct.

20 Q. And you rate the potential visual impact as
21 "high"; is that right?

22 A. (Buscher) That sounds correct.

23 Q. So let's --

24 A. (Buscher) Just let's catch up before we --

1 Q. Sure. While you're doing that, I'm going to
2 put the view sims up.

3 MR. NEEDLEMAN: If we could,
4 Dawn?

5 BY MR. NEEDLEMAN:

6 Q. So I put on the screen APP 80331. And do you
7 recognize this, Mr. Owens?

8 A. (Owens) Yes.

9 A. (Buscher) Yes, we recognize this.

10 Q. Okay. And that's the existing conditions
11 view from the Mountain View Grand; right?

12 A. (Owens) That's from the road down below the
13 Mountain View Grand, I believe.

14 A. (Buscher) That's correct.

15 MR. NEEDLEMAN: And then if we
16 could put up the view sim from this location?

17 BY MR. NEEDLEMAN:

18 Q. So that is APP 80333. And that is the view
19 sim from this location; is that right?

20 A. (Owens) Just to be clear, again, that's the
21 road in front of the Mountain View Grand.
22 And as we note in our evaluation of the
23 scenic resource, we were also using DeWan's
24 simulations which were from up on the porch.

1 Q. And those are functionally the same from this
2 location; right?

3 A. (Owens) Oh, I would say they were very
4 different.

5 Q. Okay. So we can pull those in up in a
6 minute.

7 So this is the existing sim; is that
8 right -- or this is the view sim; is that
9 right?

10 A. (Owens) Yes, it looks like it.

11 MR. NEEDLEMAN: Dawn, can we
12 go back for a moment? So that's existing.
13 And then go to the sim again.

14 BY MR. NEEDLEMAN:

15 Q. So, based on view sims like this, that was a
16 factor in your conclusion about there being
17 an unreasonable adverse effect; is that
18 right?

19 A. (Owens) As I said, we --

20 A. (Buscher) We were reviewing the Mountain View
21 Grand Hotel in this specific assessment. We
22 weren't reviewing the road in front of the
23 Mountain View Grand Hotel.

24 Q. So this view sim had nothing to do with your

1 assessment.

2 A. (Buscher) We take into account the views in
3 the general area. But if we were basing it
4 simply on this, we could have come to a very
5 different conclusion. But we were also more
6 importantly focusing on views that are 30 to
7 probably 80 feet higher in elevation than
8 this specific viewpoint is.

9 A. (Owens) We state very clearly on Page F26
10 that we were referencing also DeWan's
11 Attachment 9 photo simulation leaf-off
12 condition from the porch.

13 Q. Okay. So I'm going to ask Dawn and Adam to
14 work on pulling that up. And while we're
15 doing that, can you tell us where the
16 structures are in this view sim?

17 A. (Owens) I think the one that's visible from
18 this lower elevation on the road is over to
19 the right side. It's going to be hard to see
20 at these resolutions. If you flip back and
21 forth, it might not be easily discernible.

22 A. (Buscher) So, just to note on what Jeremy
23 just said, we're using screens to view these.
24 And the simulations are already at a smaller

1 size, so we're probably looking at these
2 simulations at a sixth of the resolution that
3 they should be looked at. So there's a
4 significant hardship in trying to view these
5 simulations on screen monitors like this.

6 MR. WAY: Mr. Needleman, could
7 we just flip back to the existing and the
8 proposed again?

9 MR. NEEDLEMAN: Sure.

10 Is that something you could
11 do, Dawn?

12 BY MR. NEEDLEMAN:

13 Q. So, I believe that is existing.

14 A. (Buscher) And if we really want to be looking
15 at this, we should be looking at the
16 simulations that we referenced in our
17 evaluation.

18 Q. We're going to pull those up in a minute.
19 I'm just addressing Mr. Way's question.

20 A. (Buscher) Sure.

21 MR. NEEDLEMAN: Let me know
22 when you're ready to flip to it.

23 All right. Flip to the other
24 one, Dawn. So that's now the sim -- oops.

1 Sorry. Did you want to go back to it?

2 MR. WAY: No.

3 MR. NEEDLEMAN: Okay.

4 BY MR. NEEDLEMAN:

5 Q. So, Mr. Owens, is this what you were talking
6 about a minute ago?

7 A. (Owens) There are -- so we say at Page 9-117
8 to 9-126, I believe it's two different
9 simulations; one they did looking southeast
10 and another maybe south.

11 Q. But this is one of the ones from the porch of
12 the Mountain View; right?

13 A. (Owens) Yeah, that's the location. And that
14 looks like one of the existing views.

15 Q. And that was one of the ones you were talking
16 about a minute ago?

17 A. (Owens) Yes.

18 Q. And this is the existing view that you were
19 talking about a minute ago?

20 A. (Buscher) So, again, we started at 117. So
21 if we wanted to go through and look at what
22 we were including in addition to photos that
23 we've taken that we didn't simulate, we
24 should really start back at Page 9-117 and

1 then go all the way through 9-126.

2 Q. I'm just interested in getting an
3 illustrative view.

4 So, Mr. Owens, a moment ago when you
5 were talking about the location where you did
6 your analysis, you said it was from the
7 porch. And this is existing conditions in
8 one location from the porch; is that right?

9 A. (Buscher) So the porch was one location.

10 Q. Okay.

11 A. (Buscher) And we were evaluating the Mountain
12 View Grand in general that has porches at
13 several different heights and elevations
14 around the facility.

15 Q. And we'll get to that in a minute.

16 MR. NEEDLEMAN: So, Dawn, can
17 you pull up the simulation now? And before
18 you do, hang on. That is APP 36257, the
19 existing conditions from the porch. And now
20 the simulation, please.

21 BY MR. NEEDLEMAN:

22 Q. And that would be the simulation; is that,
23 correct, APP 36258?

24 A. (Owens) That looks like one of the

1 simulations, yes.

2 Q. And Mr. Owens, can you point out in that
3 simulation where the structures are?

4 A. (Owens) The structures are a little bit
5 difficult to see in this simulation because
6 of the contrast of color. You're looking to
7 the south, and you usually have sun on the
8 opposite side of the structures. They are
9 using monopole steel, weathering steel
10 structures. That blends a little bit better
11 with the existing conditions that you see
12 there.

13 What's visible in this sim is that the
14 structures are very tall in a vertical
15 configuration. So each of the conductors is
16 above the next one, so you see the conductors
17 as they go across the landscape. And if you
18 look at the next simulation, which is if you
19 turn to the right, you start to see more of
20 that. The conductors are starting to
21 basically gallop across the landscape.

22 Q. So it was simulations like this that you
23 relied on in part to form your conclusion
24 that there would be an unreasonable adverse

1 effect at this location; is that right?

2 A. (Owens) That's right.

3 A. (Buscher) In part.

4 Q. In CFP 136 at Page 100, you said that with
5 respect to the Mountain View, you considered
6 visibility from locations like the front
7 porch, hotel rooms, cupola and decks; is that
8 right?

9 A. (Buscher) Cupola, yeah.

10 Q. And at one point you say, quote, "Other
11 locations may have views from where the
12 Project is much more visible, for instance,
13 from the spa tower"; right?

14 A. (Buscher) That would be the cupola, yes.

15 Q. So did you consider places like guest rooms
16 and the spa tower to be places where the
17 public has a legal right of access?

18 A. (Buscher) Sure. They can go and rent that
19 room just like you can pay to go into a state
20 park.

21 Q. But just to be clear, they have to pay to go
22 to those locations; right?

23 A. (Buscher) Like going into a state park.

24 Q. Did you give any consideration to the

1 Committee's deliberations and decision in the
2 Antrim docket with respect to this issue when
3 you made those determinations?

4 A. (Buscher) No, we didn't. But we also
5 considered the fact that you don't have to
6 pay anything to go up onto the front porch
7 where there's actually a mounted set of
8 commercial binoculars to look out directly in
9 the direction -- to look in the direction of
10 the Project.

11 A. (Owens) And the White Mountain National
12 Forest which is just behind.

13 Q. Another location you looked at was the
14 Pontook Reservoir; is that right?

15 A. (Buscher) So I feel like we're not looking at
16 all -- I feel like you're cherry-picking the
17 simulations that we're looking at. I think
18 we clearly asked to look at the variety of
19 simulations from this location.

20 CHAIRMAN HONIGBERG: Mr.
21 Buscher, he gets to decide what questions he
22 asks, and if --

23 WITNESS BUSCHER: But I don't
24 like --

1 CHAIRMAN HONIGBERG: I get to
2 talk. If Counsel for the Public wants to
3 follow up and ask you some different
4 questions, she'll do so.

5 WITNESS BUSCHER: I feel as if
6 we asked to help us answer that question,
7 however, and we're not being given the full
8 information that we would need to properly
9 answer the question.

10 CHAIRMAN HONIGBERG: Then it's
11 Mr. Needleman's loss, and Counsel for the
12 Public will clean it up for you and for him,
13 I have no doubt.

14 A. (Buscher) Okay.

15 BY MR. NEEDLEMAN:

16 Q. So, another location you looked at was the
17 Pontook Reservoir; is that right?

18 A. (Buscher) That's correct.

19 Q. And that was CFP Exhibit 138 at 005254. And
20 you rated the Project's potential visual
21 impact on the Pontook Reservoir as a
22 "medium"; is that right?

23 A. (Owens) Yes.

24 Q. And you still believe there's an unreasonable

1 adverse effect in that location; is that
2 right?

3 A. (Owens) Yes, and for the reasons described in
4 this review.

5 Q. And you relied, in part, on the photo
6 simulations that you used for the Department
7 of Energy, looking to the northwest; is that
8 right?

9 A. (Buscher) That's correct.

10 MR. NEEDLEMAN: And so if we
11 could pull up those photo simulations, Dawn.

12 BY MR. NEEDLEMAN:

13 Q. Does this look familiar to you?

14 A. (Buscher) It does.

15 Q. So that is APP 80214, which I believe would
16 be the existing conditions at Pontook
17 Reservoir; is that right?

18 A. (Buscher) That's correct.

19 MR. NEEDLEMAN: And then if we
20 could pull up the photo simulation, Dawn.

21 BY MR. NEEDLEMAN:

22 Q. And that is now APP 80216. And am I correct
23 that that's the photo simulation for this
24 location?

1 A. (Buscher) That's correct.

2 A. (Owens) One of them, yes.

3 MR. NEEDLEMAN: And Dawn,
4 could you put those side by side, if that's
5 not too much trouble?

6 MR. IACOPINO: Mr. Needleman,
7 I appreciate the page references, but what
8 exhibit is this in?

9 MR. NEEDLEMAN: CFP 138.

10 MR. IACOPINO: Thank you.

11 BY MR. NEEDLEMAN:

12 Q. So when you were forming your opinions about
13 the effects at the Pontook Reservoir, you
14 were in part relying on this photo simulation
15 to do that; is that correct?

16 A. (Buscher) We were we relying on this, in
17 part, in addition to several other factors
18 that are fully described in the evaluation.
19 And there's another simulation that looks to
20 the left from this simulation.

21 Q. And you relied on that one as well?

22 A. (Buscher) Of course.

23 MR. NEEDLEMAN: Dawn, is that
24 one we could pull up?

1 BY MR. NEEDLEMAN:

2 Q. Is this the one you were talking about, Mr.
3 Buscher?

4 A. (Buscher) It is.

5 Q. I'm looking at APP 080220, which again I
6 think is from Exhibit 138. This is the
7 simulation; is that correct?

8 A. (Buscher) That's correct.

9 Q. I'm not sure we have ready access to the
10 existing conditions. But you were saying a
11 moment ago, Mr. Buscher, that as part of
12 forming your opinion at Pontook, you also
13 relied on this simulation.

14 A. (Buscher) We did.

15 Q. Were there any others?

16 A. (Buscher) We relied on photos that we
17 captured during field investigation.

18 A. (Owens) But we also looked at DeWan's
19 simulation from the same location.

20 Q. Okay. Let me ask you about one other one,
21 Little Diamond Pond. The other day when Ms.
22 Connor was questioning you, I believe she put
23 up the photo simulation for Little Diamond
24 Pond that you prepared as part of the

1 Environmental Impact Statement; is that
2 right?

3 A. (Buscher) I believe that's correct.

4 Q. So I'd like to pull that one up. Was this
5 the photo simulation?

6 A. (Buscher) I believe it is.

7 Q. Okay. And so that shows the simulated --

8 A. (Buscher) Oh, I'm sorry. That's the existing
9 conditions.

10 Q. You're correct. That is APP 79336, existing
11 conditions. And then I think the
12 simulation's next.

13 A. (Buscher) Yeah.

14 Q. And am correct that that's the simulation?

15 A. (Buscher) That is correct.

16 Q. And that's APP 79389. And this was one of
17 the sites that you concluded would have an
18 unreasonable adverse effect?

