

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

December 21, 2017 - 5:33 p.m.
49 Donovan Street
Concord, New Hampshire

{Electronically filed with SEC 1-02-18}

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

PRESENT FOR SUBCOMMITTEE/SITE EVALUATION COMMITTEE:

Chmn. Martin Honigberg Public Utilities Comm.
(Presiding Officer)

ALSO PRESENT FOR THE SEC:

Michael J. Iacopino, Esq. Counsel for SEC
Iryna Dore
(Brennan, Lenehan, Iacopino & Hickey)

Pamela G. Monroe, SEC Administrator

(No Appearances Taken)

COURT REPORTER: Cynthia Foster, LCR No. 14

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(On the stenographic record at 5:33 p.m.)

PRESIDING OFFICER HONIGBERG: What do I need to know? Mr. Needleman?

MR. IACOPINO: Mr. Chairman, I think that probably the best place to start is with objections to exhibits that are alleged not to have been referenced during the course of the proceeding. Is that correct?

MR. NEEDLEMAN: Yes.

MR. IACOPINO: Or would you prefer to go the other way. Start with just substantive objections.

MR. NEEDLEMAN: Maybe it makes sense to start there. We started from the premise that if people listed exhibits but never used them during the proceeding they shouldn't be in. We circulated a list to everybody of what we thought those exhibits were. The list wasn't perfect. People got back to us and said no, we did use this one and this one, and we're accepting those representations, but I think what we have is we've boiled down that list.

I understand that there are people who

1 think there might be some exceptions to that and
2 might want to be heard on that, but I think that
3 there's general consensus that that's a
4 reasonable approach.

5 PRESIDING OFFICER HONIGBERG: Is everyone
6 in general concurrence with that? No,
7 Mr. Pappas. What have you got?

8 MR. PAPPAS: A couple of things. One, we
9 have started talking to the Applicant, and we
10 got a good deal way through the list and think
11 have agreement on a number of those items, but
12 we need more time to go through it. There are a
13 number of exceptions.

14 For instance, confidential documents that
15 were discussed with the witnesses but in order
16 to save time we didn't bother to put the
17 document in front of witness because we'd have
18 to clear the room. It would have taken time.
19 Those we think should come in because they were
20 discussed with the witness. Just the document
21 itself wasn't shown in order to save time so I
22 think that's one example. There are other
23 examples of exceptions where that applies. We
24 have started that discussion with the Applicant.

1 We just ran out of time. We did it yesterday.
2 We did it at lunch. I think if we had more time
3 we'd work through all those.

4 PRESIDING OFFICER HONIGBERG: And that's
5 fine. We can give you more time to do that, but
6 let's see how many, how much we can advance with
7 other parties.

8 MR. PAPPAS: Absolutely.

9 MR. IACOPINO: Are there other exceptions
10 other than confidential documents that were
11 discussed but not shown?

12 MR. PAPPAS: Yes. For instance, public
13 documents that are on the DOT website that were
14 discussed but weren't shown to the witness. We
15 think those should come in.

16 PRESIDING OFFICER HONIGBERG: Just to be
17 clear, what you're saying is those are things
18 that were marked.

19 MR. PAPPAS: Yes.

20 PRESIDING OFFICER HONIGBERG: They were
21 referred to as something that was on the DOT
22 website, but the exhibit itself wasn't shown.
23 Is that what you're describing?

24 MR. PAPPAS: Yes. All of them were marked.

1 I'll give you another example is that there are
2 a number of things where they were similar
3 exhibits, and we might have taken two or three
4 as examples and didn't bother going through them
5 all because a few examples would be sufficient,
6 but all the other ones were marked. So that's
7 another example of we think the other ones come
8 in.

9 PRESIDING OFFICER HONIGBERG: You know, I
10 actually think if the two of you sit down and
11 have a conversation about that, you'll agree.

12 MR. PAPPAS: We agree.

13 PRESIDING OFFICER HONIGBERG: I don't see
14 that as being an issue or at least something
15 that necessarily needs to be dealt with right
16 now because I think there are people out there
17 whose issues we probably can deal with.

18 MR. PAPPAS: I agree, and we're happy to do
19 that at another time and come to you with it,
20 probably precious few, if any.

21 Ms. Birchard?

22 MS. BIRCHARD: I've run into a similar
23 situation that we have been talking with the
24 Applicants about certain of our exhibits and

1 haven't yet reached a conclusion as to their
2 acceptance of those exhibits. These particular
3 exhibits, I believe, and my colleague, Ken
4 Kimball, may speak to the details better than I,
5 but I believe they were relied upon and cited in
6 full in written testimony, and then provided as
7 exhibits to the ShareFile site and to all the
8 ports, but we're, you know, again, to save,
9 similarly to save time and paper, were not
10 attached in full to the written testimony where
11 they were relied upon and cited in full and nor
12 were they each individually introduced at
13 hearing when the witnesses took the stand.

14 PRESIDING OFFICER HONIGBERG: You may be
15 right, but without an example, I can't agree or
16 disagree with you. And I'm not sure that it
17 makes sense to have a general conversation about
18 that. Mr. Kimball, what you got?

19 MR. KIMBALL: I was just going to give you
20 a quick example as opposed to going through the
21 full list.

22 PRESIDING OFFICER HONIGBERG: All right.
23 Give me a quick example.

24 MR. KIMBALL: The exhibit would be in Dr.

1 Publicover's Prefiled Testimony he stated the
2 Application cites Rosenberg, et al. 1999. NGO
3 Exhibit 107 is where that was quoted from.
4 Mr. Plouffe was going to use that in
5 cross-examination if it did not come up with one
6 of the previous people cross-examining those
7 particular witnesses. When he got to that point
8 as opposed to being repetitive he did not move
9 forward and put it forth.

10 PRESIDING OFFICER HONIGBERG: But you're
11 saying that it was cited in Mr. Publicover in
12 his testimony?

13 MR. KIMBALL: Yes.

14 PRESIDING OFFICER HONIGBERG: And is the
15 Applicant objecting to an exhibit like that?

16 MR. NEEDLEMAN: What we're objecting to is,
17 I think, a citation tasing to a document with
18 maybe a couple of sentences pulling out a part
19 of it is obviously fine and people can argue
20 from that. But I don't believe that now imports
21 the entire document as an exhibit into the
22 record.

23 MR. KIMBALL: And they did not put the
24 entire document into the record.

1 PRESIDING OFFICER HONIGBERG: Okay. That's
2 a specific example. That can clearly be ruled
3 on specifically. I mean, I think I know what
4 the answer would be, but I think if you have a
5 conversation about it, you'll end up being
6 pretty close to agreeing. I mean, if there are
7 specific lists that we can go through right now.
8 I can do that. Mr. Needleman. I'm sorry.

9 MR. NEEDLEMAN: Sounds like maybe what we
10 should do is flip the approach here. We tried
11 to start with the broad -- I would agree with
12 Tom. We can probably trim more of those down.
13 I'm not so sure I agree with AMC. I think we've
14 probably beat our heads against the wall on that
15 one. But from what I've heard, there are very
16 few of our exhibits that folks out there object
17 to. I think there are some so we can hear these
18 specifically. We started out with a list of
19 about 50 that we were going to object to. We've
20 pruned that down to, I think, 24 now working
21 with the parties. So I can go through our list
22 of 24 specific exhibits with you and tell you
23 why we object, if you want to do that.

24 PRESIDING OFFICER HONIGBERG: Why don't we

1 do the objections to the Applicant's exhibits
2 first.

3 MR. IACOPINO: Why don't you tell us what
4 exhibits you want to move in.

5 MR. NEEDLEMAN: Well, I want to move every
6 exhibit that we used into the record.

7 PRESIDING OFFICER HONIGBERG: Is it
8 generally true that everything, if you haven't
9 withdrawn it, your desire is that it be a full
10 exhibit. Is that generally true of everyone in
11 the room? All right.

12 MS. BIRCHARD: I do have a couple --

13 PRESIDING OFFICER HONIGBERG: If there are
14 some that you don't want, you'll need to
15 identify them. Otherwise, we'll assume that you
16 what to move them in, and he'll object, and
17 we'll deal with them.

18 Ms. Boepple, did you have something you
19 wanted to say?

20 MS. BOEPPLE: Well, I was just going to
21 say, we're in the process of creating a digital
22 copy for you that shows everything that we're
23 withdrawing. So I'm trying to be helpful here.
24 You don't want me to sit here and say we're

1 withdrawing 2, 3, 4, 10, 11, 12, 15, 20. I
2 mean, do you?

3 PRESIDING OFFICER HONIGBERG: I don't know.
4 It might be more efficient for all that to
5 happen separately. I mean, I'm happy to hang
6 around for as long as you want. I mean, I'll go
7 back in there. I've got draft orders to read.
8 I have plenty of work to do. So I'm happy to
9 sit in there while this work continues.

10 If on the other hand there are parties
11 whose exhibits are ripe for consideration, we
12 can get done with them and then people can go
13 home. Ms. Pacik and Mr. Whitley both have their
14 hands up. Ms. Pacik?

15 MS. PACIK: I think the Joint Munis'
16 exhibit list is ripe for consideration. We just
17 sent it around this afternoon, and there's only
18 three changes on it. I didn't want to make a,
19 send in a fourth amended one until we got final
20 ruling, but we did withdraw 219, 327, 277, and
21 we replaced 277 with 277 A by agreement with the
22 Applicants.

23 PRESIDING OFFICER HONIGBERG: All right.
24 I'm not certain that they were able to pay

1 attention while you were talking because there's
2 multiple things going on. So let's just hung on
3 one sec.

4 MR. IACOPINO: You'll have to read those
5 again.

6 PRESIDING OFFICER HONIGBERG: Yes. Mr.
7 Needleman, Mr. Getz, Ms. Pacik read from her
8 list a number that she's withdrawn. Has she
9 discussed those with you?

10 MR. GETZ: We've been working with them.
11 We've, I think, cut down what we would object to
12 from Joint Munis, but we haven't reconciled
13 entirely the subset of what was used and not
14 used and why. So we're working on that.

15 PRESIDING OFFICER HONIGBERG: Okay. So
16 that's, you may be not ready to do that.

17 MR. GETZ: That's more housekeeping. Ms.
18 Pacik, have you given them the numbers that
19 you've just read into the records of the
20 exhibits you're withdrawing?

21 MS. PACIK: Yes. They're aware of the
22 additional ones that we're withdrawing.

23 PRESIDING OFFICER HONIGBERG: Mr. Whitley,
24 did you have something else? No. In the back.

1 Mr. Berglund.

2 MR. BERGLUND: I have one that the
3 Applicant has objected to, and I would like to
4 pose a, I'd like to have it in the record. So I
5 have a statement here for both.

6 PRESIDING OFFICER HONIGBERG: Hang on.
7 Let's find out what it is. Just a minute. Mr.
8 Needleman, Mr. Getz, Mr. Berglund wants to talk
9 about a particular exhibit. Are you familiar
10 with what he's going to be, the exhibit he's
11 going to be talking about?

12 MR. NEEDLEMAN: Mr. Berglund is Deerfield
13 Abutters?

14 PRESIDING OFFICER HONIGBERG: Yes.

15 MR. NEEDLEMAN: So we object to four of
16 their exhibits. Which one is it, Mr. Berglund?

17 MR. BERGLUND: 43.

18 MR. NEEDLEMAN: Yes, it's one of the ones
19 we object to.

20 PRESIDING OFFICER HONIGBERG: Let's hear
21 what 43 is.

22 MR. BERGLUND: Okay. This will take a
23 couple minutes, but not too long. I'll go
24 quick.

1 PRESIDING OFFICER HONIGBERG: Just tell me
2 what it is first.

3 MR. BERGLUND: It's a photograph of the
4 viewscape from our field to the Northern Pass
5 Transmission line proposed with photoshopped
6 towers in the field.

7 PRESIDING OFFICER HONIGBERG: Okay. Why is
8 there an objection to 43?

9 MR. BERGLUND: I assume it's because --

10 PRESIDING OFFICER HONIGBERG: Hang on. I
11 want to hear from these guys about what the
12 objection is.

13 MR. NEEDLEMAN: It's an unreliable exhibit,
14 Mr. Chair. There's photoshopped lattice
15 structures put in that don't, we believe, in any
16 way adequately represent what we're proposing.

17 PRESIDING OFFICER HONIGBERG: Okay. Mr.
18 Getz?

19 MR. GETZ: With a number of parties what we
20 have done in similar type exhibits is we've
21 stipulated that they go into the record with
22 proviso that it's made, that the photograph was
23 provided for as a hypothetical scenario, and
24 it's not depicted for the truth of the matter.

1 PRESIDING OFFICER HONIGBERG: Mr. Berglund,
2 that kind of proviso with that exhibit is not
3 acceptable to you or is?

4 MR. BERGLUND: I didn't quite hear the
5 whole thing, but it sounded like explanation on
6 the photograph that that was a hypothetical?

7 PRESIDING OFFICER HONIGBERG: Basically.
8 Yes.

9 MR. BERGLUND: That was my proposal which I
10 didn't read. So we're done.

11 PRESIDING OFFICER HONIGBERG: All right.
12 Problem solved.

13 MR. IACOPINO: What number again was that?

14 MR. NEEDLEMAN: Deerfield 43.

15 PRESIDING OFFICER HONIGBERG: There were
16 three others you said you objected to?

17 MR. NEEDLEMAN: We object to Deerfield 19
18 based on relevancy.

19 PRESIDING OFFICER HONIGBERG: What's 19?

20 MS. BRADBURY: This is Jo Anne Bradbury.

21 PRESIDING OFFICER HONIGBERG: Hi, Jo Anne.

22 MS. BRADBURY: Hey. Deerfield 19.

23 MR. IACOPINO: Can it be pulled up?

24 MR. NEEDLEMAN: Yes, we're doing that.

1 MS. BRADBURY: I've got it. It identifies
2 an article, South Australians were left without
3 power after a storm, wreaked havoc on major
4 transmission lines with a photo of a collapsed
5 transmission line tower, and it was used by me
6 in cross-examination of Mr. Bowes. Well, there
7 was a Panel, but Mr. Bowes was --

8 PRESIDING OFFICER HONIGBERG: Right. And
9 the basis for the objection is?

10 MR. NEEDLEMAN: It's completely unrelated
11 to anything having to do with this Project.

12 PRESIDING OFFICER HONIGBERG: And Ms.
13 Bradbury, why should we let it in? Why is it
14 relevant?

15 MS. BRADBURY: Well, it's relevant and
16 material to the issue of tower collapse and
17 public safety, and it was offered to demonstrate
18 the impact of differing weather events on
19 transmission towers with a series of exhibits
20 showing the vulnerability of the towers to those
21 events. And we respectfully ask the Hearing
22 Officer to use his discretion and allow it in.

23 PRESIDING OFFICER HONIGBERG: I understand.

24 MR. IACOPINO: When you showed it to Mr.

1 Bowes, do you remember what his response was?

2 MS. BRADBURY: I have the transcript from
3 that. Hang on. There was an objection.
4 Deerfield Abutter 19.

5 Question: Would you look at Deerfield
6 Abutter 19.

7 Mr. Bowes: Yes. I have it.

8 Question, that was a high wind situation.
9 You agree it was also, I think you already
10 mentioned this, it can also occur with icing.

11 Mr. Needleman objected, and there was a
12 discussion about the fact that it was, there was
13 a storm that wreaked havoc on major transmission
14 lines, and the Chairman, Mr. Honinberg, said you
15 can proceed.

