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STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE

December 18, 2017 - 1:27 p.m. DAY 68  
49 Donovan Street AFTERNOON SESSION ONLY  
Concord, New Hampshire

{Electronically filed with SEC 12-29-2017}

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.  
William Oldenburg, Designee Dept. of Transportation  
Patricia Weathersby Public Member  
Rachel Dandeneau Public Member

ALSO PRESENT FOR THE SEC:

Michael J. Iacopino, Esq., Counsel to the SEC  
Iryna Dore, Esq.  
(Brennan, Lenehan, Iacopino & Hickey)  
Pamela G. Monroe, SEC Administrator

(No Appearances Taken)

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

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I N D E X

WITNESS PANEL:           RUSSELL CUMBEE  
                              LYDIA CUMBEE  
                              ROBERT THIBAUT  
                              BARBARA MEYER  
                              CARL LAKES  
                              KATHRYN TING  
                              WALTER PALMER  
                              PETER GROTE

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

2 (Hearing resumed at 1:27 p.m.)

3 CHAIRMAN HONIGBERG: We're going  
4 to start in just a few seconds. We have a panel  
5 in place. Is there anything we need to do  
6 before these witnesses are sworn in?

7 [No verbal response]

8 CHAIRMAN HONIGBERG: Seeing  
9 nothing, Sue, would you do the honors, please.

10 (WHEREUPON, RUSSELL CUMBEE, LYDIA  
11 CUMBEE, ROBERT THIBAUT, BARBARA MEYER,  
12 CARL LAKES, KATHRYN TING, WALTER  
13 PALMER, PETER GROTE were duly sworn and  
14 cautioned by the Court Reporter.)

15 CHAIRMAN HONIGBERG: Mr. Iacopino  
16 will help you get your prefiled testimony into  
17 the record.

18 MR. IACOPINO: Thank you.

19 DIRECT EXAMINATION

20 BY MR. IACOPINO:

21 Q. And the way I'm going to start is I'm going  
22 to ask each of you to identify yourself,  
23 starting at the far left with Mr. Cumbee.

24 A. (R. Cumbee) Russell Cumbee.

1 A. (L. Cumbee) Lydia Cumbee.  
2 Q. Please tell us where you live.  
3 A. (R. Cumbee) Oh, Franconia.  
4 A. (L. Cumbee) Franconia.  
5 A. (Thibault) Robert Thibault, Easton.  
6 A. (Meyer) Barbara Meyer, Easton.  
7 A. (Lakes) Carl Lakes, Easton.  
8 A. (Ting) Kathryn Ting, Franconia.  
9 A. (Palmer) Walter Palmer, Franconia.  
10 A. (Grote) Peter Grote, Franconia.  
11 Q. Thank you. Now, I understand that as a group  
12 you filed prefiled direct testimony which is  
13 marked as APOBP1. Do you all, for our  
14 purposes here today, adopt that testimony?  
15 A. (Panel) Yes.  
16 Q. Is there anybody who does not adopt the  
17 testimony?  
18 [No verbal response]  
19 Q. Okay. Thank you.  
20 Are there any corrections to be made to  
21 APOBP1?  
22 A. (Meyer) Yes.  
23 Q. Ms. Meyer, why don't you tell us what the  
24 corrections are for that exhibit.



1 A. (Meyer) Right. Okay. On Page 4 we needed to  
2 change the number of signatures on the  
3 petitions that we describe on Page 4. The  
4 number that is shown there was "2,250  
5 signatures as of December 26, 2016," that  
6 should be changed to "6,554 as of  
7 December 14, 2017."

8 Q. Are there any other corrections that need to  
9 be made to APOBP1?

10 A. (Meyer) Yes, I have another one. This is on  
11 Page 6 -- no, Page 5. Page 5, the second to  
12 the last paragraph, third line from the  
13 bottom, the "60 percent" number is in error.  
14 It needs to be changed to "41 percent." What  
15 that is about is we were discussing handfit  
16 stone foundations, and we said that that was  
17 the type of foundation reported by 60 percent  
18 of respondents to the survey. There were  
19 actually some respondents that owned more  
20 than one stone foundation structure on their  
21 property. So the correct way -- there are  
22 actually 41 structures that fit that  
23 description, but they were owned by 28  
24 respondents. So the correct percentage

1           should be 41 percent.

2   Q.    Okay.  And any other corrections to APOBP1?

3                   [No verbal response]

4   Q.    Okay.  I'm now going to go down through the  
5           individual testimonies that I have on my list  
6           from you.  So the first person that I have  
7           who's here is Mr. Lakes.  And I have noted  
8           that you have filed prefiled testimony which  
9           has been marked as APOBP5.  Am I correct in  
10          that?

11   A.   (Lakes) Yes, that's correct.

12   Q.    Do you adopt that as your individual  
13          testimony for our purposes here today?

14   A.   (Lakes) I do.

15   Q.    Do you have any corrections to make to what's  
16          contained in APOBP5?  I'm not asking for new  
17          information at this point, just any  
18          corrections to APOBP5.

19   A.   (Lakes) I do.

20   Q.    Okay.  Please tell us what the corrections  
21          are.

22   A.   (Lakes) And there will be a point where we  
23          can add to that; correct?

24   Q.    I will -- when we're done getting all of the

1 testimonies adopted, we will ask each of you  
2 if there is anything you need to add.

3 A. (Lakes) Okay.

4 Q. If you could tell us the page where you're  
5 making the correction.

6 A. (Lakes) Well, it's all on one page, and mine  
7 was very short and sweet, for some, anyway.

8 I would like to correct a misstatement  
9 in my prefiled testimony in Section 3. The  
10 sentence reads, "The three members of the PUC  
11 which negotiated this deal sit on the SEC."  
12 The "three" should be changed to "two," as  
13 two members of the PUC sit on the SEC.

14 CHAIRMAN HONIGBERG: And  
15 Mr. Lakes, that's the only thing you want to  
16 change in that paragraph or any of the other  
17 statements you've made in your prefiled  
18 testimony?

19 MR. LAKES: Well, some of the  
20 things I need to change are also additions, so  
21 I'm not sure where that comes in.

22 CHAIRMAN HONIGBERG: Okay. Just  
23 wondering if you were going to be withdrawing  
24 any of your prefiled testimony. The answer may

1 well be "No." I'm just interested in whether  
2 you're going to withdraw any of your prefiled  
3 testimony.

4 MR. LAKES: No, I don't plan on  
5 withdrawing anything.

6 BY MR. IACOPINO:

7 Q. With that, then I'll move on to the direct  
8 testimony of Walter Palmer and Kathryn Ting,  
9 which has been marked as APOBP6.

10 Ms. Ting and Mr. Palmer, do you adopt  
11 that testimony here today?

12 A. (Palmer) Yes.

13 A. (Ting) Yes.

14 Q. Are there any corrections that need to be  
15 made to APOBP6?

16 A. (Palmer) No.

17 Q. Now turning to Mr. Grote. Mr. Grote, I have  
18 a document marked as APOBP10, entitled  
19 "Supplemental Testimony of Peter Grote, dated  
20 April 17, 2017." I'm a little confused  
21 because it's entitled "Supplemental." Is  
22 that meant to supplement APOBP1?

23 A. (Grote) No, it's testimony, direct testimony.

24 Q. Is this the only direct testimony that you

1 filed individually?

2 A. (Grote) Yes.

3 Q. And do you adopt that as your testimony here  
4 today?

5 A. (Grote) Yes, I do. But I do have a  
6 correction.

7 CHAIRMAN HONIGBERG: You need to  
8 turn your microphone on.

9 A. (Grote) There were some typo corrections that  
10 were not material that I made. And I also  
11 changed the name of the party to "Mr. X." So  
12 in the first paragraph, wherever you see the  
13 person I was referring to, that has been  
14 changed to "Mr. X." That's not a material  
15 change.

16 BY MR. IACOPINO:

17 Q. Any other corrections for that document,  
18 Exhibit 10?

19 A. (Grote) Not that I recall, except for typos.  
20 I don't withdraw any of the testimony.

21 Q. I'm sorry. I should have done this with Mr.  
22 Palmer and Ms. Ting.

23 APOBP11 is supplemental testimony filed  
24 by Ms. Ting and Mr. Palmer; is that correct?

1 A. (Palmer) Yes.

2 Q. And do you adopt that supplemental testimony  
3 as part of your testimony here today?

4 A. (Palmer) Yes.

5 Q. Do you have any corrections to -- and that's  
6 marked as APOBP11. Do you have any  
7 corrections to that document?

8 A. (Palmer) No.

9 Q. Thank you. That's all of the individual  
10 prefiles that I have. Have I missed  
11 anybody?

12 [No verbal response]

13 Q. Okay. What I'd like to do first is, as a  
14 group, was there any additions to APOBP1 that  
15 the group wanted to make? And if you could  
16 explain to us precisely why you're seeking to  
17 add testimony with respect to that particular  
18 testimony.

19 A. (Meyer) Yes, both Walter and I will be making  
20 additions based on things that have happened  
21 during the hearings.

22 Q. Thank you.

23 A. (Meyer) So I guess I will go first and then  
24 Walter. And we have some exhibits that will

1 be shown as well.

2 First, I would ask the Committee, when  
3 you're considering what should happen on the  
4 underground portion of the route on 116, keep  
5 in mind Mr. Oldenburg's explanation of the  
6 narrow shoulders on unbuilt roads. And the  
7 first exhibit I wanted to show is  
8 Exhibit 100. This is in front of my house,  
9 obviously. And you can see the shoulder that  
10 I'm standing on there. It's about a foot,  
11 maybe a foot and a half. That is  
12 characteristic of the kind of shoulders that  
13 we have in this part of Easton and Franconia  
14 where we're talking about undergrounding and  
15 potentially using part of that shoulder.  
16 There really isn't much space to be used in  
17 the shoulder. Beyond that is undisturbed  
18 land. And so that's why we found in our  
19 surveys there are a lot of mature trees  
20 growing very close to the roads in Easton and  
21 Franconia.

22 The next picture is also on my property.  
23 It shows a tree that looks like it's got  
24 about a 24-inch diameter, and it's within

1 8 feet of the pavement.

2 Q. And that picture has been marked as APOBP101?

3 A. (Meyer) Yes. The previous one was 100 for  
4 us, and this is Exhibit 101.

5 Q. Thank you.

6 A. (Meyer) The second thing I'd like to mention  
7 is there has been a tendency to exaggerate  
8 how much of this project is going into an  
9 existing right-of-way. I'd like you to take  
10 a look at Exhibit 103. It's an article from  
11 the Colebrook Chronicle, dated 12/8/17. And  
12 on Page 2 of this article it shows a quote  
13 from Governor Sununu saying that 90 percent  
14 of this is going to be built within an  
15 existing right-of-way. And there have been  
16 some comments like that here also, you know,  
17 as testimony was going on.

18 And I just wanted to point out that  
19 along 116 we were blindsided by considering  
20 that there was any kind of a right-of-way or  
21 possibility of a transmission line being  
22 placed in front of our houses along 116.  
23 Nobody knew to expect that a project like  
24 this could be built there. And I have to say



1           that's probably one of the reasons why we  
2           expect property values to decline. It's not  
3           as if we bought a property that had a  
4           transmission line easement on it and so you  
5           would expect at some point a line would be  
6           put in. No. As far as we were concerned,  
7           there was no easement. So it's particularly  
8           galling when we see articles like this where  
9           90 percent is being built within an existing  
10          right-of-way. We didn't know or didn't think  
11          there was any kind of existing right-of-way  
12          for a transmission line in front of our  
13          houses.

14                 Another thing I wanted to highlight for  
15          the Committee is again something Mr.  
16          Oldenburg mentioned. This is when he was  
17          talking to Mr. Varney on 9/26/17. It was in  
18          the morning. This is when they were talking  
19          about sufferance. And I guess I'll just try  
20          to paraphrase. And Mr. Oldenburg I'm sure  
21          will correct me if I'm getting his comments  
22          wrong.

23                 But basically for this underground  
24          portion of the route, Eversource has no

1 roadside property rights. They don't hold  
2 any easements. They've purchased no  
3 rights-of-way. And this project along our  
4 roads is being done based on the sufferance  
5 of the DOT. If I'm reading correctly, what  
6 Mr. Oldenburg then went on to say is that the  
7 placement of this line is guided by the  
8 Utility Accommodation Manual and by state  
9 law.

10 So, looking further at that,  
11 Exhibit 105, this is in the Applicant's  
12 Application, and they say the authority to  
13 erect electric transmission lines and  
14 underground cables in state and local  
15 highways is codified at RSA 231:160. So if  
16 you compare the UAM and 231:160, it seems  
17 those two documents are actually at odds  
18 about the placement of the lines. The UAM  
19 says that these kinds of lines should go at  
20 the outer edge of the right-of-way.

21 There's Exhibit 106 showing where it  
22 says that in the UAM. But 231:160 says under  
23 the highway, placed under any such highway.  
24 "Highway" doesn't look like a defined term.

1 I couldn't find any definitions within this  
2 section --

3 MR. NEEDLEMAN: Mr. Chair, if  
4 there was a question leading to these answers, I  
5 would object for calling legal conclusions.

6 CHAIRMAN HONIGBERG: Yeah, this  
7 is kind of legal argument here, Ms. Meyer. Up  
8 to this point we had been -- you'd been giving  
9 us facts associated with statements from Mr.  
10 Oldenburg and his examination of somebody.  
11 Right now you're in a legal argument regarding  
12 the meaning of the statute --

13 MS. MEYER: Okay. All I want to  
14 show is the difference between these two  
15 documents, between 231:160 and the UAM. There's  
16 a disparity.

17 CHAIRMAN HONIGBERG: Then just  
18 show us the documents. You can argue them at  
19 the end of the case, but right now just show us  
20 the documents.

21 MS. MEYER: Okay. I'm showing  
22 these two documents, and I'm saying that it  
23 seems the UAM is inconsistent with what the  
24 state legislature intends --

1                   CHAIRMAN HONIGBERG: Right.  
2                   You're making an argument right now. Just show  
3                   us the documents right now, okay.

4                   MS. MEYER: All right. So I've  
5                   showed them. I guess I'm done with that topic.

6                   A. (Meyer) There are two other ways in which the  
7                   Project seems to be inconsistent with what  
8                   the state legislature intends, and one of  
9                   them is that eminent domain cannot be used in  
10                  situations in non-reliability energy projects  
11                  like Northern Pass. And in this case, we  
12                  have no ability to object to the Project. We  
13                  have no -- we're receiving no compensation.  
14                  So, in essence, we're being treated worse  
15                  than eminent domain. So the point is, again,  
16                  the intention of the state is not to allow  
17                  eminent domain to be used; yet, here we find  
18                  ourselves in a situation where we're being  
19                  treated worse than under eminent domain.

20                  CHAIRMAN HONIGBERG: Ms. Meyer,  
21                  that's another legal argument.

22                  MS. MEYER: All right. Let me  
23                  just show -- can I show testimony related to  
24                  this topic?

1 A. (Meyer) Mr. Bowes, on 4/17/17, in the  
2 afternoon -- let's see. Did I give you  
3 something to show? No, I don't have that  
4 one. I'll just have to make the reference to  
5 that.

6 BY MR. IACOPINO:

7 Q. Do you have the page number and the line  
8 number, please?

9 A. (Meyer) Yes, I do. It was 4/17/17, in the  
10 afternoon, Page 30 to 32. And in that  
11 conversation he agreed that if this project  
12 were running perpendicular along my fence  
13 line, they'd have to pay for an easement.  
14 They'd have to negotiate with the homeowner.  
15 But because that same strip of land is now  
16 being taken in the front of the property  
17 running parallel to the road, they have to  
18 pay nothing, and I have no way to object to  
19 the Project.

20 The last thing I wanted to  
21 mention is one more way that this project  
22 seems to run contrary to what the state  
23 intends, and that is in the use of I-93. The  
24 state designated 93 as an energy corridor.

1           Instead, this project, if it goes through as  
2           proposed --

3                           CHAIRMAN HONIGBERG:  Wait, wait,  
4           Ms. Meyer.

5                           MR. NEEDLEMAN:  I object for the  
6           same reason.

7                           CHAIRMAN HONIGBERG:  Yeah, it  
8           sounds like you're about to make a legal  
9           argument about what's permitted or what should  
10          be permitted in the interstate right-of-way.  
11          The fact is that this proposal doesn't propose  
12          to use it, and that is where we sit today.  
13          There is no proposal to use it, to use the  
14          corridor.  You may think it's a better corridor.  
15          You can make that argument for reasons that are  
16          within the state -- within the rules that should  
17          be significant to the Committee.  But right now  
18          is an opportunity to provide us with facts.  And  
19          the fact is there's no proposal to use the  
20          right-of-way.  If you want to make an argument  
21          based on it, now is not the time to do that.  
22          You want to do that at the end of the case in  
23          your post-hearing memo.

24                           MS. MEYER:  Okay.  But I just

1           need to get out the other part of the argument,  
2           which is that now transmission lines can be run  
3           down every road in the state, making all the  
4           state roads transmission line corridors. That's  
5           it. That's what I wanted to --

6                           CHAIRMAN HONIGBERG: That's your  
7           argument.

8 BY MR. IACOPINO:

9 Q.    And you're free to make that argument in your  
10       closing brief. I mean, there's a difference  
11       between providing facts to the Committee,  
12       which is what you're supposed to be doing  
13       now, and making legal arguments, or asking  
14       the Committee to draw conclusions from the  
15       facts that you've presented. Those  
16       conclusions are argued in your final briefs.

17 A.    (Meyer) Okay. All right. Well, that's what  
18       I wanted to go through.

19 Q.    Mr. Palmer, you had some addition to the  
20       group testimony as well?

21 A.    (Palmer) Yes, I do. And this is in response  
22       to something that transpired in these  
23       hearings last week when Society for the  
24       Prevention -- for the Protection of New

1 Hampshire Forests was testifying. They made  
2 the point that Franconia Notch was a  
3 perfectly feasible route for this power line  
4 and that there were no impediments to the use  
5 of Franconia Notch. Mr. Needleman responded  
6 in his cross-examination by putting up some  
7 language from House Bill 626 establishing a  
8 energy infrastructure corridor. And this is  
9 the language that Mr. Needleman put up there.  
10 And he especially highlighted the fact that  
11 there is a section of the I-93 corridor which  
12 is excepted from the corridor, excepting  
13 approximately 1.7 miles located within the  
14 White Mountain National Forest north of  
15 Franconia Notch State Park. I just wanted to  
16 provide a few facts to the Committee to  
17 clarify something about this.

18 If I could put up the next  
19 diagram, Exhibit 91. This is Franconia State  
20 Park. The excepted 1.7 miles are north of  
21 Franconia State Park. If you look closely,  
22 you can see that all of the natural features  
23 which are generally referred to as being  
24 within Franconia Notch are actually contained



1 within Franconia National Park. That park is  
2 open to use as an energy infrastructure  
3 corridor, according to the House Bill 626.  
4 The 1.7 miles that are excepted, if we could  
5 just zoom out a little bit...

6 CHAIRMAN HONIGBERG: That machine  
7 has a mind of its own.

8 A. (Palmer) The 1.7 miles that are excepted are  
9 highlighted in blue above the border of  
10 Franconia Notch State Park, and they are not  
11 within Franconia Notch. These 1.7 miles are,  
12 if I could --

13 BY MR. IACOPINO:

14 Q. Mr. Palmer, do we have a number for this  
15 exhibit that you're showing us right now?

16 A. (Palmer) Yes, this is APOBP91.

17 Q. Thank you.

18 MR. PALMER: And if we could go  
19 to Exhibit 92, please and turn it -- thanks.

20 A. (Palmer) There's the 1.7 miles again.  
21 Starting at the lower part, at the border of  
22 the northern border of Franconia Notch State  
23 Park and running to the edge of White  
24 Mountain National Forest. This 1.7 miles is

1 within White Mountain National Forest and is  
2 actually land owned by White Mountain  
3 National Forest. Everything south of this  
4 1.7 miles on Route 93 is all owned by the  
5 State of New Hampshire. The only portion of  
6 I-93 not owned by the State of New Hampshire,  
7 land under I-93 not owned by the State of New  
8 Hampshire is this 1.7-mile section which is  
9 within White Mountain National Forest. The  
10 only reason that was excepted from the  
11 statute establishing --

12 MR. NEEDLEMAN: Objection, Mr.  
13 Chair. This is now legal argument.

14 MR. PALMER: I'm sorry?

15 CHAIRMAN HONIGBERG: I don't know  
16 what it is yet, but it does sound like you're  
17 about to make an argument.

18 MR. PALMER: Okay. I will  
19 strike --

20 CHAIRMAN HONIGBERG: What was  
21 your -- I want to hear the rest of your  
22 sentence. The only reason...

23 MR. PALMER: The only reason that  
24 that 1.7 miles was excepted from the energy

1 corridor is because the State of New Hampshire  
2 does not have jurisdiction over that 1.7 miles.

3 CHAIRMAN HONIGBERG: All right.  
4 That is a pure legal argument. Okay. What's  
5 your next point?

6 A. (Palmer) My final point is I'd just like to  
7 show Exhibit 93. This is that 1.7-mile  
8 stretch. It's not within Franconia National  
9 Park -- I mean, it's not within Franconia  
10 Notch. It's not within the Notch at all. In  
11 fact, it's already come down out of the  
12 mountains and you're starting to get into the  
13 level land.

14 So the point I'm making is that this  
15 1.7 miles that are excepted from the energy  
16 infrastructure corridor are not within  
17 Franconia Notch, and there is no impediment  
18 to the Northern Pass going through Franconia  
19 Notch. If 1.7 miles in the national forest  
20 were to be an impediment, then we would have  
21 to ask how Northern Pass is proposing to  
22 conduct to site their project within 10 miles  
23 of the national forest --

24 MR. NEEDLEMAN: Same objection,

1 Mr. Chair.

2 CHAIRMAN HONIGBERG: And now  
3 you're making an argument.

4 Can I ask you a question about  
5 this exhibit, 'cause it's disconcerting to be  
6 looking down the left lane of an interstate.  
7 Am I correct that we are standing on the  
8 southbound lanes of I-93? The northbound  
9 lanes are off to the right in this picture?

10 A. (Palmer) We are standing on the northbound  
11 lane looking downhill towards Franconia --  
12 looking north towards Franconia.

13 CHAIRMAN HONIGBERG: So that's  
14 the southbound lane. Okay. If we're looking  
15 north, we're standing in the southbound lane  
16 because traffic in this country travels on the  
17 right.

18 MR. PALMER: I'm sorry. Yes,  
19 you're right.

20 CHAIRMAN HONIGBERG: Okay. Good.

21 MR. PALMER: Standing southbound  
22 lane looking north.

23 BY MR. IACOPINO:

24 Q. And this is a Google Earth image or some

1 similar process?

2 A. (Palmer) Yes.

3 Anyway, the purpose was to show that  
4 we're out of the mountains. The 1.7-mile  
5 stretch which is excluded from the energy  
6 infrastructure zone is not in Franconia  
7 Notch.

8 Q. Did you have any other additions to the group  
9 testimony?

10 A. (Palmer) That's it.

11 Q. Was there any other additions to APOBP1, the  
12 group testimony?

13 [No verbal response]

14 Q. Okay. I'm now going to turn to Mr. Lakes.

15 Mr. Lakes, you've adopted APOBP5, your  
16 direct prefiled testimony. You gave us a  
17 couple corrections. Do you have additions  
18 based upon things that have occurred during  
19 the course of this proceeding, the  
20 adjudicative proceeding?