19 A. (Buscher) Yes.

20 Q. And you reached that conclusion in part
21 relying on these photo simulations.

22 A. (Buscher) Yes.

23 Q. Okay. Mr. Buscher, I think the last time we
24 were talking, you indicated that you had some

1 familiarity with the Antrim docket. I think,
2 in fact, you were a witness in that docket;
3 is that right?

4 A. (Buscher) I had some limited familiarity, and
5 I was a witness with a limited role.

6 Q. Yeah. My recollection is it was a pretty
7 limited role. You were a witness for
8 Audubon, and you presented an animation for
9 Audubon; is that right?

10 A. (Buscher) That's correct.

11 Q. During the course of the work that you did in
12 the Antrim docket, did you ever have the
13 opportunity to review the photo simulations
14 that the Applicant's expert and Counsel for
15 the Public's expert prepared?

16 A. (Buscher) I saw some of the photo
17 simulations. I wouldn't necessarily say I
18 reviewed them.

19 Q. And I think there was some confusion the
20 other day about the timing of the Antrim
21 docket in relation to when you did your work
22 here. Would you accept my representation
23 that the Committee completed its
24 deliberations in the Antrim docket on

1 December 12th, 2016?

2 A. (Buscher) That sounds approximately correct.

3 Q. And you submitted your first report here on
4 December 31st, 2016; is that right?

5 A. (Buscher) Yes, we did.

6 Q. And then you supplemented that report, adding
7 to your analysis of the 41 sites on
8 January 20th of 2017; is that right?

9 A. (Buscher) That's correct.

10 Q. And on April 17th, 2017, you submitted
11 supplemental testimony in this docket; is
12 that right?

13 A. (Buscher) That's correct.

14 Q. Okay. I want to pull up Applicant's
15 Exhibit 346. Do you recognize this, Mr.
16 Buscher?

17 A. (Buscher) I do not.

18 Q. That was the existing conditions view from
19 scenic resource in Antrim called Goodhue
20 Hill.

21 MR. NEEDLEMAN: And if we
22 could pull up the side-by-sides, Dawn.
23 Actually, that's okay. Give us one second.

24 BY MR. NEEDLEMAN:

1 Q. So this is Goodhue Hill. This is Applicant's
2 346. That's existing. And then that's
3 Goodhue with the proposed project. And were
4 you aware that this was a scenic resource
5 from which the Committee evaluated the Antrim
6 project?

7 A. (Buscher) I was not aware.

8 Q. Where was the animation that you did? Was it
9 from Willard Pond?

10 A. (Buscher) One of them was from Willard Pond,
11 yes.

12 Q. Were you aware that when the SEC deliberated,
13 it unanimously concluded that there would not
14 be an unreasonable adverse effect on
15 aesthetics from this location, Goodhue Hill?

16 A. (Buscher) I'm not aware of that.

17 MR. NEEDLEMAN: Dawn, can we
18 go to the next one, Willard Pond.

19 BY MR. NEEDLEMAN:

20 Q. So, Willard was the place where you did the
21 animation from; right?

22 A. (Buscher) That's correct.

23 Q. So you have some familiarity with Willard
24 Pond.

1 A. (Buscher) I have some familiarity with it,
2 yes.

3 Q. So that's existing conditions from Willard
4 Pond. Does that look familiar to you?

5 A. (Buscher) That looks familiar, yes.

6 MR. NEEDLEMAN: And Dawn, the
7 side-by-side. And that's the view sim from
8 Willard Pond. By the way, all of these are
9 Counsel for the Public expert exhibits from
10 that case.

11 BY MR. NEEDLEMAN:

12 Q. So you must have been aware that the
13 Committee also reviewed the Project from this
14 scenic resource.

15 A. (Buscher) I'm aware of that.

16 Q. And were you aware that the Committee found
17 that there would not be an unreasonable
18 adverse effect from this location in a
19 five-to-one vote?

20 A. (Buscher) What I am aware of, and I did not
21 do analysis of this project, was that this
22 project had been submitted previously and
23 received a denial. Between the first time
24 and the second time, there were a number of

1 modifications done, including removal of a
2 wind turbine, lowering of another wind
3 turbine specifically addressing this view.
4 So, in part of the decision -- and I believe
5 you said that they determined that there was
6 no unreasonable impact at this location? Is
7 that what you said?

8 Q. Well, my question was were you aware that the
9 Committee found that at this location, on a
10 five-to-one vote, there was no unreasonable
11 adverse effect?

12 A. (Buscher) So as part of their decision in
13 coming to that conclusion, they looked at
14 things such as what type of mitigation the
15 Applicant did do to try to get to that point.
16 So I'm going to -- I have not actually read
17 the final decision, but I'll take your word
18 for it, that they came to an unreasonable --
19 that they did not find the impacts to be
20 unreasonable looking at many different
21 factors.

22 MR. NEEDLEMAN: Just one
23 other, Dawn, if you could pull up Exhibit
24 345.

1 BY MR. NEEDLEMAN:

2 Q. Another scenic resource that the Committee
3 evaluated was Bald Mountain Overlook. This
4 was existing conditions.

5 MR. NEEDLEMAN: And Dawn, if
6 you could put up the side-by-side.

7 BY MR. NEEDLEMAN:

8 Q. And I'm going to assume, Mr. Buscher, that
9 this is not a location you were familiar
10 with?

11 A. (Buscher) It is not.

12 Q. I guess I'll also assume that you weren't
13 aware that the Committee voted unanimously
14 that there was not an unreasonable adverse
15 effect from this location?

16 A. (Buscher) Not aware of the decision, nor of
17 any of the information that went into making
18 that decision.

19 Q. Were you aware that in Antrim the Committee
20 also looked at multiple other scenic
21 resources and in all cases unanimously found
22 that there was not an unreasonable adverse
23 effect?

24 A. (Buscher) That sounds like the proper method

1 of looking at a project, reviewing a project.

2 Q. So, earlier this morning I asked you, when
3 you were doing your analysis, if you were
4 making an effort when looking at the 41 sites
5 to apply the criteria in 301.14(a), and you
6 said you were. Do you recall that?

7 A. (Buscher) As the second component of our
8 review, yes.

9 Q. And I asked you earlier if you were making
10 judgments about how those criteria applied to
11 specific resources, and you said you were.

12 A. (Buscher) Yes, that's correct.

13 Q. And I asked you if you were looking at things
14 like prominence and dominance, and you said
15 you were.

16 A. (Buscher) Among all the other criteria that's
17 mentioned in 301.14(a).

18 Q. And you also confirmed for me that you'd
19 never done an analysis like this in New
20 Hampshire under these rules before; right?

21 A. (Buscher) And like I said, this is one of the
22 first few projects that have gone in under
23 these rules.

24 Q. So, having now seen these Antrim simulations,

1 don't you think it would have been helpful
2 for you, prior to the time that you rendered
3 your opinions about adverse effects on
4 resources, to have reviewed and considered
5 how the Committee made its decisions in
6 another docket like this?

7 A. (Buscher) I think it's a very different
8 project. I think that project received a
9 denial, that they went back through and
10 looked at very specific factors, made
11 modifications to the Project, reapplied. The
12 correlation, I don't think it's all that
13 great. And we know that public perception
14 between wind projects and transmission
15 projects are very different, so there would
16 probably be limited advantage to doing that.

17 Q. So you don't regret not doing that. You
18 don't think there would have been any value
19 in informing yourself about how the Committee
20 went about that process.

21 A. (Buscher) Well, first of all, you mentioned
22 that the deliberations were in mid-December
23 and our report came out December 31st.
24 That's really not enough time to really

1 consider that.

2 Q. Can we agree --

3 A. (Buscher) This is a large review. I think
4 you can agree to that.

5 Q. And we agreed your supplement came out
6 January 20th and your follow-up testimony
7 came out April 17th; right?

8 A. (Buscher) We agreed to that.

9 Q. So I want to go to another topic now.

10 The other day, Ms. Connor asked you
11 about people in your profession being
12 involved in the planning of projects, and the
13 implication seemed to be in her questioning
14 that DeWan had no role in working with the
15 project design team regarding avoidance,
16 minimization and mitigation of impacts. Do
17 you recall that questioning?

18 A. (Buscher) I do.

19 Q. Were you aware that Mr. DeWan and Ms. Kimball
20 were heavily involved in those issues in this
21 project?

22 A. (Buscher) I think that's contrary to what Mr.
23 DeWan said on the stand.

24 MR. NEEDLEMAN: Well, let's

1 pull up Applicant's, first of all,
2 Applicant's exhibit -- what is our number,
3 Dawn?

4 MS. GAGNON: It's 332.

5 BY MR. NEEDLEMAN:

6 Q. This is Applicant's response to Counsel for
7 the Public's expert-assisted Data Request
8 1-127. And the question had to do with
9 mitigation and particular types of
10 mitigation. And the answer there very
11 specifically addressed that issue with
12 respect to weathering steel monopole
13 structures. You see that?

14 (Witness reviews document.)

15 Q. In the third line, do you see that it says it
16 was generally based on recommendations from
17 DeWan & Associates?

18 A. (Buscher) I see that.

19 Q. Okay. And do you see where it says DeWan
20 identified and recommended sections of
21 corridor for monopole structures by the
22 scenic resource?

23 A. (Buscher) I see that.

24 Q. Okay. Are you also aware that in DeWan and

1 Kimball's prefiled testimony, they
2 specifically spoke to this issue? Did you
3 have a chance to read that?

4 A. (Buscher) Can you repeat the question?

5 Q. Yeah. At Applicant's Exhibit 16, which is
6 DeWan and Kimball's prefiled testimony, at
7 Pages 4 and 6 they specifically speak to the
8 issue of how they were involved in working
9 with the engineering team to minimize
10 impacts. Did you --

11 A. (Buscher) Yeah. And again, our understanding
12 is that was limited to switching out
13 structure types. It had nothing to do with
14 the routing, had nothing to do with structure
15 placement, had nothing to do with vegetation,
16 had nothing to do with the width of the
17 right-of-way, had nothing to do with anything
18 other than specifically replacing structure
19 types.

20 Q. Were you aware that members of the
21 Applicant's engineering team specifically
22 testified about this issue as well and talked
23 about Mr. DeWan's involvement in the
24 mitigation?

1 A. (Buscher) Not entirely, no.

2 Q. Counsel for the Public Exhibit 138, that is
3 your prefiled testimony. On Page 13, you
4 said that when considering mitigation
5 measures with respect to adverse effects,
6 quote, "visual impacts need not be
7 unreasonable to require measurements to
8 avoid, minimize or mitigate them." Do you
9 recall that?

10 A. (Buscher) Yes.

11 Q. Would you agree that examples of that might
12 be placing 60 miles of the line underground?

13 A. (Buscher) I think that can be considered a
14 mitigating element.

15 Q. Would you agree that vegetative screening in
16 locations where willing landowners permit
17 that would be a mitigation element?

18 A. (Buscher) I would agree.

19 Q. You seemed to suggest the other day that the
20 Project could be capable of doing vegetative
21 screening on private property, even if
22 landowners didn't want it.

23 A. (Buscher) I don't think we said that.

24 Q. Okay. So we agree that as long as landowners

1 are willing to have vegetative screening,
2 that's a good, potential option.

3 A. (Buscher) Yes.

4 Q. Okay. How about reducing structure heights
5 where it's possible? Would that be an
6 effective mitigation measure?

7 A. (Buscher) Yes, it would.

8 Q. How about the use of monopoles as a
9 mitigation measure?

10 A. (Buscher) In many situations, yes.

11 Q. Let me -- I want to just illustrate a couple
12 of examples of that to see if you agree with
13 me.

14 MR. NEEDLEMAN: Dawn, can we
15 pull up APP 80124?

16 BY MR. NEEDLEMAN:

17 Q. Do you recognize that location?

18 A. (Buscher) Yes, I do.

19 Q. And the structures in the foreground are
20 lattice structures; is that right?

21 A. (Buscher) That's correct.

22 MR. NEEDLEMAN: Okay. And
23 then, Dawn, if you can flip to the next one.

24 BY MR. NEEDLEMAN:

1 Q. And the lattice structures now disappear with
2 the use of monopoles; is that right?

3 A. (Buscher) They become much less prominent in
4 this view.

5 Q. Yeah, that's a better choice of words.

6 So in a location like this, would you
7 agree that the use of monopoles could be an
8 effective visual mitigation measure?