16 So I mean it goes along those lines. You
17 want me to keep reading?

18 PRESIDING OFFICER HONIGBERG: No. I don't
19 think so. I think we're going to let that in.
20 Take that for what it's worth. Off the record.

21 (Discussion off the record)

22 PRESIDING OFFICER HONIGBERG: Mr.
23 Needleman, what else you got from Deerfield?

24 MR. NEEDLEMAN: I've got Deerfield Exhibit

1 46. In particular figures 4, 5 and 6. I think
2 you saw these the other days. Mr. Newman used
3 these. And these were just exhibits where lines
4 were drawn in that supposedly represented the
5 line which we think are inherently unreliable.

6 We would be willing to allow them to be
7 admitted subject to the same stipulation we talk
8 about earlier if they were considered
9 hypotheticals.

10 PRESIDING OFFICER HONIGBERG: How does that
11 strike the Deerfield folks? Ms. Menard?

12 MS. MENARD: Yes. I believe that
13 Mr. Newman in his explanation of those exhibits,
14 he admitted that they were not photo
15 simulations. That they were serving a
16 particular purpose. So I would like to question
17 Mr. Newman in terms of the verbage that the
18 Applicant is recommending that they be labeled.

19 PRESIDING OFFICER HONIGBERG: Dawn, can
20 someone pull up 46?

21 MS. GAGNON: The updated one?

22 PRESIDING OFFICER HONIGBERG: I guess, yes.

23 MS. MENARD: Deerfield Abutter 46.

24 MR. IACOPINO: Figure 4, 5 and 6.

1 PRESIDING OFFICER HONIGBERG: Does anyone
2 know the page they were on?

3 (Discussion off the record)

4 PRESIDING OFFICER HONIGBERG: All right.
5 Mr. Getz or Mr. Needleman, what proviso would
6 you attach to these?

7 MR. NEEDLEMAN: Same as before which is as
8 long as they're not being offered for the truth
9 of the matter asserted and they're just
10 hypotheticals, I would say fine. We'd just
11 argue they're not representative and they're not
12 necessarily accurate.

13 PRESIDING OFFICER HONIGBERG: I mean the
14 captions themselves, Ms. Menard, have cautionary
15 language in them. I don't think that what the
16 Applicant is adding really changes very much the
17 way they'd be viewed. Do you disagree with
18 that?

19 MS. MENARD: Well, I believe that the, from
20 the record, the transcript, Mr. Newman did go
21 into an explanation as to how it was created.
22 So if the transcripts are clear, is there a
23 reason why there needs to be an explanation on
24 the exhibits themselves?

1 PRESIDING OFFICER HONIGBERG: Mr.
2 Needleman? That's not a bad point.

3 MR. NEEDLEMAN: Well, yes, the transcripts
4 do speak to that generally. My concern is more
5 specifically in the sense that we're going
6 through these in this session and trying to
7 articulate exactly where we stand on these, and
8 I think it needs to be clear that if they're
9 going to come in they're coming in subject to
10 that same stipulation as the others.

11 PRESIDING OFFICER HONIGBERG: I think the
12 record is clear and I think they are clear that
13 this is somebody who drew a line and purported
14 to show a height, and their value can be argued.
15 I think we'll take them for what they're worth
16 as they've been presented and as they've been
17 qualified within the transcript.

18 What else you got for Deerfield?

19 MR. NEEDLEMAN: So we were going to object
20 to Deerfield 47. We will drop that one.

21 PRESIDING OFFICER HONIGBERG: That will
22 make them happy.

23 MR. NEEDLEMAN: There you go. My
24 suggestion is we move to the one exhibit from

1 Ms. Crane's group that we have because I
2 understand they want to leave.

3 PRESIDING OFFICER HONIGBERG: But are we
4 done with Deerfield?

5 MR. NEEDLEMAN: Those were our four.

6 PRESIDING OFFICER HONIGBERG: Ms. Bradbury?

7 MS. BRADBURY: We have a, similarly to some
8 of the other Intervenors, we have a number of
9 exhibits that were filed as part of our exhibit
10 filing but that weren't brought up at the trial
11 although they were all referred to in either
12 Prefiled Testimony or Supplemental Testimony,
13 not by a number but by what the exhibit is
14 characterizing.

15 PRESIDING OFFICER HONIGBERG: But I think
16 that what, they've just gone through the ones
17 they object to. If they're not objecting to it,
18 then they're in. Mr. Needleman?

19 MR. NEEDLEMAN: Unless they were exhibits
20 that were marked and never used. That's that
21 other category.

22 PRESIDING OFFICER HONIGBERG: Oh. So we
23 have to hang around for that entire -- so
24 everybody will have to deal with that if that's

1 an issue?

2 MR. GETZ: I think this is more the
3 housekeeping issue of the things that we
4 identified that we didn't see were used, sent to
5 them, and we're waiting back to hear either that
6 we made a mistake and they were actually used or
7 they had some other theory for why it should be
8 in.

9 PRESIDING OFFICER HONIGBERG: I understand.
10 Okay. So the ones you just went through
11 specifically are apart from that group. All
12 right. I misunderstood that. I'm sorry. So
13 yes, Ms. Bradbury?

14 MS. BRADBURY: We did correct the things
15 that we could correct where there were mistakes
16 as to whether they were used. We did work with
17 Mr. Fish on which ones we could easily handle,
18 and that's been handled. So we now, our
19 remaining list is, it consists of exhibits that
20 were filed but not used on ELMO at the trial,
21 but they were, like I said, referred to in
22 Prefiled Testimony by -- I could give you an
23 example that makes it easier. I think it's
24 similar to some of the other exhibits that were

1 not put up and examined at the trial. They're
2 just, the subject matter is referred to in
3 Prefiled Testimony and Supplemental Testimony.
4 And I'm happy to go through all of those.

5 PRESIDING OFFICER HONIGBERG: Let's move on
6 to Ms. Crane because from what I understand she
7 has to leave. So what are the issues with Ms.
8 Crane's exhibits?

9 MR. NEEDLEMAN: One exhibit, Mr. Chair. It
10 came up the other day. It's labeled as CFP 59.
11 This is the 2012 BioInitiative Report. Ms.
12 Quinn used this, referenced it in her Direct
13 Testimony. The issue actually is not related to
14 Counsel for the Public not using it. They
15 didn't use it. To me, the real issue is this
16 was a report that was available prior to the
17 time any of this testimony was prepared from
18 2012. It was never used or referred to, and the
19 first time it was brought in and tried to be
20 introduced was at that point which we don't
21 think is proper and unfair to the Applicant
22 because if it was going to be used, it's a
23 technical report. It should have been used, and
24 our expert should have had the chance to speak

1 to it.

2 PRESIDING OFFICER HONIGBERG: Is Ms. Crane
3 here? This was a Ms. Quinn exhibit. I'm sorry.
4 Is Ms. Quinn here? Ms. Menard, what do you want
5 to say?

6 MS. MENARD: I believe that this exhibit
7 has been part of the record for a very long
8 time, and it puts Ms. Quinn at a disadvantage at
9 this late stage in the hearing to be pulling an
10 exhibit that had been on the record with Counsel
11 for the Public and subject to review by the
12 Applicant and because of her late date in the
13 hearings and just being able to utilize it
14 yesterday is now faced with having to defend its
15 importance to her.

16 So I do understand that they have every
17 right prior to the close of the hearings to
18 state an objection, but in all fairness I think
19 having raised this as a concern, this is a key
20 piece of evidence that she was relying on to
21 support her testimony.

22 PRESIDING OFFICER HONIGBERG: Was it
23 referenced in anyone's Prefiled Testimony?

24 MS. MENARD: I don't believe -- I guess I

1 cannot answer that question.

2 MS. GETZ: I believe it was marked for
3 identification by Counsel for the Public. I
4 think that's it.

5 PRESIDING OFFICER HONIGBERG: But was it
6 used in anybody's testimony, Mr. Pappas?

7 MR. PAPPAS: I don't believe I was. It was
8 one of our initial exhibits in, I think, April
9 12th when we premarked Track 1 exhibits, but I
10 don't recall it being used in anybody's
11 testimony. It wasn't in any of our witnesses'
12 testimony. I think only Ms. Quinn used it.

13 PRESIDING OFFICER HONIGBERG: But she
14 didn't use it until she testified live the other
15 day? It's not in her Prefiled Testimony?

16 MS. PAPPAS: That's my memory.

17 MR. IACOPINO: Anybody recall the extent to
18 which she did quote from it?

19 PRESIDING OFFICER HONIGBERG: Ms. Menard?

20 MS. MENARD: I believe in her introduction
21 of this particular exhibit the Applicant did
22 object, but I believe that the objection was
23 overruled, and she was allowed to present it,
24 and she was asked questions about it as a result

1 of having introduced it.

2 PRESIDING OFFICER HONIGBERG: Mr. Needleman
3 was shaking his head as you were talking.

4 MR. NEEDLEMAN: Yeah, I'm not sure that's
5 correct, and I certainly never had the
6 opportunity to make the objection I'm making
7 now. You know, I believe Ms. Quinn actually was
8 referring to substantive material in this
9 exhibit which is precisely the problem. If this
10 was going be used, if she was going to refer to
11 it, she had it available to her and our experts
12 would have had the chance to respond to it. We
13 have no chance to respond to this now, and this
14 is substantive technical report.

15 PRESIDING OFFICER HONIGBERG: We're not
16 going to accept that exhibit. I mean, so what
17 that means is it remains marked so it's still
18 part of the larger record of this case. But
19 it's not a full exhibit and isn't going to be
20 used by the Committee in considering the
21 decision that it's going to make. Yes, Ms.
22 Menard?

23 MS. MENARD: Just as one followup place for
24 consideration. If the Applicant's witness had

1 availed himself to this particular exhibit, I
2 believe the Applicant could have addressed it
3 when that witness was cross-examined by the
4 Applicant's attorney. So I think they would
5 have had an opportunity to -- it was in the file
6 prior to them being brought forward.

7 PRESIDING OFFICER HONIGBERG: I don't
8 understand the argument you just made. Try me
9 again.

10 MS. MENARD: I believe that Mr. Needleman
11 had just expressed that his witness did not have
12 the opportunity to respond to it when, in fact,
13 this particular exhibit was in the record, and
14 he could have brought it forward in his Direct
15 Examination of that particular witness.

16 PRESIDING OFFICER HONIGBERG: But he
17 wouldn't have. Because no one was, no one was
18 testifying about it. There would have been no
19 reason for him to do so because all it was was
20 on a list of exhibits that Counsel for the
21 Public had marked. None of Counsel for the
22 Public's witnesses testified about it, was
23 sponsoring it as something they were relying on.
24 So Mr. Needleman's experts would look at the

1 testimony and say well, I see that, but no one's
2 relying on it so I don't need to worry about it.
3 That's the thought process that they're going
4 through. So that's how we get where we are with
5 that one.

6 Okay. Do you have any others for Ms. Quinn
7 or Ms. Crane or that group?

8 MR. NEEDLEMAN: That was the one for that
9 group.

10 PRESIDING OFFICER HONIGBERG: Okay. Do
11 they also -- I'm sure they must also have
12 "marked but not used."

13 MR. NEEDLEMAN: Everyone has marked but not
14 used. I'm talking about the ones we've
15 specifically identified. Do you want me to go
16 to the next one?

17 PRESIDING OFFICER HONIGBERG: Maybe. Ms.
18 Schibanoff had her hand up. Let's see what --
19 Ms. Schibanoff, what can we do for you?

20 MS. SCHIBANOFF: We can dispense with my
21 list very quickly when you're ready.

22 MR. NEEDLEMAN: Yes.

23 PRESIDING OFFICER HONIGBERG: Let's deal
24 with Ms. Schibanoff's list.

1 MR. NEEDLEMAN: I think I can do that.

2 MR. IACOPINO: Before we do that, can I
3 just ask a question. Was the BioInitiative
4 which was just not admitted, CFP 59, was that
5 also given a number by Ms. Crane's group as
6 well? Ms. Quinn's group? No, it was not?
7 Okay. Thank you.

8 PRESIDING OFFICER HONIGBERG: So Ms.
9 Schibanoff's list.

10 MR. NEEDLEMAN: Yes. So with respect to
11 Ms. Schibanoff's list in her group, the exhibits
12 that initially objected to are NAPOBP 22, 24,
13 26, 29, 30, 31, 32, 33, and 34. These are all
14 images with things superimposed on top of them
15 that we believe were inherently unreliable.
16 We've worked with Ms. Schibanoff --

17 MS. SCHIBANOFF: Mr. Needleman, I have
18 agreed to your proviso. We can just move on.

19 PRESIDING OFFICER HONIGBERG: Right. He's
20 telling me that.

21 MR. NEEDLEMAN: Right.

22 PRESIDING OFFICER HONIGBERG: I think he's
23 telling me what you would tell me so let's
24 hear --

1 MS. SCHIBANOFF: We could do it quickly
2 though.

3 PRESIDING OFFICER HONIGBERG: Ms.
4 Schibanoff, don't get me started on things that
5 could have been done more quickly than they
6 were. Mr. Needleman?

7 MR. NEEDLEMAN: As I was saying, these are
8 all exhibits with images superimposed on them
9 that we believe were unreliable, and that was
10 the basis of our objection. We've agreed that
11 with Ms. Schibanoff that these can all be
12 subject to the same stipulation as the ones we
13 talked about earlier which is if they're not
14 being offered for the truth of the matter
15 asserted, just as hypotheticals, they can come
16 in. So subject to that, we will not object.

17 PRESIDING OFFICER HONIGBERG: Lovely. Ms.
18 Schibanoff, anything you need to correct or add?

19 MS. SCHIBANOFF: That's fine. Let it go.
20 I'm withdrawing the following exhibits. Number
21 39, these are all NAPOBP. These were unused.
22 Number 39, number 40, number 41, number 42, 48,
23 49, 52, 55, 57, 59.

24 I am not withdrawing, as the Applicant

1 asked me, Exhibit 58. The verification of my
2 use of that is in the transcript for Day 51,
3 a.m., 10/24/17, page 3, line 22. The Applicant
4 made a mistake on that one so we're going to
5 keep that one in.

6 And I am not withdrawing 61 which was also
7 not listed on the title page, if you will, of
8 the transcript, but if you look at the
9 transcript for Day 58, a.m., 11/08/17, page 54,
10 line 14, you will see that that Exhibit 61 was
11 used. And that's it.

12 PRESIDING OFFICER HONIGBERG: Mr.
13 Needleman?

14 MR. NEEDLEMAN: So two categories here.
15 Category one, I think we're in agreement with
16 respect to what we've objected to. Category 2,
17 it sounds like to me Mr. Schibanoff was
18 identifying exhibits that we asserted had not
19 been used which she believes were used. As a
20 general matter, we're going to take the position
21 that if anybody in good faith says we got it
22 wrong and an exhibit was in fact used, we're not
23 going to contest that.

24 PRESIDING OFFICER HONIGBERG: Yes, and it

1 sounds like she's given us chapter and verse on
2 exactly where we can find the use. So does that
3 dispose of all of Ms. Schibanoff's exhibits?