21 A. (Lakes) Yes.

22 Q. Okay. If you do, if you could just identify  
23 them by subject material and then address  
24 them one by one.

1 A. (Lakes) Well, this would be for No. 1 in my  
2 prefiled, and this is regard to the  
3 changes -- is this on? Yeah. This is regard  
4 to ongoing changes by Northern Pass in  
5 conjunction with DOT, the continuation of  
6 alignment, changes of alignment and  
7 non-establishment of boundaries. And so I'd  
8 like to add the following to No. 1, basically  
9 after where I say, "The Application was  
10 submitted as incomplete," I wish to add the  
11 following: "The underground alignment was  
12 not firmly established and called  
13 preliminary, did not meet minimum UAM  
14 standards, and boundaries were not firmly  
15 established. In addition, the Application as  
16 submitted with regard to the underground  
17 portion appears to have been hastily  
18 prepared, full of glaring deficiencies that  
19 did not delineate firm boundaries and did not  
20 meet or even try to meet the DOT Utility  
21 Accommodation Manual standards. This  
22 document, in addition to town meetings with  
23 Northern Pass, reinforced the false idea that  
24 most, if not all, of the transmission

1 lines" --

2 MR. NEEDLEMAN: Mr. Chair, I'm  
3 going to object. This is all argument.

4 CHAIRMAN HONIGBERG: This is a  
5 pure argument, Mr. Lakes, pure argument, which  
6 is something you can do at the end of this case  
7 in your post-hearing submissions. But right now  
8 you're just stating an argument.

9 MR. LAKES: I'm stating fact.

10 CHAIRMAN HONIGBERG: You're  
11 making an argument. If you've got another one  
12 to make, let's hear it. If you've got facts,  
13 that's what we want to hear right now.

14 MR. LAKES: I can still -- okay.  
15 Let me just read through this. Yup, that's all  
16 I have.

17 BY MR. IACOPINO:

18 Q. Thank you.

19 So now I'm going to turn to Ms. Ting and  
20 Mr. Palmer. You have adopted APOBP6 and  
21 APOBP11 as your direct testimony and  
22 supplemental direct testimony. Do you have  
23 additions that you would like to make to  
24 those testimonies based on things that have

1 occurred since the commencement of the  
2 adjudicative hearing?

3 A. (Palmer) Yes, I do.

4 Q. Did you want to go first? Ms. Ting's down  
5 here. Do we need to have her go up there?

6 A. (Ting) No.

7 Q. No. Okay. Okay, Mr. Palmer, go ahead.

8 A. (Palmer) I'll go first.

9 Okay. The addition that I'd like to  
10 make, and I'd like to bring some more facts  
11 before the Committee, relate to the portion  
12 of my testimony in which I state that I am  
13 concerned about the threat of the proposed  
14 project to surface water and groundwater  
15 quality.

16 Q. Please keep that microphone close to you.

17 A. (Palmer) Okay. I'm concerned about the  
18 threat to surface water and groundwater  
19 quality. And in particular, the additions  
20 that I would like to make pertain to the use  
21 of coal fly ash as a fluidized backfill  
22 material which has been proposed by Northern  
23 Pass. We were not aware that coal fly ash  
24 was going to be a constituent of the



1 fluidized thermal backfill until around May  
2 of this year. So this is new information,  
3 and I would like to bring some facts about  
4 this before the Committee if possible.

5 The first point that I'd like to make is  
6 that numerous representations have been made  
7 during this adjudicative hearing that coal  
8 fly ash is not toxic and poses no threat to  
9 the environment. Specifically, I can point  
10 to Day 3 of the hearing, Mr. Bowes' testimony  
11 which starts on Page 146, in which he states  
12 that coal fly ash is not toxic. And Mr.  
13 Needleman himself, in numerous objections to  
14 some of the things that I've said, has  
15 repeatedly stated that coal fly ash is not  
16 toxic. I would like to correct that on a  
17 factual basis. Coal fly ash is in fact a  
18 toxic material, and I have numerous exhibits  
19 that demonstrate that, both U.S. Government  
20 documents and peer-reviewed journal  
21 documents.

22 I could start with Exhibit No. 76, the  
23 U.S. Geological Services, the highlighted  
24 portion. Coal ash contains minor amounts of

1 trace elements, including chromium, nickel,  
2 zinc, arsenic, selenium, cadmium, antimony,  
3 mercury and lead. In addition, uranium is  
4 commonly present.

5 If I could go to Exhibit 78. This is a  
6 U.S. Environmental Protection Agency  
7 document. If we could go to the highlighted  
8 portion of that document, the U.S. EPA states  
9 that fly ash contains contaminants like  
10 mercury, cadmium and arsenic associated with  
11 cancer and various other serious health  
12 effects. The Environmental Protection  
13 Agency's estimates of potential risk and  
14 evaluation of damage cases demonstrate that,  
15 without proper protections, these  
16 contaminants can leach into groundwater and  
17 can potentially migrate to drinking water  
18 sources, posing significant public health  
19 concerns. This is the EPA.

20 If you go on the Internet, the Internet  
21 is rife with peer-reviewed documents stating  
22 that there are toxic elements in coal fly  
23 ash. I just picked one at random. If we  
24 could go to Exhibit 79, this is from peer

1 review, Journal of Environmental Quality.  
2 And the highlighted section of the abstract  
3 of this article says, "The major potential  
4 impacts of ash disposal on terrestrial  
5 ecosystems include: Leaching of potentially  
6 toxic substances into soils and groundwater,"  
7 and "increased mobility and accumulation of  
8 potentially toxic elements throughout the  
9 food chain."

10 So, using just those three quick  
11 examples from the possible thousands you can  
12 find from the Internet, I just wanted to make  
13 clear the fact, the simple fact that coal fly  
14 ash is a toxic material which contains the  
15 toxic elements of heavy metals, including  
16 arsenic, lead, mercury, et cetera.

17 Now, the next point I wanted to make is  
18 that these heavy metals are hazardous to  
19 human health. And if we look at Exhibit 77,  
20 a document by the Physicians for Social  
21 Responsibility, looking at the highlighted  
22 portion, "Coal ash typically contains heavy  
23 metals, including arsenic, lead, mercury,  
24 cadmium, chromium and selenium." "If eaten,

1 drunk or inhaled, these toxicants can cause  
2 cancer and nervous system impacts such as  
3 cognitive deficits, developmental delays and  
4 behavioral problems. They can cause heart  
5 damage, lung disease, respiratory distress,  
6 kidney disease, reproductive problems,  
7 gastrointestinal illness, birth defects and  
8 impaired bone growth in children."

9 So there's no question that the elements  
10 that are in coal fly ash and that the U.S.  
11 EPA says are leachable from coal fly ash do  
12 cause human health damage or do present a  
13 risk to human health.

14 The last point I'd like to make in this  
15 part of it is if we could go to Exhibit 88.

16 Q. Did you say 88?

17 A. (Palmer) Did you have a question?

18 CHAIRMAN HONIGBERG: Confirming  
19 the number.

20 A. (Palmer) And this is a peer-reviewed manual  
21 entitled, "Fuel Journal." And if we could go  
22 to the highlighted section of this article.  
23 Trace elements are present in coal fly ash.  
24 These elements tend to be weakly associated

1 with ash material and contribute with a high  
2 risk factor to the soil contamination due to  
3 their leachability. The elements that could  
4 be potentially a problem for soil  
5 contamination are arsenic and the same list  
6 we talked about before.

7 So, again, this just points to the fact  
8 that not only are these elements present in  
9 coal fly ash, but they are highly leachable  
10 from the coal fly ash, and when in contact  
11 with water can be leached out, the coal fly  
12 ash into the water system.

13 Now I'd like to go to Exhibit  
14 80, please. This is United States  
15 Environmental Protection Agency's guidance  
16 document which they have developed and  
17 promulgated in combination with their recent  
18 2015 rulemaking on the control of coal  
19 fired -- coal ash from coal-fired power  
20 plants. If we can turn to the next page on  
21 that, Page 2 -- or Page 1, what this document  
22 is, is it provides Best Management Practices  
23 for the use of coal fly ash in engineered  
24 structural fill, which is what basically

1 Northern Pass is proposing to do with the  
2 coal fly ash is to put it in -- use it as  
3 structural fill. I've highlighted that this  
4 document does include fly ash.

5 The first Best Management  
6 Practice that EPA suggests is that the  
7 project proponent should characterize and  
8 test the fly ash material or the ash material  
9 that they intend to use as structural fill  
10 and provides a detailed list of testing that  
11 should be carried out, especially the  
12 leaching potential -- the potential for  
13 leaching of heavy metals from the coal fly  
14 ash. And there are detailed instructions  
15 later on in this document for the type of  
16 procedure that should be used to test the  
17 leachability of heavy metals from the  
18 material.

19 MR. PALMER: Can we go to the  
20 next page?

21 A. (Palmer) The next thing EPA recommends is  
22 that the project proponent should assess the  
23 project's suitability and qualification for  
24 the use of coal fly ash. And the project



1 please.

2 A. (Palmer) -- in an unstable area, within a  
3 Wellhead Protection Area, near a drinking  
4 water well or public water supply, well  
5 reservoir or water treatment facility or near  
6 a surface water body such a lake, stream,  
7 river or pond.

8 As appropriate, landowners should be  
9 advised of the presence or the intention to  
10 put coal fly ash into the ground near their  
11 property. And the presence of coal fly ash  
12 should be acknowledged on the deed to provide  
13 notice to subsequent purchasers of the site.  
14 In other words, it's considered to be --  
15 well, I won't... I won't try to draw  
16 conclusion. I want to just present the  
17 facts.

18 At the bottom of Page 3, Community  
19 Outreach, it shows -- they discuss how the  
20 project proponent should conduct some  
21 extensive community outreach before  
22 considering putting coal fly ash into a  
23 backfill project.

24 MR. PALMER: Go to the next page,



1           please.

2    A.   (Palmer) Another concern is transportation on

3           public roadways. Transporting coal fly ash

4           on public roadways poses a threat for

5           air-quality impacts because of the

6           possibility of dust blowing out of trucks

7           carrying coal fly ash. So they provide a

8           fairly detailed list of the factors that

9           should be considered and measures that should

10          be taken to prevent impacts from transport on

11          roadways.

12                           MR. PALMER: Go to the next page.

13          Okay. Just the page that shows the testing

14          methods, which I think is the third to the last

15          page. Okay. Doesn't matter.

16    A.   (Palmer) Basically, this document also lists

17          a series of testing procedures that should be

18          used to assess the coal fly ash before it's

19          considered for use as a backfill material.

20                           So my point there is Best Management

21          Practices call for a great deal of study to

22          be carried out before any proposal is carried

23          out to use coal fly ash as a backfill

24          material.

1           The Northern Pass proposal is to use  
2           coal fly ash as a backfill in a duct bank or  
3           a trench which would be approximately  
4           four feet wide down to about a seven-foot  
5           depth below the surface of the ground. This  
6           material, once placed in the duct bank or in  
7           the trench, would set to a soft cement  
8           consistency but would remain porous. This  
9           material will be porous, as shown in  
10          Exhibit 63. This was a conference conducted  
11          by New Hampshire Department of  
12          Transportation.

13                           MR. PALMER: If we can go to the  
14          highlighted portion.

15    A.   (Palmer) This is Eversource experts speaking,  
16          and they said that the fluidized thermal  
17          backfill is water-permeable, similar to DOT  
18          gravels; it does not create a water dam and  
19          instead behaves as a french drain in porous  
20          soils. Now, if you're familiar with a french  
21          drain, it's basically a very porous conduit  
22          used to drain water, allow water to move  
23          easily through it. So, basically the  
24          statement is that the fluidized thermal

1 backfill, once in the trench, will be highly  
2 porous.

3 Q. And could we see the front page of the  
4 exhibit just so everybody knows where it's  
5 from? Thank you.

6 A. (Palmer) The fact that this fluidized thermal  
7 backfill will be highly porous once installed  
8 in the trench was confirmed by Mr. Tinus, a  
9 Northern Pass environmental expert, on Day 18  
10 in the Afternoon Session, Page 55, Line 18,  
11 and confirmed again by Mr. Bowes, Day 3,  
12 Afternoon Session, Page 146, Line 10. Yeah,  
13 this is Mr. Tinus's quote right here.

14 Q. Okay. You've given us the references. You  
15 can keep going.

16 A. (Palmer) All right.

17 So, the combination of the fact that --  
18 the two facts that, or the three facts that  
19 this material contains toxic heavy metals,  
20 the toxic heavy elements are readily  
21 leachable from this material if they're in  
22 the presence of water, and that this material  
23 will be water-permeable once installed all  
24 points to the fact that if there is any water

1 present in Northern Pass's installation,  
2 heavy metals will be leached out of the  
3 installation and into the surrounding  
4 groundwater.

5 Now, I have series of documents  
6 showing --

7 MR. PALMER: If you can go to  
8 Exhibit 82.

9 A. (Palmer) This is Franconia at the very top.  
10 This is the Franconia -- or Easton Valley  
11 south of Franconia. The very top of the  
12 diagram is the center of Franconia. The  
13 bottom of the diagram, you can see the dotted  
14 line going across, that's the town line with  
15 Easton. This is a stratified drift aquifer  
16 which has been located underneath Easton  
17 Valley. And if you look at the blue line  
18 running down through which has the number 116  
19 on it at one point and has red and green dots  
20 on it, that is the proposed route of Northern  
21 Pass. So you can see it passes directly over  
22 an important stratified drift aquifer. I'll  
23 just add quickly that this outline shown at  
24 the bottom of the page is my farm. So I am

1 using that aquifer. I have an active well  
2 drawing water from that aquifer. My active  
3 well is within 75 feet of the proposed route  
4 and within the Wellhead Protection Area. The  
5 proposed route goes right through the  
6 Wellhead Protection Area from my well. It  
7 also goes through the Aquifer Protection Zone  
8 for the entire aquifer.

9 MR. PALMER: If we can go to  
10 Exhibit 83, please.

11 A. (Palmer) This one has been shown before in  
12 these proceedings. This is the town of  
13 Easton. I'm sorry. It's fairly small in  
14 this copy I have here. But the dark line  
15 which goes through sort of an S shape through  
16 the center of the diagram from top to bottom  
17 is Northern Pass's proposed route along  
18 Route 116. All of the pink dots that you see  
19 up and down this proposed route are all  
20 wells. These are active wells being used for  
21 drinking water in the town of Easton by  
22 Easton residents. If I had another -- I  
23 don't have another aquifer map. But there is  
24 another stratified drift aquifer under

1 Easton, very similar to the one I showed you  
2 under Franconia. All of these wells draw  
3 from that aquifer. The proposed route goes  
4 right through the Wellhead Protection Zone  
5 and the Aquifer Protection Zone for all these  
6 aquifers.

7 So, now we have assembled a number of  
8 facts that toxic material is leachable if in  
9 the presence of water. It will be in a  
10 porous substrate. And now we see we are over  
11 top of aquifers --

12 MR. NEEDLEMAN: Mr. Chair, I'm  
13 going to object at this point. That's argument,  
14 not fact.

15 CHAIRMAN HONIGBERG: Yeah, we  
16 just transitioned into argument there.

17 MR. PALMER: I thought I was just  
18 listing the facts that I had previously  
19 established. I'm sorry.

20 CHAIRMAN HONIGBERG: You moved  
21 into an argument there at the end.

22 A. (Palmer) All right. I showed you --

23 MR. PALMER: Let's go back to the  
24 other, the previous diagram.

1 A. (Palmer) This stratified drift aquifer, which  
2 is a fairly deep aquifer -- you see my  
3 property there at the bottom of the page. I  
4 have put a fence line along the road. And  
5 every time I sink a fence post, when I get  
6 down to 2-1/2 feet of depth I hit the water  
7 table, a shallow water table, which flows  
8 basically from right to left across this  
9 screen, from Kinsman Ridge down to the Ham  
10 Branch, flows right through my farm and is  
11 transected by the proposed Northern Pass  
12 route. In fact, if Northern Pass is going to  
13 construct a duct bank four feet wide and down  
14 to depth of seven feet, the upper portion of  
15 that duct bank will be, as DOT has required,  
16 at least four feet below the surface of the  
17 road. What this means is the duct bank will  
18 be entirely submerged within the shallow  
19 water table on my farm in Easton Valley.  
20 It's not something that one might  
21 periodically have water wash through it. It  
22 will be submerged permanently within the  
23 aquifer in Easton Valley and in other areas  
24 all up and down the proposed route.

1           I rely on this shallow aquifer to draw  
2           water to water my animals. My business is  
3           predicated on the fact that I'm producing  
4           organic, grass-fed beef which is free of  
5           contaminants. And now I'm expected to draw  
6           water from an aquifer which is likely to be  
7           contaminated.

8           I'd also like to point out, if we can go  
9           to -- okay. This shows a map of my farm, and  
10          it shows the conservation plan that was  
11          developed by USDA. We had extension agents  
12          from that service come to my farm and  
13          conducted quite an extensive study and  
14          developed a conservation plan for my farm.  
15          And it's also a pasture development plan, and  
16          it proposes the development water supplies  
17          for my animals. If you look at the lower  
18          part down here where the pen is pointing,  
19          there's an X. This is where these experts  
20          determined that a shallow water well should  
21          be put in for watering my animals on that  
22          side of the highway.

23                           MR. PALMER: If we can go to the  
24                           next diagram.



1                   MR. PAPPAS: Could you identify  
2 the exhibit number on that?

3                   MR. PALMER: I'm sorry?

4                   MR. PAPPAS: Eighty-five. Thank  
5 you.

6 A. (Palmer) Okay. If we go to Exhibit 86, this  
7 is the Exception Request No. 115 that shows  
8 the latest plan for Northern Pass on my  
9 property. If we go to the map at the end of  
10 the document, the highlighted areas are entry  
11 areas for horizontal direction drilling.  
12 Those areas will be basically surrounded by a  
13 huge construction zone. There won't be two  
14 small squares. There will be a large  
15 construction zone. The circled area is where  
16 NRCS experts determined would be the best  
17 place for me to put the shallow water well  
18 for my farm. As you can see, they're  
19 practically on top of each other. There's a  
20 great deal of concern that when horizontal  
21 direction drilling starts and when this work  
22 is carried out, there's going to be  
23 contamination of groundwater in that area  
24 making that well unusable.

1 Q. The well is there.

2 A. (Palmer) The well is not there.

3 Q. Okay. It's just an identified site?

4 A. (Palmer) It's where the NRCS expert  
5 determined would be the best place to put the  
6 well. Basically, I have put all of these  
7 plans on hold because I'm waiting to see what  
8 happens with Northern Pass.

9 Q. Thank you.

10 A. (Palmer) All right. The other point I'd like  
11 to make is that, in contaminating  
12 groundwater, the proposal also has the  
13 potential to contaminate soil. And it's  
14 located -- the proposal is located in the  
15 area of prime agricultural land and soils of  
16 agricultural importance. And I'd like to put  
17 up a map --

18 MR. NEEDLEMAN: Mr. Chair, does  
19 this testimony in any way relate to something  
20 new?

21 CHAIRMAN HONIGBERG: Not sure.  
22 What does that relate to?

23 MR. PALMER: It's new in the  
24 sense of we were not aware up until now of the

1 potential of contamination of these soils by  
2 coal fly ash.

3 CHAIRMAN HONIGBERG: All right.  
4 You may continue.

5 A. (Palmer) Okay. If you look on this map, the  
6 areas that are circled -- this is a soil map  
7 of my farm. The areas that are circled, or  
8 the perimeter that's been drawn around are  
9 all soils of importance, farming of prime  
10 farmland importance. The red lines encircle  
11 prime farmland; the green lines encircle land  
12 of statewide importance, and the orange lines  
13 encircle farmland of local importance. All  
14 of these are considered to be good farm  
15 lands. And this --

16 MR. PALMER: All right. Can we  
17 go to Exhibit 87, please.

18 A. (Palmer) Before we finish our discussion of  
19 the previous diagram, I'd just like to point  
20 out that Northern Pass goes directly through  
21 the middle of that. You can see the line for  
22 Route 116 flows from the upper right corner  
23 of that picture down to the bottom. That's  
24 the Northern Pass route, and it goes right

1 through all this prime farmland and excellent  
2 agricultural soils.

3 MR. PALMER: Next page, please.

4 A. (Palmer) Next document is a USGS document.

5 No, I'm sorry. That's the wrong one.

6 Exhibit 86.

7 MS. TING: 86 is the exception.

8 MR. PALMER: I'm sorry. Do you  
9 have 87 there? Okay. Yes. This is the geology  
10 and soils report. Can you show the map on that  
11 page?

12 A. (Palmer) This is hard to see because it's so  
13 small. But you can see the Northern Pass  
14 route down 116 and 112 highlighted in yellow  
15 up in the top of the map. All of the areas  
16 that are highlighted in orange, purple and  
17 blue on this map are soils of importance, of  
18 agricultural importance. You can see that  
19 the upper portion of the proposed route on  
20 Route 116 is almost entirely within orange,  
21 purple and blue soils. The lower portion  
22 goes through White Mountain National Forest,  
23 and those soils are not categorize. Those  
24 are just green. But the point is there are

1 important agricultural soils which are under  
2 threat of contamination as a result of the  
3 proposed project. Not only that, but this  
4 diagram demonstrates the Project going to go  
5 through 10 miles of White Mountain National  
6 Forest, and because of the leaching potential  
7 of heavy metals from the thermal backfill,  
8 poses the potential of contamination of  
9 groundwater, surface water, soils and the  
10 food chain within the White Mountain National  
11 Forest.

12 All right. Those are the facts that I  
13 want to present about coal fly ash.

14 Q. Okay. Did you have something further you  
15 wanted to present, Mr. Palmer?

16 A. (Palmer) No, that's it. Thank you.

17 Q. Ms. Ting, my notes from Ms. Monroe said you  
18 had something additional?

19 A. (Ting) I do.

20 Q. You're going to have to find a microphone.

21 MR. PAPPAS: Here.

22 MS. TING: Thank you.

23 MR. PAPPAS: You're welcome.

24 MR. IACOPINO: Thank you.

1 (Pause)

2 A. (Ting) I would just like to add to our  
3 testimony some remarks on the Forward NH  
4 Fund, and this pertains to the testimonies of  
5 Mr. Auseré from Eversource and also from Mr.  
6 Quinlan as well on the Forward NH Fund.

7 So, on Page 10, Line 12 through 17 of  
8 Mr. Auseré's testimony, he identified the  
9 source of the funding for Forward NH Fund as  
10 a Transmission Service Agreement, or TSA.  
11 And then Mr. Quinlan presented documents  
12 showing that the receiver of those monies  
13 would be a non-profit entity created by  
14 Eversource. So the implication was that  
15 Eversource would donate the money that it  
16 received through the TSA to the Section 5013c  
17 [sic] entity. And as we know, those monies  
18 would be \$10 million per year over 20 years.  
19 And even if you took that amount of money and  
20 deducted operating costs for the 5013c  
21 entity, and say that were 10 percent, and  
22 then the \$2 million going to be administered  
23 by the PUC, there's still a sizeable amount  
24 of money each year under the Forward NH Fund,

1 let's say seven, high seven, north of seven  
2 million, close to eight million.

3 Mr. Auseré also presented a graphic on  
4 where the TSA fits into the corporate  
5 structure. And if you look here, you see  
6 this is a TSA, and it leads this way to  
7 Eversource and then here through HRE to  
8 Hydro-Quebec and the Province of Quebec. And  
9 I believe that Northern Pass has argued in  
10 the document that it is only through the  
11 operation of the Project -- that means the  
12 actual transmission line -- that funding for  
13 the Forward NH Plan -- Forward NH Fund is  
14 possible.