9 A. (Buscher) Yes.

10 Q. Okay.

11 MR. NEEDLEMAN: One other one,
12 Dawn, APP 80245.

13 BY MR. NEEDLEMAN:

14 Q. Do you recognize this location?

15 A. (Buscher) Yes, I do.

16 Q. And those are, again, lattice structures in
17 that image right here?

18 A. (Buscher) It appears so, yes.

19 MR. NEEDLEMAN: And Dawn, if
20 we could flip to what a monopole would look
21 like. And that is 80306.

22 BY MR. NEEDLEMAN:

23 Q. So would you agree with me that switching
24 from lattice to monopole in a location like

1 this could be considered an effective
2 mitigation measure?

3 A. (Buscher) Yeah, definitely.

4 Q. Do you agree that offering to relocate
5 structures to avoid or minimize potential
6 impacts is an effective mitigation measure?

7 A. (Buscher) Yes.

8 Q. And how about the use of a non-specular
9 conductor in certain locations?

10 A. (Buscher) Yes.

11 Q. Are you familiar with Site 102.12 which
12 defines best practical measures?

13 A. I'd have to refresh myself.

14 Q. If I told you that it said, quote,
15 "Available, effective and economically
16 feasible on-site or off-site methods or
17 technologies used," et cetera, et cetera, for
18 siting design and so forth, would that
19 refresh your recollection?

20 A. (Buscher) I would prefer to take a look at
21 it, to be honest with you.

22 Q. Okay.

23 MR. NEEDLEMAN: Could we pop
24 that up, Dawn?

1 BY MR. NEEDLEMAN:

2 Q. Does that refresh your memory?

3 (Witness reviews document.)

4 A. (Buscher) Yes.

5 Q. On Pages 50 to 64 of your report, you discuss
6 mitigation measures and suggest additional
7 forms of mitigation for the Project; is that
8 right?

9 A. (Buscher) That's correct.

10 Q. And am I correct that you didn't consider
11 cost when assessing many of the proposed
12 mitigation measures in that section of your
13 report?

14 A. (Buscher) That's something we would expect to
15 be provided in the Applicant's report, things
16 that they may have considered but then
17 rejected based on cost or cost implications.
18 But that is something that was not provided.

19 A. (Owens) We also used our experience with the
20 same mitigation measures on other projects of
21 even smaller size. So, non-specular
22 conductors, different types of structures and
23 vegetative mitigation, all of those were
24 reasonable in those projects. So...

1 A. (Buscher) Moving structures further away from
2 road crossings, these are all things we work
3 with on other utilities to help minimize the
4 impacts of projects.

5 Q. So on Page 50 to 64 where you make those
6 recommendations, you didn't do any assessment
7 of whether any of the means that you
8 suggested are actually economically feasible;
9 is that right?

10 A. (Buscher) That's correct.

11 Q. And you made no assessment as to potential
12 impacts to things like wetlands,
13 deer-wintering areas, vernal pools or other
14 sensitive habitats that might be disturbed in
15 relation to your recommendation of these
16 measures; right?

17 A. (Buscher) That's correct. But we weren't
18 given the information upfront of why a
19 structure would be immediately adjacent to
20 the road, which we would not consider best
21 practice in siting and locating the
22 transmission line.

23 Q. You understand that the Applicant has an
24 obligation to consider all those factors when

1 it's relocating structures; right?

2 A. (Buscher) As well as providing the mitigation
3 that they considered and why those
4 mitigations were rejected.

5 Q. Well, let's talk about that for a minute.
6 Site 301.05(b)(10) requires a description of
7 the measures planned to avoid, minimize or
8 mitigate potential adverse effects of the
9 proposed facility and of any visible plume
10 that would emanate from the proposed
11 facility, and the alternative measures
12 considered but rejected by the Applicant. Is
13 that what you were talking about?

14 A. (Buscher) That's what I was referring to,
15 yes.

16 Q. So in Council for the Public Exhibit 138,
17 which is your report, on Page 64 you said a
18 review of alternative avoidance, minimization
19 or mitigation measures considered but
20 rejected by the Applicant is not included in
21 the NPT VIA; therefore, the VIA does not
22 comply with... and you cite that rule. Does
23 that sound correct?

24 A. (Buscher) That sounds correct.

1 Q. And you also said on Page 66, the proposed
2 avoidance, minimization and mitigation
3 strategies represent a very modest effort to
4 address the visual impacts to the scenic
5 resources that were analyzed in the NPT VIA;
6 right?

7 A. (Buscher) That's correct.

8 Q. Do these general statements apply to the
9 60 miles of underground that the Project is
10 proposing?

11 A. (Buscher) The underground is a great portion.
12 Our understanding, although it is going to --
13 we considered that a mitigating element, it
14 wasn't done specifically for a mitigation
15 reason.

16 Q. Do you understand that in response to the new
17 rules coming into existence, that the
18 Applicant was required to file a supplement
19 to its Application?

20 A. (Buscher) Yes.

21 Q. You're aware of that?

22 A. (Buscher) Yes.

23 Q. And did you review that supplement?

24 A. (Buscher) Yes, we did.

1 Q. And were you aware that on Pages 10 and 11,
2 there was a description of all the methods
3 that DeWan considered and rejected?

4 A. (Buscher) I would have to look back through
5 that, but we did review the supplement in its
6 entirety.

7 Q. Do you recall whether the list considered
8 multiple potential measures that were
9 considered and rejected?

10 A. (Buscher) I can't recall, off the top of my
11 head.

12 Q. Applicant's Exhibit 90 is the supplemental
13 prefiled testimony of Ken Bowes. Did you
14 review that?

15 A. (Buscher) Yes.

16 Q. Were you aware that on Pages 3 through 11 he
17 discussed additional potential avoidance,
18 minimization and mitigation efforts?

19 A. (Owens) We were aware that he discussed some
20 items, yes.

21 Q. And I assume you had the opportunity to
22 review Applicant's Exhibit 92, which was the
23 DeWan and Kimball supplemental testimony?

24 A. (Buscher) Yes.

1 Q. And you were aware, I assume, on Page 24
2 through 27, they discussed additional
3 potential avoidance, minimization and
4 mitigation efforts?

5 A. (Buscher) I believe that sounds correct.

6 Q. Okay. Earlier we went through your opinions
7 about effects at specific resources. And
8 there are specific locations where you
9 believe that there would be a unreasonable
10 adverse effect. And Mr. DeWan analyzed all
11 those locations, and he disagrees with your
12 conclusions; is that right?

13 A. (Buscher) That's correct.

14 Q. And the Committee's job here is to assess the
15 evidence at those locations. And if it
16 wanted to, it could decide at any of those
17 locations to order additional mitigation. Is
18 that your understanding?

19 A. (Buscher) That seems appropriate.

20 Q. And there's a whole range of potential
21 mitigation measures that are available to the
22 Committee, which were documented in places
23 like Applicant's Exhibit 1, Exhibit 2,
24 Exhibit 16, which is the prefiled testimony

1 of DeWan and Kimball, Exhibit 90, which is
2 the Bowes supplemental testimony, and Exhibit
3 92, which is the DeWan supplemental
4 testimony; is that correct?

5 A. (Buscher) I would have to look through all
6 those different pieces.

7 I think our major issue is that, while
8 in concept there's been a lot of talk about
9 mitigation, in the actual materials provided
10 to us we don't have enough information to
11 make a judgment on whether that mitigation is
12 going to be appropriate or adequately
13 minimize any potential unreasonable adverse
14 effects.

15 Q. Okay. I think I'm all set. Thank you.

16 CHAIRMAN HONIGBERG: All
17 right. Why don't we take 10 minutes and then
18 we'll have questioning from the Subcommittee.

19 (Recess was taken at 10:30 a.m.
20 and the hearing resumed at 10:46 a.m.)

21 CHAIRMAN HONIGBERG: All
22 right. Mr. Oldenburg, why don't you start us
23 off.

24 MR. OLDENBURG: Thank you, Mr.

1 Chairman.

2 QUESTIONS BY SUBCOMMITTEE MEMBERS AND SEC COUNSEL:

3 BY MR. OLDENBURG:

4 Q. Good morning, gentlemen. My name is Bill
5 Oldenburg. I work for the Department of
6 Transportation. So this is just sort of not
7 really in my wheelhouse, but I have
8 questions. Most of them are clarification
9 questions.

10 So you had mentioned to a number of the
11 questions and in your testimony that you were
12 familiar with the Project because you worked
13 on it as part of the draft Environmental
14 Impact Statement for DOE; correct?

15 A. (Buscher) That's correct.

16 Q. What I thought I heard you say in previous
17 questioning is that you worked on the
18 statement that was in the draft, but not the
19 final; is that correct?

20 A. (Buscher) No, we did a VIA report, a
21 technical report, for both the draft and the
22 final. But then those reports were used to
23 draft the section in the actual draft EIS and
24 the final EIS that we did not draft -- we did

1 not write those parts of the final documents.
2 We prepared the technical report.

3 Q. So you did the technical report. But under
4 the Visual Assessment section in the Impact
5 Statement itself, you didn't have anything to
6 do with that; correct?

7 A. (Palmer) For the draft, we reviewed a lot of
8 it. We didn't even see the final. We were
9 asked to comment on some material that had
10 been prepared for the final, but my memory is
11 that it had to do with the White Mountain
12 National Forest, conformance with the forest
13 plan, to make sure that that was accurate.
14 But it wasn't sort of what you would think of
15 as the meat of it. And in particular,
16 Alternative 7, which is what you all are
17 considering, was all new, and we were not
18 asked to review that aspect of the final EIS.

19 A. (Buscher) And it's not uncommon for the EIS
20 consultant to utilize materials created by
21 other consultants to draft the final EIS
22 itself.

23 Q. Because I guess my question is, when I read
24 that, the statement that's in the EIS, I

1 didn't get a strong anti- -- you know, I
2 didn't see the unreasonable adverse effect
3 type of language in the EIS that you do in
4 your testimony, in your report.

5 A. (Palmer) We were at -- so in the federal NEPA
6 process, "significance" is a key word.
7 That's a judgmental word. And we were asked
8 not to find "significant findings" or to use
9 comparable language. So there's a string of
10 words that we were at -- we were not to be
11 making a judgment. We were to be providing
12 sort of evidence as much as possible, and
13 then that was interpreted by our contractor.

14 Q. So we shouldn't draw conclusions that in the
15 EIS there's one set of statements and in your
16 testimony here it's sort of a much harsher
17 review.

18 A. (Buscher) Yeah, it's a site-specific review.

19 One of the goals of the EIS was to
20 compare different alternatives. And that was
21 a major component of what the EIS was trying
22 to do. I think if you actually look into the
23 actual impact findings, even though it might
24 not be reflected in any type of final

1 analysis, in a lot of the sample KOPs, that
2 the finding was that impacts may very well
3 represent unreasonable impacts.

4 A. (Palmer) So the more comparable part of the
5 federal technical report would be those KOP
6 analyses in Appendix A. So that is the only
7 more site-oriented work that's in the federal
8 EIS. Again, we started out anticipating that
9 there would be a lot more site-oriented work
10 in the federal EIS, but we were asked not to
11 do that, that that was not the responsibility
12 that the Department of Energy saw for their
13 assessment, that they were really at a higher
14 level about comparing alternatives. So it's
15 a different -- what you have to do and what
16 we did there is a different analysis.
17 There's some things that you can learn
18 clearly from what we did, but it really is
19 different.

20 Q. Okay. Understood. Thank you.

21 So I struggle a little, and I don't want
22 to repeat the same questions that Attorney
23 Needleman just did, but I struggle with in
24 your testimony you found numerous things. I

1 won't go through them, but I highlighted them
2 all over the place. You found significant
3 errors with the VIA. You had substantial
4 deficiencies in this, that, and it goes back
5 to the number of resources found, et cetera.
6 And you testified you didn't redo the VIA,
7 but you were able to come to a conclusion --
8 without redoing, you looked at a few
9 resources and then came to a conclusion that
10 it would have -- that the Project would have
11 an unreasonable adverse effect. So you
12 started with 18,000 resources. You looked at
13 41, if I have the numbers right, and then you
14 found 29 had unreasonable adverse effects, or
15 some number like that. So how many resources
16 would have to have an unreasonable adverse
17 effect for you to say you shouldn't build the
18 Project?