4 MS. SCHIBANOFF: It does for me. Thank
5 you.

6 MR. IACOPINO: Thank you for taking the
7 assignment seriously, Ms. Schibanoff. We
8 appreciate it.

9 PRESIDING OFFICER HONIGBERG: Ms.
10 Pastoriza?

11 MS. PASTORIZA: I have a question about the
12 record. Is the DOT Northern Pass site part of
13 the record?

14 PRESIDING OFFICER HONIGBERG: I'm not even
15 sure what's on DOT's Northern Pass site. I
16 think the answer to that question is no. If
17 there is something that was, that a party felt
18 was relevant to what the Site Evaluation
19 Committee needed to do, then the part of
20 whatever is on the DOT site would need to be
21 brought to the Site Evaluation Committee. But
22 since I don't know what's on that site and I
23 haven't looked at that site, I don't know
24 exactly how it's set up. Is there a differing

1 view among the parties as to what the DOT
2 Northern Pass site is?

3 MR. GETZ: Mr. Chairman, this may be
4 related to an issue that Mr. Pappas brought up,
5 but in terms of the DOT website and the
6 Exception Requests and the Exception Decisions,
7 what we had uploaded was all of the, and made an
8 exhibit, are all of the Exception Decisions as
9 they come in. We did not include all of the
10 Exception Requests. Both Counsel for the Public
11 and I think SPNHF have at different times marked
12 for identification some of the requests.

13 We obviously have no objection to the
14 requests being made part of the record. To the
15 extent there's some way of recognizing that all
16 of the Exceptions and all of the Requests even
17 as they're ongoing are part of record that's, we
18 have no objection to that. If there's an easy
19 way of doing that as a housekeeping
20 administrative matter, whether you can cite to
21 that portion of the website or take
22 Administrative Notice, that may be a way to
23 address it.

24 PRESIDING OFFICER HONIGBERG: Mr. Aslin?

1 MR. ASLIN: Following on Mr. Getz's
2 comment, I would argue that in the DOT website
3 is basically all of the back and forth about
4 this Project. It's really a subset of the
5 Project itself. And while there have been
6 documents that have been brought forward and
7 others that have not, I would think that the
8 Committee could take Administrative Notice of
9 anything that's on that site because it all
10 relates to this Project and is relevant.

11 PRESIDING OFFICER HONIGBERG: Well, you and
12 Mr. Iacopino were on the same page there.
13 Administrative Notice is certainly available,
14 but there's a process. I mean, if we want to
15 take Administrative Notice of something, I think
16 we, if we want to do it on our own, we need to
17 give notice of the parties that we intended to
18 do so. If someone wants us to take
19 Administrative Notice of something, it needs to
20 be aired and then we can make a decision.

21 I think Mr. Getz is also agreeing with you
22 with respect to the Exception Requests. So if
23 they want the Committee to take Administrative
24 Notice of the Exception Requests and the back

1 and forth there, that can be done.

2 I think taking Administrative Notice of
3 that, of whatever is on that website, is an
4 invitation to an uncontrolled record. A record
5 that literally doesn't, isn't controlled,
6 because assuming, which is not a bad assumption,
7 that whatever the SEC decides is appealed to the
8 State Supreme Court, some record has to be
9 created for the Supreme Court or documents need
10 to be identified for it, and if you've just got
11 the DOT website, that isn't going to work. The
12 Court isn't going to take that. Ms. Schibanoff?

13 MS. SCHIBANOFF: There is a specific
14 section of the DOT website dedicated to the
15 Northern Pass Project. It would be very easy to
16 cordon it off to that specific URL and anything
17 on that page.

18 PRESIDING OFFICER HONIGBERG: Mr.
19 Needleman?

20 MR. NEEDLEMAN: I think, Mr. Chair, that
21 presents the same problem in large part because
22 that will continue to change. So you're right
23 it has to be fixed in time and clear for the --

24 PRESIDING OFFICER HONIGBERG: Yes. I think

1 that there's things on that website that people
2 referred to or need the Committee to take
3 Administrative Notice of, that's what we need to
4 talk about. We're not, I don't think we can, I
5 think it would be a -- I mean, I don't know
6 this, but my instinct tells me that that would
7 be an error to take Administrative Notice of a
8 website that is not ours and we don't control.
9 Ms. Pastoriza?

10 MS. PASTORIZA: So the Applicant has
11 uploaded certain parts of that website that they
12 wanted to upload whereas the rest of us are not
13 able to upload those parts of the website that
14 we want to upload.

15 PRESIDING OFFICER HONIGBERG: What do you
16 mean "upload"?

17 MS. PASTORIZA: They take their Exception
18 Requests. They put them on the ShareFile.
19 They're presumably part of record.

20 PRESIDING OFFICER HONIGBERG: Not if they
21 don't offer them as exhibits they're not. If
22 they're just, just as any other party, if all
23 they've done is put it on the ShareFile site but
24 they've never offered it and shown it to a

1 witness and used it in this hearing, it's not
2 attached to anybody's testimony, and it's not
3 part of anybody's cross-examination, when they
4 offer it somebody is going to object and it will
5 be a good objection so it's not an uncontrolled
6 situation. But so a number of parties did, I
7 think Mr. Needleman or Mr. Getz referred to the
8 Forest Society and somebody else as having used,
9 Counsel for the Public used information that
10 they pulled off of the DOT's website is my
11 understanding of what was said. That was
12 available for all.

13 MS. PASTORIZA: Why wasn't the website part
14 of the Application?

15 PRESIDING OFFICER HONIGBERG: Not a
16 question for today. We're talking about
17 exhibits that people have used and want to be
18 part of this record for the SEC to consider.

19 MS. PASTORIZA: If we'd used all of the
20 parties of the DOT website that were relevant,
21 we would have been here for weeks.

22 PRESIDING OFFICER HONIGBERG: And there was
23 a whole -- we were here for more than weeks.
24 But there were motions filed that were related

1 to the DOT proceedings. And there are orders
2 issued by the SEC recognizing that what's going
3 on at DOT is going on at DOT. Not here. And
4 the fact that another agency has matters under
5 consideration that are relevant to the Northern
6 Pass proposal, that doesn't make them part of
7 the SEC's record in and of themselves.

8 The Public Utilities Commission
9 proceedings, unless they are brought here and in
10 some way relevant to what the SEC has to do,
11 they exist in another agency, and that's, that
12 record is there, and the decisions made are
13 there, just as whatever is going on at DOT, DES,
14 or any of the other state agencies that have
15 something to do or something to look at with
16 respect to Northern Pass. They exist in their
17 proceedings, not this proceeding.

18 MR. IACOPINO: But is it correct that
19 there's no objection by any of the parties to us
20 taking official notice of the Exception Requests
21 and the Exception Decisions?

22 PRESIDING OFFICER HONIGBERG: Lots of
23 shrugs and nods of heads and --

24 MS. PASTORIZA: There's also a survey.

1 There's a lack of survey. There's a rejected
2 survey. Everything this case rests on is over
3 at DOT in terms of the survey. So to not be
4 able to refer to the survey --

5 MR. IACOPINO: Ms. Pastoriza, isn't that in
6 the context of an Exception Request?

7 MS. PASTORIZA: No. The survey is apart
8 from the Exception Requests.

9 PRESIDING OFFICER HONIGBERG: Ms.
10 Pastoriza, whoever thought that the survey
11 request was something that the SEC needed to
12 consider for part of its decision needed to
13 bring it here. I've heard about the surveys.
14 People have testified about them. The lack of
15 surveys, or whatever was done and rejected.
16 There's information in this record if someone
17 wants to use it.

18 We're not relying on the DOT's record.
19 We're relying on the SEC's record. Whatever is
20 made here at this proceeding, and we can take
21 Administrative Notice of a number of things. We
22 can take Administrative Notice of the Exception
23 Requests and any decisions that are on there. I
24 think there seems to be acknowledgment, but

1 maybe the Applicant wants to consider that and
2 make some other statement about it. Mr.
3 Needleman? You looked like you want to say
4 something or Mr. Getz maybe.

5 MR. NEEDLEMAN: I was thinking ahead to the
6 next one.

7 PRESIDING OFFICER HONIGBERG: I'm sorry.

8 MS. PASTORIZA: So if a survey has been
9 reference, does that mean that document is in
10 the record?

11 PRESIDING OFFICER HONIGBERG: Not by
12 itself. Not in and of itself. It may be, but,
13 if all I know is what you just told me, the
14 answer is I don't know.

15 MS. PASTORIZA: And if one page of the
16 survey was shown, does that mean the survey as a
17 wheel is in the record or only that one page?

18 MR. IACOPINO: How was it marked? Was it
19 marked as the entire document and then shown to
20 a witness and used on cross-examination? Is
21 that what you're talking about? Something like
22 that?

23 MS. PASTORIZA: Can't show the witness the
24 entire document if it's hundreds of pages. You

1 would show them one page to discuss the survey.
2 So does that mean that one page is in the
3 record?

4 MR. IACOPINO: Did you mark it with a
5 number?

6 MS. PASTORIZA: Yes.

7 MR. IACOPINO: Yes. That's in the record.

8 MS. PASTORIZA: That one page but not the
9 rest of the survey.

10 MR. IACOPINO: Correct.

11 PRESIDING OFFICER HONIGBERG: Based just on
12 what you've said. There may be other
13 information that might change that answer. But
14 based just what you've just said, the page that
15 was marked and discussed is likely, almost
16 certainly, going to be in. Mr. Aslin, you look
17 like you wanted to say something.

18 MR. ASLIN: Yes, Mr. Chairman. I believe,
19 well, I know that a number of the documents on
20 the DOT website have been marked as exhibits by
21 various parties including Counsel for the Public
22 in their entirety, and I can't say for sure if
23 we've marked the whole survey, but I seem to
24 recall that the Applicant may have. So it may

1 be just a question of conferring amongst
2 ourselves to figure out what may not have been
3 marked and needs a request for Administrative
4 Notice.

5 PRESIDING OFFICER HONIGBERG: At one point
6 I thought Ms. Pastoriza was going to ask us to
7 make a nonexistent survey which would have
8 really driven the Supreme Court crazy. Ms.
9 Schibanoff?

10 MS. SCHIBANOFF: Two quick questions. Am I
11 understanding correctly that the door is now
12 closed on citing anything from the DOT website
13 that hasn't already been marked as a record? Is
14 that correct? In other words, you can't start
15 bringing things in now. That's one question.

16 The other is please explain what you mean
17 by Administrative Notice.

18 MR. IACOPINO: Administrative Notice is
19 covered by 541-A:33 which essentially says that
20 an administrative agency may take notice of any
21 more of one of the following. Any fact which
22 could be judicially noticed in a court of this
23 state. The record of other proceedings before
24 this agency. Generally recognized technical or

1 scientific facts within the agency's specialized
2 knowledge. And codes or standards that have
3 been adopted by an agency of the United States,
4 this state or of another state or by a
5 nationally recognized organization or
6 association.

7 There is notice requirements before we can
8 take -- it's actually called "official notice"
9 although we often refer to it as Administrative
10 Notice. So that's what's official notice or
11 Administrative Notice is, and my understanding
12 is we still don't have an answer as to whether
13 or not the parties are in agreement as to
14 whether or not we can take official notice of
15 the Exception Requests and Decisions that have
16 been made by the Department of Transportation.

17 PRESIDING OFFICER HONIGBERG: Ms. Pacik?

18 MS. PACIK: I hate to complicate things,
19 but my only pause on that is I think it would be
20 helpful to not only take Administrative Notice
21 of the Exception Requests and Notice of
22 Decisions, but also they post every month
23 information from their design conferences which
24 includes their agenda and their reports, and

1 there's also information on the website which
2 provides all of their survey reports and
3 responses, and, for example, that was most
4 recently updated in October of 2017.

5 So I feel like those three categories all
6 pertain to the SEC's decision rather than just
7 the Exception Requests.

8 PRESIDING OFFICER HONIGBERG: Mr.
9 Needleman?

10 MR. NEEDLEMAN: I was just going to make an
11 observation, I think, just to put a sharper
12 focus on it. With DOT, for example, anything
13 that is part of an agency's core permitting
14 function that directly relates to the permits
15 they're issuing here I think continues to come
16 in. So, for example, the finished survey and
17 the ongoing Exception Requests. Those are
18 directly related to the underlying permit here
19 that the Committee would ultimately rely on if
20 it were to issue a certificate.

21 PRESIDING OFFICER HONIGBERG: Mr. Pappas.
22 And then Ms. Menard.

23 MR. PAPPAS: Well, that raises the question
24 of whether this record ever closes. Because if

1 the DOT continues to do things or DES continues
2 to do things, and they keep supplementing this
3 record, I'm not sure this record ever closes. I
4 mean, it seems to me at some point the record
5 needs to close and the Committee deliberates and
6 make a decision, and if what I just heard is,
7 well, DOT in two weeks takes some action and
8 that comes in as admitted evidence in this case,
9 that means the record doesn't close and stays
10 open. So that seems problematic.

11 PRESIDING OFFICER HONIGBERG: Ms. Menard?

12 MS. MENARD: I would like to second my
13 agreement with Ms. Pacik's suggestions and
14 broadening the Administrative Notice to include
15 the other two items that she mentioned.

16 PRESIDING OFFICER HONIGBERG: Ms.
17 Pastoriza?

18 MS. PASTORIZA: Could we make a cutoff date
19 of today and any information after --

20 PRESIDING OFFICER HONIGBERG: I think what
21 we're going to have you all do is discuss this
22 among yourselves and see if you can come to an
23 agreement on what the SEC should take official
24 notice of in other Agencies' websites or in

1 other Agencies' records. That seems to be the
2 way to deal with this. Yes, Ms. Schibanoff.

3 MS. SCHIBANOFF: Attorney Pappas put much
4 more directly what I was trying to express that
5 when we leave here today and start writing
6 briefs, we should have a set text, if you will,
7 that we can work from. Not one that's going to
8 change in two weeks or four weeks. So I would
9 agree with the idea of somehow or other making a
10 cutoff now.

11 MR. GETZ: I think I look at it this way,
12 Mr. Chairman. For purposes of closing off the
13 record for writing briefs, with respect to what
14 the DOT has actually ruled on is one thing.
15 Then trying to say that that somehow closing off
16 the record for purposes of brief would mean that
17 the Committee was not going to incorporate the
18 decisions of the DOT on the Exception Requests
19 because that's the way DOT performs its
20 regulatory authority is another thing. So we
21 would just want to make clear that that still
22 needs to be considered by the Committee as part
23 of its ongoing decision that the decisions made
24 after today are still something to be

1 incorporated into the certificate.

2 PRESIDING OFFICER HONIGBERG: And those
3 could be either favorable or unfavorable to what
4 the Applicant wants to do.

5 MR. NEEDLEMAN: I think that's correct, and
6 I think that's consistent with prior SEC
7 practice.

8 PRESIDING OFFICER HONIGBERG: But we do
9 have to find a date by which, I don't know, Ms.
10 Schibanoff's formulation is helpful for a
11 layperson to think of it that way. That a fixed
12 set of materials with which to work.

13 MR. NEEDLEMAN: And I agree with Ms.
14 Schibanoff on that point, and, hopefully, that
15 date is very soon.

16 PRESIDING OFFICER HONIGBERG: Do we want to
17 make that date as of today? I mean, if
18 that's --

19 MS. SCHIBANOFF: Hear! Hear!

20 MR. NEEDLEMAN: Well, yes, assuming we can
21 get these things resolved to your satisfaction.
22 Sure.

23 PRESIDING OFFICER HONIGBERG: Okay.
24 Ms. Fillmore, you looked like you were ready to

1 jump on that microphone.

2 MS. FILLMORE: We would agree with having a
3 fixed date.

4 PRESIDING OFFICER HONIGBERG: Mr. Pappas?

5 MR. PAPPAS: The SEC rules have a specific
6 rule about closing the record, and I think we
7 ought to follow that rule, and seems to me that
8 the record closes and then the Committee doesn't
9 consider any evidence after that in its
10 deliberations.