15 So the additional comment I want to  
16 make, and I'll try to keep this very short,  
17 is that just the observation that the  
18 benefits that the Applicant is adding through  
19 the Forward New Hampshire Fund are coming  
20 either from the ratepayers here on this side  
21 or through Hydro-Quebec, which is ultimately  
22 the government of Quebec. And, you know,  
23 looking at that, if it were the ratepayers,  
24 you could argue there's really no net benefit

1           because it's just a redistributing of money  
2           for households and businesses who are  
3           ratepayers into the fund. But if it were the  
4           government of Quebec, then somehow it seems  
5           like this doesn't create a really level  
6           playing field for the citizens of New  
7           Hampshire. And the fact I bring is, you  
8           know, we've --

9                               MR. NEEDLEMAN: Mr. Chairman, I  
10           object. This is argument.

11                              CHAIRMAN HONIGBERG: You've moved  
12           into an argument.

13    A.    (Ting) I'm going present a fact now. In our  
14           testimony, we did not mention the fact that  
15           on our property -- I think we highlighted the  
16           impacts on us as property owners. But we  
17           also have a six-unit rental apartment there,  
18           and we do rely on the income from that  
19           business to pay for our mortgage and also to  
20           cover some of our property taxes. And the  
21           concern I'm bringing is that it's difficult  
22           for us to deal with the fact that, you know,  
23           we're potentially -- the cost of benefits of  
24           the Project and the cost to us as residents



1 of New Hampshire might be weighed against  
2 whatever money is coming from the government  
3 of Quebec here. And it just seems like that  
4 if this is allowed, then the math will always  
5 come out in favor of the Applicants. And  
6 that's all I have to say.

7 Q. Thank you. Any other additions on the Palmer  
8 and Ting testimony?

9 [No verbal response]

10 Q. Okay. Mr. Grote, I'm going to turn to you.  
11 Do you have any additions to your prefiled  
12 testimony which has been marked as APOBP10,  
13 based upon things that have occurred during  
14 the course -- new things that have occurred  
15 during the course of the adjudicative  
16 proceedings?

17 A. (Grote) Yes, I do. I have two schedules to  
18 add. I'm going to hand them over to Kathy so  
19 she can put them on the ELMO.

20 Q. Thank you.

21 A. (Grote) First is Schedule G. This is new  
22 information that we received from the DOT,  
23 from some of their recent testimony. And I  
24 believe it's pertinent to the property values

1 particularly on Route 116, but also Route 18.

2 The second exhibit, I'm really not sure  
3 I need to show it. It's a Northern Pass  
4 document. I'm not sure that it's part of the  
5 docket. It probably is. But if you can --  
6 if somebody can tell me if that second  
7 document is part of the docket, then we don't  
8 need to add it. Can you show that?

9 Q. Have you given it a number?

10 A. (Grote) It was one of the first  
11 presentations. It's a flyer that shows a  
12 number of maps. They're important,  
13 particularly contour maps on the back side.  
14 It's two pages, one --

15 MR. GROTE: Kathy, have you got  
16 it there? Yes, there's the document. I don't  
17 know that it has a number.

18 BY MR. IACOPINO:

19 Q. Why don't we give that a number. I believe  
20 that the last number we have for APOBP is  
21 19 -- no, it can't be that. Can anybody on  
22 the panel help me?

23 MR. PALMER: Yes. We're up to  
24 125, so we can call this 126.

1 MR. IACOPINO: Thank you. If you  
2 could mark that as APOBP126. Thank you.

3 BY MR. IACOPINO:

4 Q. Anything else, Mr. Grote?

5 A. (Grote) That's all. Thank you.

6 Q. Okay. Thank you. I guess we're ready for  
7 cross-examination.

8 MR. ASLIN: Before we do that,  
9 are we going to mark the prior additional  
10 exhibit? Mike, do you want to have him mark the  
11 prior additional exhibit he put up as well?

12 MR. IACOPINO: I guess we should.  
13 I thought it had been marked. Okay. I guess  
14 we'll call that APOBP127. It won't be in  
15 chronological order, but the reference is in the  
16 record.

17 CHAIRMAN HONIGBERG: Whenever  
18 you're ready, Mr. Aslin.

19 CROSS-EXAMINATION

20 BY MR. ASLIN:

21 Q. My name's Chris Aslin. I've been designated  
22 as Counsel for the Public in this proceeding.  
23 I'd like to ask you a few questions following  
24 up on your testimony. I'll start with the

1 group as a whole. Whoever is the appropriate  
2 person to answer can answer.

3 In your prefiled testimony and as  
4 referenced in the video you submitted, you  
5 make reference to a survey that was -- you  
6 called it a "survey." And if I understand it  
7 correctly, and I just want to make sure that  
8 I have this correct, the survey was conducted  
9 by sending a letter to the residents along  
10 the section of the Project that you are  
11 speaking to in this testimony?

12 A. (Meyer) Yes, that's correct. It was sent to  
13 abutting property owners in Easton and  
14 Franconia.

15 Q. Okay. Thank you. And if I understand it,  
16 there were 188 recipients of that letter, and  
17 you received 68 responses?

18 A. (Meyer) Yes, that's right.

19 Q. Okay. And the questions that were in that  
20 survey or in that letter were factual  
21 questions, if I understand it correctly?

22 A. (Meyer) We can show you an example if you'd  
23 like.

24 Q. That's okay. I think I'll run through them

1           briefly.

2                   I understand that there were questions  
3           about structures that were within proximity  
4           of the right-of-way and how far away they  
5           were from the right-of-way. Is that fair?

6    A.   (Meyer) Most of the information that was in  
7           the video about proximity related to houses  
8           was because of a sort of a photographic  
9           survey that our group did.

10   Q.   Okay.

11   A.   (Meyer) You know, the video shows the  
12           distance between the houses. What we  
13           realized when we did that video was that  
14           there were things that were important that  
15           couldn't be seen, like a location of a well.  
16           And so that's why we decided to send out the  
17           survey to elicit more of that information  
18           about things that couldn't be seen, like  
19           wells, like stone foundations -- you know how  
20           houses have handmade stone foundations dating  
21           back to 1700s, 1800s. We asked people about  
22           a number of trees on their property, stone  
23           walls, the age of the structure. Yes.

24   Q.   Okay. Thank you. So this survey was just to

1 gather factual information, if I understand  
2 what your purpose of the survey was?  
3 A. (Meyer) Yes. And in part, we thought that  
4 was information that the Applicant quite  
5 frankly should have been gathering. We  
6 thought that if you were interested in public  
7 safety and that sort of thing, that in  
8 choosing a route you would want to know in  
9 advance how many wells are there, how close  
10 are they to the place where we're going to be  
11 doing our excavation, what are the structures  
12 like on this route, how close are they to the  
13 route, what is their foundation like? Now, I  
14 understand the Company does plan to do  
15 pre-blasting surveys, at which time they will  
16 do things like take videos of wells or videos  
17 of foundations. But that's really just to  
18 prove, you know, after the fact, you know,  
19 when a homeowner wants to make a claim, you  
20 know, so the Company can show them the video  
21 and say, no, that crack was there before.  
22 And what we were interested in is more sort  
23 of a preventive kind of approach or a public  
24 safety kind of approach where we were trying

1 to provide what information we thought the  
2 Applicants should be providing that would  
3 help the Committee evaluate alternative  
4 routes -- "routes" meaning that routes that  
5 had fewer wells would probably be preferable  
6 than a route that had more wells.

7 Q. Okay. Thank you. In your survey, in the  
8 letter that went out, how did you identify  
9 yourselves?

10 A. (Meyer) "Abutting Property Owners." I could  
11 pull up an example of it if you'd like.

12 Q. Sure, we can take a look.

13 A. (Meyer) We identified ourselves as "Abutting  
14 Property Owners from Easton and Franconia,"  
15 to answer your specific question.

16 Q. Okay. Thank you.

17 A. (Meyer) And if you wanted to see the cover  
18 letter itself --

19 Q. Sure.

20 A. (Meyer) And while she's putting that up, I  
21 can find a copy of the survey page that we  
22 asked people to fill out.

23 MR. ASLIN: Dawn, if we can just  
24 switch over to the ELMO for a moment. Thank

1           you.

2   BY MR. ASLIN:

3   Q.   Has this document been marked as an exhibit  
4       by anyone at this point?

5   A.   (Meyer) No, I don't think so.

6                       MR. ASLIN:  So I think we'll mark  
7       this as a Counsel for the Public exhibit so we  
8       have it in the record.

9   BY MR. ASLIN:

10   Q.   And this answers my next question, which was  
11       about whether the survey indicated your  
12       position on the Project in any way.  And I  
13       see it does indicate that you're opposed to  
14       the Project in the first paragraph.

15                      MR. ASLIN:  So we'll mark this as  
16       Counsel for the Public 661.

17   A.   (Meyer) And then this is an example of the  
18       survey, and it's filled out for my property.  
19       And I would point out that that cover letter  
20       and all of these survey results were  
21       presented to the Applicant during the  
22       technical sessions.  And I think you folks  
23       got a copy, too.

24   Q.   I expect so.



1                   MR. ASLIN: So why don't we mark  
2                   this page as well. It's an example of the  
3                   survey itself. And we'll mark that as Counsel  
4                   for the Public 662.

5                   CHAIRMAN HONIGBERG: Ms. Meyer,  
6                   can you move that microphone closer to your  
7                   mouth, please?

8 BY MR. ASLIN:

9 Q. So, thank you for those clarifications.  
10                   Your sort of general point with the  
11                   survey was to identify the location of  
12                   structures and other features, such as trees  
13                   and wells that were in the proximity to the  
14                   proposed project. Do you have an opinion  
15                   about whether any of those specific features  
16                   are going to be impacted by the Project?

17 A. (Meyer) Yes. Actually, all of them. That's  
18                   why we put them on the survey. We're  
19                   concerned about wells. We're concerned about  
20                   stone walls, about stone foundations.

21 Q. And is your concern affected in any way by  
22                   the specific location of the burial of the  
23                   Project, you know, one side of the road or  
24                   the other?

1 A. (Meyer) Not so much one side of the road or  
2 the other. But, you know, under the pavement  
3 would be a preferable situation to outside of  
4 the pavement. But as Mr. Palmer pointed out,  
5 we still have significant concerns under the  
6 pavement. There's still water effects to be  
7 concerned about. But the Project, in our  
8 opinion, has gotten worse rather than better  
9 as it's migrated out from under the pavement.

10 Q. Okay. Thank you very much.

11 A. (Meyer) Actually, I would also point out that  
12 in the video, when you see those distances  
13 marked from the house, it's measured to the  
14 pavement because that was done at the time  
15 when we thought this project was going to be  
16 basically under the pavement. But those  
17 distances would shorten, depending upon how  
18 far out into the right-of-way they moved the  
19 Project.

20 Q. Thank you, Ms. Meyer. In the video itself,  
21 you show a significant amount of information  
22 about the Project route and structures and  
23 other things we've been talking about. You  
24 also show a depiction of travel down the I-93

1 corridor. But I noted that the portion of  
2 I-93 that was displayed stops short of the  
3 area that Mr. Palmer was discussing earlier,  
4 which is the 1.7 miles that's exempted from  
5 the energy corridor. It also stops short of  
6 the Notch. Is there a particular reason why  
7 those portions of I-93 were not included in  
8 the video?

9 A. (Meyer) No, there's several reasons. You  
10 know, just the fact we had to stop it  
11 somewhere, and it does get more complicated  
12 as you get through the Notch. My  
13 understanding is it's not that it's  
14 impossible to go through the Notch or it's  
15 infeasible, it's just more complicated.  
16 Among our group, we've heard conversations  
17 about possibly using the bike path route or,  
18 you know, using the available road edges that  
19 are going through the Notch, or using a  
20 former railway bed or some remnants of  
21 Route 3. I mean, we've heard lots of  
22 alternative ways to go through the Notch. So  
23 things get complicated once you get to the  
24 Notch. So that's basically a principal

1 reason why we stopped there. Also, just the  
2 timing. The number of houses we had to show,  
3 the timing was right, you know, to drive that  
4 distance down 93.

5 Q. Okay. Thank you. I think that's all the  
6 questions I have for the group testimony. So  
7 I'll run through the other more individual  
8 testimonies that were presented as well. Why  
9 don't we start with Mr. Grote.

10 Is it Grotee or Grotta?

11 A. (Grote) As if there's an A on it.

12 Q. Grotta. I will try to get it correct.

13 So, Mr. Grote, I'll start with you and  
14 ask you questions first about where your  
15 property is located.

16 A. (Grote) Would you like me to show it on the  
17 map?

18 Q. I'm going to pull up a map for you to look at  
19 on the screen, see if we can orient  
20 ourselves.

21 A. (Grote) We don't have a signal yet.

22 Q. Yeah, it should come up in just a minute.

23 I understand you own a number of parcels  
24 in this area?

1 A. (Grote) That's correct.

2 Q. And so you should be seeing the map now,  
3 Applicant's Exhibit 201, which is Bates  
4 Stamped APP67919. And is this the location  
5 of some of your parcels?

6 A. (Grote) No, this is not. The parcel we're  
7 talking about is on the left of the  
8 intersection of Lafayette Road --

9 Q. Well, let me stop you there for a minute.  
10 I'm talking about your --

11 A. (Grote) Oh, my own property.

12 Q. Yes.

13 A. (Grote) Oh, we're way over on the right.

14 Q. So some of your parcels are over on the  
15 right-hand side.

16 A. (Grote) That's right. We have both sides of  
17 the road. You see Wells Road way over on the  
18 right. And essentially we have -- it  
19 continues basically off the map around the  
20 corner, yes.

21 Q. And do you see the small numbers that are  
22 indicated in blue here? If I understand  
23 correctly, your parcels are labeled "3914,"  
24 which is to the left --

1 A. (Grote) I really have to look at this closely  
2 here.

3 MR. ASLIN: If you can zoom it on  
4 the top there?

5 A. (Grote) Very hard to read.

6 Q. Is that better? I think you have 3914, 3196  
7 and 3920 that are shown here on the --

8 A. (Grote) 3920 is part of the property. The  
9 one -- and that's as far as I see.

10 Q. Do you own -- I think you said you own the  
11 two parcels to the left and right of Wells  
12 Road as well?

13 A. (Grote) That's correct.

14 Q. Okay. There's a small lot tucked in there  
15 that's labeled 3918. That's not yours;  
16 correct?

17 A. (Grote) That does not belong to us. No, wait  
18 a minute. I'm sorry. Is that... that's  
19 correct. I see the orientation. That's  
20 correct.

21 Q. And then on the far right-hand side in the  
22 lot labeled "3920," there's two yellow dots.  
23 Is that where your actual home is?

24 A. (Grote) We're on the home that's higher up.

1 Both of those homes are ours, yes.

2 Q. Okay. So that's your property. And then you  
3 should be seeing now the next map in the  
4 series, which is Bates APP67921. Now, your  
5 properties are on the left-hand side of the  
6 map; is that correct?

7 A. (Grote) Well, basically if we start at 3920,  
8 to the right of that is our property, which  
9 is 3922, and then below that is 3917.

10 Q. And that's the triangular lot?

11 A. (Grote) That's the triangular lot, right.

12 Q. And is that the entirety of your property in  
13 this area?

14 A. (Grote) Well, no, we also own property above  
15 that's not labeled.

16 Q. So, non-abutting property?

17 A. (Grote) Not abutting, right.

18 Q. Okay. Thank you.

19 A. So, basically the properties we have are, as  
20 I see it, if it --

21 (Court Reporter interrupts.)

22 A. It's 3916, 3920, 3922, 3917. And then there  
23 is a property on the other side of Wells Road  
24 by the airport.

1 Q. Okay.

2 A. (Grote) That isn't labeled.

3 Q. Great. Thank you very much. And your  
4 testimony -- well, before I do that, let's  
5 take a look at an exception request,  
6 Exception Request 114. So we'll start with  
7 the photos, I guess. This is part of  
8 Exception Request No. 114. And we'll look at  
9 the map in a second. But if I have my  
10 orientation correctly, your property is  
11 located -- so the photo on the top is the  
12 entry area. And we're facing north. And I  
13 believe, if I'm correct where we are, your  
14 property is located on the right-hand side of  
15 the road and behind the photo?

16 A. (Grote) It's located on the right, but really  
17 on the immediate right. I believe there's a  
18 camper... it looks like there's a camper  
19 behind the tree. That is not -- that is a  
20 small one-acre lot that does not belong to  
21 us. But our property is basically on the  
22 right. Correct.

23 Q. Okay. And then the bottom photo is the exit  
24 area, which again we'll take a look at the



1 map in a moment.

2 A. (Grote) Yes.

3 Q. And here we're facing north as well. So I  
4 believe your property in this location is on  
5 the right-hand side?

6 A. (Grote) Correct. And I don't know where the  
7 property line is from the photograph. But  
8 the property that abuts us on the other side,  
9 that we have on the other side, I believe is  
10 also included in a corner of that photograph.

11 Q. Okay. So the triangular parcel that's on --

12 A. (Grote) That's correct, the triangular  
13 parcel.

14 Q. Okay. So one of the questions I had was in  
15 regards to the proposed project. Just for  
16 reference, and we'll come back to it, there's  
17 a fair bit of tree cover here along the edge  
18 of the road; is that correct?

19 A. (Grote) That's correct.

20 Q. Okay. So this is another page from the  
21 exception request, which for the record is  
22 Counsel for the Public 556. And we're  
23 looking now at page Bates Stamp CFP014041.  
24 And the top right-hand corner shows the exit

1 work area space. Looking at the photo facing  
2 north from the exit pits -- so you see the  
3 red dashed line coming in?

4 A. (Grote) Yes, I do, over on the left of the  
5 image.

6 Q. And it ends in two little squares?

7 A. (Grote) Correct.

8 Q. Those are the exit pits, and that's the photo  
9 that we were looking at on the bottom of the  
10 screen was --

11 A. (Grote) I see it, yes.

12 Q. -- on the left as oriented here, which is  
13 north. And we saw the trees on both sides of  
14 the road here.

15 Do you see that there's a long, 300-foot  
16 work area shown in this part of the Project,  
17 the hashed line, rectangular area?

18 A. (Grote) Oh, all right. Are we talking about  
19 in the triangle area?

20 Q. No, across the street. Within the  
21 right-of-way there's a work area shown here,  
22 which is the long stretch --

23 A. (Grote) Oh, it's a long ribbon?

24 Q. Yes.

1 A. (Grote) Yes, I see that.

2 Q. Now, are you able to see, it's a faint line,  
3 but in the middle of the work area is the  
4 edge of pavement?

5 A. (Grote) Yes.

6 Q. And would you agree that this work area  
7 extends to the outside of the edge of the  
8 pavement?

9 A. (Grote) Yes.

10 Q. And we saw the photo of the area at the exit  
11 pits. As you move farther south on Route  
12 116, does there continue to be a wooded  
13 portion along that side of the road to the  
14 east side of the road?

15 A. (Grote) Yes.

16 Q. Okay. And then would it be your  
17 understanding that they would have to cut  
18 down some of those trees in order to have a  
19 work area that extends beyond the pavement on  
20 that side of the route?

21 A. (Grote) I would. And I'd also be  
22 concerned -- the root systems of many trees  
23 extend well under the proposed route.

24 Q. Okay.

1 A. (Grote) We also have stone walls on the edge.

2 Q. Which part of your parcel has stone walls?

3 A. (Grote) As you're looking south, it would be  
4 on the left-hand side --

5 Q. Is it in the vicinity --

6 A. (Grote) -- in other words, abutting my  
7 property.

8 Q. And is it along your entire property?

9 A. (Grote) Parts of the property.

10 Q. Okay.

11 A. (Grote) It's also part of our neighbor's  
12 property.

13 Q. Do you see what's shown on the page now?  
14 We're on the exhibit Bates 014042. You see  
15 the triangular parcel that you own on the  
16 bottom?

17 A. (Grote) Yes.

18 Q. And you own the parcels along the top of this  
19 curve of the road?

20 A. (Grote) That's correct.

21 Q. And do you see the green line that's  
22 indicated on the right-hand side?

23 A. (Grote) Yes.

24 Q. Do you understand that to be the proposed

1 location of the trench for burial of the  
2 Project, moving it out of the roadway and  
3 into the edge of the right-of-way?

4 A. (Grote) I hadn't noticed -- I hadn't equated  
5 that before. But now that you mention it, if  
6 you say so, I certainly believe it.

7 Q. Okay. And again do you see that -- you  
8 testified a minute ago that there are trees  
9 lining that portion of the road. Do you see  
10 they're indicated here with sort of a  
11 squiggly line along the side?

12 A. (Grote) Yes.

13 Q. And the proposed trench appears to go through  
14 those trees; is that correct?

15 A. (Grote) Yes.

16 Q. Okay. And you indicated a minute ago that  
17 you had stone walls. Is it along this  
18 portion of your property?

19 A. (Grote) I'm not quite sure. Actually, I'm  
20 not quite sure. I know there's a stone wall  
21 further down. In the past there very well  
22 may have been. But I know there's a very  
23 visible stone wall that extends at my  
24 neighbor, yes.

1 Q. Okay. And sort of the primary concern you  
2 raised in your testimony was the effect of  
3 the Project on property values.

4 A. (Grote) That's correct.

5 Q. Seeing this proposal with trenching and a  
6 work area along the right-of-way through  
7 what's currently a wooded area, does that  
8 confirm or validate your concerns about  
9 property impacts?

10 A. (Grote) This definitely confirms it, yes.

11 Q. In your testimony, you also give an example  
12 of another property, so we're going to take a  
13 look at that briefly.

14 So you gave an example of a parcel that  
15 had been recently sold; is that correct?

16 A. (Grote) That's correct.

17 Q. And is it the parcel that's located on the  
18 left-hand side of the page labeled as "3901"  
19 and --

20 A. (Grote) That's correct.

21 Q. Adjacent to Lafayette Road?

22 A. (Grote) Yes.

23 Q. And in your testimony you provide some  
24 information about the sale price of this

1 parcel and how it was listed and the reasons  
2 for the reduction in the sale price; is that  
3 correct?

4 A. (Grote) I listed what I thought -- I  
5 basically stuck to the facts. The facts have  
6 to be interpreted in the context, yes.

7 Q. And you provided as an exhibit to your  
8 testimony a memo dated May 19, 2016. It was  
9 unclear to me who the author of that memo  
10 was.

11 A. (Grote) I'm the author of that memo.

12 Q. You are.

13 A. (Grote) Those are my notes. I took some  
14 notes during these conversations, and that  
15 memo was written after I reviewed my notes.

16 Q. Okay. Thank you. And were you involved in  
17 the sale of that property directly?

18 A. (Grote) No, I was not involved in the sale.  
19 The background information was very plain.  
20 That property was not listed by a realtor,  
21 and the party that was interested in it, the  
22 gentleman that was the out-of-state gentleman  
23 that was interested in it, contacted our  
24 staff at town hall. And she called me and

1           asked that I call the gentleman and respond  
2           to his inquiry.

3    Q.    I see.

4    A.    (Grote) I proceeded to call him that evening.  
5           We had a number of conversations over the  
6           next two days. As I have indicated in my  
7           memo, essentially the gentleman expressed to  
8           me the fact that he's interested in buying  
9           the property. He noted that the price had  
10          come down --

11   Q.    Okay. We can read through that --

12   A.    (Grote) Oh, sure. Absolutely. Sorry about  
13          that.

14   Q.    I wanted to make sure I understood the source  
15          of the information. Okay. Thank you very  
16          much, Mr. Grote. That's all the questions I  
17          have for you, so you can relax. I'm going to  
18          turn to Mr. Lakes next.

19                 Good afternoon, Mr. Lakes.

20   A.    (Lakes) Hello.

21   Q.    You should be seeing on the screen another  
22          project map from Applicant's Exhibit 201.  
23          And this is Bates APP67927. And I believe,  
24          if I am oriented correctly, that your



1 parcel -- well, Loop Road is shown here as  
2 sort of left of center; is that correct?

3 CHAIRMAN HONIGBERG: Mr. Aslin,  
4 how is this part of or related to Mr. Lakes'  
5 testimony which I have in front of me and can  
6 read? So I'd be interested in which paragraph  
7 this relates to.