19 A. (Buscher) Well, quite honestly, I think there
20 could be a single resource that might have
21 such an unreasonable impact with the Project
22 moving forward, that the SEC, it's within
23 their jurisdiction to decide that the Project
24 on the whole shouldn't move forward just

1 because just of that one location. We're not
2 saying that that's occurring here.

3 But our review looked at several
4 different things. First of all, we just
5 don't think we have the information provided
6 by the Applicant to make a full
7 determination. We really feel that the
8 number of scenic resources were not
9 adequately provided. And just our review
10 would anticipate that there's several hundred
11 resources, at least, that should have been
12 evaluated, that were not.

13 We also completely disagree with how the
14 Applicant then vetted resources before even
15 doing an impact assessment, even though the
16 supplemental somewhat provides that. We
17 really don't see that as an analysis that
18 should have been done within the requirements
19 of the SEC 301.05.

20 The 41, again, we're just trying to --
21 we took a handful of resources and tried to
22 see if we were coming up with some more
23 conclusions. We have quite a bit of
24 experience dealing with transmission lines,

1 and we have quite a bit of experience working
2 with the developer to minimize, avoid
3 impacts, and we just don't see that happening
4 here.

5 A. (Owens) We do see it happening to some
6 extent, but not to what we would consider a
7 reasonable extent. So there are a lot of
8 mitigation strategies that they should have
9 been suggesting or employing. Just for
10 example, the 41 resources, or 29 that we
11 found unreasonable, we considered those
12 additional mitigation items to be a
13 reasonable thing for them to do.

14 Q. I do have questions about those, but let me
15 go on to -- you just touched on the whole
16 resource, the scenic resource. And I still
17 struggle with the public access versus
18 private property issue. And the example you
19 just used a few minutes ago with Attorney
20 Needleman was the state park fee that you pay
21 versus paying a room rate at the Mountain
22 View Grand. So, to me, the state park is
23 public. It's owned by the State of New
24 Hampshire; correct? And the hotel is owned

1 by a private property. You don't have a
2 legal right for access at the hotel, do you?
3 I'm trying to -- because one of the
4 requirements is it has to have "legal public
5 access." Wouldn't a private property owner
6 have the ability to say no?
7 A. (Palmer) Well, but it's a retail
8 establishment. And under what -- there's
9 certainly some things they could not refuse
10 you. For race they could not refuse you. So
11 if you were black, they could not tell you
12 that you could not be there. You know, you
13 can't have places open for business that say
14 that women are not welcome here. I mean, so
15 I'm not sure what exactly the leak -- I mean,
16 clearly you are -- they're open for business
17 to the public, so the public can -- and
18 there's certainly publicly-owned buildings
19 where you don't -- I mean, I can't just walk
20 into your office, for instance. So there's
21 publicly-owned property where the public
22 doesn't have a legal right of access also.
23 So it's not an easy thing to actually define.
24 And I think Terry also struggled with that.

1 And we don't have a clear, detailed, legal
2 investigation of what that means either.

3 A. (Buscher) But given the situation, it would
4 seem that you would want to be more
5 encompassing than restrictive in your
6 interpretation of that, and that's the
7 approach we took.

8 Q. But I was just thinking I wouldn't -- I don't
9 know. Maybe I'm looking at this more in my
10 view. But I wouldn't go up there with an
11 ATV, park in the parking lot, get off and use
12 their trails, because I didn't pay. I mean,
13 aren't the amenities at that hotel for a
14 paying customer?

15 A. (Palmer) But there are places in the state
16 park where you can't take an ATV. I mean,
17 it's not open -- the trails are not open to
18 any use. You cannot take an ATV on the
19 Appalachian Trail.

20 A. (Buscher) But to just stop and go up onto the
21 porch and look at the view, I would guess
22 that that's not an uncommon occurrence.

23 Q. Okay. All right.

24 A. (Palmer) But I understand the struggle. For

1 us, the really big one was whether or not you
2 all will accept, as we accept, that public
3 roads are publicly funded and that it's
4 common for people to drive roads to go look
5 at the scenery. And a lot of that scenery is
6 scenic resources, like historic properties,
7 that you're looking from the public road,
8 which we think is a scenic resource, looking
9 at a scenic resource.

10 Q. I think it's more of an interpretation or a
11 lack of definition in the rules that
12 everybody struggles with, so --

13 A. (Buscher) But in general, I think, you know,
14 and Mr. Needleman talked about it, you know,
15 when you have professional experience doing
16 VIAs, in our professional experience doing
17 VIAs, most every situation I can think of,
18 we're going to assess the impact to the
19 Mountain View Grand Hotel.

20 Q. All right. Because one of the other examples
21 was bodies of water, streams, ponds. And if
22 I remember correctly, in New Hampshire a body
23 of water has to be over 10 acres to be a
24 public waterway.

1 A. (Palmer) A natural pond of 10 acres or
2 greater, correct.

3 Q. But I thought someone had said or asked the
4 question about streams, if someone had public
5 access to go fishing on a stream.

6 A. (Palmer) Streams, there are publicly-owned
7 streams, too, and both of those are listed in
8 a report that's published annually.

9 Q. Okay.

10 A. (Palmer) So if a pond all of a sudden got
11 dammed, it would get judged differently than
12 it would as a natural pond.

13 Q. Because I've just seen where a deed might
14 access the center of a stream as a private
15 property line. So therefore, you would think
16 in some cases streams could be privately
17 owned; correct? And the public wouldn't have
18 access --

19 A. (Palmer) The streams that are publicly owned
20 are all listed, I mean, which is really nice.
21 That's something that's not common in the
22 rules. But it's one of the views, sure.

23 Q. Okay. Just trying to review the questions
24 that were already asked and not ask them

1 again.

2 In your testimony, one of the -- under
3 your question of please describe your
4 conclusions as to why the Project would
5 result in an unreasonable adverse effect on
6 aesthetics, one of the bullet points was
7 inappropriate siting of new transmission
8 corridor. By the "new transmission
9 corridor," is that the new 24-mile section
10 that's new, above ground? Or what did you
11 mean by "new"?

12 A. (Buscher) Yeah, the corridor in the north 40
13 where there's no existing lines, where
14 there's a corridor being created specifically
15 for this project.

16 Q. My impression is most of that's on private
17 property. And are there -- from what
18 sections? I guess no one -- when I reviewed
19 it and when we did our site visits, it wasn't
20 specifically pointed out, locations where we
21 might have stopped or saw or photo
22 simulations of views of that line that are in
23 the new corridor. Did you do any?

24 A. (Owens) You're talking about examples?

1 Q. Yes.

2 A. (Owens) So, just today we reviewed three
3 examples. One was next to Little Diamond
4 Pond and the routing adjacent to Coleman
5 State Park. You're going over the top of a
6 ridge when there maybe were other options.
7 Two that I can think of: One would be burial
8 in that same corridor, and another would be
9 to continue going down roads and around that
10 park. We looked at --

11 A. (Buscher) Or just relocating that so it's not
12 sitting on top of a ridge line.

13 A. (Owens) Right, yeah.

14 So the next was the Moose Path on Route
15 26, where we were looking at some galvanized
16 lattice structures. That's a new corridor
17 coming over an elevated location. If that
18 was the location that the line would need to
19 be in for some reason, you'd want to see
20 pretty much the maximum available mitigation
21 measures. We had talked about Natina.

22 And another one was the Pontook
23 Reservoir, where you've essentially got a
24 landscape where you can't really see. There

1 is an existing lead line, that 115 kV line
2 that goes up to some wind turbines. The
3 proposed route's been elevated on one of
4 those ridge lines, and that's not good
5 siting. You would want to have that down as
6 low as you can go.

7 So that's what we reported, that those
8 are inappropriate when you consider a new
9 transmission line corridor. That's not where
10 you would want them to be.

11 A. (Palmer) I'd also point out the Dummer ponds,
12 where I think the Dummer ponds are great
13 because they really provide a good example of
14 how a line can be sited in an appropriate
15 location because there's an existing lead
16 line that has just been installed in the last
17 10 years that is very well hidden, very well
18 screened in those views. And then there's
19 the proposed Northern Pass Project, which is
20 high up on the existing slope and exposes it.
21 It's within a clear-cut area, and --

22 A. (Owens) Consequently, that's the same ridge
23 line that you can see from Pontook Reservoir.

24 A. (Palmer) And say Dummer Pond. Dummer Pond is

1 a scenic resource because it's a large lake.
2 But without having checked, I would bet that
3 a lot of the Wagner lands are receiving the
4 current-use appraisal and then the 20-percent
5 adjustment for recreation use. And I haven't
6 checked that, but there is a lot of
7 recreation use back there. And there's an
8 ATV club with a building. There's a whole
9 bunch of that sort of resource. So at least
10 it would makes sense that if they're
11 providing that recreation activity, that
12 they're availing themselves of the financial
13 benefit that they could get for providing
14 that activity.

15 Q. Okay. The next bullet point is the mix of
16 structure types. And I guess on that
17 statement you're saying that by mixing
18 structure types, that can be a -- that can
19 have an effect on aesthetics; correct?

20 A. (Buscher) That's correct.

21 Q. So are you recommending that all structure
22 types be the same?

23 A. (Buscher) Well, we feel that there's quite a
24 few different locations where we're seeing

1 both lattice and steel monopole. And a term
2 that is commonly used is "clutter," landscape
3 clutter. And that creates clutter in the
4 landscape visually. So it would be more
5 appropriate to have a single-structure type
6 from visible locations. Generally, you know,
7 in general I feel there's definitely
8 situations where lattice towers might be less
9 apparent within the landscape. Generally I
10 feel that there is a more industrial
11 character provided with a galvanized steel
12 tower compared to a self-weathering monopole.

13 Q. So if I read into that statement a little
14 bit, you're saying that they should be
15 monopoles, not all lattice structures. So if
16 one has to be a lattice structure, you're not
17 saying they all should be lattice structures;
18 right?

19 A. (Buscher) That's correct.

20 Q. You're saying making them all monopoles would
21 be more aesthetically pleasing.

22 A. (Owens) There would probably be some
23 exceptions to that. I think the Route 26
24 location where we've got -- we saw that

1 simulation of the lattice structures coming
2 over the hill. If those had some other type
3 of mitigation applied to the lattice
4 structure, that might actually be less
5 visible than a steel monopole, a series of
6 steel monopole structures going over that
7 landscape. So it's not a panacea.

8 Q. So one of the next bullets is the height of
9 the structures. And I think one of the
10 things that you would -- let me pull a bunch
11 of questions -- or answers that I think I
12 heard was the height of the structures -- I
13 think you made a statement that the structure
14 heights was as low as you thought was
15 feasible, given all the different components.

16 A. (Buscher) Given the layout design of the
17 Project, I would assume that they're as low
18 as they -- I don't see any --

19 Q. Without requiring --

20 A. (Buscher) -- reasoning for them making
21 structures higher than they need to be.

22 Q. And one of your mitigation suggestions was
23 they should purchase a wider right-of-way or
24 right of easement so that the structures

1 could be spread out and therefore lower?

2 A. (Buscher) So there's a lot of different ways
3 that you can lower structure heights. You
4 can space structures closer together. You
5 can adjust positioning of the structures
6 within the given landscape. But, yeah, one
7 option would be to understand if people were
8 willing to sell additional right-of-way and
9 change the Project to, say, a horizontal
10 configuration than a vertical configuration.

11 Q. So, given all the different components then,
12 the criteria that go into the tower height, I
13 have to imagine things like distance from the
14 right-of-way, distance from the ground,
15 distance from each of the conductors come
16 into this.

17 A. (Buscher) Right.

18 Q. So, for the Northern Pass line to be lower,
19 some of the criteria has to change. And you
20 would have -- I would have thought that
21 the -- or wouldn't you think that the
22 engineers would have done that and made these
23 towers as low as possible?

24 A. (Buscher) I'm sure they're as low as they can

1 be given the configuration. That's not
2 saying that from our perspective it's
3 acceptable. For instance, we're used to
4 working on 345 lines that have regular
5 heights of 65 feet, where we're looking at
6 structure heights that are regularly over a
7 100 feet tall. Those are tall structures,
8 and up to 160 feet. That's an extremely tall
9 transmission structure, and it's not common
10 in New England, based on my experience.

11 So there's a number of factors that,
12 given my general knowledge and working with
13 transmission companies, why that's occurring.
14 And one of the reasons that I'm going to make
15 the assumption is that there's a lot being
16 fit into these right-of-ways. So maybe it
17 results in a different, lower voltage line
18 being undergrounded or taking -- instead of
19 just rebuilding one line, maybe it's
20 rebuilding two lines and putting them on a
21 single structure, double circuit.
22 Reliability comes into play in that type of
23 situation. So there's a lot of different
24 things you can look at to consolidate,

1 organize, potentially lower the structure
2 height.