11 PRESIDING OFFICER HONIGBERG: But like any
12 other legal proceeding, if things happen that
13 are relevant and crucial, someone brings them to
14 the attention of the decision-making body,
15 right, Mr. Pappas?

16 MR. PAPPAS: Absolutely. There's also a
17 provision for reopening the record and they can
18 avail to that, and the rules provide for it.

19 PRESIDING OFFICER HONIGBERG: As you could
20 or any of the Intervenors could.

21 MR. PAPPAS: Yes.

22 MR. IACOPINO: As I understand the
23 Application, the Application asks that the SEC
24 delegate to the Department of Transportation the

1 authority to site within the right-of-way the
2 thing so that if what the argument is over is
3 whether or not the Committee should grant the
4 certificate based on that condition, if I'm
5 correct, Mr. Needleman, am I?

6 MR. NEEDLEMAN: I think you are correct,
7 and I think those delegation requests extend
8 beyond DOT.

9 MR. IACOPINO: Right. So you're asking us
10 to delegate -- and those delegations may be, but
11 the determination for the Committee is whether
12 or not to grant a certificate with that
13 condition.

14 MR. NEEDLEMAN: Yes.

15 MR. IACOPINO: So you're not asking us to,
16 that for the Application to be granted or to
17 fall based on any particular exception decision.
18 You're saying leave it to DOT is your position
19 and to delegate it to DOT is the proper term to
20 use, and that's really the decision point for
21 the Committee to make. Committee doesn't have
22 to decide each individual Exception Request.

23 MR. NEEDLEMAN: Should I keep going? Let's
24 get Mr. Baker out of here.

1 MR. ASLIN: Before you continue --

2 PRESIDING OFFICER HONIGBERG: Yes. Mr.
3 Aslin.

4 MR. ASLIN: I just wanted to clarify was
5 just discussed. If I understand what we've
6 discussed, the Committee once the record closes
7 today or tomorrow, whenever that happens, that's
8 the record before the Committee for
9 deliberations. And the Applicant is asking that
10 anything that comes in after that be dealt with
11 through delegation. Not that it be considered
12 by the Committee during the deliberation.

13 PRESIDING OFFICER HONIGBERG: I think that
14 depends on what it is.

15 MR. ASLIN: Unless they reopen the record.

16 PRESIDING OFFICER HONIGBERG: I think if
17 there's something that's come in that's a
18 showstopper, then --

19 MR. ASLIN: But there's a process to reopen
20 the record.

21 PRESIDING OFFICER HONIGBERG: Yes, there's
22 a process to reopen the record, but otherwise I
23 think what you've said is consistent with what
24 Mr. Needleman just said and what Mr. Iacopino

1 just said. And he's nodding his head in
2 agreement.

3 MR. ASLIN: I just wanted to make sure I
4 understood where we were.

5 PRESIDING OFFICER HONIGBERG: Let's make
6 Mr. Baker a happy man so he can get on the road.

7 MR. NEEDLEMAN: All right. So we've got
8 two of Mr. Baker's exhibits that we originally
9 objected to, and we will drop those objections
10 subject to the same stipulation we've talked
11 about here about them being treated as
12 hypotheticals. I'm not going back to the
13 language.

14 PRESIDING OFFICER HONIGBERG: And you and
15 Mr. Baker are on board?

16 MR. NEEDLEMAN: We're on board together,
17 and those Exhibits are CS 94 B, and DNA 21.

18 PRESIDING OFFICER HONIGBERG: Are there
19 exhibits of Mr. Baker's that are in the "unused"
20 category?

21 MR. BAKER: I'm not aware of any.

22 MR. NEEDLEMAN: We're checking, but if
23 there aren't --

24 MR. GETZ: We haven't been notified that

1 there's been any dispute about what we had
2 circulated.

3 PRESIDING OFFICER HONIGBERG: There was a
4 lot of passive voice in that one.

5 MR. GETZ: We've given our view of what was
6 not used, and we haven't heard anything to
7 dispute that.

8 MR. BAKER: I have looked that over, and
9 I've not seen any of the exhibits my client
10 proffered as being improperly listed as not
11 having been used.

12 PRESIDING OFFICER HONIGBERG: Seems like
13 Mr. Baker can go home then. Unless you want to
14 continue to participate in the conversation.

15 MR. BAKER: No. I think we've done it.

16 PRESIDING OFFICER HONIGBERG: Okay. Ms.
17 Percy?

18 MS. PERCY: Can we stay with
19 Dummer-Stark-Northumberland for a moment?

20 MR. NEEDLEMAN: The DN-A exhibits?

21 MS. PERCY: Yes.

22 MR. NEEDLEMAN: Yes. Sure. So there are
23 three others that we're specifically objecting
24 to. DN-A 61, DN-A 62 and DN-A 113.

1 PRESIDING OFFICER HONIGBERG: What are
2 they?

3 MR. NEEDLEMAN: So DN-A 61 and 62 were both
4 reports that Mr. Cunningham used, I believe, on
5 cross-examination with Counsel for the Public's
6 Construction Panel. They both related to
7 pipelines. The Panel was unfamiliar with these
8 documents, and these were reports that existed.
9 They were created prior to the date that
10 Supplemental Testimony was due. One was October
11 2015 and the other was February 2015. And so we
12 object to their inclusion on the same basis that
13 we objected to that EMF report earlier.

14 MR. IACOPINO: But they were used in his
15 cross-examination of your Panel.

16 MR. NEEDLEMAN: No. Counsel for the
17 Public's Panel.

18 MR. IACOPINO: Oh, okay.

19 MR. NEEDLEMAN: And Counsel for the
20 Public's witnesses knew nothing about this.

21 PRESIDING OFFICER HONIGBERG:
22 Mr. Cunningham?

23 MR. NEEDLEMAN: And I'm told we objected at
24 the time, and it was sustained.

1 PRESIDING OFFICER HONIGBERG:

2 Mr. Cunningham?

3 MR. CUNNINGHAM: These two exhibits,
4 Mr. Chair, are particularly relevant to one of
5 the fatal flaws in the Applicant's case. That
6 is their failure to assess the safety of a
7 co-located pipeline with high voltage electric
8 lines, both HVDC and AC. I think of particular
9 concern at their particular use is the advanced
10 analysis of HVDC electrodes, their interference
11 on neighboring pipelines. And the reason that
12 is particularly important is that it talks about
13 DC, the characteristics of DC interacting with
14 metallic materials in a right-of-way where
15 there's high voltage transmission.

16 PRESIDING OFFICER HONIGBERG: Were these
17 exhibits shown to any witnesses other than
18 Counsel for the Public's experts?

19 MR. CUNNINGHAM: I used them in
20 cross-examination.

21 PRESIDING OFFICER HONIGBERG: Of Counsel
22 for the Public's experts?

23 MR. CUNNINGHAM: Yes, and that's when they
24 were introduced.

1 PRESIDING OFFICER HONIGBERG: So you didn't
2 show them to the Applicant's experts.

3 MR. CUNNINGHAM: I'm sorry. What was the
4 question?

5 PRESIDING OFFICER HONIGBERG: What Mr.
6 Needleman has said is that the only witnesses
7 these were shown to was Counsel for the Public's
8 witnesses and Counsel for the Public's witnesses
9 were unfamiliar with them. Is that correct? Or
10 did you show them to the Applicant's witnesses
11 as well?

12 MR. CUNNINGHAM: I did. I remember
13 specifically talking with one of the Applicant's
14 construction witnesses about the criteria for
15 pipelines coexisting with electric power lines.
16 We discussed it. As a matter of fact, he
17 recognized that's the INGAA study.

18 MR. IACOPINO: Not if you discussed the
19 issue. Did you discuss these particular
20 exhibits, 61 and 62. That's the question.

21 MR. CUNNINGHAM: Yes. I specifically
22 discussed the 62. DNA 62, Criteria for
23 Pipelines Co-Existing with Electric Power Lines,
24 with Applicant's, one of Applicant's

1 construction witnesses, and he acknowledged that
2 he was familiar with the document. In fact, we
3 had a discussion on the record about the
4 document. That's the INGAA study. That's 62.

5 PRESIDING OFFICER HONIGBERG: This is
6 knowable information. I think Dawn is looking
7 for that.

8 MR. NEEDLEMAN: I can shortcut it. If
9 Mr. Cunningham is in fact correct, and he can
10 show that he used Exhibit 61 and/or 62 with our
11 witnesses during cross-examination and asks them
12 a question about them, then we won't object. If
13 that's not the case, then we do object.

14 PRESIDING OFFICER HONIGBERG: So let's find
15 out. I mean, we know when those people
16 testified. We know when Mr. Cunningham was
17 questioning them. All these transcripts exist.
18 If someone can find them, we can get --

19 MR. CUNNINGHAM: For the record, Mr.
20 Chair --

21 PRESIDING OFFICER HONIGBERG: Hang on. We
22 can get that question answered within the next
23 few minutes. Yes, Mr. Cunningham.

24 MR. CUNNINGHAM: For the record, I'm not

1 sure why it matters that I presented them to
2 their witnesses.

3 PRESIDING OFFICER HONIGBERG: It would
4 matter. I think if the only place you used them
5 were with two witnesses or with witnesses who
6 were not familiar with them, we would, I would
7 not take them. I would exclude them. But it
8 sounds to me like at least one of them you're
9 sure you used --

10 MR. CUNNINGHAM: As I recall --

11 PRESIDING OFFICER HONIGBERG: Okay.

12 MR. CUNNINGHAM: I had a discussion with
13 one of their witnesses about particularly the
14 INGAA study.

15 PRESIDING OFFICER HONIGBERG: This is
16 knowable information, and we will know it soon.

17 MR. CUNNINGHAM: Let me further reflect for
18 the record that these documents are of
19 significant substance in terms are of
20 understanding the dangers of co-location which
21 the Applicants have not addressed in any
22 meaningful way and remains an open question in
23 this document.

24 PRESIDING OFFICER HONIGBERG: I understand

1 that's your argument. You and I just both have
2 law degrees. The key to this is people who have
3 relevant experience and expertise to talk about
4 things, and if you get them in that way, we're
5 going to take them. If you challenged the
6 Applicant's experts to say, haven't you looked
7 at Exhibit 62, doesn't this change your mind,
8 aren't you wrong, clearly that document is going
9 to come in.

10 MR. CUNNINGHAM: Please recall, Mr. Chair,
11 that their expert really basically didn't know
12 anything about co-location.

13 PRESIDING OFFICER HONIGBERG: We're not
14 making substantive arguments of anybody's
15 qualifications right now or anybody's expertise.
16 I just know that neither you nor I has the right
17 expertise on this one. So Mr. Needleman.

18 MR. NEEDLEMAN: We're going to look for
19 that. While we do that, can I move on to the
20 other one?

21 PRESIDING OFFICER HONIGBERG: Hang on. I
22 think Mr. Iacopino may have something.

23 MS. GAGNON: I did a search for DNA 61 and
24 it came up once on Day 50.

1 MR. IACOPINO: It says that there's a
2 reference on page 132 of this transcript.

3 PRESIDING OFFICER HONIGBERG: Do you have
4 that transcript in your database, Dawn?

5 MR. GAGNON: Looking at it.

6 PRESIDING OFFICER HONIGBERG: Can you pull
7 up page 132?

8 MR. ASLIN: That's the CFP Panel, not the
9 Applicant Panel.

10 PRESIDING OFFICER HONIGBERG: Oh, that's
11 the CFP Panel.

12 MR. ASLIN: I would just make the general
13 point that not every exhibit that was presented
14 or put on the screen appears in the exhibit list
15 in the transcript so it's not a hundred percent
16 accurate.

17 PRESIDING OFFICER HONIGBERG: Right. So
18 when was Mr. Cunningham questioning the
19 Applicant's Construction Panel and would have
20 used this.

21 MR. IACOPINO: Just so you know, I believe
22 you're doing, you have the ability to do a
23 global search through all of the transcripts for
24 the reference, regardless of whether it's in a

1 listing at the beginning of the transcript or if
2 it's in the body of the transcript.

3 MS. GAGNON: Yes. I did a search for DNA
4 61.

5 MR. IACOPINO: So based on that search the
6 only place that you found it is in that
7 particular transcript which is Counsel for the
8 Public's Panel.

9 MS. GAGNON: Yes. On the screen now is the
10 transcript for Day 10 which was the Construction
11 Panel. Page 22.

12 (Discussion off the record)

13 PRESIDING OFFICER HONIGBERG: Mr.
14 Cunningham, it doesn't look like it's coming up
15 during your questioning of the Applicant's
16 Construction Panel. What I'm going to say
17 though is that it looks to me like we're
18 probably not going to finish tonight. I just
19 don't, I'm not, because there's too many
20 discussions that still need to take place, but
21 we can make some conditional rulings pending
22 your and the Applicant's and Counsel for the
23 Public's and the people who have good databases
24 here look to see if it was used with the

1 Applicant's experts. Because if it wasn't and
2 the only use of those two documents was with
3 Counsel for the Public's witnesses and they
4 disclaimed any experience with it or any
5 knowledge of it, we're going to not let those
6 two exhibits in. So the conditional ruling on
7 that is it's out. But you still have the
8 ability to find those references, and then I
9 think Mr. Needleman and Mr. Getz will agree with
10 you that they come in. And Mr. Needleman is
11 nodding his head at me.

12 MR. NEEDLEMAN: I agree with that.

13 PRESIDING OFFICER HONIGBERG: So that's
14 where we are without --

15 MR. CUNNINGHAM: I don't agree with the
16 basis of the ruling, but I sure will look.

17 PRESIDING OFFICER HONIGBERG: Okay.

18 MR. IACOPINO: So now we're on to 113.
19 What's that?

20 PRESIDING OFFICER HONIGBERG: You've got
21 another one.

22 MR. NEEDLEMAN: 113 is the Appraisal Report
23 that Mr. Cunningham wanted to use from the PUC
24 docket. That was prepared by Jay Dudley, and we

1 objected at the time on relevance, and I think
2 the objection was sustained at the time.

3 PRESIDING OFFICER HONIGBERG: Can you show
4 me the exhibit?

5 MR. NEEDLEMAN: DNA 113. I'm sorry.
6 Prepared for Jay Dudley.

7 PRESIDING OFFICER HONIGBERG: I believe it
8 was prepared by an outside consultant, right?
9 The Shenehon Company.

10 PRESIDING OFFICER HONIGBERG: Yes. When
11 and how was this used, Mr. Cunningham?

12 MR. CUNNINGHAM: I used this exhibit, if my
13 memory serves me correct, this, again, was with
14 a CFP witness.

15 MR. NEEDLEMAN: Correct.

16 MR. CUNNINGHAM: I don't make any
17 representation at all that I used this with any
18 of the Applicant's witnesses, but I used it in
19 connection with what I consider to be a fatal
20 omission on behalf of the Applicants to fail to
21 assess the impacts of the transfer of the AC
22 portion of the line to PSNH. The Applicants
23 failed to make any analysis of what impacts on
24 PSNH ratepayers if that AC portion of the line

1 was returned back to PSNH under the terms of the
2 provisions of the PSA.

3 What was particularly interesting to me
4 with respect to the Schmick report was that 72.4
5 percent, if I remember right, of the value of
6 the line of the right-of-way is attributable to
7 the AC portion of the line. So that was the
8 purpose of using the Schmick report.