8 MR. ASLIN: Well, I was trying to  
9 understand his relationship to the Project as an  
10 abutter.

11 CHAIRMAN HONIGBERG: I believe  
12 he's provided no information in his testimony  
13 that would give you a basis to ask a question  
14 along those lines. He's stated a number of  
15 opinions --

16 MR. ASLIN: He has.

17 CHAIRMAN HONIGBERG: -- none of  
18 which relate to where he lives.

19 MR. ASLIN: Okay. I will move  
20 on.

21 BY MR. ASLIN:

22 Q. Your primary -- well, one of the concerns  
23 that you raised in your testimony, Mr. Lakes,  
24 is that you believe the Application in this

1 proceeding was incomplete; is that correct?

2 A. (Lakes) That's correct.

3 Q. Do you believe that the Subcommittee at this  
4 point, after 68-plus days of hearings, and  
5 all the documents that have been submitted,  
6 now has adequate information to decide the  
7 case?

8 A. (Lakes) I do not believe that's true. We're  
9 still going through iteration after iteration  
10 after iteration with regard to the  
11 underground alignment. The boundaries have  
12 not been defined. And the reason why I said  
13 that the Application was incomplete was  
14 because this material should have been  
15 provided at the time of Application, not two  
16 years later.

17 Q. Okay. So your opinion remains the same.  
18 Thank you.

19 A. (Lakes) Yes.

20 Q. You also raised impact -- raised a concern  
21 with the impact to scenic roads and tree  
22 removal. Do you have -- is that -- let me  
23 rephrase.

24 Based on the information you've heard in

1           this proceeding so far, has your concern  
2           about tree removal been clarified in any way?  
3       A.   (Lakes) Well, I think, again, because the  
4           alignment has not been firmly decided, and  
5           because DOT has stated they want as much of  
6           the line off the road as possible, that I'm  
7           actually more concerned now, in light of the  
8           fact that we understand better what's going  
9           to happen with the laydown areas for  
10          horizontal direction drilling. We know that  
11          the trench is going to be deeper and wider  
12          than originally specified. And so we know  
13          there's going to be a lot more trees coming  
14          down. And anybody who lives along Route 116  
15          in particular knows that the aesthetics and  
16          the beauty of that road is so much determined  
17          by the trees and the tree line and some of  
18          the older trees that are there. And as  
19          somebody who loves that road and loves the  
20          views on that road, I believe it will be  
21          severely impacted with gashes up and down the  
22          road with land being leveled, and basically  
23          the beautiful properties of that road will be  
24          severely destroyed.

1 Q. Okay. Thank you.

2 Now, you've also raised a concern about  
3 a bias by the members of this Committee who  
4 also sit on the PUC, based on different a  
5 docket and a payment made as a settlement in  
6 that proceeding; is that correct?

7 A. (Lakes) That is correct. Myself and  
8 everybody I spoke to after we heard of the  
9 PUC decision and the negotiated settlement  
10 with Northern Pass that there would be a \$20  
11 million settlement, that in and of itself was  
12 disturbing. But when I learned that two of  
13 the members on the PUC sit on the SEC, I feel  
14 that that is an extreme conflict of interest,  
15 and I believe in a regular courtroom setting  
16 this would be grounds for recusal of those  
17 persons involved.

18 Q. Mr. Lakes, do you understand that the  
19 Commissioners of the PUC are going to receive  
20 some portion of that \$20 million personally?

21 A. (Lakes) Absolutely not. I want to make clear  
22 that I am not here to impugn the integrity of  
23 the people sitting on this panel. But I am  
24 here impugning the process that has been

1 established by the State of New Hampshire to  
2 legalize basically what I consider to be a  
3 potential bias, conflict of interest, and a  
4 potential bribe to a government organization.

5 CHAIRMAN HONIGBERG: Mr.  
6 Needleman.

7 MR. NEEDLEMAN: Mr. Chair, I  
8 don't know of any evidence at all in the record  
9 to support testimony like that. It seems  
10 entirely inappropriate to me, and I would move  
11 that it be struck.

12 CHAIRMAN HONIGBERG: I'm inclined  
13 to agree with Mr. Needleman. Does anyone want  
14 to make a contrary argument?

15 [No verbal response]

16 CHAIRMAN HONIGBERG: We'll strike  
17 that testimony.

18 Mr. Aslin, what's your next  
19 question?

20 MR. ASLIN: I have no further  
21 questions for Mr. Lakes.

22 BY MR. ASLIN:

23 Q. Mr. Palmer and Ms. Ting, just a few questions  
24 for you as well.

1           Mr. Palmer, you have raised in your  
2           testimony this afternoon the concerns about  
3           coal fly ash being used in the fluidized  
4           thermal backfill; correct?

5    A.   (Palmer) Right.  Yes.

6    Q.   During the course of these proceedings, after  
7           you learned of the proposed use of coal fly  
8           ash in the FTB, have you raised your concerns  
9           with either New Hampshire DES or New  
10          Hampshire DOT?

11   A.   (Palmer) I have raised with DES in letters,  
12          or in e-mails and letters.  The DOT, probably  
13          not.

14   Q.   And were your submissions to DES made prior  
15          to their issuance of their permit in this  
16          case?

17   A.   (Palmer) No.

18   Q.   So, afterwards --

19   A.   (Palmer) My e-mail to DES was after they had  
20          issued their finding.  My purpose was to  
21          question how they could issue findings of no  
22          threat in view of the fact that coal fly ash  
23          was now proposed to be used.

24   Q.   Okay.

1 A. (Palmer) I don't feel that DES, either, was  
2 aware that coal fly ash was proposed to be  
3 used when they made their findings.

4 Q. Do you have any specific knowledge to that  
5 fact?

6 A. (Palmer) No.

7 Q. Okay. Thank you.

8 A. (Palmer) Just timing.

9 Q. You showed us in your supplemental testimony  
10 your location of your property and your farm  
11 along 116, so we don't need to go over that.

12 You've raised an issue in your prefiled  
13 testimony that the right-of-way width as  
14 shown in the Project maps is four rods. And  
15 you've said that there are some areas along  
16 116 that is less than four rods. But I  
17 didn't see --

18 A. (Palmer) I'm sorry. Some are --

19 Q. The right-of-way is actually less than four  
20 rods; is that correct?

21 A. (Palmer) The entire route through my farm is  
22 three rods.

23 Q. Okay. That was my question. Because it was  
24 unclear from your testimony whether you had

1 specific locations that you claimed were less  
2 than four rods. And it sounds like the --

3 A. (Palmer) I can show you a historical document  
4 dated in 1838, a town meeting in Franconia in  
5 which it was established that the road from  
6 the center of Franconia to the Easton town  
7 line would be a three-rod road.

8 Q. Was that one of the documents you included in  
9 your testimony?

10 A. (Palmer) Yes, I believe it's included with  
11 our first, our initial prefiled testimony.

12 Q. I think so as well, so we don't need to look  
13 at it again. It's already in the record.

14 But your testimony is that specifically  
15 a portion of the road through your property  
16 is only three rods.

17 A. (Palmer) Exactly.

18 Q. And that's the basis for your concern of  
19 encroachment into your private property  
20 outside the right-of-way, based on the  
21 current project maps?

22 A. (Palmer) Yes, absolutely. The diagram that I  
23 put up earlier from the exception request,  
24 which is the most recent plan made available



1 by Northern Pass for the work on my property,  
2 if you use the distance markers on that  
3 diagram and measure carefully, they are still  
4 showing a right-of-way width of approximately  
5 3.6 rods. Now, I'm not sure where 3.6 comes  
6 from. It's neither 3 nor 4, but it's  
7 certainly greater than 3. So if they intend  
8 to use the full width of that right-of-way,  
9 they will be encroaching on my property  
10 because the right-of-way there is only three  
11 rods.

12 Q. Do you understand that there is a current  
13 survey underway by the Applicant? They're  
14 conducting further survey activities?

15 A. (Palmer) Yes, I understand that.

16 Q. And you haven't at this time seen their final  
17 survey at the intersection of 116; is that  
18 right?

19 A. (Palmer) No, I haven't.

20 Q. I think you covered all my other questions in  
21 your supplemental discussion, but just give  
22 me one minute.

23 (Pause)

24 Q. Yes. Thank you very much.

1 A. (Palmer) Thank you.

2 MR. ASLIN: I have no other  
3 questions.

4 CHAIRMAN HONIGBERG: Ms. Saffo.  
5 Yes, Ms. Schibanoff?

6 MS. SCHIBANOFF: She's right  
7 outside and --

8 CHAIRMAN HONIGBERG: And she's  
9 bursting through the door as you speak.

10 MS. SAFFO: Thank you.

11 CROSS-EXAMINATION

12 BY MS. SAFFO:

13 Q. My goal will be not to reask questions. So  
14 if I ask something I need to put in context,  
15 just let me know.

16 I first wanted to talk to Ms. Meyer  
17 about the survey and the questions asked in  
18 the survey. And you had just testified that  
19 you felt that should have been done up front  
20 by the Applicant and not be something that  
21 you had to do as citizens. Why is that?

22 A. (Meyer) Because I thought they would, out of  
23 concern for public health and safety being  
24 one of the criteria that's required of the

1 Project, that it just seemed natural that if  
2 you're choosing among different routes, you  
3 would want to choose a route that was less  
4 impactful on the people adjacent to the  
5 route. And certainly when it comes to things  
6 like their well water, the quality of the  
7 foundation of their homes, things like that,  
8 that you would want to have that information  
9 in advance of making your route selection and  
10 not find out after you chose the route that,  
11 you know, you've got whatever, you know, a  
12 thousand wells to deal with or something like  
13 that.

14 Q. And on 116, and this can be for anybody in  
15 the group, but if your well is impacted, what  
16 are your options? And if we could even -- if  
17 Mr. Thibault, if you want to address that.

18 A. (Thibault) I think basically bottled water or  
19 try to drill a new well somewhere. But if  
20 the whole aquifer is contaminated, it's  
21 basically bottled water.

22 Q. And have you seen something else in the state  
23 that would cause you concern?

24 A. (Thibault) Yeah. I wouldn't like people to

1 think that this is a long shot that wells  
2 could be contaminated. If we just look at  
3 the Litchfield-Merrimack area, last year they  
4 had a well contamination issue. It's on the  
5 DES web site. It was Saint Gobain. Found  
6 elevated levels of PFCs I think they are, and  
7 only 40 parts per trillion. They found a  
8 sample in their tap water, which is not at  
9 the threshold of safety. But they notified  
10 the DES anyway. The DES had put out requests  
11 for over 800 wells to be tested. Obviously  
12 in Litchfield-Merrimack area, these people  
13 are living off wells as well. And the DES  
14 got 774 tests back, and over 100 of those  
15 were over the safety threshold for that  
16 chemical. Now, that was 29 percent.

17 Now, the main point there is if you  
18 looked at the map that's on the DES web site  
19 that shows the location of all those wells,  
20 they show an area that's one and a half miles  
21 from the concentrated site. And many of  
22 those wells are contaminated, undrinkable and  
23 are right on the edge of that one and a half  
24 miles. Many of them are over a mile away.

1           So the point we're concerned about is  
2           it's not an unrealistic concern. It happens.  
3           And the water there carried that contaminant  
4           over a mile away. And here we're talking  
5           about Northern Pass being right on top of our  
6           aquifers. Even if we didn't have the aquifer  
7           there, our wells, as you saw in the map today  
8           and last week, our wells run all up and down  
9           116 on both sides, many of them less than a  
10          100 feet away from the edge of the road. So  
11          our concern is a valid concern. It's not a  
12          concern that, oh, this might happen. It has  
13          happened right here in New Hampshire.

14    Q.    And this coal fly ash situation was brought  
15          to your attention when? Like when did all of  
16          a sudden the existence of coal fly ash, if  
17          you can remember --

18    A.    (Thibault) Actually, it was from a member of  
19          our own group.

20    Q.    So it wasn't part of the original  
21          Application, to your knowledge?

22    A.    (Thibault) No, I never saw that. I think it  
23          was one of the iterations that came out.

24    Q.    The situation at Saint Gobain was one source

1 of contamination. Is it your understanding  
2 that coal fly ash is going to be in all  
3 52 miles?

4 A. (Thibault) That's correct.

5 Q. Now, has anybody, to anybody on the panel  
6 here, shown you exactly where the excavation  
7 is going to be and made a commitment that  
8 that's where the excavation is going to be?

9 We can start at the end with Mr. Cumbee.

10 A. (R. Cumbee) Absolutely not.

11 Q. So, Mr. Cumbee, as far as your property is  
12 concerned, has anybody told you what's going  
13 to happen to your property?

14 A. (R. Cumbee) Again, absolutely not. I have no  
15 idea. I have no idea which side of the road  
16 is going to be used to bury this monstrosity.  
17 You know, we haven't been given any  
18 information, really.

19 Q. And then you can go down the group. Does  
20 anybody else know of where the hole's going  
21 to be dug? We can start with Ms. Cumbee.

22 A. (L. Cumbee) Absolutely no information other  
23 than the general flyers that we get in the  
24 mail that everything will be just fine.

1 Q. And do the general flyers tell you where a  
2 hole is going to be dug?

3 A. (L. Cumbee) No.

4 Q. Thank you.

5 A. (Thibault) I have no for-sure idea either  
6 based on the maps I've seen so far.

7 Q. And Ms. Meyer.

8 A. (Meyer) No, I don't know. And I would just  
9 add that during the time that geotechnical  
10 borings were being done, there was a public  
11 outreach person there with the crew. And he  
12 walked my property with me and took a look at  
13 how, in the photograph I showed, there's just  
14 a very short shoulder and then the land rises  
15 up sharply with mature trees on it. The  
16 power lines are on that side of the street.  
17 We've got a lighted sign in front of the  
18 building. It also then, as it runs along the  
19 road frontage, it eventually drops down into  
20 a culvert. And he said, "I really don't  
21 think they'd want to put it on this side of  
22 the road," because of all those things that I  
23 mentioned.

24 I got an e-mail from him several days,

1 or a couple weeks after that, and he had  
2 indicated then it would be a project under  
3 the pavement. Then I saw some drawings that  
4 had it basically straddling the edge of the  
5 pavement, which would, because of that short  
6 shoulder, put it a few feet into the  
7 undisturbed area. And then, now the latest  
8 drawing that I've seen has some green  
9 markings that indicate that they have --  
10 they're not asking for an exception request  
11 anymore. And it looks like the Project will  
12 be further into the vegetative area on the  
13 side of the road on our side, but I'm not  
14 quite sure exactly how far. It's hard to  
15 tell from the drawing.

16 Q. So it's hard to tell from the drawings. Has  
17 anybody given you a survey yet?

18 A. (Meyer) No, no survey. And nobody has talked  
19 to me about these changes. In fact, I tried  
20 to send a letter to Eversource asking  
21 about -- to present the packet of information  
22 I had about what I thought should happen in  
23 terms of an exemption request related to our  
24 property. And I asked for contact



1 information through their info line and  
2 didn't get a response back. But I did send a  
3 packet to the DOT and got a response from  
4 Melody Esterberg that they would hold on to  
5 that for the time when the exemption requests  
6 are resurrected.

7 So, things keep going back and forth.  
8 And do I have an answer of where it will be?  
9 No.

10 Q. And it seems to be going more and more into  
11 your land as time goes on; correct?

12 A. (Meyer) That's what I'm afraid of.

13 Q. Thank you. Mr. Lakes.

14 A. (Lakes) I'm not sure exactly at this point  
15 where it's going to be. I have concerns,  
16 however, that I have an engineered septic  
17 system which is about 15 to 20 feet off the  
18 road on a fairly steep hill, and I'm afraid  
19 that any kind of blasting or trenching or  
20 vibratory work, or whatever they do when they  
21 do all of this work, could affect that septic  
22 system.

23 I'd also like to add on to what Bob said  
24 earlier regarding contamination of wells, et

1           cetera, that if in fact we had to get to a  
2           point where there was a lot of contamination  
3           of wells and we needed to find clean water  
4           somewhere, even putting in a engineered water  
5           system would be very difficult because of the  
6           obstruction of the transmission line with it  
7           crisscrossing the road as opposed to staying  
8           on one side of the road or the other.

9       Q.    And you noted you have an engineered septic  
10       system.  And why is that?

11      A.   (Lakes) Well, it's on a hill and it's also --  
12      I have a small property.  And it's not your  
13      typical, really big leach field type of  
14      thing.  It's a system that's different, and  
15      it's built up this way (indicating) as  
16      opposed to spread out widthwise.  So I have a  
17      lot of concerns that a lot of that action  
18      around my property could impact that septic  
19      system.

20      Q.    And it's not an easily-moved septic system to  
21      a different location on your property.

22      A.   (Lakes) No.  It would be very expensive.  And  
23      I basically have a one-acre lot there, so I  
24      don't have a lot of land.

1 Q. Thank you. Ms. Ting.

2 A. (Ting) No, we have no idea where the final  
3 line will be. And as I mentioned earlier, we  
4 do have this rental unit that we rely on for  
5 a good part of our income. And it would be  
6 nice -- it's hard for us to explain what the  
7 full impact of the underground line would be  
8 on us because we don't know where it's going  
9 to be. We don't know how close it's going to  
10 be to the front porch of the old farmhouse,  
11 for example.

12 Q. Thank you. Mr. Palmer.

13 A. (Palmer) As Kathryn alluded to, we have only  
14 the most recent design plans provided by  
15 Northern Pass. But they're all still listed  
16 as "preliminary," even the exception  
17 requests. We're still waiting to see whether  
18 the exception requests will be granted and  
19 what that does in terms of location. So, no,  
20 we don't know where the line will be located  
21 on our property.

22 Q. And the most recent design plans are  
23 preliminary, anyway, and can be subject to  
24 change.

1 A. (Palmer) Everything we've seen is  
2 preliminary.

3 Q. Okay. Thank you. And lastly, I think it's  
4 Grote?

5 A. (Grote) Yes. As I testified earlier this  
6 afternoon, I am aware of where the HDD  
7 entrance pits and exit pits are. And there's  
8 a red line that apparently indicates where  
9 the line is. So, to the extent that that's  
10 accurate, I know where it's going. But as  
11 far as where the line goes on other aspects  
12 of our property, I'm oblivious to that.

13 And I should add that the person who  
14 contacted me about buying the property, his  
15 main concern was exactly your point. He was  
16 very concerned about the location of the  
17 proposed line. And that was quite a while  
18 ago. And he basically turned away because we  
19 couldn't give him an answer.

20 Q. So when you heard that there was no  
21 assessment as to a decrease in property value  
22 due to the burial line, was that a concern of  
23 yours?

24 A. (Grote) I'm sorry. Could you speak up a

1           little bit?

2    Q.    Yes.  I apologize.

3    A.    (Grote) My hearing isn't that good.

4    Q.    That's okay.

5                        So there's been testimony that, while  
6                        experts have analyzed the impact on property  
7                        values for the above-ground transmission  
8                        lines, a similar assessment wasn't done for  
9                        burial.  And what do you think about that?

10   A.   (Grote) I think there's a major impact on the  
11           underground as we've heard today, on the  
12           scenery.

13                       And I'd also like to mention I've had  
14                       experience with reclaiming mineral rights,  
15                       quieting titles.  And, you know, the first  
16                       thing that Phelps Dodge did when they wanted  
17                       to lease my property on Gardner Mountain was  
18                       to make sure we had absolutely bullet-proof  
19                       title to the land and mineral rights.  Took  
20                       us three years to get them.  But it was only  
21                       after we had clear title that they were  
22                       satisfied with that we were able to enter a  
23                       lease with them for their exploration.  So,  
24                       clear title I think is absolutely critical,

1 particularly for a project of this order,  
2 complexity, magnitude and duration. And I  
3 just don't understand how the Applicants  
4 could proceed as far as they have and still  
5 not know what property rights they need to  
6 get, need to acquire.

7 Q. And as far as the land for you abutting  
8 landowners for this particular area, and we  
9 can start with Mr. Cumbee, what is your  
10 understanding of the Applicant's property  
11 rights in front of your residence, and I  
12 guess adjacent to, on top of your property?

13 MR. NEEDLEMAN: Objection. Calls  
14 for a legal conclusion. This has been specified  
15 repeatedly.

16 CHAIRMAN HONIGBERG: Ms. Saffo.

17 MS. SAFFO: I definitely think  
18 this particular group, because this plan keeps  
19 modifying and changing, and that's been a part  
20 of the record certainly since their pretrial  
21 trial testimony has been presented, I think  
22 their understanding of what is on their property  
23 as far as, I guess it be DOT easements, is vital  
24 for this group to understand.

1 CHAIRMAN HONIGBERG: Sustained.

2 BY MS. SAFFO:

3 Q. So as far as the -- Ms. Meyer, you just  
4 testified about pre-blasting surveys, but not  
5 excavating surveys and no location surveys.  
6 Why is that a concern of yours?

7 MR. NEEDLEMAN: Objection. This  
8 is expansion of testimony at this point.

9 CHAIRMAN HONIGBERG: Overruled.  
10 You can answer.

11 A. (Meyer) I didn't -- rephrase the question?

12 BY MS. SAFFO:

13 Q. Absolutely. You talked about how the  
14 Northern Pass was going to be doing surveys  
15 for the pre-blasting. They're going to be  
16 doing the assessments of whether there's  
17 cracks in foundations, cracks in wells and so  
18 forth before blasting, but not before  
19 excavating, and you indicated that as a  
20 concern. Can you elaborate on why that's a  
21 concern to you as a property owner?

22 A. (Meyer) Well, I wouldn't make the distinction  
23 so much on excavating. I think before the  
24 Project begins in any way, before the route

1 is selected, I thought they should have done  
2 some investigation as to where there would be  
3 wells or where there would be sensitive  
4 structures and choose your route based on  
5 that preliminary information before you got  
6 to the point where you're actually knocking  
7 on somebody's door and saying we're going to  
8 be blasting this afternoon, you know, we'd  
9 like to video your well.

10 Q. And then if the -- back to the survey. The  
11 fact that -- is it fair to say that nobody  
12 here has seen a survey outlining what people  
13 believe to be the easement on their property?

14 MR. NEEDLEMAN: Same objection.

15 CHAIRMAN HONIGBERG: Sustained.

16 MS. SAFFO: The fact of whether  
17 they've seen a survey? Earlier there's been  
18 testimony by Northern Pass that they're going to  
19 be seeking to do the survey, do it in  
20 increments, in 12-week increments, and they'd be  
21 releasing it as they were doing it. So I think  
22 it's important to know if as of today's date  
23 anybody here has actually seen one of those  
24 updated surveys that Northern Pass said they



1 would be doing.

2 CHAIRMAN HONIGBERG: So you want  
3 to ask a "Yes" or "No" question?

4 MS. SAFFO: "Yes" or "No."

5 CHAIRMAN HONIGBERG: Then these  
6 are "Yes" or "No" answers.

7 MS. SAFFO: "Yes" or "No"  
8 answers.

9 CHAIRMAN HONIGBERG: Go ahead.

10 BY MS. SAFFO:

11 Q. As of today's date, have you seen a survey  
12 indicating the easement line?

13 A. (R.Cumbee) No.

14 A. (L. Cumbee) No.

15 A. (Thibault) No.

16 A. (Meyer) I have seen survey workers out there,  
17 but they did not leave any kind of markings  
18 and didn't -- you wouldn't know that they  
19 were there after they left.

20 Q. Thank you.

21 A. (Lakes) No.

22 A. (Ting) No.

23 A. (Palmer) No.

24 A. (Grote) No.

1 Q. Now, lastly -- or actually, I have two more  
2 questions. You talked about how Northern  
3 Pass -- there's been testimony about Northern  
4 Pass and their ability to hear your input and  
5 work with you and meet with towns,  
6 Memorandums of Understanding and so forth.  
7 Has anybody responded to your input in  
8 response to questions about Northern Pass and  
9 what you think about Northern Pass on 116?  
10 And I believe there's been earlier testimony  
11 by you that your input is that 116 is an  
12 inappropriate road for this project to be  
13 located on, and it should be located on the  
14 energy corridor on I-93.