3 A. (Palmer) And maybe the existing
4 right-of-way's just not big enough for the
5 addition that they're proposing.

6 Q. So that was one of your mitigations was for
7 them to purchase additional easements. And
8 if I remember correctly, and I wrote down the
9 number, but I don't know if I've got the
10 context right, in the EIS they analyze that
11 portion of it, and there were hundreds of
12 individual easements that would have to be
13 renegotiated. Is that reasonable?

14 A. (Buscher) We have seen it done on other
15 projects.

16 Q. Okay.

17 A. (Owens) There's also another way to
18 reconfigure, as we said, reconfigure the
19 actual structure that they're proposing into
20 what's called a delta configuration. So
21 right now, most of what they have is each
22 phase -- there's three phases, one above the
23 other, which is the minimum clearance between
24 the three phases. If you go to a delta

1 configuration, you alternate sides of the
2 structure, which lowers the height. I
3 believe that in a right-of-way this small,
4 there's some clearance issues that they might
5 have with the adjacent 115 line or lines.
6 But those types of things need to be
7 considered. And additionally, they might be
8 able to get easements or understandings about
9 what they're clearing in terms of vegetation
10 in order to have the clearances that they
11 need in order to reduce the structure height
12 across the entire corridor.

13 A. (Buscher) And we haven't -- I don't
14 believe -- have we been given information,
15 Jim, can you recall, on if there's been any
16 type of analysis done on danger tree
17 clearing?

18 A. (Palmer) No, we weren't. So we, as part of
19 the federal process, kept asking for
20 information about vegetation management and
21 how they would do that and sort of the
22 guidelines that they would use to make their
23 decisions, and in the federal process it
24 really wasn't forthcoming.

1 Q. But since they -- going back to Mr. Owens'
2 statements just now about the configuration,
3 given the fact that the tower height is
4 probably one of the biggest issues with the
5 Application, wouldn't you assume that the
6 engineers have already done everything
7 possible to make these towers as low as
8 possible?

9 A. (Buscher) Well, they're certainly taller than
10 other structures of similar voltage capacity
11 in New England.

12 A. (Palmer) Well, they lowered the voltage some
13 between what we call Alternative 2 and
14 Alternative 7. So the original preferred
15 alternative to the federal government, and
16 then what you all are looking at is a
17 revision of that. And the structures
18 changed. And all the structures -- well,
19 pretty much all the structures dropped
20 10 feet -- do I remember that right --
21 anyway, a meaningful amount because they
22 redesigned the structures.

23 A. (Owens) So you're correct, though. If
24 they've -- what I would say, if they've

1 lowered those structure heights as much as
2 they can and they've condensed the corridor
3 as much as they think they can from an
4 engineering perspective and a reliability
5 perspective, if nothing else is done, then it
6 may just be that that solution is going to
7 result in unreasonable impacts.

8 Q. So one of the other mitigation areas was
9 harmonizing the new structures with existing
10 wooden structures. So you talked about
11 employing or using wooden structures for the
12 new lines instead of the steel structures.
13 If the tower heights have to be that high,
14 can you actually get wood poles that are
15 100 feet tall and build wood structures that
16 high?

17 A. (Buscher) Well, we have experience with 345
18 lines being constructed entirely out of
19 wooden structures, H-frame configurations.
20 But there's also laminated wood structure
21 possibilities that you can get fairly tall
22 heights out of.

23 A. (Owens) Also, the configuration again. One
24 of the reasons that that 115 line that

1 they're replacing with a tall steel structure
2 is so tall is because they're not doing a
3 delta configuration, which is what the other
4 existing 115 line is, which is a lower
5 structure height, and those are wooden. So
6 you're essentially looking at an example of
7 what could be done. There would be some
8 clearance issues for reliability that might
9 have to be solved, but that would be one way
10 of changing to a different type of structure,
11 or co-locating the two 115s onto a single
12 structure instead.

13 A. (Buscher) Having lots of different structure
14 types within a right-of-way, all visible,
15 that sort of goes to the concept I introduced
16 earlier called "clutter." So you have lots
17 of different structure types, you have lots
18 of different spacing for the structure types,
19 you have different sags being created with
20 the conductors because of the different
21 placement and structure types, and it all
22 creates a very chaotic visual situation or
23 character within those right-of-ways.

24 Q. But you can only see so many structures at

1 once. I mean, there's 1800 structures
2 they're building.

3 A. (Buscher) Right.

4 Q. So you're not suggesting that they all be the
5 same type, but be more consistent --

6 A. (Buscher) Cohesive.

7 Q. -- within a view. Is that what you're
8 basically saying?

9 (Court Reporter interrupts.)

10 A. (Buscher) Yes.

11 Q. Okay. So one of the last statements in your
12 prefiled testimony was failure to adequately
13 consider best practical mitigation measures
14 results in the Project as proposed having an
15 unreasonable adverse effect. And that's one
16 of the criteria that we review is mitigation.
17 But just because they haven't considered all
18 mitigation, is that why your recommendation
19 is to find it unreasonable? Or is it the
20 measures that they used? The lack of being,
21 you know, all-inclusive or the lack of the
22 measures that were employed? Do you
23 understand -- you're struggling with the
24 question.

1 A. (Buscher) Yeah.

2 Q. So you listed a lot of additional measures
3 that I didn't hear the DeWan folks call for.
4 Is it an unreasonable adverse effect because
5 they didn't use all of these measures or --

6 A. (Buscher) Just because of that?

7 Q. -- or is it the fact that they didn't go far
8 enough with the measures they used, or a
9 combination of both I guess?

10 A. (Buscher) Yeah, I would say it's a
11 combination. The reason why we're
12 considering the overall project unreasonable
13 is for a number of different reasons,
14 mitigation being one of those reasons. And I
15 think that's accurate to say that they
16 haven't employed mitigation that would be
17 considered best practice. Basically there
18 hasn't been any information -- one of the
19 things that -- one of the basic ways to
20 mitigate a project is screening. They talked
21 about it a little bit, but yet there's not a
22 single landscape mitigation plan provided.
23 Non-specular, something that other
24 transmission companies do straight off the

1 bat. It's just something that's expected.
2 And they're arguing that, given a couple
3 years -- and it's been our experience that's
4 not the case -- there's going to be patina
5 that forms that makes them just as not
6 visible as if they would be treated with
7 non-specular treatments. So the mitigation,
8 in large part, we feel does not adequately
9 address what we would anticipate as accepted
10 practices to fit this project within the
11 landscape.

12 Q. Sort of the last series of questions I have
13 is based upon sort of an assessment now. One
14 of the assessments that you reviewed was the
15 Coleman State Park area. How many locations
16 did you review that from? Did you review it
17 from the entrance, from like the cabins at
18 Coleman Estates, the visitor's center, the
19 campground, the boat launch, middle of the
20 lake, the hiking trails, the ATV trails? I
21 mean, you just didn't go to one spot, did
22 you?

23 A. (Buscher) No. It's actually not a spot I
24 visited. We had two different teams go out

1 there at two different times.

2 Were you one of those teams? You were;
3 correct?

4 A. (Owens) Right. We didn't go to all the
5 trails. We didn't go to the rental cabins.
6 I think that even the --

7 A. (Buscher) We looked at the -- I mean, some of
8 the things that we do is we do take advantage
9 of desktop techniques to review projects.
10 And I actually looked at the rental cabins
11 themselves through a more desktop analysis.

12 Spots we really focused on was the
13 entrance road, the area near the campground
14 and park entrance, the lake itself. And
15 there's a large portion of the lake that are
16 going to have views of those towers on top of
17 the ridge.

18 Q. So when you do your assessment, how do you
19 take into account the different uses and the
20 different types of access? You know, an ATV
21 user might have a different impression or
22 expectation than a hiker would or a fisherman
23 would. How do you review that and come up
24 with your "low," "medium," "high"

1 assessments? Do you do it individually by
2 use, or is it a cumulative review?

3 A. (Buscher) I think we tried to understand what
4 uses might be impacted greatest by a project
5 like this. We had the fortune of having the
6 New Hampshire Lakes study which did evaluate
7 specifically different types of users on
8 water bodies within New Hampshire, including
9 non-motorized boating which is done for a
10 recreational purpose that has a high
11 expectation for scenery. And the survey said
12 that those users would feel that a
13 significant change to the landscape would
14 have a profound impact on their use and
15 enjoyment of those facilities.

16 We do -- the information available is
17 limited, and I think we've been pretty clear
18 about that. And Jim, you can jump in. But
19 we do look at all the different components.
20 We try to evaluate the different uses.

21 Q. So if we made an assumption that someone
22 that's using the ATV trails or the snowmobile
23 trails, you know, they're sort of looking
24 down at the trails and traveling around and

1 going up and down the trails themselves, so
2 their impact might not be as -- you know,
3 their visual impact of the lines might not be
4 as great as say a fisherman that's on the
5 lake, who's there really to fish and, you
6 know, looks up occasionally to see the
7 mountains and everything, but the hiker, who
8 is there specifically to see the scenic
9 beauty and go to the overlooks and things
10 like that, how do you weigh one against the
11 other, and then how do you weigh the thousand
12 ATV users versus the 15 hikers? Is it a
13 qualitative analysis or a quantitative
14 analysis that you're looking at?

15 A. (Palmer) For almost all these places it's a
16 qualitative analysis. And the information
17 isn't available. If there were particular
18 sensitive sites, then we would recommend that
19 there be an on-site survey that asked these
20 questions. And you would essentially get a
21 cross-section of the people who were there
22 during the survey and then they're weighted
23 appropriately. I mean, that's one of the
24 reasons to do intercept surveys.

1 Q. So when you went to Coleman State Park, did
2 you talk to, like, the ranger on duty or get
3 an idea of use? Did you talk to anybody at
4 the Parks Service to see what the uses were
5 before you sort of threw all these numbers
6 together?

7 A. (Buscher) We did contact the parks department
8 and found out they don't keep track of
9 numbers.

10 Q. So is it from an observation for the uses?

11 A. (Buscher) Partly.

12 A. (Palmer) Well, we didn't do a VIA in the SEC
13 process. So if you think about it in the
14 federal process, the way that was handled was
15 using the same data that DeWan used. And
16 that data base has information about primary
17 and important secondary recreation activities
18 that are happening in the recreation areas.
19 So we were using that information. But
20 again, in the federal process, they were not
21 interested in us kind of developing all of
22 that information. It would be certainly
23 possible. And it's your all decision about
24 how deep that should go. So, some parks,

1 like Coleman State Park, they don't even have
2 counts of people. We don't know how much
3 visitation they get. But it'd be pretty
4 simple to put in a road counter, which your
5 department has experience with, to figure out
6 how many vehicles are going in and out over a
7 year. And those sorts of things would help a
8 lot if the amount of visitation was going to
9 be important.

10 MR. WAY: Follow-up if I
11 could?

12 CHAIRMAN HONIGBERG: Sure.

13 QUESTIONS BY MR. WAY:

14 Q. So when you contacted probably the Parks
15 Division, they said that they didn't have
16 counts of people? And Mr. Buscher, I think
17 I'm referring back to a statement you made
18 earlier that they didn't keep track. Didn't
19 keep track of what?

20 A. (Palmer) Visitation counts. Say annual
21 visitation counts.

22 Q. They didn't keep track of annual visitation
23 counts?

24 A. (Palmer) Well, we could not find a source of

1 that, yes.

2 Q. Okay. So that's different than saying they
3 don't keep track of it. You're saying you
4 didn't find any. Did you talk to someone
5 about that?

6 A. (Palmer) I believe in the federal process
7 that we did, but I would have to go back and
8 check those e-mails.

9 Q. Okay. Because that's quite a statement to
10 make, that we don't keep track of visitor
11 counts, which I believe we do.