9 PRESIDING OFFICER HONIGBERG: Right, but I
10 recall you trying to use it and having an
11 objection sustained, and I think we're going to
12 continue with that and not allow it in as a full
13 exhibit.

14 MR. CUNNINGHAM: Okay, Mr. Chair. One more
15 thing. I've got some objections to the
16 Applicant's. You may not want to do that yet
17 but --

18 PRESIDING OFFICER HONIGBERG: Well, I mean,
19 we're going to get to it eventually, but --

20 MR. NEEDLEMAN: Well, having in mind we're
21 not going to finish tonight so we're probably
22 going to set an endpoint, I'm wondering whether
23 we should work to try to finish particular
24 groups so they don't have to come back.

1 PRESIDING OFFICER HONIGBERG: I think that
2 would be great so actually maybe we should do
3 groups, you know, like Mr. Cunningham or
4 Mr. Baker has objections to your exhibits, we
5 can dispose of those. I don't know.

6 MR. NEEDLEMAN: That's fine. I would note
7 that we haven't heard from Mr. Cunningham about
8 any objections.

9 PRESIDING OFFICER HONIGBERG: Mr.
10 Cunningham, do you have objections to the
11 Applicant's exhibits?

12 PRESIDING OFFICER HONIGBERG: All right.
13 Well, hang on. Before you do that, I know that
14 the Drapers and Mr. Stamp probably want to get
15 out of here if they can.

16 Mr. Cunningham, one of the Applicant's
17 people is going to go find out what exhibits you
18 have objections to.

19 So do you want to do the Pemi group now,
20 Mr. Needleman?

21 MR. NEEDLEMAN: We have no specific
22 objections to any of their exhibits.

23 PRESIDING OFFICER HONIGBERG: Are there
24 unused exhibits?

1 MR. NEEDLEMAN: I believe there are some.
2 We talked about reconciling. We haven't had the
3 chance yet.

4 PRESIDING OFFICER HONIGBERG: Okay.

5 MR. NEEDLEMAN: Mr. Fish will go try to
6 work with them. He said it's a short list.

7 I've have got another group I can do
8 quickly here.

9 PRESIDING OFFICER HONIGBERG: Who's that?

10 MR. NEEDLEMAN: Dalton-Whitefield-Bethlehem
11 Abutters.

12 PRESIDING OFFICER HONIGBERG: Anybody here
13 from that group? Don't see anybody. All right.
14 What are the objections for that group?

15 MR. NEEDLEMAN: It was the same. There
16 were a series of photos that we identified that
17 had representations on them that we believe were
18 not accurate, and we're willing to allow them in
19 subject to the same stipulation. I believe it
20 was DWBA number 7.

21 MS. BIRCHARD: Does it make sense to
22 resolve the exhibits for parties who aren't
23 present?

24 PRESIDING OFFICER HONIGBERG: Ms. Birchard,

1 everybody knew this was going to happen when we
2 were done with exhibits, and if that's the only
3 one they've got, and it gets resolved the same
4 way it gets resolved for everybody else, I think
5 we're okay. But, again, if somebody's got a,
6 makes a stink, we'll maybe revisit, but --

7 MS. BIRCHARD: I guess I'm partly concerned
8 that those of us who are present and some who
9 have driven very long distances --

10 PRESIDING OFFICER HONIGBERG: Use your
11 microphone, all right?

12 MS. BIRCHARD: I guess I'm partly concerned
13 that if the Applicant intends to go through
14 multiple parties who are not present, those of
15 us who are present cannot leave.

16 PRESIDING OFFICER HONIGBERG: He just said
17 it would be a quick one because I think it's
18 only one exhibit.

19 MR. NEEDLEMAN: That's correct, and there
20 are various photos within here that have those
21 sorts of representations like Exhibit G. Go
22 back to G, Dawn. Yes. There's one. That's
23 another one. They're just poles sort of drawn
24 in with Photoshop. Same idea.

1 PRESIDING OFFICER HONIGBERG: My ruling
2 would be to let them in with the same kind of
3 notation that these are somebody's drawing that
4 don't -- they're just someone's interpretation.

5 MR. NEEDLEMAN: Yes.

6 PRESIDING OFFICER HONIGBERG: Who else you
7 got?

8 MR. NEEDLEMAN: Well, I can turn to Ms.
9 Birchard, I think. I don't think we have any
10 specific objections to your exhibits. Is that
11 correct?

12 MS. BIRCHARD: Can you distinguish between
13 CLF and AMC exhibits or are you talking about
14 the NGOs as a general matter?

15 MR. NEEDLEMAN: I'm not seeing, if someone
16 will correct me, I don't think we have any
17 objections to specific NGO exhibits.

18 MS. BIRCHARD: Including the ones that were
19 discussed earlier?

20 MR. NEEDLEMAN: That's separate. That's
21 the other category.

22 PRESIDING OFFICER HONIGBERG: The unused.
23 The unused is a different category that we're
24 going have to have a discussion about, but it

1 doesn't sound like they have any objections to
2 the ones you did use. So that at least wipes
3 that category out.

4 MR. KIMBALL: Are we going to be able to
5 resolve that this evening? I'm just trying to
6 figure out. I've got a snowstorm tomorrow and a
7 long drive.

8 PRESIDING OFFICER HONIGBERG: I don't know.
9 I hope so. Like I said, I've got no place I
10 have to be and I live in town so I can hang out
11 for as long as it would be helpful or useful to
12 do that.

13 MR. KIMBALL: I would rather resolve it
14 tonight and stay late.

15 MR. NEEDLEMAN: I can tick another one off
16 quickly.

17 PRESIDING OFFICER HONIGBERG: Let's do it.

18 MR. NEEDLEMAN: Abutting Property Owners
19 Bethlehem to Plymouth. We object to one
20 exhibit. It's number 40. This is the photo.
21 This was purported to be related to the Project.
22 It was never connected or authenticated in any
23 way. If you want to let it in as a photo,
24 that's fine, but we object to it being connected

1 to us.

2 PRESIDING OFFICER HONIGBERG: Do you recall
3 who used it? Is somebody here from that group?
4 I don't see anybody. How was this used?

5 MR. NEEDLEMAN: It was used, I think, in
6 relation to an argument that this was somehow
7 runoff, inappropriate runoff connected to the
8 boring operations that we engaged in.

9 PRESIDING OFFICER HONIGBERG: Do you recall
10 who was asking questions of whom?

11 MR. NEEDLEMAN: I'm told it might have been
12 Mr. Lakes, but I can't say that with certainty.

13 MR. GETZ: I believe it was Mr. Lakes
14 asking questions of our Construction Panel on
15 May 31.

16 PRESIDING OFFICER HONIGBERG: So you're
17 willing to let it in with the same kind of
18 notation that this is -- well, actually it's a
19 different notation.

20 MR. NEEDLEMAN: I don't know how it could
21 possibly have any value. It's a picture of the
22 ground with stuff on it.

23 PRESIDING OFFICER HONIGBERG: If that's the
24 only way it was used, I don't see it coming in.

1 MR. NEEDLEMAN: So the ones -- I've got a
2 couple left on my list. We're going to save
3 Counsel for the Public. We only have three.

4 PRESIDING OFFICER HONIGBERG: What about
5 SPNHF?

6 MR. NEEDLEMAN: None. We're in agreement
7 with SPNHF.

8 PRESIDING OFFICER HONIGBERG: Do they have
9 unused?

10 MR. NEEDLEMAN: Yes. We're in agreement on
11 specific, and I think maybe close on unused.

12 PRESIDING OFFICER HONIGBERG: Okay.

13 MS. BOEPPLE: Yes. If I can just speak to
14 that very quickly. With respect to unused, if
15 we can, a lot of what we have that was unused
16 could be recognized, taken Administrative Notice
17 of, that are part of an Agency's record. So if
18 we could narrow those categories down, then
19 that's going to resolve.

20 PRESIDING OFFICER HONIGBERG: I think what
21 is going to happen is when Mr. Needleman is done
22 with the specific exhibits, I'm going to walk
23 out, and you guys are going to engage in another
24 discussion about this Administrative Notice

1 issue, the unused exhibits, categories, things
2 that are like Mr. Kimball raised earlier.
3 Things that are referenced in someone's
4 testimony but not necessarily expanded on beyond
5 one or two lines.

6 So what other groups can we deal with, Mr.
7 Needleman?

8 MR. NEEDLEMAN: So we've got one exhibit,
9 Ms. Lee's, Ashland to Concord Abutters number 4.
10 This is the presentation that was done with
11 Mr. Kucman at the time that involved tower
12 collapse and so forth, and we objected to this
13 as having no foundation and unreliable. And I
14 can't -- did we object at the time?

15 MR. IACOPINO: Yes.

16 MR. NEEDLEMAN: Yes. And I thought it was
17 sustained, but I'm not positive.

18 MS. LEE: Excuse me. Mr. Needleman?

19 PRESIDING OFFICER HONIGBERG: Ms. Lee?

20 MS. LEE: Are you saying that it was
21 objected to at the time because --

22 PRESIDING OFFICER HONIGBERG: Mr. Iacopino
23 thinks it was.

24 MS. LEE: I just found the transcript.

1 It's April 13th, and it's page 175, and it ends
2 on 193.

3 MR. IACOPINO: Morning or afternoon?

4 MS. LEE: Excuse me? It was in the
5 afternoon session, and I had cross-examined
6 Mr. Quinlan, and I know that Mr. Honigberg, you
7 referred to it as the moving picture, but it was
8 really because it was called a Power Point and
9 Taras Kucman was the one who created the Power
10 Point for me and he assisted me, but he didn't
11 file Prefiled Testimony so he couldn't speak
12 about the Power Point.

13 PRESIDING OFFICER HONIGBERG: What we need
14 to find is --

15 MR. IACOPINO: Page 175.

16 MS. LEE: Is 175, it starts on page 193.

17 MR. IACOPINO: April 13, afternoon. Page
18 175.

19 PRESIDING OFFICER HONIGBERG: Ms. Lee, you
20 say there's a discussion about it from 175 to
21 193?

22 MS. LEE: Yes. All regarding the moving
23 picture or Power Point. And the number 4 that
24 you cited, I had found the Power Point version.

1 I don't know if it is important to make it a
2 little bit more or less boring and put in the
3 Power Point version instead of the static pages.
4 I just loaded it this afternoon while I was
5 here.

6 PRESIDING OFFICER HONIGBERG: Dawn, can you
7 search in the text that you're looking at right
8 now during this section for an objection?

9 MS. GAGNON: I think it was when you cut
10 her off.

11 (Discussion off the record)

12 PRESIDING OFFICER HONIGBERG: So we're back
13 with an issue with the Pemi folks.

14 MR. NEEDLEMAN: With the Pemi folks and
15 also with Ms. Percy's groups as it relates to
16 unused exhibits, they have now, and the ones
17 that we identified that were of concern they
18 have either shown us that they were used or they
19 have withdrawn the ones that we were concerned
20 about so we have disposed of that issue with
21 those two groups.

22 PRESIDING OFFICER HONIGBERG: Thank you.

23 MR. IACOPINO: How are we going to know
24 which ones are out?

1 MR. NEEDLEMAN: We'll let you know.

2 MR. FISH: So for the PRLAC group, they've
3 withdrawn Exhibits 12, 14, 17, 20, and 21-1.

4 MR. IACOPINO: 12, 14, 17, 20, 20-1.

5 MR. FISH: 20-1. Right.

6 MR. IACOPINO: And the rest are in?

7 MR. FISH: Right.

8 PRESIDING OFFICER HONIGBERG: What about
9 Percy?

10 MR. IACOPINO: DNA?

11 MS. PERCY: I just have one question on the
12 DNA. I think we're all set on the exhibits that
13 were used and weren't properly referenced, but
14 I'll get that for you, but I don't know about
15 Eric and Margaret Jones, and they have DNA 30 to
16 38, and they are listed as exhibits not used.

17 MR. NEEDLEMAN: We haven't heard anything
18 from them.

19 PRESIDING OFFICER HONIGBERG: All right.
20 We're going to put that aside for a minute.
21 Let's go back to Ms. Lee.

22 Dawn, can you pull back up the exhibit and
23 give us a sense of how many pages it was?
24 Because I do recall it was used for a bit --

1 MS. LEE: Excuse me.

2 PRESIDING OFFICER HONIGBERG: Hang on, Ms.
3 Lee. And I'm not sure how far into it we got
4 before we decided we'd shown him enough that
5 Mr. Quinlan could answer a question.

6 MS. GAGNON: That's it.

7 MS. LEE: I can help you. It starts on
8 page 9 of the transcript. Excuse me. It starts
9 on 186.

10 PRESIDING OFFICER HONIGBERG: Right. We've
11 read it. Dawn was able to pull it up, and I was
12 able to read it while other things were going
13 on.

14 MS. LEE: Okay.

15 PRESIDING OFFICER HONIGBERG: So I recall
16 that you used this, you and Mr. Kucman, you used
17 this to ask Mr. Quinlan a question. Mr. Quinlan
18 answered that question.

19 MS. LEE: It was several questions.

20 PRESIDING OFFICER HONIGBERG: Yes, it was.

21 MS. LEE: It's 18 pages long.

22 PRESIDING OFFICER HONIGBERG: But so this
23 document, as I recall, is also, was also used by
24 Mr. Kucman during one of the public comment

1 sessions that took place in Concord. He may not
2 have used this specific document, but he used a
3 document like it. Because he used it as,
4 because you used it as the basis for a question
5 that, a series of questions that were answered,
6 we're going to allow this to be in as an
7 exhibit. So we're going to overrule the
8 objection to it and allow it in as an exhibit,
9 but understanding that we're not accepting that
10 it is a true and accurate representation of
11 what's going to happen with the Northern Pass
12 line if it's ever constructed, but it was used
13 as the basis of a question or a series of
14 questions that Mr. Quinlan answered so this one
15 is in.

16 MS. LEE: Thank you.

17 MR. NEEDLEMAN: All right. Move on?

18 PRESIDING OFFICER HONIGBERG: Move on.

19 MR. NEEDLEMAN: Let me try to get rid of
20 the Joint Muni ones. So there are four that we
21 object to. I'll start with Joint Munis 311 and
22 313. 311 was an email exchange, and I think
23 Danielle can correct me if I'm wrong, 313 were a
24 couple of photos of Unitil work near Alton

1 Woods.

2 We went back and forth after these exhibits
3 were used with Ms. Pacik because we were
4 concerned that the portion of the testimony that
5 asserted that we didn't have correct approvals
6 to do that work was not accurate. Ms. Pacik has
7 now submitted something to the Committee
8 correcting that portion of the record, but she
9 asserts that these were still used for other
10 illustrative purposes that she believes are
11 relevant. I'm not going to contest that. I
12 haven't had a chance to look at the transcript.
13 And so subject to that description we wouldn't
14 object to letting them in. Is that accurate,
15 Danielle?

16 MS. PACIK: It is. We still rely on 311
17 and 313 and it was part of our examination and
18 we've just clarified it with the Notice of
19 Correction at this point.

20 MR. IACOPINO: Can I just ask a question?
21 Has the Notice of Correction been marked as an
22 exhibit?

23 MS. PACIK: Yes. We marked it as Joint
24 Muni 352, and we also filed it to the entire

1 Service List.

2 MR. IACOPINO: Thank you.

3 PRESIDING OFFICER HONIGBERG: So there's no
4 issue that needs to be resolved with 311 and
5 313?

6 MR. NEEDLEMAN: I think we're set subject
7 to all that.

8 The other two, Joint Muni 277 is a
9 compilation of exhibits that Ms. Pastoriza used.
10 I believe we've reached an agreement where they
11 will submit a revised version of it that won't
12 be objectionable to us. Is that correct,
13 Christine?