15 Has any of you gotten a response other  
16 than that's not the Application in front of  
17 you?

18 A. (Thibault) No.

19 Q. Did that question make any sense? I know it  
20 got long.

21 CHAIRMAN HONIGBERG: I think you  
22 got "Noes" across the board, Ms. Saffo.

23 BY MS. SAFFO:

24 Q. Okay. So you can give input, but you can

1           only -- the only input that you can talk  
2           about is modifying it going down 116, whether  
3           you like it or not; right?

4    A.   (Lakes) That is correct.

5    A.   (Meyer) Yeah.

6    Q.   So, Mr. Lakes, you had talked about what's  
7           going to be disturbed and undisturbed on your  
8           property. Has Northern Pass made a  
9           commitment as to what they plan to do on your  
10          property?

11                           MR. NEEDLEMAN: Objection.

12                           That's expansion of his testimony.

13                           CHAIRMAN HONIGBERG: Sustained.

14   BY MS. SAFFO:

15   Q.   Mr. Palmer, you talked a lot about the coal  
16          fly ash. I apologize. You answered those  
17          questions.

18                           You pointed out that your farm is  
19          organic. If the water is contaminated on  
20          your property, can you still market your farm  
21          as organic?

22   A.   (Palmer) I'm sorry. You said if the water is  
23          contaminated what?

24   Q.   If your water is contaminated by the coal fly

1 ash, can you still market your meat as  
2 organic?

3 A. (Palmer) No, I could not. I think the  
4 perception by the public, if it was  
5 contaminated, it would drive customers away  
6 from my product.

7 Q. And do you think there's a decrease in value  
8 of your property caused by burial of lines  
9 that might be surrounded by a permeable  
10 substance containing coal fly ash?

11 MR. NEEDLEMAN: Objection.  
12 Expansion of testimony.

13 MS. SAFFO: Coal fly ash is new.  
14 I think it's a fair question for Mr. Palmer.

15 CHAIRMAN HONIGBERG: Overruled.  
16 You can answer.

17 A. (Palmer) I think it pretty much destroys the  
18 value of the property as a farm for organic  
19 farming. And also, I think it will drive  
20 people away from our apartment complex and  
21 reduce the value of the apartment complex.

22 Q. Do you think people move to the Franconia  
23 area where you are to get away from those  
24 sorts of concerns?

1 A. (Palmer) Yes. Absolutely. That's why we  
2 bought the land we did. We wanted a pristine  
3 environment to conduct the business that we  
4 wanted to conduct.

5 Q. So if somebody from Boston, for example, is  
6 moving to Grafton County, do you think they  
7 would look at other property over property  
8 along the Northern Pass route with a burial  
9 transmission -- with a transmission line  
10 buried?

11 MR. NEEDLEMAN: Objection. Calls  
12 for speculation.

13 MS. SAFFO: I think his opinion  
14 is --

15 CHAIRMAN HONIGBERG: Sustained.

16 MS. SAFFO: Thank you. No  
17 further questions.

18 CHAIRMAN HONIGBERG: Off the  
19 record.

20 (Discussion off the record)

21 (Recess was taken at 3:31 p.m.

22 and the hearing resumed at 3:45 p.m.)

23 CHAIRMAN HONIGBERG: Ms. Pacik,  
24 we'll have you go first.

1 MS. PACIK: Actually, over the  
2 break I determined that I do not need to ask my  
3 questions. Thank you.

4 CHAIRMAN HONIGBERG: Maybe we can  
5 take another break and maybe all the other  
6 questions will disappear.

7 Off the record.

8 (Discussion off the record)

9 CHAIRMAN HONIGBERG: Ms. Menard,  
10 whenever you're ready.

11 MS. MENARD: Thank you.  
12 Ms. Meyer actually answered my question in her  
13 direct testimony, so I'm going to have to pass.  
14 I tried to let you know that before the break,  
15 but you moved on.

16 CHAIRMAN HONIGBERG: We're going  
17 to take more breaks. All the questions are  
18 going to disappear. It's going to be great.

19 All right. I think, Mr.  
20 Needleman, you're up.

21 CROSS-EXAMINATION

22 BY MR. NEEDLEMAN:

23 Q. So, Mr. Lakes, let me start with you. I'm  
24 looking at your testimony, Paragraph 2. And

1 at the end of that you say, "The opposition  
2 has no legal recourse to even the scale."  
3 You're aware of the fact that this PUC  
4 settlement docket that you're making  
5 reference to was an open docket?

6 A. (Lakes) As far as it taking place in public  
7 you're talking about?

8 Q. Correct.

9 A. (Lakes) Yes.

10 Q. You're aware of the fact that people could  
11 petition to intervene in that docket if they  
12 wanted to?

13 A. (Lakes) Yes, I'm aware of that.

14 Q. You're aware that there's actually a party in  
15 the SEC docket who did petition to intervene  
16 in that docket and was granted intervention?

17 A. (Lakes) Well, let me just say that --

18 Q. It's a "Yes" or "No" question, sir.

19 A. (Lakes) What was the question again?

20 Q. Are you aware of the fact that an attorney  
21 representing a party in this SEC docket  
22 intervened in that settlement docket and  
23 participated in it?

24 A. (Lakes) I guess I'm not.

1 Q. Are you aware of the fact that the Consumer  
2 Advocate participated in that document and  
3 represented the interests of the consumers in  
4 the state?

5 A. (Lakes) I'm not going to answer that question  
6 until I can make a statement.

7 Q. It's a "Yes" or "No" question, sir. Please  
8 answer.

9 A. (Lakes) Then I don't have an answer.

10 Q. Do you know the answer to the question?

11 A. (Lakes) I do not know the answer.

12 Q. Would it surprise you to learn that the  
13 Consumer Advocate did participate in that  
14 docket?

15 A. (Lakes) Makes no difference to me.

16 Q. So when you say that the opposition had "no  
17 legal recourse," in fact you're wrong about  
18 that, aren't you?

19 A. (Lakes) No. The statement that I'm making  
20 about the "no legal recourse" is that the  
21 opposition doesn't have a way to balance the  
22 \$20 million that Eversource is paying to the  
23 PUC. That is what I meant by that statement,  
24 that there's no monetary balance between the



1 two. It's totally uneven.

2 Q. With respect to the statements that you've  
3 made in Paragraph 2 and 3 of your paragraph,  
4 am I correct that those are lay opinion?

5 A. (Lakes) What's a "lay"?

6 Q. Are you an attorney?

7 A. (Lakes) No, I'm not.

8 Q. Did you seek the advice of an attorney before  
9 you wrote these opinions?

10 A. (Lakes) No, I did not.

11 Q. Did an attorney review these opinions before  
12 you submitted them?

13 A. (Lakes) No.

14 Q. Do you have any evidence that you presented  
15 in this docket that anyone can look at that  
16 supports any of these opinions?

17 A. (Lakes) Say that again?

18 Q. It's correct that you presented no evidence  
19 in this docket that supports any of the  
20 opinions you offered in Paragraph 2 and 3 of  
21 your testimony; correct? Those are simply  
22 assertions.

23 A. (Lakes) I haven't heard anything.

24 Q. Okay. Let me move on to you, Mr. Palmer,

1 please.

2 MR. NEEDLEMAN: Dawn, can we call  
3 up Applicant's 158.

4 BY MR. NEEDLEMAN:

5 Q. Mr. Palmer, this exhibit was previously  
6 introduced. You're aware of the fact that  
7 EPA determined that it was going to regulate  
8 coal ash as a non-hazardous material?

9 A. (Palmer) That is a very simplistic and  
10 misleading characterization of that rule.

11 Q. Are you aware of the fact that EPA made that  
12 determination?

13 A. (Palmer) That is not exactly what EPA  
14 determined, no.

15 Q. Well, we'll let the record speak for itself.  
16 It's right here.

17 To the extent that EPA made that  
18 determination, do you have any evidence that  
19 they have since changed it?

20 A. (Palmer) Who wrote this article? What is the  
21 source of this article?

22 Q. Mr. Palmer, can you answer my question,  
23 please? Do you have any evidence --

24 A. (Palmer) Well, you said we're letting the

1 record stand for itself, and I'm just trying  
2 to clarify the record. What is the source of  
3 this article?

4 Q. The article is already in the record. It's  
5 published on Lexis. It talks about the EPA  
6 determination in depth.

7 My question to you, sir, is: Are you  
8 aware of any intention on EPA's part to  
9 change the determination it made with respect  
10 to this ruling?

11 A. (Palmer) The EPA has never said that this  
12 material is non-hazardous. In fact, I put up  
13 a document earlier today in which EPA states  
14 quite clearly that the material is toxic and  
15 hazardous and poses a threat to human health.

16 MR. NEEDLEMAN: Dawn, highlight  
17 the bottom, please?

18 BY MR. NEEDLEMAN:

19 Q. Do you see what's on the screen, sir?

20 A. (Palmer) Yes.

21 Q. "The final rule also supports the responsible  
22 recycling of coal ash by distinguishing safe,  
23 beneficial use from disposal." Do you see  
24 that?

1 A. (Palmer) You are picking and choosing from  
2 this final rule. The final rule makes a very  
3 clear distinction --

4 Q. Do you see that, sir?

5 A. (Palmer) The final rules makes a very  
6 clear --

7 Q. Mr. Palmer, please answer my question. Did  
8 you see the statement?

9 A. (Palmer) I see it. It does not characterize  
10 the final rule.

11 Q. Do you understand the difference in the law  
12 between "disposal" and "beneficial use"?

13 A. (Palmer) Yes, sir, I understand the  
14 difference.

15 MR. NEEDLEMAN: Okay. Dawn,  
16 could you --

17 A. (Palmer) The EPA makes a very clear  
18 distinction on beneficial use --

19 Q. I'm going to turn to that right now.

20 MR. NEEDLEMAN: Dawn, can you  
21 turn the ELMO on, please?

22 BY MR. NEEDLEMAN:

23 Q. Mr. Palmer, this is a document directly from  
24 EPA's web page. Have you seen this before?

1 A. (Palmer) Can't see it yet.

2 A. (Grote) No signal.

3 Q. Let me know when it's on, please.

4 MR. NEEDLEMAN: We've marked this  
5 as Applicant's 494.

6 Q. Is it on the screen now?

7 A. (Palmer) It is on the screen now.

8 Q. All right. So in the first sentence that I  
9 highlighted, do you see where EPA says, "Coal  
10 ash can be beneficially used to replace  
11 virgin materials..., thus conserving natural  
12 resources"?

13 A. (Palmer) I see that, yes.

14 Q. Okay. And then do you see the bullet points  
15 underneath where it EPA lists some of those  
16 beneficial uses?

17 A. (Palmer) Before we can continue in this  
18 discussion, I need a few minutes to describe  
19 what "beneficial use" is, as defined by U.S.  
20 EPA.

21 Q. We're going to get to that on the next page.  
22 I'm asking you if you see these statements.

23 A. (Palmer) "Beneficial use" is encapsulated,  
24 not unencapsulated.

1 Q. Well, thank you for saying that. Let's go to  
2 the next page. That's exactly what EPA talks  
3 about here is "encapsulated beneficial use."  
4 And if we look at the first paragraph, it  
5 specifically talks about encapsulated  
6 beneficial use that includes the use in  
7 concrete. Do you see that? The two largest  
8 encapsulated uses as reported by ACAA in fly  
9 ash are for concrete and concrete products.  
10 Do you see that?

11 A. (Palmer) Yes, which is a hardened material,  
12 portland cement or some form of hardened,  
13 non-porous material.

14 Q. Portland cement. Let's come back to that in  
15 a moment.

16 CHAIRMAN HONIGBERG: Mr.  
17 Needleman, can you grab the microphone, please?

18 MR. NEEDLEMAN: Sure.

19 BY MR. NEEDLEMAN:

20 Q. And do you see in Paragraph 3 below that how  
21 EPA describes the methodology that it  
22 developed in order to assess the encapsulated  
23 use of coal ash to make a determination about  
24 its safety?

1 A. (Palmer) What Northern Pass is proposing is  
2 not encapsulated use.

3 Q. Do you see that?

4 A. (Palmer) I see that, yes.

5 Q. And then in the final paragraph it says that  
6 EPA used the methodology to evaluate  
7 potential environmental impacts associated  
8 with fly ash as a direct substitute for  
9 Portland cement in concrete, what you just  
10 said. And the final conclusion there in the  
11 last sentence is that EPA's evaluation  
12 concluded that the beneficial use of  
13 encapsulated CCR in concrete and wallboard is  
14 appropriate because environmental releases  
15 are comparable to or lower than those from  
16 analogous non-CCR products or are at or below  
17 the relevant regulatory and health-based  
18 benchmarks. Do you see that?

19 A. (Palmer) I don't understand your point  
20 because this is not what Northern Pass is  
21 proposing. You're not proposing concrete or  
22 wallboard. You're proposing unencapsulated  
23 use in a trench --

24 Q. Your understanding --

1 A. (Palmer) -- under water. Under water.

2 Q. Your understanding is it's unencapsulated.

3 In fact, that's not the position of Northern  
4 Pass, is it?

5 A. (Palmer) I had not heard any position of  
6 Northern Pass other than to say that the  
7 material will be porous and will act like a  
8 french drain. That is not encapsulated.

9 Q. Do you have any documents you can point to  
10 that show this material is not encapsulated.

11 A. (Palmer) I put documents up earlier today.

12 Q. Those didn't relate to the use of this  
13 specific material, did they?

14 A. (Palmer) Yes, they did. They were --

15 Q. The material that Northern Pass --  
16 (Court Reporter interrupts.)

17 Q. I apologize. Mr. Palmer, which exhibit  
18 number that you put up today relates  
19 specifically to the material that Northern  
20 Pass will be using in this project?

21 A. (Palmer) You'll have to give me a moment.

22 (Pause)

23 A. (Palmer) That was APOBP63.

24 Q. And what does that document say about



1 Northern Pass's use of this material?

2 A. (Palmer) It says the Northern Pass -- the  
3 fluidized thermal backfill is  
4 water-permeable, similar to DOT gravels, does  
5 not create water dams and behaves as a french  
6 drain --

7 Q. Who wrote the document?

8 A. (Palmer) This was a statement by Eversource  
9 in a meeting held by New Hampshire Department  
10 of Transportation.

11 Q. And is there anywhere in there that it says  
12 the material is not encapsulated?

13 A. (Palmer) The description given is the very  
14 definition of unencapsulated.

15 Q. In fact, unencapsulated is free fly ash, like  
16 in coal piles, which is what EPA was  
17 regulating, isn't it?

18 A. (Palmer) No. No. Encapsulated means  
19 hardened, like hardened cement or in gypsum  
20 wallboard. Unencapsulated is material that  
21 is unhardened and is able to be -- and is  
22 porous. That's the simple definition --

23 MR. NEEDLEMAN: Dawn, let's go to  
24 Applicant's 160, please.

1 BY MR. NEEDLEMAN:

2 Q. Mr. Palmer, we saw this exhibit earlier.

3 This is from the New Hampshire DOT web page,  
4 which is encouraging --

5 MR. NEEDLEMAN: Go to the next  
6 one, please, Dawn.

7 BY MR. NEEDLEMAN:

8 Q. This is with respect to the DOT construction  
9 initiatives. It's encouraging the use of fly  
10 ash from foundries in concrete. Do you see  
11 that? Do you recall seeing this exhibit  
12 before?

13 A. (Palmer) I'm sorry. What is this from again?

14 Q. From New Hampshire DOT's web page. Do you  
15 remember seeing this exhibit previously?

16 (Witness reviews document.)

17 A. (Palmer) No, I can't say I remember seeing  
18 this before.

19 MR. NEEDLEMAN: Dawn, just one  
20 other, Applicant 159.

21 BY MR. NEEDLEMAN:

22 Q. The first page of this, this organization --

23 MR. NEEDLEMAN: No, back, Dawn.

24 BY MR. NEEDLEMAN:

1 Q. AASHTO, do you know who that organization is?

2 A. (Palmer) I'm sorry. What was the question?

3 Q. Do you know what this organization is? Do  
4 you know what that acronym stands for?

5 A. (Palmer) No.

6 Q. It's the American Association of State  
7 Highway and Transportation Officials.

8 MR. NEEDLEMAN: And Dawn, if we  
9 can go over to the next page, please.

10 BY MR. NEEDLEMAN:

11 Q. Do you recall seeing this exhibit which was  
12 previously introduced?

13 (Witness reviews document.)

14 Q. Mr. Palmer, have you seen this previously?

15 A. (Palmer) I have not.

16 Q. And do you see where it says that, among  
17 other things, 46 state DOTs responded to this  
18 survey and indicated that they use fly ash as  
19 structural concrete or in concrete pavements?

20 A. (Palmer) In structural concrete or concrete  
21 pavements. In hardened concrete,  
22 encapsulated form.

23 Q. And so do you think that EPA would find the  
24 encapsulated use of this material acceptable

1 and environmentally beneficial, New Hampshire  
2 DOT would promote its use, and these 46 other  
3 DOTs would promote its use, if they had the  
4 same concerns about environmental impacts  
5 from the material that you do?

6 A. (Palmer) You're talking about encapsulated  
7 use, and what you're proposing is not  
8 encapsulated use.

9 Q. Do you have a single example of encapsulated  
10 fly ash causing the type of environmental  
11 issues that you've posited here?

12 A. (Palmer) I don't have any examples of  
13 encapsulated fly ash causing problems, no.

14 Q. And so my last question, sir. If it turns  
15 out that in fact you're not correct and that  
16 the fly ash that's proposed to be used here  
17 is encapsulated, would that address all your  
18 concerns?

19 A. (Palmer) If it was not -- no, it would not  
20 because I don't believe it is encapsulated.  
21 It's going to be unencapsulated. It's going  
22 to be --

23 Q. That wasn't my question.

24 A. (Palmer) -- porous, as stated by several of

1 the Northern Pass experts.

2 Q. We'll make it a hypothetical.

3 Hypothetically, if it turns out that in fact  
4 Northern Pass's proposed use of this material  
5 is encapsulated, would it then address all  
6 your concerns?

7 A. (Palmer) I would still have concerns about  
8 toxic substances leaching out of it.

9 Q. Thank you, sir.

10 CHAIRMAN HONIGBERG: Mr.  
11 Oldenburg.

12 QUESTIONS BY SUBCOMMITTEE MEMBERS AND SEC COUNSEL:

13 BY MR. OLDENBURG:

14 Q. Ms. Meyer, I think it was you that showed a  
15 picture of you standing in front of your  
16 property along Route 116; correct?

17 A. (Meyer) Yes.

18 Q. And I think your point was if the line is  
19 required to go off the pavement, as close to  
20 the right-of-way as possible, that would have  
21 an impact to your -- to trees and everything  
22 else that we saw in the picture.

23 A. (Meyer) Yes.

24 Q. And it's been stated in the Utility

1 Accommodation Manual, the UAM, that was the  
2 statement from the DOT, that the line needs  
3 to be close as to the right-of-way "as  
4 practical" is the statement. And that --  
5 fair to say it's your understanding that  
6 manual isn't just for the Northern Pass  
7 Project, that's statewide?

8 A. (Meyer) Hmm-hmm.

9 Q. So after that line in the paragraph, there's  
10 dozens of qualifiers to that statement that  
11 say, but if you have to go under the  
12 pavement, this is the case, and that if you  
13 have to go under the pavement, that's where  
14 all these exemption requests come from. And  
15 there's been testimony that there's been  
16 quite a few. But if I heard you right when  
17 Ms. Saffo was asking you, you haven't seen or  
18 are aware of an exemption request in front of  
19 your property; is that correct?

20 A. (Meyer) There was an exemption request, and  
21 then apparently it was withdrawn. And the  
22 most recent drawing that I saw had green  
23 lines that then apparently removed the  
24 exemption request and showed that there would

1           be more advancement into the, I guess you'd  
2           call it the undisturbed area.

3    Q.    But your preference would be, if it went  
4           anywhere, under the road would be the least  
5           impact --

6    A.    (Meyer) Under the pavement is better than  
7           outside of the pavement.  But obviously, when  
8           we thought the Project was completely under  
9           the pavement, we still became intervenors.  
10          So that doesn't completely mitigate our  
11          concerns about the Project.  But I would have  
12          to say it's better than being outside the  
13          pavement and in what we consider our front  
14          yards.

15   Q.    Okay.  All right.  Thank you.

16                   MR. OLDENBURG:  I guess that's  
17           all the questions I have.  Thank you.

18                   CHAIRMAN HONIGBERG:  Ms.  
19           Weathersby.

20   QUESTIONS BY MS. WEATHERSBY:

21   Q.    Good afternoon.  Mr. Grote, you had testified  
22           about that land across the street from you  
23           that sold after it had been on the market  
24           awhile and the price had dropped and it

1 ultimately sold for around \$25,000. Is that  
2 a price that's lower than what you believed  
3 to market value -- it's fair market value  
4 would be if the Northern Pass Transmission  
5 Project was not proposed?

6 A. (Grote) I'm not a real estate expert, but I  
7 do know that a property that abuts us --  
8 excuse me. Is this working? Yeah. The  
9 property that abuts us, a one-acre lot that  
10 was shown on the map, I believe several years  
11 ago sold for approximately \$35,000.

12 Q. Okay.

13 A. (Grote) And that was a smaller property that  
14 didn't have views, that did not face south.  
15 It was certainly -- and it was basically the  
16 end of the runway for the airport. I  
17 consider that a much less desirable property  
18 than the one that was sold. Thank you, yes.

19 Q. Thank you.

20 In your video, there was a number of --  
21 all kinds of structures and walls and things  
22 in there. But it showed some -- there was a  
23 geothermal structure and underground gas  
24 pumps. Do you know if any of those types of



1 structures, or even septic systems, are  
2 actually located in the right-of-way or  
3 just -- your point was that they were near.  
4 But do you know if there's anything actually  
5 located within the right-of-way?

6 A. (Meyer) No, we didn't look at an analysis of  
7 where the right-of-way is in that part of  
8 Franconia where those structures are.

9 Q. Okay. Thanks.

10 And Ms. Meyer, I seem to recall from  
11 something that your property was a bed and  
12 breakfast?

13 A. (Meyer) Yes, that's correct.

14 Q. Do you still run the bed and breakfast?

15 A. No. We made it a private home for a while,  
16 but now we're thinking of taking it back to  
17 being a B & B again.

18 Q. Okay. But not you're operating it as a bed  
19 and breakfast now.

20 A. (Meyer) No, no. My elderly mother was living  
21 with us, and it just wasn't practical to have  
22 it as a B & B at that point.

23 Q. Understood.

24 Mr. Palmer, you talked about, I think it

1 was you, the Route 93 corridor and the  
2 1.7 miles that is the federal lands. If they  
3 were to use the 93 corridor, just  
4 hypothetically because it's not what's before  
5 us, but I'm just exploring this, if a project  
6 was to use the 93 corridor and there'd be  
7 that 1.7-mile gap, it seems as though there  
8 would have to be a detour around that. Would  
9 that detour most likely be Route 18 through  
10 Franconia?

11 A. (Palmer) No, I don't think there would have  
12 to be a detour around it because that  
13 1.7 miles is owned by the White Mountain  
14 National Forest. The Project is already  
15 proposing to go through 10 miles of the White  
16 Mountain National Forest and has applied for  
17 a permit to do so with the White Mountain  
18 National Forest. So they could do the same  
19 thing with this 1.7 miles. And in fact,  
20 White Mountain National Forest has already  
21 made a draft record of decision to grant that  
22 permit. So they could do the same thing with  
23 the 1.7 miles.