12 A. (Palmer) Okay. We've not been able to find
13 them. We've been looking pretty assiduously.
14 But it's possible --

15 Q. But you did talk to someone you said.

16 A. (Palmer) I would have done it by e-mail. So
17 I could try to find that out, to go back --

18 Q. Could you do that?

19 A. (Palmer) Yes.

20 Q. Thank you.

21 CHAIRMAN HONIGBERG: So that's
22 a record request, Ms. Connor. You understand
23 the request?

24 MS. CONNOR: I do.

1 QUESTIONS BY MR. OLDENBURG (CONT'D):

2 Q. So I guess my last question is you reviewed
3 the Visual Impact Assessment, but you didn't
4 do it. You did some independent reviews of
5 some certain resources, but not all of them
6 like would be required under our rules. So I
7 guess I'm trying to understand, because we
8 have the Applicant who had certain rules --
9 you know, an Application to fill out, certain
10 requirements to give us, came to one
11 assessment. You reviewed that assessment,
12 found multiple flaws in it, but still
13 allowed -- but still had the ability to find
14 or make a recommendation that the Project had
15 an unreasonable adverse effect. So I'm
16 trying to grasp that.

17 A. (Buscher) So, for instance, the Applicant
18 reviewed impacts and found that the Project
19 as proposed didn't come to a high impact at
20 any location. I think the highest -- the
21 strongest impact reading they had was medium
22 high. We just simply wanted to verify, and
23 we used our experience with the DOE as well,
24 to see if that was a realistic assumption,

1 and we found it was not. We found that there
2 were definitely high impacts associated with
3 this project, with a large set of other
4 reviewers, both DOE process and through our
5 experience with the SEC. So we felt that
6 there were some glaring examples that in
7 itself, without doing a full VIA, were
8 indicative enough to come to that conclusion.

9 Q. Okay. That's all the questions I have.

10 CHAIRMAN HONIGBERG: Ms.
11 Weathersby.

12 QUESTIONS BY MS. WEATHERSBY:

13 Q. Good morning, gentlemen. I know you did an
14 independent analysis of 41 locations. How
15 did you choose those 41?

16 A. (Buscher) For a large part, we looked at
17 information we had available to us to do the
18 reviews where there were simulations prepared
19 for those locations. We looked at areas that
20 we felt might have pretty high impacts.

21 Q. And you extrapolate from your findings there
22 that similar findings would be concluded
23 along the entire length of the Project. How
24 do you make that extrapolation?

1 A. (Buscher) I'm just trying to refresh myself a
2 little bit here.

3 Q. I have a --

4 A. (Buscher) We know, for instance, we feel as
5 if most roads should be considered scenic
6 resources, that traveling roads to observe
7 scenery is one of the highest recreational
8 activities done in the state of New
9 Hampshire. And looking at the limited number
10 of roads, for example, that we did review, we
11 found that they are very similar to many
12 other road crossings, for example, and that
13 the way that the Project is proposed to fit
14 in the landscape would have a similar finding
15 for the samples that we did review. Does
16 that answer your question?

17 A. (Owens) I would say that we recognized in our
18 review that the Applicant did not really
19 consider roads that weren't designated as
20 being scenic resources. So we know that
21 there were over a hundred road crossings in
22 itself, and there were other places on
23 different roads where you could see this
24 project. So, just knowing that they didn't

1 even look at those things, you can assume
2 that there's going to be impacts that they
3 haven't addressed or informed you of, and you
4 can extrapolate that there are other scenic
5 resources, if they didn't address them, that
6 they might also have unreasonable impacts.

7 Q. In reaching your conclusions concerning the
8 reasonableness or unreasonableness of the
9 impacts, the adverse impacts, you first
10 categorized the potential visual impacts on
11 the scenic resources as "high," "medium" or
12 "low." How was that determination made
13 between the categories?

14 A. (Buscher) It was a combination of we looked
15 at -- we did a more systematic review of
16 particular, what we referred to as "KOPs" in
17 the DOE review. And we used some
18 professional judgment, our experience working
19 on other similar transmission line projects.

20 Q. So was it one of you that would look at
21 the -- walk me through -- look at a photo
22 sims, maybe you went out to the site and then
23 you checked the box, I think it's going to be
24 potentially -- you know, the viewshed maps

1 were potentially going to be high, medium or
2 low? Is that generally what happened? Or
3 could you walk me through --

4 A. (Buscher) Specifically for how we filled out
5 the 41? For example, there were two of us,
6 and we went through each of the criteria. We
7 looked at other materials that we had for the
8 DOE. And we made a finding for each of the
9 criteria, first under 301.05, and then we
10 came up with that low, medium or high. And
11 that's actually where we stopped for that
12 part of it.

13 Q. Maybe I misunderstood. I thought you started
14 the analysis as determining whether the
15 potential impact was high, medium or low. Is
16 that -- am I incorrect?

17 A. (Owens) You're saying on the forms we had
18 that listed --

19 Q. I know you went -- the next step in your
20 analysis was going through all those factors
21 in the Rule 201.14 of the significance and
22 duration, et cetera, et cetera. But I
23 thought the first sort of filter was a high,
24 medium or low ranking. Perhaps I'm --

1 A. (Buscher) The first filter is whether it's a
2 scenic resource or not. That's our first
3 filter. And then we went through each of the
4 criteria under 301.05(b), 6 in particular.
5 We rate the -- the first thing we do is we
6 rate what type of scenic resource it is. We
7 look at the expectations of the typical
8 viewer. For some particular activities we
9 had information on that, for others we had to
10 use our best professional judgment. Same
11 with future use and enjoyment, the extent of
12 the proposed facility, including all
13 structures and disturbed areas. And we
14 described this more in our narrative of each
15 of the resources. But we looked at specific
16 factors. So we went through each of those
17 factors. And based on what we found going
18 through all this different criteria, then we
19 made a judgment on low, medium or high.

20 Q. Okay. Seems as though there were instances
21 where your ratings in the ratings sheet, the
22 evaluation form, that the ratings were mostly
23 low or medium, but you found that the adverse
24 impacts were unreasonable based on

1 insufficient mitigation. I'm thinking
2 particularly like at Bear Brook State Park.
3 So am I correct that because you found the
4 mitigation insufficient, it changed sort of,
5 it sort of tipped the impact into an
6 unreasonable category because more could have
7 been done?

8 A. (Buscher) That is a good example of one of
9 the locations where I think overall we came
10 out with a medium impact. But there seemed
11 to be effective mitigation we would
12 anticipate would be employed, that an average
13 person would consider reasonable on this
14 project, that was not incorporated. So, for
15 that reason we felt it was enough to consider
16 the impact unreasonable.

17 Q. One of your criticisms of Mr. DeWan's
18 analysis was the eliminating a number of
19 sites based on their low cultural value. Do
20 other impact assessments use such a filter in
21 your experience? Have you come across
22 others, or is that standard practice? Could
23 you speak to why that criticism --

24 A. (Buscher) In general terms, I think that how

1 New Hampshire looks at significance is
2 appropriate. First decide if there's an
3 impact, and then, when you're looking at the
4 unreasonableness of this impact, let the
5 significance come into play. That seems the
6 more appropriate way that I would say
7 generally VIAs look at significance, not just
8 simply eliminating the resources from being
9 looked at at all.

10 Q. Or bringing it at the end rather than instead
11 of the beginning of the project.

12 A. (Buscher) As an initial filter. There are
13 some limited examples that -- like Maine's
14 siting law, for example, specifically for
15 wind and expedited sites, has a very defined
16 list of scenic resources that are, I believe,
17 predicated mostly on national and
18 state-designated scenic resources. But it's
19 one of the few examples in New England that I
20 can think of that would employ that type of
21 criteria.

22 QUESTIONS BY MR. WAY (CONT'D):

23 Q. So in your report when you reference cultural
24 impact and you suggest that the SEC rules do

1 not recognize cultural impact --

2 A. (Buscher) As an initial filter.

3 Q. -- as a regional [sic] filter, are you saying
4 it should not be used, or are you saying it
5 should just be used in a different manner, a
6 more encompassing manner?

7 A. (Buscher) We're saying that there is no
8 mechanism for the Applicant to use it in
9 their VIA, that it only comes in later in the
10 rules under 301.14, which, you know, we would
11 expect an applicant to give their assumption
12 or their take on. But that's really a
13 criteria for the SEC to consider.

14 Q. So when you look at the methodology employed
15 by Mr. DeWan, midway down the methodology you
16 would take that cultural impact piece out as
17 a filter.

18 A. (Buscher) One hundred percent.

19 Q. Thank you.

20 BY MS. WEATHERSBY (CONT'D):

21 Q. Your report references a National Forest
22 Landscape Management document regarding
23 mitigation and corridor alignment. Can you
24 tell me what that is and whether its use is

1 standard?

2 A. (Palmer) Is it utilities? Does it have a
3 title? I can think of more than one
4 document.

5 Q. NFLM. You indicate the Applicant didn't
6 appear to consult or reference previous
7 studies regarding planning of new utility
8 systems, such as the National Forest
9 Landscape Management. That's from your
10 Visual Impact Analysis report.

11 A. (Palmer) So I'm going to assume that it's the
12 -- there are several chapters for different
13 types of projects, forest harvesting,
14 recreation. One's utilities. And utilities
15 talks about general principles for installing
16 utilities from a scenic point of view. It
17 may have also been, if there's some page
18 references, there's a landscape management
19 handbook that's more recent. Probably about
20 1995 was the update. And it may have been
21 some sections from that, too. But utilities
22 is what I would expect, and that would have
23 been probably in the '80s when it was
24 published. But it's still in effect. It's a

1 current Forest Service document.

2 Q. So it's a document for siting, this section,
3 for siting utilities in national forests, and
4 gives siting -- just in general, what is it?
5 It gives siting techniques and --

6 A. (Palmer) Yeah, it's like sort of guidelines
7 and examples, and it includes cell towers as
8 well as power lines.

9 Q. Is that the Bureau of Land Management
10 document I've heard --

11 A. (Palmer) No, no, that would be different.

12 Q. That would be different.

13 A. (Palmer) Yeah. No, the Forest Service is in
14 the Department of Agriculture and the Bureau
15 of Land Management is Interior. Easy
16 mistake.

17 Q. In thinking about some of the mitigation
18 measures you have suggested, we discussed a
19 little bit about the use of Natina on the
20 steel poles. And I'm just wondering what
21 your experience is with that finish in winter
22 conditions, where against the white snow it
23 may be more visually apparent versus -- I
24 don't know if you've had -- if any northern

1 New England studies have been done as to
2 generally whether that's a more effective use
3 of mitigation?

4 A. (Palmer) There are not very many recent
5 studies on treatments of transmission
6 structures and this sort of camouflaging
7 approach. BLM has done some work recently.
8 It's in the arid west. They do have snow,
9 however, so there are times when it gets all
10 white. The usage, however, is heavier in the
11 summer. So they designed to that standard.
12 And that sort of situation would really be
13 particularly in places where there's a
14 significant amount of visibility. I don't
15 know that they would anticipate it being used
16 everywhere. So I can't generalize to what
17 that actually means for New England.

18 The reason that we actually raised it,
19 it is a way to treat a lattice structure
20 which cannot be made of weathering steel that
21 gives it a darker color, and it doesn't peel
22 the way paint does. And so what we were
23 trying to do was identify a problem that
24 needs to be mitigated. And we would have

1 hoped that there would be some discussions
2 about doing that mitigation in the report.
3 And if they rejected it all, then they
4 rejected it all. But there wasn't a
5 discussion of the problem.

6 Q. Okay. I found it interesting, some of the
7 photos concerning the non-specular
8 conductors. I understand that Velco project,
9 that was in Vermont. So, similar weather
10 conditions; is that correct?

11 A. (Buscher) That's correct.

12 Q. So you would anticipate that the difference
13 between non-specular and specular conductors
14 that were found in that Velco Project would
15 be similar to the Northern Pass Project.

16 A. (Buscher) That's correct. Just as a further
17 note, Velco, for all their transmission
18 projects, they use non-specular for their
19 entire route; it's not even a consideration.

20 Q. Thank you. I have nothing further.

21 CHAIRMAN HONIGBERG: Mr. Way.

22 QUESTIONS BY MR. WAY:

23 Q. Good morning again.

24 A. (Buscher) Good morning.

1 Q. I wanted to go back to the Washington [sic]
2 Grand porch that we were on. I think it's an
3 important issue because it just either
4 broadens or lessens the scope of what we're
5 looking at.

6 I was considering the findings of the
7 Antrim Wind Project. I think that had been
8 brought up earlier last week. And in
9 particular, I'm looking at Page 117 and 118.
10 And I'm just going to read a piece of it, and
11 if you want, I could certainly bring it down
12 and we can put it up, or I can certainly try
13 to put it up, just to get your take on it.

14 There was Black Pond that was in the
15 Antrim Wind. And the question on Black Pond
16 was whether it was publicly accessible or
17 not. Let me read to you what I'm reading.