14 MS. FILLMORE: Yes, it is, and the
15 corrected version is 277 A.

16 PRESIDING OFFICER HONIGBERG: So 277 is
17 withdrawn and replaced with 277 A.

18 MS. FILLMORE: Yes.

19 MR. NEEDLEMAN: And the only one is Joint
20 Muni 212. We have a similar objection to this
21 one. It's an image of material on the ground
22 that is purported to be from us. And we would
23 not object to this coming in subject to the same
24 proviso as the other ones as long as it's

1 considered a hypothetical and not tied to us.

2 PRESIDING OFFICER HONIGBERG: Ms. Fillmore,
3 this isn't your picture, I don't think, is it?

4 MS. FILLMORE: It falls under Joint Muni.
5 It was Kris Pastoriza which is part of Municipal
6 Group 2.

7 PRESIDING OFFICER HONIGBERG: So then what
8 is the proviso under which the Applicant would
9 be okay with this picture coming in?

10 MR. NEEDLEMAN: Same as before. As long
11 and it's not offered for the truth as being our
12 material, but it's just a hypothetical as to
13 what this might look like if it happened.

14 MS. FILLMORE: That's agreeable to us.

15 PRESIDING OFFICER HONIGBERG: Okay.

16 MR. NEEDLEMAN: I think the last category
17 that we have specific objections to are
18 Clarksville/Stewartstown combined, and I don't
19 know if there's anyone here to speak to them.

20 MS. THOMPSON: I'm here.

21 MR. NEEDLEMAN: Okay. So we've got 7
22 exhibits in this group that we object to. I may
23 look for a little bit of help from Mr. Getz.
24 The first one is CS 123. 123, 124 and 125.

1 MR. GETZ: This is information provided by
2 Mr. Thompson. That's really testimony that was
3 compiled by someone else who was then not
4 available for the Applicants to cross-examine,
5 and it's his position about how much takeoff
6 there would be from the site.

7 MR. NEEDLEMAN: Right. This was the
8 Transition Station 4 blasting issue and how much
9 material would be removed.

10 PRESIDING OFFICER HONIGBERG: Did he show
11 these exhibits to your witnesses?

12 MR. NEEDLEMAN: No. They weren't shown to
13 our witnesses. They came in later and it's the
14 same concern. They weren't presented to a
15 adverse witness who could react to it and refute
16 them.

17 PRESIDING OFFICER HONIGBERG: I don't
18 remember seeing them. Did he purport to use
19 them?

20 MR. NEEDLEMAN: I'm sorry. It was
21 presented to the Construction Panel on recall,
22 but it was ruled outside the scope of the issues
23 on recall.

24 PRESIDING OFFICER HONIGBERG: Oh. I see.

1 Okay. So what's 125? You said 123, 124 and
2 125?

3 MR. NEEDLEMAN: I think these were his
4 calculations or some expert that he asked to do
5 calculations that he presented to the Panel.

6 PRESIDING OFFICER HONIGBERG: Ms. Thompson?

7 MS. THOMPSON: Yes. He presented them
8 because the Construction Panel had said that it
9 was going to be 30,000 cubic yards back in
10 Technical Sessions, and then it came out later
11 that it was going to be 60. So they also that
12 day they thought it was going to be cut and
13 fill, and they found it was just going to be
14 cut. And that's when the Panel took the plans
15 out, came back, admitted they were wrong. So
16 that made Brad question all those numbers. And
17 he did the takeoff himself but where he's not a
18 civil engineer he took it to Kevin Hayes
19 actually just to validate his numbers, and later
20 it was verified by the Counsel for the
21 Public's Dewberry.

22 MR. NEEDLEMAN: Mr. Chair --

23 MS. THOMPSON: And it was shown during --

24 MR. NEEDLEMAN: And, again, this was during

1 the recall, and our objections were sustained at
2 the time because it was outside the scope of the
3 recall.

4 PRESIDING OFFICER HONIGBERG: Ms. Thompson,
5 did you say you also used it with Counsel for
6 the Public's witnesses?

7 MS. THOMPSON: No. I said the Counsel for
8 the Public's witnesses, Dewberry, validated the
9 numbers. Not Kevin Hayes's numberS but they had
10 their own expert who did the takeoffs.

11 PRESIDING OFFICER HONIGBERG: Ms. Thompson,
12 is it your understanding that the work done by
13 Counsel for the Public agreed with the
14 information that Mr. Hayes, that Mr. Thompson
15 vetted with Mr. Hayes?

16 MS. THOMPSON: No. It was just that after
17 we presented Kevin Hayes and then the Counsel
18 for the Public's Dewberry agreed, they didn't
19 agree with that witness but they came up with
20 numbers that were similar.

21 PRESIDING OFFICER HONIGBERG: Ms. Thompson,
22 here's what we're going to -- I'm going to agree
23 with the Applicant that the information that's
24 in 123, 124 and 15 was brought in too late,

1 outside the scope of the recall. But I will
2 tell you that it sounds like you have an
3 information available to you that may not be
4 identical, but is similar from Counsel for the
5 Public.

6 MS. THOMPSON: Why was it too late? We
7 didn't know about that --

8 PRESIDING OFFICER HONIGBERG: The witnesses
9 were recalled for a particular purpose, and this
10 was an attempt to expand the numbers of topics
11 that they were going to talk about.

12 MS. THOMPSON: Okay.

13 PRESIDING OFFICER HONIGBERG: Mr.
14 Needleman.

15 MR. NEEDLEMAN: The next three all fall
16 into the same category. CS 136, CS 137, CS 138.
17 These I believe are all hand drawings that were
18 created by Mr. Thompson that purport to
19 represent his understanding of how logs would be
20 handled and work would be done on the dirt
21 roads. I think it was Bear Rock Road. They
22 were only used with Counsel for the Public's
23 witnesses. They were never used with ours. We
24 have concerns about reliability, accuracy,

1 whether they actually represent what we're
2 purporting to do, and they were never presented
3 to any of our witnesses so they could be
4 challenged.

5 PRESIDING OFFICER HONIGBERG: What did
6 Counsel for the Public's witnesses say about
7 them?

8 MR. NEEDLEMAN: I honestly can't recall.

9 PRESIDING OFFICER HONIGBERG: Anybody?

10 MR. PAPPAS: I do recall our witnesses
11 testifying about them. I can't specifically
12 recall what, but I, part of what I do recall is
13 something about the boom and when it went around
14 was one issue and then I think the width might
15 have been another issue, but beyond that my
16 recollection is fuzzy.

17 PRESIDING OFFICER HONIGBERG: Do we know
18 when this -- can we find the transcript?

19 MR. GETZ: October 23rd.

20 PRESIDING OFFICER HONIGBERG: Tom, do you
21 know, was it a.m. or p.m.?

22 MR. GETZ: Not clear.

23 (Discussion off the record)

24 PRESIDING OFFICER HONIGBERG: The question

1 is did Mr. Thompson have a discussion with
2 Counsel for the Public's witnesses about these
3 three exhibits. And if so, what was it.

4 (Discussion off the record)

5 PRESIDING OFFICER HONIGBERG: Dawn, can you
6 try searching on the exhibit number?

7 MR. NEEDLEMAN: 136, 137, 138.

8 (Discussion off the record)

9 PRESIDING OFFICER HONIGBERG: In looking at
10 this, it appears, at least I can confirm that
11 136 and 138 appear to have been used to ask
12 hypotheticals. I haven't yet seen a reference
13 to 137, but 136 and 138 look good, at least for
14 purposes of bringing them in. They may not be
15 accurate. You can argue they're not. But they
16 were used for purposes of asking Counsel for the
17 Public's witnesses questions.

18 Yes, Mr. Needleman?

19 MR. NEEDLEMAN: Well, again, my concern is
20 I'm not sure that Counsel for the Public would
21 be considered adverse witnesses who would have
22 an incentive to challenge the accuracy of these.
23 That's the issue here. I mean, and I think that
24 Mr. Thompson wants to use them to argue that

1 they actually represent what they purport to
2 represent, and that's the problem.

3 PRESIDING OFFICER HONIGBERG: Mr. Iacopino
4 has just whispered in my ear they were used to
5 set up hypothetical questions. If he never, if
6 Mr. Thompson never established that they were
7 accurate, his argument is going to fail, and
8 you're going to, if that's the state of play,
9 you'll be able to argue to the contrary maybe
10 successfully.

11 MR. NEEDLEMAN: Okay.

12 PRESIDING OFFICER HONIGBERG: So those
13 three are coming in.

14 MR. NEEDLEMAN: And then the last one is CS
15 156, and the basis of the objection is we
16 haven't seen it. We can't find it anywhere.

17 MR. IACOPINO: Do you know what it is?

18 PRESIDING OFFICER HONIGBERG: That could be
19 a problem.

20 MR. GETZ: It's a photo of some lattice
21 structures.

22 MS. THOMPSON: Yes. We're very willing to
23 let that one go.

24 PRESIDING OFFICER HONIGBERG: Wonderful.

1 MR. IACOPINO: Thank you.

2 MS. PACIK: Mr. Chair?

3 PRESIDING OFFICER HONIGBERG: Who's
4 talking. I'm sorry.

5 MS. PACIK: Over here. I'm sorry. It's
6 Danielle Pacik.

7 PRESIDING OFFICER HONIGBERG: Ms. Pacik. I
8 recognized the voice, and I looked for you over
9 there.

10 MS. PACIK: On the 125 that they just went
11 over, I was looking at the transcript from Day
12 43 in the morning, October 2nd, 2017, page 36,
13 it looks like that one was allowed in, and that
14 Mr. Thompson was alluded to ask questions. That
15 was the list of the amount from Mr. Hayes, the
16 blasting. It appears that ultimately he may not
17 have gotten the answers to the questions he
18 wanted, but he was allowed to ask questions
19 about it.

20 PRESIDING OFFICER HONIGBERG: Mr.
21 Needleman?

22 MR. NEEDLEMAN: Sorry. I was talking to
23 Mr. Getz.

24 PRESIDING OFFICER HONIGBERG: Ms. Pacik

1 indicates that she's found questions that
2 Mr. Thompson was allowed to ask using Exhibit
3 125 which was, that was the one that was just
4 the table that had numbers on it.

5 MS. PACIK: Exactly. Yes.

6 PRESIDING OFFICER HONIGBERG: And that he
7 may not have gotten answers that he liked, but
8 he was using the document to ask questions of
9 those witnesses.

10 MR. NEEDLEMAN: Right. Again, I'm not sure
11 the objection was that he didn't use it. The
12 objection was outside the scope of the
13 testimony.

14 PRESIDING OFFICER HONIGBERG: That's right.

15 MS. PACIK: And that objection was raised,
16 and Commissioner Bailey, I think, at that point
17 was acting as the Presiding Chair, and she
18 allowed Mr. Thompson to ask questions.

19 PRESIDING OFFICER HONIGBERG: That would
20 explain why I don't recall this.

21 We're going to stick with the original
22 ruling. Those were out because they were beyond
23 the scope of what was supposed to be used that
24 day, and I think that the parties who wanted to

1 use them, if Mr. Thompson wants to use
2 information that would be inconsistent with the
3 Applicants, he can probably use information that
4 came from Counsel for the Public. Okay? Yes.
5 Mr. Needleman.

6 MR. NEEDLEMAN: So, Mr. Chair, but for the
7 three Counsel for the Public exhibits we're
8 going to work on separately, that resolves our
9 individual objections. I understand that
10 separately we'll work on the "not used"
11 objections. I'm not sure there's more you want
12 to cover. If you want to take up --

13 PRESIDING OFFICER HONIGBERG: I think
14 objections to your exhibits would be in order,
15 but maybe we'll take a five-minute break to give
16 people a chance to get up and stretch their
17 legs.

18 (Recess taken 7:08 - 7:32 p.m.)

19 PRESIDING OFFICER HONIGBERG: The first
20 order of business is to deal with the NGOs'
21 exhibits and objections to those and vice-versa,
22 if any.

23 MR. GETZ: I would summarize it this way.
24 In looking at the list of unused with

1 Mr. Kimball we've broken them into three
2 categories. We've agreed on a couple of things,
3 but there's one category I think that we're not
4 in agreement on that Mr. Needleman raised
5 earlier, and that's so there's Exhibits 107,
6 109, 110, 113, 119, and 122. These were
7 exhibits that were marked for identification and
8 loaded in the ShareFile that are excerpts from
9 references in Dr. Publicover's Prefiled
10 Testimony. I'm sure that Ken will want to
11 address this a little more, but we interpreted
12 these with a series of other exhibit as were
13 intended to for cross-examination. Some were
14 used in cross, some were not. The ones that
15 were not used in cross are the ones that we
16 would object to, and they take the position that
17 they relate to the Direct Testimony and should
18 be in.

19 PRESIDING OFFICER HONIGBERG: Just to be
20 clear, you said excerpts. You said that each of
21 the exhibit is an excerpt of something?

22 MR. KIMBALL: Can I try to clarify that?

23 PRESIDING OFFICER HONIGBERG: Sure.

24 MR. KIMBALL: And this carries through, I

1 think, all of those that Tom just listed out.
2 This will be the example.

3 If we used Exhibit 107, and it's Rosenberg,
4 et al, 2003, it's A Land Manager's Guide to
5 Improving Habitat for Forest Thrushes, and then
6 we put in NGO Exhibit 107. Dr. Publicover
7 refers to that at page 8, line 11, in his
8 Prefiled Testimony.

9 PRESIDING OFFICER HONIGBERG: All right.
10 Let's get 107 up.

11 MR. KIMBALL: And he relies on it. And
12 some of these we had put together because we
13 were late in the questioning lineup.

14 PRESIDING OFFICER HONIGBERG: Hang on, Ken.
15 Let me see what we're looking at.

16 MR. KIMBALL: Sure. If you go to Dr.
17 Publicover's testimony, and you go to page 8,
18 his Exhibit is 101. Page 8. Line 11. And
19 you'll see it reads, however, in a companion
20 publication Rosenberg, et al, 2003, found that
21 certain thrushes, et cetera, et cetera. So NGO
22 Exhibit 107 is that document.

23 PRESIDING OFFICER HONIGBERG: This is the
24 excerpt issue. So what I see in Exhibit 107 is

1 the cover and then page 16.

2 MR. KIMBALL: Which is where that quote
3 came from. So that full bucket that Tom just
4 outlined which is the 107, 109, 110, 113, 119,
5 and 122 all follow that same criteria.

6 PRESIDING OFFICER HONIGBERG: Tom, is your
7 objection to these two pages or maybe what's
8 being offered? That may be for you, Ken. Is
9 what's being offered just these two pages or is
10 there a larger document associated with this
11 that you want --

12 MR. KIMBALL: No, those are the relevant
13 pages out of that document.

14 PRESIDING OFFICER HONIGBERG: And that's
15 all you want in as an exhibit.

16 MR. KIMBALL: That's correct.

17 PRESIDING OFFICER HONIGBERG: Okay, Tom,
18 what's the objection?

19 MR. GETZ: Our concern was if these were
20 meant to be part of the testimony, they should
21 have been part of the testimony so we knew what
22 to address while they were cross-examining the
23 witnesses. These were a bundle of documents
24 that were marked for identification.

1 PRESIDING OFFICER HONIGBERG: But they're
2 in his Prefiled Testimony. At least for this
3 one. There's a very specific reference to these
4 two pages.