24 A. (Meyer) If I could add something? The White

1 Mountain Forest is a good part of Easton, and  
2 that's what he was referring to; if they were  
3 to grant permission to go through the White  
4 Mountain Forest in Easton, presumably they  
5 would as well on 93.

6 MR. OLDENBURG: Can I butt in and  
7 ask a question?

8 MS. WEATHERSBY: Sure.

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

10 Q. So this is the question I didn't ask. But  
11 since she started, I'll ask anyway.

12 So you pointed out the 1.7 miles in the  
13 legislation. But in the paragraph above that  
14 it says, insofar as they do not -- so let me  
15 go back.

16 So it talks about the energy corridors  
17 themselves and that the state has the  
18 exclusive right to use these corridors,  
19 "insofar as they do not conflict with any  
20 federal statute, rule or regulation."

21 A. (Palmer) Right.

22 Q. Do you know of any federal statute, rule or  
23 regulation that would probate the use?

24 A. (Palmer) No, I do not. I think the only

1 reason the 1.7 was left out is because the  
2 state has no jurisdictions, and therefore  
3 can't put in their law anything about that  
4 1.7-mile stretch. They don't own it.

5 Q. Okay.

6 MR. OLDENBURG: Just for the  
7 record, that's 162-R:2 in the RSAs.

8 BY MR. OLDENBURG:

9 Q. So this project had to get a federal permit  
10 through the Department of Energy. A highway  
11 project in the interstate system is governed  
12 by the Federal Highway Administration. So  
13 you don't know of any federal highway rules  
14 that would prohibit the use through --

15 A. (Palmer) My understanding is that the Federal  
16 Highway Administration delegates authority  
17 over the use of the interstate highways to  
18 the state governments, and to DOT in this  
19 case.

20 Q. So you don't know of any special permitting  
21 or anything else that went on to get the  
22 Project -- I-93 through Franconia Notch --

23 A. (Palmer) No.

24 Q. -- that would prohibit the use of the

1 corridor?

2 A. (Palmer) No.

3 Q. Okay. Thank you.

4 QUESTIONS BY MS. WEATHERSBY (CONT'D):

5 Q. And I just had one last question about the  
6 fluidized thermal backfill and the fly ash.

7 I seem to recall that before they use  
8 the fly ash, it needs to be tested and make  
9 sure that it doesn't exceed minimum -- or  
10 maximum contaminant levels. If I'm  
11 remembering correctly and that's the case,  
12 would that satisfy your concerns, or mostly  
13 alleviate them?

14 A. (Palmer) If it were tested and it was shown  
15 that there were absolutely no heavy metals in  
16 it that could be leached out of it, that  
17 would go a long way towards alleviating my  
18 concerns. I find that to be highly unlikely,  
19 in that all coal fly ash has been shown to  
20 contain heavy metals, which are readily  
21 leachable.

22 MS. WEATHERSBY: Thank you.

23 Nothing further.

24 CHAIRMAN HONIGBERG: Any other

1 questions from the Committee?

2 [No verbal response]

3 CHAIRMAN HONIGBERG: All right.

4 In light of the questions you've been asked  
5 today, is there anything you need to follow up  
6 on in the way of factual information to clarify  
7 or supplement an answer? Mr. Palmer.

8 A. (Palmer) Yes, I want to follow up on the  
9 issue of whether EPA has designated coal fly  
10 ash as hazardous. I have just a few facts  
11 that I'd like to put out there about that.

12 This was actually the decision made by  
13 EPA in 2015 for the regulation of coal  
14 combustion residuals, including fly ash. And  
15 this was a very nuanced decision by U.S. EPA.  
16 It did not at any point identify coal fly ash  
17 as "non-hazardous." What it does is it  
18 establishes the regulation of coal fly ash  
19 under Subtitle D, which is generally a waste  
20 management rule for non-hazardous wastes,  
21 rather than Subtitle C. And the reason it  
22 did that is because EPA was eager to make  
23 sure that coal fly ash could still be  
24 recycled and reused. If it was regulated as

1 a hazardous waste, it would not be able to be  
2 recycled and reused. However, EPA makes a  
3 very clear distinction between safe reuse of  
4 coal fly ash and the unconsolidated use of  
5 coal fly ash that is being proposed here.  
6 They stated that when coal fly ash is used in  
7 a solid material such as Portland cement or  
8 gypsum wallboard, it's safe. They stated  
9 that when it's used in an unconsolidated form  
10 and placed in the earth, there's not enough  
11 data to say whether it's safe or not.  
12 However, they pointed to several damage cases  
13 in which unconsolidated coal fly ash was  
14 placed in the earth, similar to the proposal  
15 here, and it resulted in contamination of  
16 groundwater above drinking water standards.  
17 So, even though they, EPA, made it very  
18 clear that they feel coal fly ash is a toxic  
19 and hazardous material that has the potential  
20 for leaching, they still regulated it under  
21 Subtitle D. Basically, they created a new  
22 category of waste which behaves in the manner  
23 of toxic waste but is regulated in such a way  
24 that it can be recycled under safe

1 conditions. EPA never stated that coal fly  
2 ash is not hazardous. In fact, I put up a  
3 document earlier today in which EPA clearly  
4 states that coal fly ash does contain  
5 materials which can be leached and which pose  
6 a definite threat to human health. And that  
7 document is a very recent document.

8 CHAIRMAN HONIGBERG: Anything  
9 else? Yes, Mr. Thibault.

10 A. (Thibault) We talked about that, well and  
11 well contamination, and the discussion was  
12 centered on coal fly ash. But we have to  
13 remember also that there will be a couple of  
14 miles of HDD drilling in this route between  
15 Franconia and Easton. The HDD drilling will  
16 put bentonite and some form of chemicals also  
17 in the ground, and actually much deeper than  
18 the trenching. So we had that concern, too,  
19 that it's not just coal fly ash, but it's  
20 also chemicals and bentonite that will go  
21 into the ground that's not there now. And my  
22 property -- I border Ham Branch, and Kendall  
23 Brook runs through my property. And I have a  
24 pond on my property. All of these are right



1           alongside the road. When they drill under  
2           Kendall Brook, they're going to drill past my  
3           pond which is fed from across the street by  
4           streams. They're going to go through that  
5           water flow underground and block it with  
6           bentonite. Hopefully the water will flow  
7           above it and below it, but we don't know.  
8           Also, there'll be chemicals I believe in that  
9           bentonite because I don't think they can do  
10          all their drilling without adding additives  
11          to the slurry. So now they're going to drop  
12          the chemicals in underground, maybe 35 feet  
13          deep, even closer to our aquifer. So it's --  
14          and then they're going to go under Ham  
15          Branch, which also borders my property. And  
16          it's like that all the way up and down the  
17          road. There will be about 10 streams they  
18          have to do this to.

19                 So, again, as I said earlier, the  
20                 concern about contaminated wells is real.  
21                 It's not theoretical. It's very possible.

22                 The other point I'd like to make,  
23                 totally unrelated to that, is when we all  
24                 started out at the initial public hearings

1           that the Applicant was required to have, the  
2           story was, yes, we're going to build this  
3           under the road. And there was no mistaking  
4           at those meetings that "under road" meant  
5           under the hot top. We have video evidence of  
6           that. It's in transcripts. People were  
7           saying 99 percent of this will be under the  
8           hot top. So that was quite misleading. I  
9           don't know how many hundreds, if not  
10          thousands, of people attended those public  
11          hearings and walked away with that belief.  
12          Obviously, there aren't thousands of people  
13          attending these hearings, so there's many  
14          people out there that still harbor the  
15          impression that, oh, yeah, this is going  
16          under the road. And I know for a fact that  
17          I've spoken to people in my own area who  
18          still believe that.

19                 The point I want to make is that  
20          Northern Pass puts this misinformation out  
21          there; yet, there's been in all this time no  
22          effort or no outreach by Northern Pass to  
23          correct that misinformation --

24                                 CHAIRMAN HONIGBERG: Mr.

1 Thibault, what question are you following up on  
2 or clarifying?

3 MR. THIBAUT: (Thibault) I'm  
4 just answering the question of is there anything  
5 that we'd like to add to our testimony.

6 CHAIRMAN HONIGBERG: No, that  
7 wasn't the question. The question was: In  
8 light of what you've been asked today, specific  
9 questions and answers, is there anything you  
10 need to clarify or follow up on?

11 MR. THIBAUT: Nothing further.  
12 Thank you.

13 CHAIRMAN HONIGBERG: All right.  
14 Is there anything else?

15 [No verbal response]

16 CHAIRMAN HONIGBERG: All right.  
17 Thank you very much. You can return to your  
18 seats. We'll go off the record while we turn  
19 over a witness.

20 (Recess was taken at 4:16 p.m.  
21 and the hearing resumed at 4:22 p.m..)

22 CHAIRMAN HONIGBERG: All right.  
23 If people could reassemble. We have a witness  
24 in place.

1                               Would you swear him in,  
2                               please?

3                               (WHEREUPON, D. SCOTT NEWMAN was duly  
4                               sworn and cautioned by the Court  
5                               Reporter.)

6                               DIRECT EXAMINATION

7 BY MS. DORE:

8 Q.    Mr. Newman, good evening.   Right here.  
9                               Hello?

10 A.    Hi.

11 Q.    Could you please state your full name for the  
12                               record?

13 A.    Scott Newman.

14 Q.    And Mr. Newman, did you file prefiled  
15                               testimony in this docket?

16 A.    I did.

17 Q.    And was it premarked as Deerfield Abutter 46?

18 A.    Yes.

19 Q.    And did you file a supplemental prefiled  
20                               testimony?

21 A.    I did.

22 Q.    And was it marked as Deerfield Abutter 47?

23 A.    Yes.

24 Q.    Do you have any changes or additions to your

1           prefiled testimony?

2       A.    I don't.

3       Q.    And do you adopt and swear to this prefiled  
4           testimony you filed as your testimony today?

5       A.    I do.

6       Q.    Okay.

7                               MS. DORE:  Ms. Menard, it's my  
8           understanding you have some questions?

9                               DIRECT EXAMINATION

10       BY MS. MENARD:

11       Q.    Good afternoon, Mr. Newman.

12       A.    Good afternoon.

13       Q.    Thank you for making the trip down this  
14           afternoon.

15       A.    Sure.

16       Q.    So, a few questions.  You state in your  
17           testimony that the new power poles will  
18           represent a 500-percent increase in profile.  
19           How did you arrive at that statement?

20       A.    I simply measured the existing poles versus  
21           the new poles.  And I know Ms. Widell spoke  
22           to this same assertion.  Thinking I must have  
23           been referring to the lattice towers when I  
24           said 500 percent, in fact I was referring to

1 the steel monopoles, which are several times  
2 the profile of the existing steel poles, and  
3 in instances up to 70 percent higher; that's  
4 how I arrived at my 500 percent.

5 If you were talking about the lattice  
6 structures versus the existing wooden poles,  
7 the difference would be in the many  
8 thousands-of-percent increase in profile.

9 Q. Thank you. There is a reference in an  
10 exchange between Attorney Whitley and the  
11 Applicant's historic expert, Ms. Widell,  
12 where she says that the views outside the  
13 historic district for Deerfield are not  
14 considered. What is your view regarding this  
15 exchange and Ms. Widell's assertion that  
16 power poles behind a historic church have no  
17 impact because this view is purportedly not  
18 considered in the National Registry  
19 nomination?

20 A. Well, this line of reasoning makes no sense  
21 to me. I've never heard it used by any party  
22 in a historic preservation review in over 25  
23 years of reviewing properties. Of course,  
24 structures built beside or behind historic

1 properties would impact those properties,  
2 especially when industrial-scale  
3 infrastructure is built behind a community  
4 church. In the case of the Deerfield Center  
5 Church that you were referring to, the pole  
6 behind the church presently is 83 feet, and a  
7 50-percent increase in height as proposed,  
8 bringing the equipment up to around 120 feet,  
9 I believe that's a monopole in that instance,  
10 that new equipment would backdrop the  
11 historic church from multiple vantage points  
12 from within the district.

13 MS. MENARD: And Jo Anne, can you  
14 put up the next exhibit with the pink lines?

15 BY MS. MENARD:

16 Q. This exhibit that we have here is Page 5 of  
17 your supplemental testimony, and it's a  
18 district map with the district of the  
19 Nottingham Road Rural Historic District with  
20 the pink lines. And you note in your  
21 supplemental testimony that the NHDHR  
22 established the boundaries of the Nottingham  
23 Road Rural Historic District after your  
24 original testimony. Please explain the

1 impact of this boundary change on your  
2 assessment of the Project's impact on  
3 historic sites.

4 A. Well, in my original testimony, at that  
5 time -- and this is after I believe the  
6 Applicant had made their determinations of  
7 effect in this area, but the boundaries of  
8 that district, the potential district at that  
9 time were unknown. So I conservatively  
10 estimated for my determination of effect that  
11 the boundary of the district would abut the  
12 right-of-way for the proposed transmission  
13 line. After my testimony, before my  
14 supplemental, the Division of Historic  
15 Resources defined the boundaries of the  
16 historic property. And you can see them on  
17 this exhibit. And they extend -- so, like  
18 this is the official boundary now. They  
19 extend north and south of the Nottingham Road  
20 Historic District, which has been determined  
21 eligible by DHR for the National Register,  
22 such that the changes that instead of  
23 abutting the historic district, the Project  
24 now bisects the National Registered historic



1 district.

2 Q. Can you explain briefly what you mean by  
3 "degrade the character of the district"?

4 A. So I do point --

5 MR. NEEDLEMAN: Mr. Chair,  
6 objection. Sounds like this is repetition of  
7 existing testimony.

8 CHAIRMAN HONIGBERG: Ms. Menard.

9 MS. MENARD: I think that the  
10 phrase "degrade the character of the district,"  
11 we have an expert witness that is offering this.  
12 And I was hoping that he would clarify from a  
13 professional standpoint exactly what that means.  
14 I think we all have a general appreciation for  
15 what that might mean. But specifically, and  
16 briefly, if he could clarify that, I'm hoping  
17 that it would be helpful.

18 CHAIRMAN HONIGBERG: I like  
19 "briefly." Yeah, why don't you have him clarify  
20 that. But again, this is information that is in  
21 his testimony which we all have access to. But  
22 go ahead, as far as you said.

23 BY MS. MENARD:

24 Q. Do you understand my question, Mr. Newman?

1     A.    I do.  You're asking me to clarify briefly  
2            what I mean by "degrade the character of the  
3            district."  And it's fairly simple.  Building  
4            lattice towers and power poles and suspending  
5            wires above a tree canopy in a National  
6            Registered historic district is inherently  
7            negative.  This explains why historic  
8            communities around the country are spending  
9            millions advocating for building the wires in  
10           and around the communities.  The views of  
11           this infrastructure bisecting this historic  
12           district would, in my opinion, alter the  
13           fundamental rural, scenic and historic  
14           characteristics of the Nottingham Historic  
15           District.  The proposed project is not an  
16           off-in-the-distance view.  It would  
17           physically bisect the historic district,  
18           introducing prominent views of  
19           industrial-scale infrastructure and scarring  
20           the skyline from views within the district.

21     Q.    Thank you.  How many infrastructure projects  
22            have you reviewed in New England to determine  
23            effects of historic sites?

24                                    MR. NEEDLEMAN:  Same objection,

1 Mr. Chair.

2 CHAIRMAN HONIGBERG: Sustained.

3 BY MS. MENARD:

4 Q. Could we take a look at your Figure 6 from  
5 your original testimony.

6 MS. MENARD: And for the record,  
7 we have labeled this as Deerfield Abutter  
8 Exhibit 46C. He had three photo simulations,  
9 and this is just to help identify this for the  
10 record.

11 BY MS. MENARD:

12 Q. So, once again, how did you arrive at the  
13 lines that are shown in this and other photo  
14 simulations?

15 MR. NEEDLEMAN: Same objection,  
16 Mr. Chair. All in his testimony.

17 CHAIRMAN HONIGBERG: Ms. Menard.

18 MS. MENARD: There's been some  
19 criticism of Mr. Newman's methodology, if you  
20 will, in the supplemental testimony of Ms.  
21 Widell and various -- and no less than three  
22 locations in this testimony, in hearings, in  
23 transcripts, has this been raised as a criticism  
24 of Mr. Newman's work.

1 CHAIRMAN HONIGBERG: Why don't  
2 you refresh all of us on what that criticism is  
3 and have him respond to it, which I think is  
4 what you're ultimately intending to do; right?

5 MS. MENARD: Yes.

6 CHAIRMAN HONIGBERG: Why don't we  
7 get to that rather than the setup which is in  
8 his testimony. What did Ms. Widell say about  
9 it? Or what did others testify about that was  
10 critical of the work that he did?

11 MS. MENARD: May I take a  
12 ten-second break and go get my transcript?

13 CHAIRMAN HONIGBERG: You may.

14 MS. MENARD: Thank you.

15 (Pause)

16 MS. MENARD: I apologize. I'm  
17 going to have to take more time than I asked  
18 for, so I'm going to move on, and hopefully  
19 we'll be able to come back.

20 BY MS. MENARD:

21 Q. There's a footnote on Applicant's Exhibit 95  
22 at the bottom of Page 11 where Ms. Widell is  
23 addressing her response to your "unreasonable  
24 adverse effects" conclusion regarding

1 Deerfield Center and Nottingham Road Historic  
2 District. And she states, "The assessment of  
3 unreasonable adverse effect is for the  
4 Project as a whole. While that includes  
5 evaluation of individual historic properties,  
6 the findings of unreasonable adverse effect  
7 is not applied to discrete individual  
8 resources." How would you respond to Ms.  
9 Widell's statement?

10 MR. NEEDLEMAN: Mr. Chair,  
11 doesn't that call for a legal conclusion?

12 MS. MENARD: I'm sorry. I didn't  
13 hear him.

14 CHAIRMAN HONIGBERG: He said it  
15 called for a legal conclusion. Can you repeat  
16 the question?

17 MS. MENARD: Yes. I would like  
18 for Mr. Newman to respond to Ms. Widell's  
19 footnote explanation as to why she evaluated the  
20 Project as a whole with the determination of  
21 unreasonable adverse effect applies to the  
22 Project as a whole, whereas Mr. Newman's  
23 conclusion was very specific about two distinct,  
24 individual historic resources. And this

1 footnote is just explaining the differences  
2 between the two.

3 CHAIRMAN HONIGBERG: Why don't  
4 you ask him why he did it the way he did it.

5 BY MS. MENARD:

6 Q. Mr. Newman, why did you choose to evaluate  
7 two individual historic resources and render  
8 an opinion, contrary to Ms. Widell's  
9 approach?

10 A. Sure. There is very little guidance in the  
11 SEC rules about what constitutes the magic  
12 number, where the number of adverse effects  
13 combined create an unreasonable adverse  
14 effect. And in my experience, I apply a test  
15 which I've used for a number of years, and  
16 the test for me is if this project were  
17 shorter, if this project was taking place  
18 just within Deerfield, from one side of  
19 Deerfield to the other, given the number of  
20 adverse effects to dozens of properties  
21 within two historic districts, that's my  
22 conclusion, that the Project would have an  
23 unreasonable adverse effect, given the  
24 proportion of properties affected. Now, I

1 see no reason as a regulator to discount or  
2 disqualify or dilute that conclusion just  
3 because the Project happens to be longer.

4 Q. Thank you.

5 During cross-examination of Ms. Widell  
6 by Mr. Whitley on Day 28 in the afternoon,  
7 starting on Page 31, there was a discussion  
8 about the existing modern intrusion of  
9 utility poles in Deerfield Center as compared  
10 with the modern intrusion of the Project  
11 outside the historic district. Do you agree  
12 with Ms. Widell's assertion that there's a  
13 difference?

14 A. Sorry. Could you repeat that, please?

15 Q. Yes. Ms. Widell was referring to existing  
16 infrastructure within Deerfield Center as a  
17 "modern intrusion." And she viewed the  
18 proposed project similarly as being a modern  
19 intrusion to the district. Do you agree with  
20 that assessment?

21 A. No. In fact, the National Register  
22 nomination for the Deerfield Center Historic  
23 District calls out, it mentions the utility  
24 infrastructure, which is a small-scale

1 distribution network for homes and businesses  
2 in that community. And it calls it "typical"  
3 in the nomination. Effects on historic  
4 districts from infrastructure equipment, or  
5 really from anything, have a lot to do with  
6 viewer expectations, reasonable expectations  
7 of somebody who's passing through or living  
8 there. And it's entirely reasonable to  
9 expect you have small-scale utility poles  
10 running up and down the side of the street  
11 shows the evolution electrification of that  
12 community. Having the community backdropped  
13 by an industrial-scale transmission line,  
14 which as I've shown exists above the tree  
15 canopy, and specifically in the case of the  
16 Deerfield Church sort of looms behind that  
17 historic property, that is not -- you could  
18 not consider that -- or I would not consider  
19 that view to be reasonably expected by  
20 somebody visiting a historic district, that  
21 there would be lattice towers or large  
22 monopoles and sagging wires across the sky in  
23 the district.

24 Q. Thank you.



1           And finally just a few questions  
2           regarding the Programmatic Agreement and  
3           Section 106. You state in your supplemental  
4           testimony the following: "The Applicant has  
5           not completed the Section 106 process,  
6           rendering NHDHR unable to make official  
7           effects findings under the Section 106 as  
8           required under the SEC rules." What rules  
9           are you referring to?

10        A. I'm referring to the SEC rules governing the  
11        determination of unreasonable adverse effect  
12        on historic districts, specifically the  
13        fourth, I think that's Site .14(b). The  
14        rules, if you have them there --

15        Q. Actually, could you take a look at this. And  
16        I've highlighted what I believe -- could you  
17        confirm these are the rules you are referring  
18        to?

19        A. I'm referring to these rules. And  
20        specifically I'm referring to (4) at the  
21        bottom of that page.

22        Q. Okay. Thank you.

23                        Can the Programmatic Agreement take the  
24                        place of the required findings and

1 deliberations in accordance with the (4)?

2 A. In my opinion, under no circumstances could  
3 it take the place of required findings and  
4 determinations.

5 Q. Why not?

6 A. Because there are no findings and  
7 determinations in that PA. Programmatic  
8 agreements and memorandum agreements are  
9 typically formed because you do not have  
10 findings and determinations, and those two  
11 types of agreements set forth the process to  
12 make those findings and determinations in the  
13 future.

14 Q. And you have been involved in -- how many  
15 Section 106 PAs have you drafted for  
16 infrastructure projects in New England?

17 A. Well, several hundred MOAs and at least a  
18 dozen programmatic agreements.

19 Q. So, finally, what do you believe are the  
20 risks to the site selection process of not  
21 having the findings and determinations as  
22 required in the rules?

23 A. Well, I should point out I'm not a lawyer, so  
24 I can't comment specifically on what would

1           happen if the SEC rules are not followed.  
2           But I can say this: The 106 process spelled  
3           out in the PA could result in changes to the  
4           Project, potentially significant changes as  
5           that process is undertaken. I believe that's  
6           the reason the SEC rules call for these  
7           findings and determinations to be in hand so  
8           that they can deliberate on the unreasonable  
9           adverse effects to historic sites.

10    Q.    Thank you, Mr. Newman.

11                           CHAIRMAN HONIGBERG: Off the  
12           record.

13                           (Discussion off the record)

14                           CHAIRMAN HONIGBERG: Mr. Aslin.

15                           MR. ASLIN: Thank you, Mr. Chair.

16                           CROSS-EXAMINATION

17    BY MR. ASLIN:

18    Q.    Good afternoon, Mr. Newman. My name is Chris  
19           Aslin. I've been designated as Counsel for  
20           the Public in this proceeding. I'll ask you  
21           a few more questions to follow up on your  
22           testimony.

23                           To start off, you testified briefly just  
24           now that you looked only at Deerfield for

1           this project. I assume that was part of your  
2           scope of work?

3       A.     Correct.

4       Q.     And you were retained by the Deerfield  
5           Abutters to perform that work; is that  
6           correct?