18 "The Subcommittee finds, however, that
19 the viewpoint associated with Black Pond is
20 situated on private property. Without paying
21 the fee, the general public cannot access and
22 does not have a legal right of access to this
23 viewpoint; therefore, the viewpoint from
24 Black Pond is not a scenic resource as

1 defined by the Committee's rules and shall
2 not be considered while ascertaining the
3 impact of the Project on aesthetics."

4 I think we can probably go back and
5 forth on this with the porch. I think one
6 could probably agree that you're going to
7 have to pay a fee at some point, even if you
8 want to stay on that porch, to stay in that
9 establishment, I mean at night or whatever.
10 But at some point, you know, it's their
11 discretion. That's one point that I'm
12 bringing up.

13 Also, too, are you suggesting that if
14 what you say is true, does that mean any
15 retail establishment is fair game for this
16 discussion? Because that seems to be what
17 would be suggested.

18 A. (Palmer) Well, first you have to pay a fee to
19 get into state parks, don't you? So I'm not
20 sure that the fee is the --

21 Q. Does the public funding piece of it make a
22 difference? And also, too, what I'm
23 wondering is that fee to get into a state
24 park is probably, I don't know how to put

1 this, probably fairly different than to be
2 able to go to a Grand Hotel, and so the
3 ability of people to actually access that.

4 A. (Palmer) So what we're saying would be that
5 the fee is not, per se, the issue, but how
6 much the fee is? I mean, it just seems that
7 the money part is a difficult criteria to
8 determine public access. So --

9 Q. Fair enough. How would you respond to what I
10 just read to you?

11 A. (Buscher) So could you repeat the last part
12 of your question?

13 Q. "Without paying" -- well, so I'm trying to --
14 without really taking a position one way or
15 another, I'm just trying to get a sense of
16 where the scope is going to be for us to
17 establish. Is it a retail establishment
18 where you have to pay a fee publicly
19 accessible or is it not?

20 A. (Buscher) I think that you would give some
21 consideration to most retail establishments.
22 Obviously, if you're considering the Mountain
23 View Grand a retail establishment, you're
24 looking at the overall significance of that

1 resource compared to -- you know, you might
2 not even consider most other retail
3 establishments as a scenic resource for other
4 reasons, such as a gas station. But in
5 general, yeah, I think that you could, that
6 you could potentially look at any retail
7 establishment as having public access.

8 Q. But a fee-based one such as the Mountain View
9 Grand, how is that different than Black Pond?

10 A. (Buscher) I think you have to look at each
11 one -- are you asking if I agree with the
12 SEC's ruling on Black Pond or --

13 Q. No, just if you see a difference.

14 A. (Buscher) Yeah, I think there's some
15 difference. I do. There's definitely
16 components of the Mountain View Grand where I
17 would say you definitely don't have to pay a
18 fee to access it, and going to certain areas
19 where it's probably much more restrictive
20 because of the monetary exchange, it would
21 have to be in place to utilize that
22 particular component.

23 Q. I'm trying to remember. Were the other
24 simulations taken from the road or all taken

1 from the porch? I think one was taken from
2 the road; correct?

3 A. (Buscher) I believe the simulations that were
4 done for the DOE were taken from the road
5 that our office produced. And I believe all
6 the simulations within the DeWan report were
7 taken from the balcony or from the front
8 porch.

9 Q. Okay. Something obviously we'll probably
10 think about more, I would imagine, but
11 helpful.

12 So when I look at the methodology that
13 was provided by Mr. DeWan, it was helpful
14 because I think we were going through piece
15 by piece where you differed, cultural impact,
16 for example. But the start of it all is that
17 you started with a bigger pool and narrowed
18 it down. And that bigger pool, as I
19 understand it, was a lot of it was that
20 public roads were scenic resource.

21 A. (Buscher) Some were public roads. Public
22 waters, that was another big piece of it.

23 Q. So what you would be suggesting is that that
24 population really should be evaluated, should

1 be studied, should be seen.

2 A. (Buscher) Yeah. Our take, roads are one of
3 the -- in doing a VIA, it's one of the
4 locations where the public is going to have
5 the greatest exposure to a project. And to
6 ignore that as a public resource, as a scenic
7 resource, we just don't think that's
8 appropriate.

9 Q. And so I was thinking about something that
10 Attorney Needleman brought up last week when
11 he was saying how much time it would be --
12 let's say you could go back to evaluate this.
13 And I think it was 125 years, some crazy
14 number that I think we can't wrap our heads
15 around. So I'm trying to think, if,
16 hypothetically, if someone gave you an RFP to
17 respond to this, to do exactly what you're
18 saying, how much time would you estimate to
19 do that? What sort of cost? How many
20 people? Could it feasibly be done?

21 A. (Buscher) Well, yeah, I do think it can be
22 feasibly done. I don't think that we ever
23 suggested that every single one of the 8,000
24 [sic] should be visited and specifically

1 reviewed. We think when you do a further
2 analysis that a significant portion of those
3 are still going to be eliminated entirely.
4 We feel that there probably will be several
5 hundred resources, if not even over a
6 thousand or 2,000, that are going to be
7 identified to be evaluated. We would come up
8 with a methodology. We'd probably break it
9 down by town. We'd probably break it out by
10 distance zone. For certain resources we
11 would probably come up with a methodology
12 that would include a sample of resources to
13 look at, but a sample of that could be
14 representative of the
15 overall-resource-in-general type resource.
16 We never argued that there's not a reason to
17 include screen visibility. So that would be
18 another major component. And we'd probably
19 focus on that first mile, mile and a half
20 from the right-of-way and really look at the
21 areas that are going to have the most
22 sensitivity.

23 So there's definitely a methodology that
24 needs to be incorporated. But just saying

1 it's a big project, so we shouldn't have to
2 do the work, we wouldn't agree with that.

3 A. (Owens) Can I just add to the end of that?

4 Q. Sure, Mr. Owens, please.

5 A. (Owens) As he said, it's a big project. But
6 we've worked with other firms to help sort of
7 carry the load, in particular with the DOE
8 Project. We worked with another landscape
9 architect's office to get additional people
10 on the project, to help facilitate a better
11 time line. So, just the size of it might
12 mean you have to bring in more help.

13 Q. So how long would it take to do it right?
14 And when I say "do it right," I'm saying by
15 what you're saying.

16 A. (Buscher) I would think that a reasonable
17 amount of time to do a review for a project
18 like this, we would expect to be brought in
19 pretty early in the game when site location,
20 when route selection is being first
21 anticipated. We would think we would really
22 encourage, if it hadn't been done by the
23 client already, a public engagement process
24 to help with that very, very early stage of

1 the process. So, given that we would
2 anticipate being involved that early, and our
3 knowledge with other projects that might not
4 be quite as big as this one, we would think
5 we'd need a couple years.

6 Q. Couple years?

7 A. (Buscher) Yeah.

8 Q. And let me qualify for the record. I wasn't
9 suggesting it was done wrong. I'm just
10 saying for conversation.

11 So you would say that it would take
12 approximately a couple years to cull down
13 18,000 and do an evaluation by the standards
14 that you're looking at?

15 A. (Buscher) Yes.

16 Q. Still trying to wrap my head around Coleman
17 State Park, in terms of the visitation logs
18 the state does of how many visitors come to
19 their parks. And I would say that for Bear
20 Brook, too. Was there contact with the State
21 for Bear Brook, or attempted?

22 A. (Palmer) It would have been the same sort of
23 thing. So I have to go back and actually
24 look at that. I know that we certainly never

1 found a document. We were looking at SCORP
2 reports, we were looking at Plymouth State's
3 Recreation Unit which does a lot of work for
4 the state parks, and we couldn't find
5 park-level visitation --

6 Q. That's available.

7 A. (Palmer) Yeah.

8 Q. So in terms of Coleman, I know it's
9 challenging, because as we're looking at the
10 screens up here, if you're looking at our
11 faces, our bifocals are having a hard time.
12 We're pulling out our maps down there. And
13 then, of course, it's an adverse impact at
14 the very entrance to the park. And that's
15 the challenging piece. Without talking to
16 anyone, using the information provided to
17 you, someone decided that that was an adverse
18 impact that would impact enjoyment; correct?
19 That would impact --

20 A. (Buscher) You're talking about --

21 Q. -- the entrance to Coleman State Park.

22 (Court Reporter interrupts.)

23 A. (Buscher) You're talking about not the road,
24 but when you actually get to sort of the

1 campground area.

2 Q. Right in the campground area.

3 A. (Buscher) Yes.

4 Q. And in looking at that in the distance, which
5 I had a hard time even seeing, someone -- you
6 decided that that would have -- that that
7 would impact the user experience?

8 A. (Buscher) Yes.

9 A. (Owens) And to follow up on that, we just
10 didn't look at that view. We had been there.
11 Mike hadn't, but I had. And we tried to take
12 into account all of the things that are
13 happening there. I think there's a
14 recreation building with a porch that
15 literally looks across the valley to the
16 hillside and the entrance building. So it
17 wasn't just looking at that simulation. It
18 was trying to understand what's the existing
19 condition, which is very natural other than
20 the park itself, the buildings associated
21 with the camping and things that happen at
22 the entrance, and then trying to understand
23 when you introduce this into the landscape,
24 what kind of effect does that have.

1 A. (Buscher) And going to what type of effect
2 that has, we're thinking about why are people
3 coming here. What's the experience that
4 they're -- that we would anticipate people
5 are trying to have at this location. And to
6 me, it's one of the more remote state parks
7 in the state. It's far away. It's pretty
8 far north. And the fact that you would have
9 this industrial-looking component popping out
10 above the ridge line skylighted as you
11 navigate around this general area, then we
12 think about how that experience is impacted
13 by other sitings of the Project, such as when
14 you're driving in on Little Diamond Pond or
15 using the lake itself. So all those factors
16 come into play.

17 Q. So when you say -- and I'm not being
18 combative. I'm trying to get to the -- so
19 when you say popping out, the structures
20 "popping out," that's what you would see from
21 that vantage point of the VIA for Coleman
22 State Park is --

23 A. (Buscher) A structure at the top of a ridge
24 line breaking the skyline, so it's not

1 backgrounded by the land form.

2 Q. That would have prominence. In other words,
3 anytime you see a structure breaking the
4 skyline, it has prominence.

5 A. (Buscher) That's one of the things we do look
6 for in general for prominence. Plus, the
7 location --

8 Q. Is that true, though, what I just said?
9 Anytime a structure breaks the skyline, that
10 has prominence?

11 A. (Buscher) I don't think you could put a
12 blanket statement on it. I think you have
13 to -- I think it definitely elevates its
14 opportunity to be a prominent feature,
15 though.

16 A. (Palmer) It would depend perhaps on how far
17 away it is. But I mean, if you can think
18 about the controversies over cell towers,
19 that's what it was largely about. They were
20 on ridges where they were breaking the
21 skylines, sticking right up at the peak. And
22 people were upset about that. Nobody -- if
23 you ask people, nobody would say that a
24 transmission line is beautiful or that a cell

1 tower is beautiful. That's in contrast, by
2 the way, to wind turbines. I mean, whenever
3 the surveys are done in Maine, there's always
4 a group that says we're really pleased that
5 they're there and they're beautiful. But you
6 don't get that for cell towers and
7 transmission lines.

8 A. (Buscher) But even the cell tower, the basic
9 functionality of the cell tower is dependent
10 on that sort of prominent location, where
11 that's not the case for transmission lines.

12 Q. Because I think that's one of the things that
13 I know we wrestled with when we went on a --
14 when we went on the site tour a couple weeks
15 back and you're given a simulation and you
16 say, okay, so where are the cell towers --
17 where are the utilities towers here, and no
18 one knows, and we say, well, we think it's
19 right there, and you see a little bit of a
20 smudge. And so we're having to evaluate the
21 impact of that here in trying to separate out
22 all the chatter from what's really the issue.

23 And so last thing on Coleman State Park.
24 Mr. Owens, you said you considered all those

1 different activities. I thought I heard you
2 say earlier, though, that you hadn't looked
3 at that in the park. Or did I misunderstand
4 you?

5 A. (Owens) We didn't go everywhere in the park.
6 So I did go at the entrance, I did go up to
7 the office there near where the campground
8 is --

9 Q. Down by the lake?

10 A. (Owens) Went down to where the beach and boat
11 launch is and then around to the other side
12 where people were actually fishing on the
13 shoreline. But I didn't spend a lot of time
14 going to all the different places. And also,
15 we were doing the VIA for sort of different
16 rules under the DOE side of things. So, you
17 know, going to those types of places or
18 trying to find out a little bit more
19 information about it wasn't something that we
20 were specifically tasked with I think. There
21 is a lot going on there. I think the Cohos
22 Trail crosses, things like that, that would
23 be additional considerations. But, you know,
24 we didn't go into that level of detail.