5 MR. GETZ: There's a cite to it.

6 PRESIDING OFFICER HONIGBERG: Let's go back
7 to the transcript, Dawn. Let me see what that
8 transcript says again.

9 MS. GAGNON: The transcript or the Prefiled
10 Testimony?

11 PRESIDING OFFICER HONIGBERG: The Prefiled
12 Testimony. Sorry.

13 MR. KIMBALL: Is it Line 11? And just as a
14 little bit --

15 PRESIDING OFFICER HONIGBERG: This is in.
16 And the others, do you agree, Tom, that the
17 others are identical? So the ruling on this one
18 controls the ruling on the others?

19 MR. GETZ: They're of the same nature.
20 It's references that weren't in the testimony or
21 attached to the testimony but are some --

22 PRESIDING OFFICER HONIGBERG: But they are
23 in the testimony. I see them in the testimony.
24 I'm looking at them.

1 MR. IACOPINO: Isn't this really just a
2 difference in citation between scientific
3 journal and legal document? We cite to
4 references differently?

5 PRESIDING OFFICER HONIGBERG: I think it's
6 different than that. I think what it is is I'm
7 making an assertion in the testimony that this
8 authority says X, and then I'm attaching that
9 authority to the testimony to say, see, you can
10 look at it. It's right here. I mean, that's
11 all that's happened, right? And if all of these
12 are identical, they're all in.

13 MR. GETZ: Yes. We would concede that
14 they're of the same nature.

15 PRESIDING OFFICER HONIGBERG: Okay.

16 MR. KIMBALL: Then 108 and 112 which are
17 in, are in a different bucket, those came from
18 when Dr. Publicover was asked in discovery what
19 he based his opinion on. We had entered these
20 into the record because we'd intended to use
21 them in cross, but in the end we did not.

22 MR. GETZ: Well, I mean, marked for
23 identification. Not entered into the record.

24 MR. KIMBALL: I take it back. We were

1 asked to put our exhibits in in April, and these
2 were part of that grouping that we put in in
3 April.

4 MR. IACOPINO: But you didn't use them.

5 PRESIDING OFFICER HONIGBERG: But you never
6 used them.

7 MR. KIMBALL: We did not use them in cross,
8 that's correct, and they're not cited in any of
9 our Prefiled.

10 PRESIDING OFFICER HONIGBERG: And those, I
11 think, are out.

12 MR. KIMBALL: Okay. Then the others which
13 are 111, 120, 127 and 128 that they had flagged,
14 those are actually all Applicant exhibits.

15 MS. BIRCHARD: I think the Applicants now
16 concede that those are now acceptable. Is that
17 correct?

18 MR. GETZ: Our position was we searched the
19 records and couldn't find the references to
20 their exhibit numbers. If they're representing
21 that this material is something that we've
22 already put on the record elsewhere, then we
23 don't have an objection.

24 PRESIDING OFFICER HONIGBERG: Scroll down

1 to where the page number is. Does the DIS in
2 the number indicate that this was a discovery
3 response?

4 MR. KIMBALL: No, they entered the Draft
5 EIS as one of their exhibits, and then Dr.
6 Publicover actually updates it when the Final
7 EIS come out.

8 PRESIDING OFFICER HONIGBERG: I'm sorry.
9 The letter is "D-" D as in dog, "-IS." It's the
10 page number that's at the bottom of probably all
11 of the pages of this exhibit. Does that mean
12 it's a discovery response?

13 MR. FISH: Yes.

14 PRESIDING OFFICER HONIGBERG: So is it not,
15 are these documents that I'm looking at which
16 appear to be emails, are they not otherwise
17 exhibits? That's different. Discovery is not
18 exhibits.

19 MR. GETZ: I've got to make sure we're on
20 the same category again.

21 MR. KIMBALL: I'm a little mixed up here as
22 well. I think you jumped back to the second
23 category.

24 PRESIDING OFFICER HONIGBERG: No. I don't

1 think so. I'm looking at NGO 111. That's what
2 Dawn pulled up for us.

3 MR. KIMBALL: Okay.

4 MR. GETZ: I guess it may be whether we --
5 if Ken is saying that it's a document that's
6 actually in the record that we've submitted and
7 identified and put in the record, we're fine,
8 but if it's something that we marked as part of
9 a discovery response that we haven't put it,
10 then we're not fine.

11 PRESIDING OFFICER HONIGBERG: The
12 distinction is if it was just produced in
13 discovery, it doesn't exist as far as the
14 Committee is concerned until somebody puts it in
15 front of us.

16 MR. KIMBALL: Yes. 111 is a little
17 different because the Applicant had contended
18 that the northern forest seepage hardwood forest
19 was an exemplary community. We checked with the
20 Heritage, and they said that that was not the
21 decision they'd made. Later they came forward
22 and said that it was an exemplary community.
23 And then the Applicant updates their record
24 which is Applicant Exhibit 124, link 130, which

1 then brings into the record what had been come
2 forth from the state agency.

3 PRESIDING OFFICER HONIGBERG: Okay. I'm
4 not, I'm not with you yet. Are you saying that
5 111 is related to 124 and 130?

6 MR. KIMBALL: It's Exhibit 124, link 130.
7 I'm sorry.

8 PRESIDING OFFICER HONIGBERG: Oh, it's
9 Applicant's exhibit.

10 MR. IACOPINO: This is an excerpt from an
11 Applicant exhibit.

12 PRESIDING OFFICER HONIGBERG: Is that what
13 you're saying?

14 MR. KIMBALL: We had put in NGO Exhibit 111
15 which was the correspondence between Heritage
16 and AMC trying to determine whether what had
17 been put forth by the Applicant was correct or
18 incorrect relative to whether it was an
19 exemplary community. The Bureau came back and
20 said that it was an exemplary community and that
21 record also then goes to the Applicant and the
22 Applicant resubmits it now as Applicant Exhibit
23 124, link 130. So the original --

24 MR. FISH: Can I ask for some

1 clarification? This document is included in
2 that Applicant's Exhibit 124 because looking at
3 it, it doesn't look like this is an email or
4 correspondence from the Applicants or the
5 Applicant's consultants, Normandeau. In which
6 case we wouldn't have provided it.

7 PRESIDING OFFICER HONIGBERG: I'm sorry,
8 Dawn. Can you go back to it? 111 I think was
9 the number. Thank you. So scroll down to the
10 page number. What does NPT DIS 158122 mean?

11 MR. FISH: It means it was produced during
12 discovery.

13 PRESIDING OFFICER HONIGBERG: By whom?

14 MR. FISH: By the Applicant.

15 PRESIDING OFFICER HONIGBERG: Okay. So you
16 produced this document.

17 MR. GETZ: Yes. I guess the question is
18 did we ever put it into the record. They would
19 need to have put it into the record in some
20 direct way, not just mark it for identification.

21 PRESIDING OFFICER HONIGBERG: Right. I
22 hear you. I think that's right, Tom. Chris,
23 did you want to say something?

24 MR. ASLIN: I think what Ken is saying is

1 that this same document was later included as
2 part of an Applicant's exhibit which is 124
3 which is a massive exhibit of agency stuff.

4 PRESIDING OFFICER HONIGBERG: Is that
5 right, Ken?

6 MR. KIMBALL: Yes.

7 MR. ASLIN: I think if we go to 124, we may
8 be able to confirm that that's the same thing.

9 PRESIDING OFFICER HONIGBERG: I think
10 that's where Dawn was trying to go when I
11 tracked her back.

12 MR. KIMBALL: What was provided in
13 discovery later gets updated by the Bureau and
14 that becomes Applicant Exhibit 124, link 130.

15 PRESIDING OFFICER HONIGBERG: Does 111 have
16 separate significance to you or can you use
17 what's in --

18 MR. KIMBALL: We can use Applicant Exhibit
19 124, link 130.

20 PRESIDING OFFICER HONIGBERG: That would
21 simplify this discussion, wouldn't it.

22 MR. KIMBALL: That's why I, it's in that
23 block of --

24 PRESIDING OFFICER HONIGBERG: But what Mr.

1 Iacopino is saying, it might be easier if it's
2 pulled out as its own document. I see concerned
3 faces over on this side of the room.

4 MR. FISH: I would, I think we would just
5 like to see where it is in Applicant's Exhibit
6 124. It seemed like Mr. Kimball had a
7 reference.

8 MR. IACOPINO: It's on page 981 of
9 Applicant 124. It's a confidential document.
10 At least it's marked that way. 981 and around
11 there is a series of correspondence between Amy
12 Lamb and Lee Carbonneau. Hi, Amy, recently came
13 to our attention.

14 PRESIDING OFFICER HONIGBERG: Is that the
15 same stuff?

16 MR. KIMBALL: I just can't read it from
17 here.

18 MR. IACOPINO: Oh, I'm sorry.

19 MS. GAGNON: Should be on the screen.

20 MR. IACOPINO: Is that the same as 111?

21 MR. FISH: My concern about 111 was that no
22 members of the Applicant's consultants,
23 Normandeau, appeared to be attached to that
24 email.

1 MR. IACOPINO: Well, I see what he's saying
2 about the links. If you go to page 29?

3 MS. GAGNON: 29 on what?

4 MR. IACOPINO: Applicant 124. You can see
5 there's a number of emails.

6 MS. GAGNON: 29?

7 MR. IACOPINO: Yes. Listed in that list.
8 So it appears, I think what is being said is
9 that this was linked to 30, did you say?

10 MR. KIMBALL: 130.

11 MR. IACOPINO: 130. So we have to go up
12 that list.

13 MR. FISH: I saw a date of April 11.

14 PRESIDING OFFICER HONIGBERG: I think 111
15 has multiple pages, and it looks like might be
16 an email string. Maybe not. Doesn't look like
17 the same thing.

18 MR. KIMBALL: I think it is the number 130
19 that you're looking at.

20 PRESIDING OFFICER HONIGBERG: But the dates
21 seem different.

22 MR. KIMBALL: This comes in after we filed
23 our original exhibits. So this updates the
24 record.

1 PRESIDING OFFICER HONIGBERG: But what's in
2 the table that's in Applicant's Exhibit 124,
3 item number or link number 130, shows a date of
4 May 9th, 2016. An email that's in your Exhibit
5 111 doesn't have the same date. It has an April
6 11th date of 2016.

7 MR. KIMBALL: That's correct. That's what
8 I was saying is when we filed these in April the
9 record was only up to what the Agencies had
10 filed in April. The record is now updated which
11 is what you see in May with new information.
12 Either way, if you remove this exhibit, it's
13 still in the record with the update.

14 PRESIDING OFFICER HONIGBERG: So we're
15 going to remove 111 and have people reference
16 the relevant pages in 124. Applicant's 124.

17 MR. KIMBALL: Fine.

18 MR. IACOPINO: And just for everybody's
19 knowledge right now it's around 309, page 309
20 and 310 of that 986-page exhibit.

21 MR. KIMBALL: So if I can summarize
22 correctly where we are is 105, 107, 109, and
23 110, 113 and 119 are in, and --

24 PRESIDING OFFICER HONIGBERG: Let's make

1 sure that Mr. Getz over here agrees on that.

2 MR. GETZ: Yes.

3 PRESIDING OFFICER HONIGBERG: Okay.

4 MR. KIMBALL: And then 108 and 112 are out,
5 and 111 is out, but it's kind of irrelevant
6 because it's still in the record. And then 120,
7 127 and 128, either way they're Applicant's
8 exhibits.

9 PRESIDING OFFICER HONIGBERG: Have we
10 talked about those yet? I don't think we have.
11 You said they're Applicant's exhibits. Are they
12 actually things that were introduced by the
13 Applicant?

14 MR. GETZ: But 127 and 128, again, are both
15 these Exhibit 124 linked exhibits. So again, if
16 it's in, then we don't object.

17 PRESIDING OFFICER HONIGBERG: Okay. And
18 there's one more number.

19 MR. KIMBALL: 120 is Applicant Exhibit 441.
20 That was, you used that on cross of us. Of
21 Kimball and Garland.

22 MS. GAGNON: 441?

23 MR. KIMBALL: It's Applicant Exhibit 441
24 which was we had to pay to get the Intermap

1 data.

2 MS. GAGNON: That relates to what NGO
3 exhibit?

4 MR. KIMBALL: It was NGO Exhibit 120.

5 PRESIDING OFFICER HONIGBERG: They don't
6 appear to be the same document.

7 MR. KIMBALL: We asked for a data response,
8 and then they had a response back to Attorney
9 Plouffe.

10 PRESIDING OFFICER HONIGBERG: Is it just
11 that the cover letter's at the back end of the
12 document in one place and the front end of the
13 other place question?

14 MR. ASLIN: It looks like to me the
15 responsive letter is the same, but the actual
16 Data Request at the top is different.

17 PRESIDING OFFICER HONIGBERG: Getting
18 confirmation from the only person who's really
19 likely to know, Dawn, that they are in fact the
20 same document.

21 MS. GAGNON: Our 441 is just the letter.

22 PRESIDING OFFICER HONIGBERG: Oh, that's
23 the problem. Their Exhibit 441 is just the
24 cover letter. Mr. Aslin?

1 MR. ASLIN: It's not the cover letter.
2 It's the letter that's responsive to the data
3 request.

4 MR. KIMBALL: That's correct. They're both
5 one and the same.

6 MR. ASLIN: Which is attached to Exhibit
7 111.

8 PRESIDING OFFICER HONIGBERG: So in the NGO
9 exhibit the request is there with the answer.
10 In the Applicant's exhibit, it's just the
11 answer. Did I get that right?

12 MR. KIMBALL: Say that again. I think you
13 did, but --

14 PRESIDING OFFICER HONIGBERG: In your
15 Exhibit, 120, whatever it is, you have both the
16 question and the company's answer which was in
17 the form of a letter.

18 MR. KIMBALL: Yes.

19 PRESIDING OFFICER HONIGBERG: Their exhibit
20 is just the letter.

21 MR. KIMBALL: And that's fine with us.

22 PRESIDING OFFICER HONIGBERG: All right.
23 Then we're good. So it's out. So the NGO
24 Exhibit 120 is out.

1 MR. KIMBALL: Well, it's out, but it's
2 still in because --

3 PRESIDING OFFICER HONIGBERG: Right. It's
4 not in as NGO 120. References to that document
5 should be to the Applicant's exhibit.

6 Anything else for your list?

7 MR. KIMBALL: Just to make sure that I got
8 this correct. 127 and 128 are also Applicant
9 exhibits. We're out, and we just use the
10 Applicant's exhibits. Was that my
11 understanding?

12 PRESIDING OFFICER HONIGBERG: Um-hum.

13 MR. KIMBALL: Thank you.

14 PRESIDING OFFICER HONIGBERG: Okay.
15 Objections to the Applicant's exhibits. I
16 understand, Mr. Cunningham, that you have a few.