7       A.     Yes.

8       Q.     Was it your -- well, I'll ask it this way:  
9           You did not identify all the historic sites  
10          in Deerfield, did you, as part of your work?

11      A.     Because of funding, my scope was limited. So  
12          I made the conservative choice to evaluate  
13          the resources and effects to those resources  
14          within a mile of the transmission corridor,  
15          and only those resources that were eligible  
16          or listed in the National Register. There  
17          are certainly a far greater number of  
18          historic resources in Deerfield that this  
19          scope really couldn't contemplate.

20      Q.     Since the time of your initial review, are  
21          you aware of any additional resources that  
22          have been identified as eligible within that  
23          one-mile area in Deerfield?

24      A.     Well, the boundary is the Nottingham Road

1 Historic District. That changing to  
2 encompass on either side of the transmission  
3 line is probably the biggest change. So  
4 they've increased the amount of contributing  
5 historic property to extend on either side of  
6 the proposed project now.

7 Q. Okay. But you're not aware of any other  
8 resources within the one-mile APE that --

9 A. I am not.

10 Q. You testified -- or in your testimony you  
11 state that you used the one-mile APE and  
12 considered it to be a conservative area of  
13 review. Do I understand that to mean that  
14 you believe that a larger APE would be  
15 appropriate?

16 A. Yes, I think it would be appropriate  
17 considering that that project is within the  
18 view of multiple vantage points in that  
19 community which my scope didn't allow me to  
20 evaluate. I certainly visited some of them  
21 informally. But again, as my scope was  
22 funded -- this is an out-of-pocket project by  
23 the Deerfield Abutters.

24 Q. Okay. Much of your testimony deals with the

1 critique of the Applicant's work. And you  
2 assert that the Applicants used a method of  
3 assessment without any regulatory basis, and  
4 then you go on to note specifically the  
5 failure to use a bare earth analysis and the  
6 reliance on leaf-on vegetative screening.  
7 Was that the extent of your critique in terms  
8 of an assessment that was without any  
9 regulatory basis?

10 A. No, I believe I also mentioned the fact that  
11 there was little, if any, attention given to  
12 a major part of the Project, which is the  
13 suspended wires.

14 Q. Okay. So that was part of that initial  
15 critique?

16 A. Correct.

17 Q. Okay. Thank you.

18 With regard to the wires, you note, I  
19 believe it's on Page 4 of your original  
20 report attached to your prefiled testimony,  
21 that the conductors have a prominent visual  
22 element within the historic district. At  
23 what distance or what level of visibility do  
24 the conductors become prominent, in your

1 opinion?

2 A. The conductors?

3 Q. Yeah, the wires.

4 A. Oh, okay. At what distance? I think at a  
5 distance that a reasonably sighted person  
6 would notice them on the landscape. I think  
7 it really depends how the big the wires are,  
8 you know, what your vantage point is from  
9 above, from below, at what level. So,  
10 really, I'd need to make that on case-by-case  
11 scenarios. Certainly within the historic  
12 districts that I looked at, the wires would  
13 be prominently visible in each one of those.

14 Q. Okay. And in regard to the Nottingham Road  
15 District, it's a fairly large district.  
16 Would you agree that the prominence of the  
17 wires is different from different parts of  
18 the district?

19 A. Yes.

20 Q. And is it your opinion that they're prominent  
21 from all places within the district or  
22 certain areas?

23 A. No. Some areas are -- I think the wires  
24 would be more prominently visible in certain

1 areas depending on the topography. In a  
2 couple of simulations that I generated, you  
3 can see where the towers and wires would be  
4 located above the tree canopy. Those are  
5 taken from vantages in the historic district.  
6 You know, I took a couple. I could have  
7 taken six or ten.

8 Q. Okay. Thank you.

9 I want to go back to your calculation of  
10 tower profile. And I believe you testified  
11 earlier to Ms. Menard that your calculation  
12 of a 500-percent increase in tower profile  
13 applied to monopoles. Do I have that right?

14 A. Yes.

15 Q. Can you explain what you mean by "tower  
16 profile"? I'm having a hard time  
17 understanding how you get to 500 percent.

18 A. Sure. It's what you would see silhouetted  
19 against a background. So if a pole is a foot  
20 wide by 10 feet tall, you'd have a profile  
21 of, you know, 10 square feet against the  
22 backdrop. So, similarly, you know, something  
23 3 feet by 10 feet, you'd have 30 feet; so  
24 that would be, you know, 300-percent increase



1 and so on.

2 Q. Is your calculation based on the entirety of  
3 the tower or just the portion that will be  
4 visible above the tree line?

5 A. No, the entire tower.

6 Q. Okay. Thank you.

7 A. Well, when I say "tower," I should say "pole"  
8 because the 500 percent was an approximation  
9 for the poles. The towers, again, I didn't  
10 assess that. But the change in profile would  
11 be in the thousands of percent.

12 Q. Okay. Thank you for that clarification.

13 You found, in your opinion, an  
14 unreasonable effect on both the Nottingham  
15 Road Historic District and the Deerfield  
16 Center Historic District. And you state with  
17 regard to Nottingham Road that, make sure I  
18 get this right, the proposed transmission  
19 line will be clearly and prominently visible  
20 from multiple locations within the Deerfield  
21 Center and Nottingham Road Historic  
22 Districts. How did you make that  
23 determination? Did you go to multiple  
24 locations in each district and do visual

1           simulations or --

2       A.    I did.  I spent roughly 12 hours traveling in  
3           both of these districts.  And you can see the  
4           existing poles.  If you look carefully,  
5           they're just about even with the tree canopy,  
6           but they can be made out if you're really  
7           looking.  And so you could clearly see where  
8           the new poles would be.  And then scaling off  
9           the existing poles, you could determine the  
10          height of the new poles to inform the  
11          simulation.  The data is there.  For example,  
12          behind the church we know the existing one is  
13          83; we know the proposed is 120.  So it's  
14          just simply scaling off with a ruler -- low  
15          tech, but effective -- scaling off with a  
16          ruler to determine the new height.

17       Q.   And is that how you came to the blue lines in  
18           your figures showing the proposed height of  
19           the line?

20       A.   Yeah.  The blue line or the yellow line would  
21           be the tops of the towers.  And, you know,  
22           those are conservative estimates.  In some  
23           instances, you know, depending on where you  
24           look, that line might be higher.  For

1           example, in the area just directly south of  
2           Parade Road, the towers are 73, 67 and  
3           53 percent higher. A little further east,  
4           the towers are, you know, 37, 36 and  
5           40 percent higher. So it depends, again,  
6           where you are on that road exactly and what  
7           the topography is.

8       Q.    Okay. Would you agree that the topography of  
9           the right-of-way is not perfectly flat and  
10          that the actual heights will vary somewhat  
11          rather than being a straight line?

12       A.    It will, yes.

13       Q.    So this is an approximation, and you said a  
14          conservative one?

15       A.    Right.

16       Q.    Thank you.

17                    After your testimony was filed, the  
18           Applicant's consultants submitted effects  
19           tables for these two districts to the New  
20           Hampshire DHR. Were you aware of that?

21       A.    Yes, I'm aware that they were submitted,  
22          though I haven't seen them myself. A lot of  
23          this is kind of late-breaking for me.

24       Q.    So you haven't reviewed those at this point?

1 A. No. And it's my understanding neither has  
2 DHR. So those were proposed effect findings.

3 Q. Yes, these are recommendations by the  
4 consultants for the Applicant.

5 Would it surprise you to know that the  
6 Applicant's consultants found no adverse  
7 effects for both of these districts in the  
8 effects table?

9 A. No. I think that was the original -- I saw a  
10 preliminary table and I saw those effects.  
11 They won't stand the scrutiny of Section 106.  
12 They will be changed.

13 Q. All right. Thank you. I have no further  
14 questions.

15 CHAIRMAN HONIGBERG: There were  
16 no other intervenor groups that indicated they  
17 had questions for Mr. Newman.

18 Mr. Walker.

19 CROSS-EXAMINATION

20 BY MR. WALKER:

21 Q. Good afternoon, Mr. Newman.

22 A. Good afternoon, sir.

23 Q. My name's Jeremy Walker. We met at your  
24 technical session.

1 A. We did.

2 Q. I'm counsel for the Applicant. Good to see  
3 you again.

4 A. Good to see you.

5 Q. I just want to be clear. You are not and you  
6 did not offer any opinion with regard to  
7 below-ground resources in this case; right?

8 A. Correct.

9 Q. I want to ask you a little bit about your  
10 background. And I know you spent about 15  
11 years with the DOT in Vermont; correct?

12 A. Right.

13 Q. In fact, the majority of your career has been  
14 with the DOT?

15 A. About half.

16 Q. And when you reference in your prefiled  
17 testimony that you worked on 2200 projects, I  
18 think you told me at your tech session about  
19 75 percent of those were highway  
20 improvements, about 25 percent were rail, and  
21 another five percent -- is that about right?

22 A. Correct.

23 Q. And most of those projects did not involve  
24 high-voltage transmission corridors; right?

1 A. Well, utilities lines, but a few high-voltage  
2 lines.

3 Q. And since you started 106 Associates, you  
4 have not done any assessment of a  
5 high-voltage transmission line; correct?

6 A. That's correct.

7 Q. And you also served as the treasurer of the  
8 Isle La Motte Fire Department until the  
9 summer; correct?

10 A. Right.

11 Q. I want to ask you a little bit about your  
12 methodology, and then I'm going to ask you  
13 your opinions.

14 In this case, you mentioned that you  
15 used the one-mile APE, and you found two  
16 resources, historic resources, in Deerfield  
17 within that one-mile APE; right?

18 A. Yes. Two concentrations of National Register  
19 properties, yes.

20 Q. And you were looking at properties that were  
21 eligible for the National Register; right?

22 A. Or listed.

23 Q. Or listed.

24 A. Yeah.

1 Q. And those are the only properties, historic  
2 properties, you identified in Deerfield?

3 A. Yes.

4 Q. Did you review, prior to providing your  
5 prefiled testimony, the analysis that was  
6 done by the Applicant's consultants,  
7 Preservation Company, with regard to  
8 Deerfield?

9 A. Yes.

10 Q. You reviewed the assessments both of the  
11 Deerfield Historic Center District?

12 A. I read their assessment of the Center  
13 District. And I believe I saw their  
14 recommendations for eligibility of the  
15 Nottingham Road District.

16 Q. And did you review the boundaries that they  
17 recommended for the Nottingham Road District?

18 A. Yeah. There was, I think, a KMZ Google file  
19 that had some recommended boundaries.

20 Q. And the boundary that they recommended for  
21 Nottingham Road actually was bisected by the  
22 right-of-way; correct?

23 A. Their recommendation, yes.

24 Q. It was broader than the boundary that you

1 recommended?

2 A. Correct. Without a determination by DHR, I  
3 took a conservative approach.

4 Q. And did you read the 15 to 20 pages of  
5 analysis and photographs and photo  
6 simulations that accompanied their  
7 assessment?

8 A. I read through it, yes.

9 Q. Okay. But I heard you say earlier that you  
10 had read the effects tables they provided.

11 A. Not the recent ones. I think they've had a  
12 couple of iterations of those tables.

13 Q. And for each of the two historic districts  
14 that you've focused on, you've identified --  
15 or you've opined that there will be an  
16 unreasonable adverse effect for each of  
17 those; correct?

18 A. That's my opinion, yeah.

19 Q. And you base that on your photo simulations  
20 that you provided or your visual simulations.  
21 But you also said in your prefiled testimony,  
22 "The Applicant has not availed themselves of  
23 readily available tools (undergrounding) to  
24 mitigate the --"



1 A. Right. Correct.

2 Q. Did I hear you say earlier that you thought  
3 there were dozens of adverse effects within  
4 the town of Deerfield?

5 A. No.

6 Q. Okay. I want to get to something that  
7 Attorney Aslin asked you about, your  
8 criticism of the methodology by Ms. Widell  
9 and the Applicants. And in your prefiled  
10 testimony you're critical that they failed to  
11 follow the SEC rules requiring a bare earth  
12 visual impact analysis. Do you recall that?

13 A. Correct. Yeah.

14 Q. But that requirement for a bare earth  
15 analysis, and you cite to the rule -- it's  
16 SEC 301.05(b)(1) -- that deals with the  
17 effect on aesthetics; correct?

18 A. Correct.

19 Q. It's not required for the analysis on the  
20 effects on historic sites.

21 A. Are you asking me or are you --

22 Q. I'm asking you that. Do you agree with me?

23 A. No.

24 MR. WALKER: Okay. Dawn, if you

1           could pull up SEC 301.05(b)(1), please.

2   BY MR. WALKER:

3   Q.   And you see the requirement of the bare  
4       ground analysis is with regard to a visual  
5       impact assessment; correct?

6   A.   Yes.

7   Q.   And are you aware that in this case the  
8       Applicants did provide a visual impact  
9       assessment that included a bare ground  
10      analysis?

11  A.   I'm not aware they did that in Deerfield, no.

12  Q.   So you have not reviewed that impact analysis  
13      for Deerfield?

14  A.   If they did a bare earth analysis in  
15      Deerfield, I did not see it.

16  Q.   Do you think that would be important to  
17      review for purposes of your analysis?

18  A.   Yeah.

19  Q.   Okay.  And you're aware that there is an  
20      entirely separate section in the rules  
21      dealing with the effect on historic sites.

22                           MR. WALKER:  And if you could  
23      pull up 301.06, please, Dawn.

24  BY MR. WALKER:

1 Q. Mr. Newman, I assume you've seen this rule  
2 with regard to what the Applicant has to  
3 provide with regard to effects on historic  
4 sites?

5 A. Yes.

6 Q. You reviewed that prior to preparing your  
7 opinion in this case?

8 A. Yes.

9 Q. You would agree with me that in there, there  
10 is no reference to a bare ground assessment  
11 in this section; right?

12 A. Correct.

13 Q. And you mentioned earlier that 301.14(b)  
14 which provides the criteria for determining  
15 whether the Project will have an unreasonable  
16 adverse effect -- and I know you have that  
17 before you. Is there anyplace in that rule  
18 that requires the Applicant to provide a bare  
19 ground analysis when determining the effects  
20 on historic sites?

21 A. No. But you did not show all of 301.05. You  
22 left out the part (3) referencing historical  
23 and cultural features of the landscape  
24 required -- inventory of those features

1 required when undertaking effects on  
2 aesthetics.

3 Q. Right, but that's the section on visual  
4 impact analysis. And I will represent to you  
5 that the Applicant has provided that impact  
6 analysis in this case, visual impact  
7 analysis. But it's a different section that  
8 deals with aesthetics. The section that  
9 we're talking about is the section on  
10 historic sites. Do you agree with me?

11 A. No, I don't. Historic and cultural sites are  
12 mentioned in the effects on aesthetics.

13 Q. And again, you have not reviewed the photo  
14 simulations and the impact analysis for the  
15 town of Deerfield that the Applicant has  
16 provided in this case.

17 A. Yes, I've seen some. I have one right in  
18 front of me that looks, for example, looks at  
19 the Deerfield Center Church.

20 Q. Have you reviewed any others?

21 A. I have. I've seen others. I don't find them  
22 to be compelling. I think this is an example  
23 of one where, instead of looking at the  
24 church, it looks down the road, I mean, to my

1 mind, purposely minimizing the impact of the  
2 poles in the historic community.

3 Q. Okay. We'll put some of those up to talk  
4 about them.

5 Before you rendered your opinion in this  
6 matter, had you gone back to look at any  
7 decisions by the SEC since these rules became  
8 in effect in 2015?

9 A. I did an online search. I couldn't find any  
10 deliberations on "unreasonable adverse  
11 effects to historic sites" in what I looked  
12 at.

13 Q. Have you found any decision in which the Site  
14 Evaluation Committee required a bare ground  
15 analysis when considering the effect on  
16 historic sites?

17 A. I don't know if one exists or not.

18 Q. Okay. Is it your position that the SEC must  
19 not consider trees and other screening  
20 vegetation in assessing effects on historic  
21 sites?

22 A. No.

23 Q. That's not your position?

24 A. No. It's simply my position that they need

1 to take into account the ephemeral nature of  
2 vegetation and not count on it as mitigation.

3 Q. In this case, you did not provide a visual  
4 impact analysis, and I don't think you're  
5 suggesting that you have, for the town of  
6 Deerfield.

7 A. A visual impact analysis, no.

8 Q. Right.

9 A. I mean, there are visual effects. Certainly  
10 visual effects are part of Section 106. And  
11 visual effects to historic sites are part of  
12 effects on aesthetics in Site 301.05.

13 Q. Right. And the rules by the SEC also define  
14 what photo simulations are for purposes of  
15 the SEC review.

16 A. Right.

17 Q. Have you seen that definition?

18 A. Yes.

19 Q. And it requires professionally accepted  
20 software that illustrates visual effects;  
21 right?

22 A. I would have to see the actual rule to agree  
23 with you or not. Do you have a --

24 MR. WALKER: Dawn, if you could

1 pull up 102.35, please, which is the definition  
2 of "photo simulations."

3 BY MR. WALKER:

4 Q. All right. Well, Mr. Newman, this is a  
5 definition that requires photo simulations in  
6 this case to be, for visual impact analysis,  
7 requires professionally-accepted software.  
8 That's not what you used to --

9 A. I haven't seen that reference, sir. Do you  
10 have it or --

11 Q. We'll pull it up.

12 Do you have any experience or expertise  
13 preparing photo simulations using  
14 professional software that's typically used  
15 for a visual impact analysis?

16 A. Sure. I've done over 2,000 Section 106  
17 reviews. Many of them I've used relied on  
18 other staff members to produce  
19 visualizations.

20 Q. Do you personally have an opinion -- I'm  
21 sorry. Do you personally have experience  
22 preparing those?

23 A. Sure.

24 Q. Okay.

1 MR. WALKER: Any luck, Dawn?

2 MS. GAGNON: I'm looking.

3 BY MR. WALKER:

4 Q. We'll move on, and I'll get back to that, Mr.  
5 Newman.

6 Deerfield Center. I asked you about the  
7 effects tables. But I want to look at your  
8 analysis. And in your analysis of the  
9 Deerfield Historic District, you included  
10 only one photograph, and that's Figure 4  
11 which is attached to your prefiled testimony.  
12 Sorry, Mr. Newman. I want to...

13 A. Figure 4, yeah.

14 MR. WALKER: Dawn, can you pull  
15 up that Figure 4, please, Mr. Newman's prefiled  
16 testimony, Figure 4?

17 BY MR. WALKER:

18 Q. You have that in front of you on the screen,  
19 Mr. Newman?

20 A. Yes.

21 Q. Now, you drew a bold line in your prefiled.  
22 It's a yellow bold line across. That is what  
23 you are saying is showing the height of the  
24 new infrastructure?



1 A. That's correct.

2 Q. But that's not an actual photo simulation of  
3 how the structures are going to appear from  
4 that particular vantage point, is it?

5 A. No. It shows the -- it shows exactly what I  
6 say it shows, which is the height of the  
7 equipment.

8 Q. Well, where -- how far is any of the  
9 structures or conductors from where you took  
10 that photo?

11 A. They're about 30 feet behind the property  
12 line of the church.

13 Q. Did you use any -- I heard you say you did  
14 not consider topography as to where the  
15 structures would be, and the height based on  
16 topography; correct?

17 A. I'm not sure what you mean by that exactly.

18 Q. Well, is this -- where did you measure on  
19 this picture to draw your line? Did you  
20 measure right in the foreground?

21 A. To get that line?

22 Q. Yeah.

23 A. I measured the height of the pole and then  
24 scaled it off with a ruler showing the

1           increase to 120 feet.

2   Q.   From the ground right at that spot?

3   A.   Yeah.  In actual fact, that line is probably  
4       a little too low, because if you took into  
5       account the entire pole which drops down  
6       below that horizon and that pavement a little  
7       bit, that line probably would be above the  
8       addition to the church on the right.

9                 But my lines, I purposely put them low  
10                in all cases just to be conservative and make  
11                sure there wouldn't be, you know, some sense  
12                that I was exaggerating the height.

13  Q.   Let me just --

14                         MR. WALKER:  Can I approach, Mr.  
15                         Chairman?

16  BY MR. WALKER:

17  Q.   This is Site Rule 102.35.  I want to go back  
18       to that definition of "photo simulation."

19                         CHAIRMAN HONIGBERG:  Do you want  
20       to put it on ELMO?

21                         MR. WALKER:  Yeah, maybe.

22  BY MR. WALKER:

23  Q.   Have you had a chance to look at it?

24  A.   No.

1 (Witness reviews document.).

2 BY MR. WALKER:

3 Q. Let me just jump back to that question. Are  
4 you suggesting that these photo simulations  
5 that you provided meet that standard?

6 A. They simply show the height of the equipment.  
7 If I was going to superimpose a pole or a  
8 lattice tower on there, that would require  
9 use of more and better technology. But  
10 simply to show the height of a line, it's a  
11 fairly simple endeavor. You don't need --  
12 there's not a lot of software required for  
13 that.

14 Secondly, we have to keep in mind that I  
15 think this project is one and a half billion  
16 dollars, and the Deerfield Abutters are  
17 having to pay for my evaluation out of  
18 pocket. So I think that there should be  
19 accommodation of two things: One is the fact  
20 that they have limited resources in order to  
21 fund me; and the second thing is all of this  
22 probably should have been done by the  
23 Applicant by now because of the Section 106  
24 information that I referred to earlier that

1           should be done is not done. And if it were  
2           done, they wouldn't be counting on me to do  
3           this. This would have already been done by  
4           the Applicant.

5    Q.    Mr. Newman, did you review the requirements  
6           for what photo simulations must include --

7    A.    Yes.

8    Q.    -- in the SEC rules?

9    A.    Yeah.

10   Q.    You did.

11                           MR. WALKER: So, Dawn, could you  
12           pull up 301.05, please? Do you have that?

13   BY MR. WALKER:

14   Q.    There are certain things the rules require,  
15           Mr. Newman, that I'll represent to you, in  
16           other words, including what focal length  
17           these were taken at, the distance. It seems  
18           to me that these photo simulations are not  
19           that. You did not include all that  
20           information to provide an accurate depiction  
21           of what the line or the structure would look  
22           like when you provided these pictures. Would  
23           you agree with me?

24   A.    I would agree, yes. And that should have

1           been prepared by the Applicant, as required  
2           under the rules, so that the community of  
3           Deerfield would have had access to it.

4    Q.    Okay.  And let me show you the photographs  
5           that were provided not only by the Applicant,  
6           but by the visual impact experts from Counsel  
7           for the Public, as well as other experts in  
8           this case.  Have you reviewed those?

9    A.    No.

10                               MR. WALKER:  Dawn, if you could  
11           pull up APP68180, please.

12  BY MR. WALKER:

13    Q.    Now, this is a -- these are photographs taken  
14           of Church Street in Deerfield.  These are not  
15           photo simulations but photographs that were  
16           taken.  And you would agree with me that  
17           these photographs show the various  
18           distribution lines within the town and are  
19           visible within the town?

20    A.    Yes.

21                               MR. WALKER:  And Dawn, if you  
22           could also pull up 68188, which is the photo of  
23           the road adjacent to the town hall.

24  BY MR. WALKER:

1 Q. Again, various distribution poles and utility  
2 lines are visible?

3 A. Yes.

4 Q. And in your prefiled testimony you talk about  
5 the Project and the impact on Deerfield,  
6 noting that the new infrastructure would be  
7 jarring and offend the expectations of the  
8 typical viewer within the district  
9 boundaries.

10 A. Correct.

11 Q. You also say that the visual intrusion would  
12 extend east and west as far as the viewer  
13 could see. But you note that there are other  
14 distribution lines and poles that are visible  
15 within the town. And other than providing  
16 this one photograph, this Figure 4, you don't  
17 present any other photo simulations. So I  
18 want to ask you to look at the ones that the  
19 other experts, the photo simulation experts  
20 have provided.