1 Q. It all does seem somewhat of a subjective
2 process, though; does it not? I mean, you're
3 making --

4 A. (Buscher) In what way?

5 Q. Well, I think you're going to be making --
6 all of us will be making judgment calls on
7 what we consider to be an impact.

8 A. (Buscher) Sure. And when we look at Coleman
9 State Park, we look at some of the most
10 important resources that are there. And it
11 seems like it would be hard to deny that
12 Little Diamond Pond isn't probably the most
13 significant resource, and that's where you're
14 getting most of the visibility from.

15 A. (Palmer) So I would add that our approach for
16 the review that was presented to you was
17 pretty clearly a qualitative, subjective kind
18 of analysis. But it went through every
19 criteria in 301.05(b)(6) that we were
20 supposed to look at. I mean, nothing was
21 eliminated in that sense. And the same thing
22 was true with all the criteria that you all
23 are supposed to consider. And we tried to
24 explain how we viewed each of those. So

1 every one of the 29 or however many we had
2 detailed ratings of, we tried to evaluate
3 every one of the things that we were supposed
4 to look at. Nothing was eliminated. But it
5 was qualitative. That's correct.

6 Q. All right. And I think the one last topic I
7 wanted to discuss, the key observation points
8 that were looked at. That's despite the
9 amount of time we spent talking about it,
10 it's still a little bit of a mystery to me
11 how you decide I'm going to stand here or I'm
12 going to stand here or I'm going to stand
13 over there. Or do you just stand in multiple
14 places? The Applicant, as I understand it,
15 looked at a place where you would see the
16 most impact; is that correct?

17 A. (Palmer) I could be mistaken, but I think his
18 definition was "greatest number of
19 structures."

20 Q. I guess that's what I meant to say, the
21 greatest number of structures, the most
22 impact, whereas --

23 A. (Palmer) No, no, that's different. I mean, I
24 would say if you're standing next to a

1 lattice tower that goes up over a 100 feet
2 over your head, the impact would be greatest;
3 but if you went away 3 miles, you might see
4 40 structures. The greatest impact would be
5 right next to the structure.

6 Q. You bring up a good point. And so your
7 methodology to come up -- and it would be a
8 representative sample, correct, a
9 representative point?

10 A. (Buscher) Well, I think "key observation
11 points" in the SEC is a -- they have a pretty
12 defined definition of what they expect a key
13 observation point is. And in the rules, it's
14 only used to try to indicate where simulation
15 should be prepared from. It really doesn't
16 come into the rules anywhere else. But the
17 key observation point means a viewpoint that
18 receives regular public use from which the
19 proposed facility would be prominently
20 visible from. Regular public use, we have to
21 make -- you know, that requires a little bit
22 of judgment, because a road that receives
23 regular public use is going to have a
24 different intensity of public use than, say,

1 a trail that receives regular public use. So
2 we're looking at those components when we're
3 thinking about key observation points.

4 Q. Because it also makes me think, like for
5 example, in Deerfield, we see the pictures
6 from the town hall and we debate: Should we
7 take the picture from the driveway or from
8 the entrance to look at the church? And part
9 of me thinks: Well, why don't we take the
10 picture from the church. Publicly available
11 publicly accessible, probably historic, right
12 in the center of the village. Someone had to
13 decide that that wasn't the right vantage
14 point.

15 A. (Buscher) Probably because the Project wasn't
16 prominently visible specifically from the
17 church itself.

18 Q. Okay. I guess I can't say it without being
19 in front of the church, but I have to imagine
20 if the structure is right behind the church,
21 that one would be able to see it right from
22 the main road.

23 A. (Buscher) Well, the church itself actually
24 screens the structure when you're on the road

1 right in front of the church.

2 A. (Owens) Just to correct, if you move over to
3 the side when you're standing in front of the
4 church, you can see the structure. But in
5 relation to the size of the church when
6 you're that close, the church becomes sort of
7 more prominent than the proposed structure
8 because it's closer to you and very tall. If
9 you move away, somewhere like the town hall
10 door, you start to see a little different
11 perspective. The structure appears to be
12 pretty tall compared to the church, other
13 than the steeple. But you know, we sort of
14 mince words a little bit with what is
15 prominent. Maybe they both are.

16 A. (Palmer) And again, that's all clearly a
17 judgment call.

18 Q. Exactly. A judgment call.

19 A. (Palmer) Yeah, there's moving pieces.

20 A. (Buscher) And that's not really what the
21 overall evaluation is based on. That's just
22 trying to create the simulations.

23 Q. All right. That's all for me. Thank you.

24 CHAIRMAN HONIGBERG: Mr.

1 Wright.

2

3 QUESTIONS BY MR. WRIGHT:

4 Q. Good morning, gentlemen. Craig Wright, with
5 the Department of Environmental Services.

6 A. (Buscher) Good morning.

7 Q. Others have largely covered the areas I was
8 going to cover this morning, but I did want
9 to follow up in one area.

10 Mr. Buscher, you made it clear in your
11 opinion that a single visual impact at a
12 single resource can result in an unreasonable
13 determination; is that correct?

14 A. (Buscher) I would say so, yes.

15 Q. Does that need to be high visual impact?
16 Could a medium visual impact result in an
17 unreasonable determination?

18 A. (Buscher) For the entire project --

19 Q. Yeah.

20 A. (Buscher) -- or at a specific location?

21 Q. For the entire project.

22 A. (Buscher) Probably would be unlikely. But
23 it's hard to just give you that theoretical
24 answer.

1 Q. Okay. I think in your report on Page 99 you
2 go through the 41 sites that you looked at.
3 And in there you had a number of high visual
4 impacts. If those were all medium, would you
5 still come up with the same conclusion that
6 it was unreasonable overall?

7 A. (Buscher) I mean, one of the big conclusions
8 that we came up with in this project is that
9 reasonable mitigation that we would expect to
10 be implemented as part of this project isn't
11 being followed. To a certain degree, for
12 that sole fact we find the Project to be
13 unreasonable.

14 Q. Okay. You went to where I was going next
15 with that, and that was, it's really what I'm
16 hearing, that you believe there are other
17 mitigation things that can be done.

18 A. (Buscher) Yes.

19 Q. Okay. Thank you.

20 CHAIRMAN HONIGBERG: I
21 understand Commissioner Bailey and Ms.
22 Dandeneau don't have questions.

23 Mr. Iacopino, do you have
24 questions for the panel?

1 MR. IACOPINO: I do. Thank
2 you.

3 QUESTIONS BY MR. IACOPINO:

4 Q. I understand that much of your analysis was
5 conducted based upon your interpretation of
6 our rules. So I want to draw your attention
7 to Site Rule 102, I believe it's 45, which I
8 know you've been questioned about, so I'm not
9 going to repeat those questions. But I do
10 have an additional question.

11 With respect to the definition of
12 "scenic resources" at Site 102.45, you
13 indicated that Subsection C speaks about
14 lakes, ponds, rivers, parks, scenic drives
15 and rides and other tourism destinations that
16 possess a scenic quality. If I understood
17 Mr. Buscher's testimony correctly, you
18 determined and interpreted this rule as that
19 the tourism destinations were separate from
20 lakes, ponds, river, parks, scenic drives and
21 rides; is that correct?

22 A. (Buscher) Generally, yes.

23 Q. Did you attribute any importance to the word
24 "other" prior to tourism destinations?

1 A. (Palmer) I would say no. We, for instance,
2 did not try to identify which great ponds
3 were tourist destinations and which were not.

4 Q. Okay. And what about with scenic drives and
5 rides?

6 A. (Palmer) Actually, I feel a little better
7 about saying that a very large number of non-
8 designated roads in New Hampshire are tourist
9 destinations, for instance, this time of
10 year.

11 Q. And does your report in any place identify
12 where those are, other than those that are
13 actually designated?

14 A. (Palmer) No. We basically used the DOT
15 public roads and assumed that in the
16 countryside-type areas they would all be
17 scenic.

18 Q. Okay. My other question involves the
19 current-use properties. I understand that
20 you take the position that properties that
21 are in current use for recreational purposes
22 are properties that are established,
23 protected or maintained in whole or in part
24 with public funds as set forth in Subsection

1 D of our rule?

2 A. (Palmer) Yes.

3 Q. Okay. Did you consider the other types of
4 discounts or tax-related reductions that are
5 available for property owners throughout the
6 state? Things like, for instance, in my
7 town, veterans get a discount from their
8 property tax?

9 A. (Palmer) And does that provide the public a
10 right of access to -- is it a recreational
11 area --

12 Q. The question to you is whether or not --

13 A. (Palmer) No, we didn't.

14 Q. Okay.

15 A. (Palmer) I did consider current use in
16 general. But what was important was that the
17 additional benefit, the recreation 20 percent
18 was clearly given for one year's access for
19 the public.

20 Q. Okay. So if I understand correctly, then
21 you're only considering recreational current
22 use.

23 A. (Buscher) That's correct.

24 A. (Palmer) Yes, under Item D.

1 Q. Okay. All right.

2 And then my last question, and it just
3 came up when one of the Committee members was
4 questioning you. Do you know the general
5 cost difference between specular and
6 non-specular wires? Is there a ratio that
7 the Committee could use?

8 A. (Buscher) I don't know if there's a ratio. I
9 have been given some numbers on other
10 projects in the past, and that was a
11 relatively modest increase.

12 MR. IACOPINO: Thank you. I
13 don't have any other questions.

14 QUESTIONS BY CHAIRMAN HONIGBERG:

15 Q. And virtually everything I was going to ask
16 has been asked, and I think others may have
17 asked questions that go in this direction.
18 But with respect to the simulations that
19 DeWan prepared, do you believe that in
20 general those simulations are fair
21 representations of what they purport to be?

22 A. (Buscher) Overall, I would say that they are
23 representative of the Project. We would
24 contend that they do not specifically meet

1 the SEC requirements.

2 Q. I got that. I just wanted to make sure I
3 understood where along the line of the work
4 that was done you agree and where you
5 disagree. You disagree with where they
6 stood, what properties they chose, lots of
7 other things about the decisions they made
8 along the way. But once they got to the
9 point of actually doing the simulations,
10 creating the simulations, what they created
11 were fair representations of what the Project
12 would look like from those points.

13 A. (Buscher) In general. We would say that
14 there are certain components that might start
15 to deteriorate the effectiveness or how clear
16 things are represented, so there might be
17 details that aren't being represented because
18 of resolution issues, for instance.

19 Q. Can you think of one that falls into that
20 category? I'm sure one of the technically
21 competent people could pull it up for us so
22 we can take a look.

23 A. (Palmer) Well, it really has to do with the
24 resolution of some of the photography I think

1 is what Mike is referring to. So the
2 original photography wasn't high resolution
3 as required, so structures in the far
4 distance aren't going to be as clear as
5 perhaps they should be. But in terms -- I
6 mean, that's sort of a technical issue. And
7 those sorts of things happen. I mean, they
8 didn't -- based on their testimony in the
9 technical session, they were not aware that
10 the photography was done at the medium rather
11 than the highest resolution. Their field
12 work's complete. I don't know what you do.
13 It's not like they were out of focus or
14 something. So I don't think that that's
15 where a major -- we wouldn't say that you
16 have to throw the Project out because of
17 that -- the report out because of that.

18 Q. Oh, I understand that.

19 A. (Palmer) In general, though, the scale and
20 coloring and things like that I think is what
21 you're really interested in. They're
22 reasonably accurate. Obviously, we used some
23 of their simulations when we were evaluating
24 the 21.

1 Q. Okay. Then that is what I wanted to ask you
2 about.

3 CHAIRMAN HONIGBERG: Does any
4 member of the Subcommittee have anything
5 further for this panel?

6 [No verbal response]

7 CHAIRMAN HONIGBERG: That
8 brings us back to you, Ms. Connor. How much
9 do you think -- how much time do you think
10 you need with these witnesses?

11 MS. CONNOR: I have no idea.
12 I'm thinking less than an hour.

13 CHAIRMAN HONIGBERG: Okay.
14 Then let's take a lunch break and we'll be
15 back shortly after 1:15.

16 (Lunch recess taken at 1:15 p.m. and
17 concludes the Day 47 Morning Session.
18 The hearing continues under separate
19 cover in the transcript noted as Day 47
20 Afternoon Session.)

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C E R T I F I C A T E

I, Susan J. Robidas, a Licensed
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