21 A. Like the one I'm looking at now?

22 Q. No, that's not a photo simulation. That's an  
23 existing picture of Deerfield.

24 A. All right.

1 MR. WALKER: Dawn, if you could  
2 pull up 68192, please.

3 A. What is the arrow pointing to?

4 MR. WALKER: If you could  
5 highlight this picture.

6 BY MR. WALKER:

7 Q. This is a photo simulation. I'll represent  
8 to you, Mr. Newman, this was presented by the  
9 Applicant's visual expert.

10 CHAIRMAN HONIGBERG: Off the  
11 record.

12 (Discussion off the record)

13 MR. WALKER: Dawn, if you could  
14 pull it back a little bit so the description is  
15 showing below.

16 BY MR. WALKER:

17 Q. I'll give you a minute to look at this, Mr.  
18 Newman.

19 (Witness reviews photograph.)

20 Q. This is the photo simulation provided by the  
21 Applicant's consultant. And this is a view  
22 that you would see driving through the  
23 district; correct?

24 A. Yes.

1 Q. And you see where that black arrow shows?

2 A. I see it.

3 Q. Okay. And you'll see that the note that the  
4 new structure -- that black arrow is pointing  
5 to where the new structure will be; correct?  
6 And it's even shown in --

7 A. That's what it says.

8 Q. Let me show you a similar viewpoint from the  
9 expert for Counsel for the Public.

10 MR. WALKER: And Dawn, if you  
11 could pull up 68193, please.

12 BY MR. WALKER:

13 Q. This is a different vantage point in leaf-on  
14 conditions. Do you see that?

15 A. I see it.

16 Q. Had you seen this before you rendered your  
17 opinion?

18 A. I saw the previous one.

19 Q. Okay.

20 A. Yeah.

21 MR. WALKER: And then the last  
22 one, Dawn, if you could pull up 68194.

23 BY MR. WALKER:

24 Q. And this was prepared by the visual expert



1           presented by the Society for the Protection  
2           of New Hampshire Forests. See that?

3    A.    Right.

4    Q.    Is it your position that these photographs  
5           and these simulations show that the new  
6           infrastructure would be jarring and offend  
7           the expectations of typical viewers in  
8           Deerfield?

9    A.    Well, this one certainly does. The other two  
10           don't. But I wouldn't accept either of the  
11           other two photo simulations if they came to  
12           my office.

13   Q.    You wouldn't accept them even though these  
14           are two experts that --

15   A.    Doesn't matter --

16                   (Court Reporter interrupts.)

17   Q.    You wouldn't accept these other two --

18   A.    I would not have accepted either of the other  
19           two photo simulations as indications of the  
20           effects, no.

21                   CHAIRMAN HONIGBERG: Off the  
22           record.

23                   (Discussion off the record)

24   BY MR. WALKER:

1 Q. Did I hear you earlier testify that the wires  
2 will be prominently visible throughout the  
3 district?

4 A. Not sure I said those exact words, but I said  
5 they would be prominently visible from  
6 multiple vantage points within the district.

7 MR. WALKER: Dawn, if you could  
8 pull up the last one I showed, which was 68193,  
9 please.

10 BY MR. WALKER:

11 Q. Now, this is for the Counsel for the Public's  
12 expert. Is it your opinion that the wires  
13 from the proposed project would be  
14 prominently visible from this vantage point?

15 A. No, but that's one of the simulations I  
16 wouldn't accept.

17 Q. Do you agree that from this vantage point the  
18 distribution wires are more prominent?

19 A. Are you saying the wires -- which wires are  
20 you referring to?

21 Q. The distribution, the local utility poles.

22 A. Are they more prominent than the wires --

23 Q. In this viewpoint.

24 A. -- in the background? Yes.

1 Q. I want to turn to your evaluation of the  
2 Nottingham Road District. Now, in your  
3 original assessment, you recommended that  
4 this district was potentially eligible for  
5 listing; correct?

6 A. Correct.

7 Q. And the Applicants also noted that,  
8 correct --

9 A. Yes.

10 Q. -- in their assessment?

11 And I asked you this earlier. The  
12 Applicants actually recommended a broader  
13 boundary than you did in their original  
14 assessment; correct?

15 A. I wasn't recommending a boundary.

16 Q. Well, you did provide a boundary when you  
17 made your opinion. When you rendered your  
18 opinion, you provided a boundary; correct?

19 A. Yeah, a conservative approach to effects on  
20 the district. I mean, that's a boundary  
21 that's straight, delineated, would not be a  
22 National Register boundary. So I just took a  
23 conservative approach until the boundaries  
24 were determined and approved by DHR. I think

1           everybody was just proposing boundaries;  
2           right?

3       Q.    But I read your prefiled testimony to say you  
4           submitted your prefiled testimony, then you  
5           submitted you're supplemental testimony.  And  
6           you said in your supplemental testimony that  
7           it's even more severe now that the  
8           right-of-way bisects the boundaries  
9           determined by the DHR.

10       A.   Correct.

11       Q.    But did you read the original analysis by the  
12           Applicants' consultants, because they already  
13           had boundaries that were bisected; correct?

14       A.    Yeah, they were saying there was no adverse  
15           effect.

16       Q.    Right.  But they had it pictured as bisecting  
17           the district.

18       A.    Yes.  Sure.

19       Q.    So, for this district, the Nottingham Road  
20           District, you also submitted two photos.

21                               MR. WALKER:  Dawn, if you could  
22           pull up Figure 5, please, from Mr. Newman's  
23           prefiled testimony on Page 16 of the PDF.

24       BY MR. WALKER:

1 Q. And that bold line, Mr. Newman, you've  
2 explained that represents the height, or what  
3 you claim represents the height of the new  
4 equipment?

5 A. Right.

6 Q. Do you know how many structures will be  
7 visible from this particular photo?

8 A. Give me a second. That's from 15?

9 (Pause)

10 A. About five.

11 Q. Five?

12 A. Yup.

13 Q. Do you know how far away those structures  
14 will be from where this picture was taken?

15 A. About a third of a kilometer.

16 Q. Where are you getting that from?

17 A. From the scale on my map.

18 Q. And you note in this figure that the existing  
19 power pole is barely visible. Where is that  
20 in your pictures?

21 A. It's just right of center. It's about  
22 even with -- you see there's kind of a trough  
23 that goes down just right of center? It's in  
24 the middle of that.

1 Q. Okay. And you're saying that that's a third  
2 of a kilometer away?

3 A. That's what the map scale indicates, yeah.

4 Q. I want to show you a picture from the effects  
5 tables. And I realize you haven't reviewed  
6 the effects tables of that same location.

7 But before I do that, there's a house on  
8 the right side of your picture.

9 A. Right.

10 Q. Do you know when that house was built?

11 A. I don't. I'm not claiming that building is  
12 historic.

13 Q. I'll represent to you that that house was  
14 built in 2007.

15 A. Yeah, makes sense.

16 Q. If that's accurate, that represents what you  
17 would call a "modern intrusion", is that  
18 right, into the historic district?

19 A. No.

20 Q. Why not?

21 A. Because it's a single-family-house-sized  
22 building that I consider to be more or less  
23 compatible with the qualities of the  
24 district.

1                   MR. WALKER: Dawn, if you could  
2                   pull up 68175, please.

3 BY MR. WALKER:

4 Q.     And actually, this is a different photo,  
5           obviously, but it's from the Nottingham Road  
6           Historic District. And these are existing  
7           conditions pictures. And in this one on the  
8           bottom, I'll let you take a minute to look at  
9           that.

10                   MR. WALKER: And Dawn, if you  
11                   could include the description, please.

12 BY MR. WALKER:

13 Q.     That one is showing the black arrow is where  
14           the existing monopole structure is visible.  
15           Do you see that?

16 A.     I do.

17 Q.     Is that what you were referring to in the  
18           earlier picture, that structure?

19 A.     That appears to be the same one. I mean, I  
20           can't be a hundred percent certain. It's  
21           from a different angle and there's several  
22           poles in that area.

23 Q.     And that's the corridor where the new project  
24           would go; correct?

1 A. Right.

2 Q. And that's that same blue house I referred to  
3 as a "modern intrusion" and that you just  
4 disagreed --

5 A. You referred to --

6 Q. I understand. But this is the same house.  
7 This is the same picture --

8 A. Yes.

9 MR. WALKER: Dawn, if you could  
10 back up to the photo above it, please.

11 BY MR. WALKER:

12 Q. And this is an existing photograph of the  
13 Nottingham Road District. Do you see that?

14 A. Yes.

15 Q. And once again there's views of these  
16 distribution lines, the local utility lines.  
17 Do you see that?

18 A. I do.

19 Q. Would you consider that a modern intrusion --

20 A. No.

21 Q. -- that affects the view? No?

22 A. No, I would not. These lines and  
23 distribution networks, just as they are  
24 called out in the National Register



1 nomination in the Deerfield Center District,  
2 are typical and expected.

3 Q. Mr. Newman, throughout your prefiled  
4 testimony and your supplemental prefiled  
5 testimony you support your finding of  
6 unreasonable adverse effect by noting, again,  
7 that the Applicant "has not availed itself of  
8 readily available tools (undergrounding) to  
9 mitigate the unreasonable adverse effects."

10 A. Yeah, that was one of the things, yes.

11 Q. And you're basically saying, if they can bury  
12 it elsewhere, they should be burying it in  
13 Deerfield; correct?

14 A. Not quite what I said.

15 Q. Well, you note that -- and I'm referring to  
16 your prefiled testimony. It says, "The  
17 Applicant has not availed themselves of  
18 readily available tools (undergrounding) to  
19 mitigate the unreasonable adverse effect  
20 which they plan to deploy elsewhere in the  
21 project, specifically in the White Mountain  
22 area." So is that what you're saying,  
23 because they did it in the White Mountain  
24 area, they should be doing it in Deerfield?

1 A. I'm saying it should have been considered and  
2 evaluated.

3 Q. Did you conduct any type of feasibility  
4 analysis for the burying in Deerfield? You  
5 didn't do that; right?

6 A. No. No.

7 Q. You made some comments today about the  
8 requirement that the Committee consider the  
9 106 findings; correct?

10 A. Yes.

11 Q. And you commented that the Programmatic  
12 Agreement -- well, have you reviewed the  
13 Programmatic Agreement?

14 A. I have.

15 Q. And have you reviewed prior decisions by the  
16 SEC with regard to the status of the  
17 Programmatic Agreement and how that  
18 implicates the SEC --

19 A. I'm not sure what your question is. I'm  
20 sorry.

21 Q. Well, have you reviewed any prior cases that  
22 the SEC has ruled on and determined how the  
23 SEC relies on the 106 process in considering  
24 whether to issue a certificate?

1 A. I've heard testimony in this process about  
2 that. I've heard that it has been relied on.  
3 My understanding is the rules were changed in  
4 2015 and that there is sort of a lack of  
5 jurisprudence on that issue right now.

6 Q. Do you recall which testimony that was?

7 A. Whose?

8 Q. Right.

9 A. Cherilyn Widell. I'm sorry I can't tell you  
10 the date. But when she was asked about this  
11 same issue, you know, why isn't the 106 done,  
12 she said, "Well, they'll rely on the 106  
13 Programmatic Agreement."

14 Q. Let me ask you this: Have you reviewed the  
15 DHR's August 25th, 2017 status summary to the  
16 members of this Committee?

17 A. No.

18 Q. I'll represent to you that it was drafted by  
19 Dr. Boisvert. Do you know who Dr. Boisvert  
20 is, Dr. Richard Boisvert?

21 A. I do.

22 Q. He's deputy director of the DHR; correct?

23 A. Hmm-hmm. Yes.

24 Q. Have you worked with the DHR before?

1 A. Many times.

2 Q. And I take it you would -- his opinion on  
3 this matter would be important to you?

4 A. Yes.

5 MR. WALKER: Let me ask, Dawn, if  
6 you could pull up that status summary, please.  
7 And this is, again, the summary that Dr.  
8 Boisvert provided to the SEC. And if you could  
9 highlight that 106 section.

10 BY MR. WALKER:

11 Q. And Mr. Newman, I'm going to give you a  
12 chance to take a quick look at that, okay.

13 (Witness reviews document.)

14 A. Okay. I've read it.

15 Q. Okay. Particularly in that last paragraph  
16 where he's noting that the DHR would  
17 appreciate the opportunity to continue  
18 working with the SEC to specify certificate  
19 conditions, assuming such conditions, do you  
20 agree that the SEC could take comfort in that  
21 106 process and the Programmatic Agreement  
22 and the DHR's continued involvement?

23 A. I'm not sure what you mean by "take comfort."

24 Q. Do you think the SEC could take comfort

1 knowing that the DHR, as Mr. Boisvert noted  
2 here, will be involved to ensure that any  
3 conditions will be implemented and to resolve  
4 adverse effects?

5 A. I said his opinion was important. I mean, I  
6 see what he's doing here. If the SEC  
7 approves the Project prior to the 106 being  
8 done, we'd appreciate the opportunity to  
9 continue to work on it. Yeah.

10 Q. And he's also saying that there be conditions  
11 that the DHR would remain, continue to remain  
12 involved.

13 A. Yeah, they would have to. The Programmatic  
14 Agreement would require their continued  
15 involvement.

16 Q. And that would provide some level of  
17 assurance, that the DHR is going to work to  
18 ensure that any adverse effects are resolved.

19 A. See, I'm not sure on the "taking comfort" and  
20 "some assurance." I really don't know how  
21 you mean those terms. I mean, the rule seems  
22 clear to me that findings and  
23 determinations -- they use the word "shall."  
24 They "shall" have DHR's findings and

1           determinations to inform that deliberation.

2           So how that's mitigated by the SEC taking  
3           comfort or finding some assurance, I'm not  
4           sure what to make of that. I'm not sure how  
5           to respond to that.

6    Q.    Okay. Let me just ask you a couple more  
7           questions, Mr. Newman, on that same issue  
8           with regard to the Programmatic Agreement. I  
9           want to -- I asked you if you looked at prior  
10          decisions by the SEC. I don't think you have  
11          with regard to this particular issue and the  
12          use of the Programmatic Agreement. I want to  
13          refer you to the Groton Wind Project. Are  
14          you aware of that project?

15   A.    No.

16                               MR. WALKER: Dawn, if you could  
17           pull up Exhibit 218, please, Applicant's  
18           Exhibit 218.

19   BY MR. WALKER:

20   Q.    And I'll represent to you that this was a  
21          project that was before this SEC back in  
22          2010, and there was a certificate issued by  
23          this Committee.

24                               MR. WALKER: And if you could

1 pull up Page 83263, please, Dawn.

2 BY MR. WALKER:

3 Q. And if you look at the very first paragraph,  
4 that sentence that begins with "However..."  
5 I'll let you look at that, okay.

6 (Witness reviews document.)

7 A. Hmm-hmm. Yeah.

8 Q. Also I want to continue on.

9 MR. WALKER: Dawn, if you could  
10 pull up 83295, please.

11 A. Was I supposed to have read that last bit?

12 Q. I'm sorry. I thought you had.

13 A. No. It was only up there for about a second.

14 Q. All right. Let me just read to you what it  
15 says. It says, "However, review under  
16 Section 106 of the National Historic  
17 Preservation Act has a direct bearing on our  
18 decision whether construction and operation  
19 of the Facility will have an unreasonable  
20 adverse effect on historic sites in the  
21 region." That was that prior page.

22 Now I'm jumping to this page, Mr.  
23 Newman. So in the past -- you've had a  
24 chance to read that Mr. Newman?

1 A. Yes.

2 Q. In the past, the SEC has made decisions while  
3 the 106 process is ongoing. Do you see that?

4 A. If I could just have another minute.

5 Q. Sure.

6 (Witness reviews document.)

7 A. I see it, but I don't see that it says what  
8 you're saying. I'm not sure, unless it's  
9 stated elsewhere. It says there will be  
10 continued involvement of the DHR through the  
11 construction of the facility to make sure  
12 that impacts are not unreasonably adverse.

13 Q. Well, you saw that in that prior exhibit that  
14 I showed you --

15 MS. MENARD: Excuse me, Mr.  
16 Chairman. I'd like to object. It seems that  
17 Mr. Newman is uncomfortable just grabbing a  
18 little snip-it of an overall conclusion. And  
19 I'm sensing that he doesn't have enough  
20 information in order to be rendering or  
21 answering the question being asked.

22 CHAIRMAN HONIGBERG: You may well  
23 be right. Mr. Walker I think will have to work  
24 through it with Mr. Newman so that the two of



1           them get on the same page. I think Mr. Walker  
2           is prepared to do that.

3 BY MR. WALKER:

4 Q.   Mr. Newman, I'm asking now, having seen it --  
5       and I realize you've not seen the whole  
6       opinion, and I understand that. But based on  
7       what you have seen, it's clear that the SEC  
8       has made its decisions in past dockets while  
9       the 106 process is ongoing; correct?

10 A.   I mean, do you have anything that says that?  
11       Because this is -- you know, you could  
12       understand that from this. But I could  
13       simply understand, as in most projects, that  
14       106 findings and determinations aren't made  
15       in advance. But the role of the DHR  
16       continues through construction on most of  
17       these projects. So I don't -- do you have  
18       anything that states it categorically?

19 Q.   That's fair enough. If you're not getting --  
20       have you worked with the SEC? You have not  
21       testified before this SEC before?

22 A.   No, I have not.

23 Q.   And you've explained you haven't reviewed  
24       prior decisions by this Committee on this

1 topic; right?

2 A. No, but I am an expert in 106, and that's  
3 what this is about, seems to me a lot of it.

4 Q. This is a decision by the SEC. It's not a  
5 decision in the 106 process. It's a decision  
6 specific to this SEC.

7 MR. WALKER: Nothing further.

8 Thank you.

9 CHAIRMAN HONIGBERG: Members of  
10 the Committee. Ms. Weathersby.

11 QUESTIONS BY SUBCOMMITTEE MEMBERS AND SEC COUNSEL:

12 BY MS. WEATHERSBY:

13 Q. Good afternoon. Just a couple questions.

14 The Nottingham Road Historic District  
15 that's -- has an application been filed yet  
16 for a National Register listing?

17 A. I don't believe there's an actual nomination  
18 in place. The DHR determined that the  
19 district is eligible based on the boundary  
20 that's on the previous exhibit.

21 Q. And if the Northern Pass Transmission Project  
22 is built, will that endanger its eligibility?

23 A. I think it would remain eligible for the  
24 National Register.

1 Q. Okay. We've had a couple visual folks here  
2 before us that have suggested a couple of  
3 ways that impacts can be reduced, and I'm  
4 just curious as to your opinion as to things  
5 called "non-specular conductors," non-  
6 reflective wires, different finishes on the  
7 poles, non-glass insulators, those sort of  
8 things. In your experience, do any of those  
9 help reduce the impacts on historic  
10 properties?

11 A. I don't think those would necessarily have a  
12 great impact in this case with the equipment  
13 above the tree line.

14 Q. Okay. My last question is, did you in any  
15 way assess any properties in Deerfield, as  
16 the line runs from the Deerfield Substation  
17 to Scobie Pond, sort of -- it's not really  
18 part of the Project, but it extends, as the  
19 Project connects --

20 A. Others may have looked at that. I did not.  
21 My scope was pretty limited.

22 MS. WEATHERSBY: Thank you.  
23 Nothing further.

24 CHAIRMAN HONIGBERG: Mr.

1 Oldenburg.

2 MR. OLDENBURG: Thank you, Mr.  
3 Chairman.

4 QUESTIONS BY MR. OLDENBURG:

5 Q. Good evening. Just a few quick questions.

6 I noticed in your CV or your resume that  
7 you've actively completed projects in New  
8 Hampshire, that you worked on the Section 106  
9 for Salem Bike-Ped Corridor Phase 2 and the  
10 Wilton Kings Brook Bridge Improvements. Were  
11 you working to develop the 106 project, or  
12 were you working for a client opposed to the  
13 Project?

14 A. I was working for the engineering company.

15 Q. In support of the project? Or developing --

16 A. I don't know.

17 (Court Reporter interrupts.)

18 Q. So you were developing the documents in  
19 support of the project?

20 A. I'm not sure how you mean "support" or  
21 "oppose." Those projects are not adversarial  
22 situations with a pro and con. I was just  
23 developing Section 106 documentation to  
24 satisfy DHR and the consulting parties.

1 Q. So you weren't hired by an abutter to  
2 oppose the --

3 A. No, I was not an advocate for or against the  
4 project. I was there to facilitate  
5 construction of the project by generating  
6 acceptable documentation.

7 Q. How much of your work -- as 106 Associates,  
8 how much of your work is developing those and  
9 doing exactly what you did for those two  
10 projects?

11 A. Most of it I would say. It is generating  
12 agreements among parties to facilitate  
13 infrastructure construction.

14 MR. OLDENBURG: Okay. That's all  
15 I have.

16 CHAIRMAN HONIGBERG: Mr. Wright.

17 QUESTIONS BY MR. WRIGHT:

18 Q. Good afternoon, Mr. Newman. When Mr. Walker  
19 was showing you the three photo simulations  
20 around the Deerfield Church prepared by other  
21 professionals, you seem to have an objection  
22 to two of them. I don't think I heard an  
23 explanation as to what your objection to two  
24 of those was.

1 A. My objections were that they were a long road  
2 photo sims which to me minimized the visual  
3 impact of the infrastructure. I mean, if you  
4 looked at -- photos can tell you a lot of  
5 different things depending on which angles  
6 they're taken from. And in review of over,  
7 as I said, a couple thousand of these, I've  
8 seen engineers and architects come in with a  
9 variety of photo simulations trying to prove  
10 one thing or another. And in my experience,  
11 photo simulations of a long road are intended  
12 to minimize -- or they're not intended to --  
13 they do minimize the appearance of that  
14 infrastructure in the district.

15 Q. Okay. Thank you for that explanation.

16 CHAIRMAN HONIGBERG: Any other  
17 questions from members of the Committee?

18 CHAIRMAN HONIGBERG: Ms. Menard,  
19 do you have any redirect? Looks like you do.

20 MS. MENARD: Yes.

21 REDIRECT EXAMINATION

22 BY MS. MENARD:

23 Q. Mr. Newman, I just have one question for you.  
24 If you were to put your lack of bare earth

1 argument aside, would that change your  
2 conclusions regarding the unreasonable  
3 adverse effects on historic resources in  
4 Deerfield by the Project?

5 A. No. I think the adverse effects on the  
6 districts are clear: It's an  
7 industrial-scale infrastructure project  
8 bisecting a National Registered historic  
9 district.

10 Q. Thank you.

11 MS. MENARD: That's all I have.

12 CHAIRMAN HONIGBERG: Well, thank  
13 you, Mr. Newman.

14 So that's it for today. We'll  
15 adjourn, and we will be coming back tomorrow  
16 at 1:00, I believe, and Ms. Monroe will be  
17 sending out a status report to tell us what  
18 we'll all be doing. So with that, we'll  
19 adjourn. Thank you all.

20 (Whereupon the Day 68 Afternoon  
21 Session was adjourned at 5:40  
22 p.m., with the Day 69 hearing to resume  
23 on December 19, 2017  
24 commencing at 1:00 p.m.)

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C E R T I F I C A T E

I, Susan J. Robidas, a Licensed  
Shorthand Court Reporter and Notary Public  
of the State of New Hampshire, do hereby  
certify that the foregoing is a true and  
accurate transcript of my stenographic  
notes of these proceedings taken at the  
place and on the date hereinbefore set  
forth, to the best of my skill and ability  
under the conditions present at the time.

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

---

Susan J. Robidas, LCR/RPR  
Licensed Shorthand Court Reporter  
Registered Professional Reporter  
N.H. LCR No. 44 (RSA 310-A:173)



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