17 MR. CUNNINGHAM: Thank you, Mr. Chair.
18 I'll number them quickly.

19 PRESIDING OFFICER HONIGBERG: Can you get
20 closer to the microphone so that our
21 stenographer can hear you well?

22 MR. CUNNINGHAM: Number 28, 82, 101.

23 PRESIDING OFFICER HONIGBERG: Let's take
24 them one at a time unless there's a group.

1 MR. GETZ: There's a theme.

2 MR. CUNNINGHAM: They're all the same --

3 PRESIDING OFFICER HONIGBERG: What are
4 they?

5 MR. CUNNINGHAM: Frayer.

6 PRESIDING OFFICER HONIGBERG: The Frayer
7 testimony?

8 MR. CUNNINGHAM: Yes.

9 PRESIDING OFFICER HONIGBERG: Are you
10 objecting to all the Frayer testimony?

11 MR. CUNNINGHAM: Yes.

12 PRESIDING OFFICER HONIGBERG: On what
13 ground?

14 MR. CUNNINGHAM: To reiterate, Mr. Chair,
15 the argument I made during the process is that
16 Eversource executives or Eversource counsel made
17 what I consider to be a fatal decision, and that
18 fatal decision is that Hydro-Quebec is not a
19 party to this docket. The Frayer testimony, the
20 Frayer exhibits are all based on hypotheses,
21 assumptions, the worst kind of hearsay. There
22 is not a single document in this record, there
23 is not a single piece of credible evidence in
24 this record from Hydro-Quebec on whether or not

1 they're financially committed to this Project,
2 whether they have the financial ability to do
3 this Project, whether they have the energy
4 capacity, whether they have the energy at all to
5 enter into the Forward Capacity Markets. I
6 think the decision to leave this critical party
7 out of this docket is fatal to the Application.
8 So Tom has the numbers of each Frayer exhibit
9 that I object to. I'll be fully briefing this
10 in the final brief, but I wanted to make this
11 record objection at this time.

12 PRESIDING OFFICER HONIGBERG: Mr. Getz?

13 MR. GETZ: Yes, Mr. Chairman. It's not a
14 proper evidentiary argument. It's an argument
15 about the merits of the case and whether with
16 Ms. Frayer and everybody else's testimony for
17 that matter whether we proved that this
18 certificate should be issued. He has provided
19 no basis or no infirmity in any of the exhibits
20 provided by Ms. Frayer.

21 PRESIDING OFFICER HONIGBERG: I think,
22 Mr. Cunningham, you won't be surprised that I'm,
23 for purposes of the evidentiary objection, I'm
24 going to overrule the objection and allow them

1 to come in as exhibits. And the other argument
2 you can make, you'll be able to make in your
3 brief.

4 MR. CUNNINGHAM: Thank you, Mr. Chair.

5 PRESIDING OFFICER HONIGBERG: Are there any
6 other specific exhibits that you object to of
7 the Applicant?

8 MR. CUNNINGHAM: None for me.

9 PRESIDING OFFICER HONIGBERG: Okay. I
10 understand, Mr. Pappas, that there's one you
11 want us to deal with or Mr. Aslin?

12 MR. ASLIN: Yes. Thank you, Mr. Chairman.
13 It's actually two Applicant's exhibits that are,
14 that's the same objection, and we've discussed
15 it. It's not, it's more a question of form than
16 anything else.

17 PRESIDING OFFICER HONIGBERG: Well, queue
18 it up for me.

19 MR. ASLIN: I will queue it up. It is
20 Applicant's Exhibits 366 and 372 which are
21 excerpts of other SEC proceedings so it's
22 transcripts of, in one case it's deliberations
23 in an SEC matter. I think it's the Antrim one,
24 but I could be off. Yes. Antrim is 366. The

1 other is transcript from a rulemaking hearing.

2 Our objection is that these, is to the
3 excerpts coming in without the full transcript,
4 and it's a question of what the Committee would
5 prefer. Obviously, you could take notice of
6 your own decisions and look at them, but I think
7 for a complete record it would be appropriate
8 for the entirety of the transcript to come in
9 rather than excerpts which provide information
10 out of context.

11 PRESIDING OFFICER HONIGBERG: Mr. Getz?

12 MR. GETZ: We have no objection. We think
13 it's a matter just of housekeeping of how you
14 want it entered. If the excerpts are sufficient
15 in and of themselves or if you want the full
16 transcript.

17 PRESIDING OFFICER HONIGBERG: I'm of two
18 minds on this. And I think that there's an
19 advantage, and I think a lot of the parties
20 recognize the advantage of having a specific
21 exhibit that shows what it is you really want to
22 talk about, but that doesn't mean that the rest
23 of that transcript would be relevant or usable.
24 If the parties want us to take official notice

1 of those transcripts in those proceedings, we
2 can make an appropriate entry in the record.
3 Mr. Iacopino can help make sure that it's done
4 properly. But I think that using them and being
5 able to refer to Applicant's Exhibit 372 will be
6 a quick and easy way for people who are
7 interested in that section of transcript to find
8 it.

9 MR. ASLIN: And if the Committee were to
10 take official notice of the entire transcripts,
11 then that would be fine with Counsel for the
12 Public.

13 MR. IACOPINO: Is 366 a transcript or is
14 that the decision?

15 MR. ASLIN: I thought it was the
16 deliberative transcript of the deliberations.

17 MR. IACOPINO: So my question is when you
18 say, do you mean just that volume of the
19 transcript or --

20 MR. ASLIN: Yes.

21 MR. IACOPINO: -- because I think we spent
22 3 or 4 days on Antrim Wind.

23 PRESIDING OFFICER HONIGBERG: I think he's
24 just talking about that volume. God, I hope

1 he's just talking about that volume.

2 MR. ASLIN: I was focused on the volume,
3 but it might be simpler to take official notice
4 of the deliberations so that if someone needed
5 to reference for context material that's related
6 to that section that's in the deliberations
7 somewhere else, they could.

8 PRESIDING OFFICER HONIGBERG: Mr. Getz?

9 MR. GETZ: We don't object to that.

10 PRESIDING OFFICER HONIGBERG: Okay. So
11 I'll ask Mr. Iacopino to make sure that the
12 language is correct, and everybody understands,
13 I believe that that statute requires notice to
14 the parties that we're going to be taking
15 official notice of something and an opportunity
16 to object if they want, right?

17 MR. IACOPINO: Yes.

18 PRESIDING OFFICER HONIGBERG: So you've all
19 heard the request. We're inclined to grant it.
20 I don't see any objection. So I'll ask that you
21 work with the parties so that the language is
22 correct for that aspect.

23 MR. IACOPINO: And in doing that, just for
24 the parties that are here, does anybody object?

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Okay.

1 PRESIDING OFFICER HONIGBERG: The record
2 will reflect there were no objections.

3 MR. ASLIN: Thank you. There is one other
4 document that we're in discussions about still,
5 and it's probably not ripe for us to argue yet.

6 PRESIDING OFFICER HONIGBERG: Cool. Did
7 anyone else have objections to the Applicant's
8 exhibits? All right. Let's go off the record.

9 (Recess taken 8:02 - 8:31 p.m.)

10 PRESIDING OFFICER HONIGBERG: Mr. Pappas, I
11 think you have something to offer on one of the
12 outstanding issues.

13 MR. PAPPAS: I do. Thank you,
14 Mr. Chairman. The parties have agreed that the
15 Committee can take Administrative Notice of
16 items on the DOT website. For purpose of the
17 record we've determined that the BL Companies
18 survey report and the Meridian survey report and
19 the DOT response to those survey reports as well
20 as the recent draft survey reports are already
21 in the record, and they're either Applicant's
22 Exhibit 130, Applicant's Exhibit 220, or Counsel
23 for the Public's Exhibit 614 through 617 so
24 there is no need to take Administrative Notice

1 of those items on the DOT website.

2 The Committee can take Administrative
3 Notice of the following items and we have screen
4 shots of the DOT website that we can mark so
5 there's no misunderstanding of what it is we're
6 taking Administrative Notice of, and they are
7 all of the Exception Requests themselves, and we
8 have screen shots of all of those that are on
9 the DOT website as of today.

10 The second category is all of the design
11 conference reports, just the reports, not the
12 agendas. We all need Administrative Notice of
13 the reports themselves, and we have a one-page
14 screenshot that lists all of those as of today.

15 And then, finally, the bore hole log files
16 and geotechnical reports, and we have a
17 screenshot of the items that we're requesting
18 Administrative Notice of those items as of today
19 with the exception of a NPT master boring
20 locations which is a geolocation file and you
21 need special software to access that, and so
22 without that special software, I don't think
23 anybody is going to be able to access that. But
24 other than that, the other items on this

1 category, we'd request Administrative Notice as
2 of today.

3 PRESIDING OFFICER HONIGBERG: Mr. Getz?

4 MR. GETZ: We have no objection to taking
5 Administrative Notice of those files, Exception
6 Requests, et cetera, with the proviso I made
7 earlier about this is for the purposes of
8 closing the record, taking Administrative
9 Notice, writing the briefs. There may be
10 requirements that extend beyond that with
11 respect to delegations that we would propose.

12 PRESIDING OFFICER HONIGBERG: Correct.
13 Others in the room, any objection to having the
14 Committee take official notice of the items
15 Mr. Pappas just listed?

16 All right. Seeing none, we'll make that
17 happen working with counsel.

18 Can you update us on Commissioner Bailey's
19 record request regarding work done by the
20 Brattle Group?

21 MR. PAPPAS: Yes. We will mark as Counsel
22 for the Public Exhibit 669 the redacted version
23 of the Brattle Group's response to the record
24 request, and we will mark as 669 A the

1 confidential version of the Brattle Group's
2 response to the record request.

3 PRESIDING OFFICER HONIGBERG: Mr. Getz, I
4 know that there was a response from the
5 Applicant to that. That's going to be marked as
6 an exhibit as well?

7 MR. GETZ: Yes. I'm not sure what the next
8 available number is, but --

9 MS. GAGNON: 503.

10 MR. GETZ: 503. We can mark that. But
11 there may be a couple other exhibits that we
12 would also put onto our list.

13 PRESIDING OFFICER HONIGBERG: Okay. But
14 that will be 503, and as folks know, there's a
15 pending Motion to Strike the Applicant's
16 Response, 503, and that will get ruled on. So
17 that will determine what the status of 503 is
18 going forward.

19 Anything else that we can resolve before we
20 go back off the record and allow you to continue
21 talking? Ms. Boepple?

22 MS. BOEPPLE: I just have one other thing
23 if we could put this in the record, and that is
24 from the Chair. How information sessions,

1 comments, public comments will be treated. Are
2 they considered part of the record.

3 PRESIDING OFFICER HONIGBERG: Yes. I think
4 the statute answers that question for us.

5 MS. BOEPPLE: Just wanted to get it on the
6 record. Thank you.

7 PRESIDING OFFICER HONIGBERG: Yes. There's
8 a lot of them.

9 MR. FISH: Mr. Chair?

10 PRESIDING OFFICER HONIGBERG: Yes,
11 Mr. Fish.

12 MR. FISH: I have one minor issue that I
13 was hoping to bring up before Ms. Lee left. It
14 looks like she has left, but she had asked that
15 the Applicants -- for a background, the
16 Applicants and Ms. Lee entered into an agreement
17 today on a Memorandum of Understanding with
18 respect to her property, and she has asked and
19 we agreed that the Applicants would introduce
20 that as an exhibit, and she had asked that I
21 express our mutual understanding that if the
22 certificate were granted, the MOU would be
23 included, essentially as a condition of the
24 certificate, and we have marked that as

1 Applicant's Exhibit 502.

2 PRESIDING OFFICER HONIGBERG: In very brief
3 terms, what are the terms of the MOU?

4 MR. FISH: It relates primarily to with
5 respect to her property, I'm providing her
6 design plans, maps, and then it deals with
7 restoration and ongoing operations with respect
8 to her property and the Project facilities.

9 PRESIDING OFFICER HONIGBERG: I mean,
10 understanding that I don't have the authority to
11 make anything a condition of anything by myself,
12 I understand that there's an MOU, you guys will
13 put it into the record, and in effect it becomes
14 a request for a condition in the event it's
15 granted, right? Isn't that its legal status?

16 MR. FISH: Yes. That's what I understand
17 it to be.

18 PRESIDING OFFICER HONIGBERG: Okay. Thank
19 you. Anything else before we go back off the
20 record? Let's go off the record.

21 (Discussion off the record)

22 (Recess taken 8:37 - 9:03 p.m.)

23 PRESIDING OFFICER HONIGBERG: Who wants to
24 talk about the situation with Deerfield? Mr.

1 Fish, Ms. Menard?

2 MR. FISH: I believe they are going to
3 begin.

4 PRESIDING OFFICER HONIGBERG: Okay.

5 MS. MENARD: Mr. Chairman, we'll start with
6 Jo Anne since she's going to lead the list, and
7 then each of us are going to bounce down because
8 different exhibits belong to different parties.

9 PRESIDING OFFICER HONIGBERG: So tell me
10 what the state of play is. What are we going to
11 are hearing about?

12 MS. MENARD: You're going to be hearing a
13 number of exhibits that we have agreed to
14 withdraw.

15 PRESIDING OFFICER HONIGBERG: Okay.

16 MS. MENARD: You're going to hear some data
17 response requests that we would like to suggest
18 consideration for inclusion even though they
19 weren't officially used as exhibits.

20 PRESIDING OFFICER HONIGBERG: Okay.

21 MS. MENARD: We have some materials that
22 were similar to the NGOs that were clearly
23 referenced in our testimony and were put in full
24 as attachments and placed as exhibits for

1 reference purposes, just citing. And then we do
2 have some, a collection, maybe five or six or
3 seven items that were not used but we consider
4 them relevant and supporting evidence to our
5 testimony. So we'd like for you to consider
6 them.

7 PRESIDING OFFICER HONIGBERG: Okay. Thank
8 you for the road map. So are we starting with
9 withdrawn exhibits?

10 MS. MENARD: Whatever your pleasure. Would
11 that be easier to clean up?

12 PRESIDING OFFICER HONIGBERG: Just tell me
13 what you're doing, and we'll work from there.
14 So Jo Anne, where are we starting?

15 MS. BRADBURY: I'll give you the ones that
16 are withdrawn first. There's a long list. And,
17 Viggo, I'd be grateful if you'd follow and make
18 sure that I've not missed anything. Deerfield
19 Abutter 30, 61, 65, 67, 81, 83, 84, 87, 89, 92,
20 96, 97, 101, 134, 137, and 153.

21 MR. FISH: Mr. Chair, I would just add
22 Deerfield Abutter 13 to that list. Correct me
23 if I'm wrong, Deerfield Abutters? The
24 clarification is that it was already introduced

1 as Joint Muni 266 so they agreed that that would
2 be fine.

3 PRESIDING OFFICER HONIGBERG: Perfect.
4 Thank you.

5 MS. BRADBURY: And coming in we agreed that
6 Deerfield Abutter 23, 60, 152, and 164 are in.
7 Right, Viggo?

8 MR. FISH: Correct.

9 MS. BRADBURY: And we would like to make an
10 argument for the inclusion of some others.

11 PRESIDING OFFICER HONIGBERG: Let's find
12 out what are they, and we'll find out what the
13 objection is. So where do you want to start?

14 MS. BRADBURY: Deerfield Abutter 73, 74,
15 and 75. These three exhibits illustrate and
16 identify the historic cemetery near Thurston
17 Pond. There's a photograph of the cemetery
18 gateway, a photograph of a grave stone in the
19 cemetery, and a map of the graves with dates and
20 names of the occupants.

21 And this cemetery is referred to in my
22 Prefiled Testimony which is Deerfield Abutter 2
23 on page 3, paragraph 5, and on page 4,
24 paragraphs 1 and 2.

1 PRESIDING OFFICER HONIGBERG: What's the
2 basis of the objection?

3 MR. FISH: The objection is that while the
4 general location of the graveyard is referenced
5 in the Prefiled Testimony, none of these
6 exhibits were introduced during the course of
7 the hearings. And just for clarification,
8 that's essentially our objection for the
9 remainder of these exhibits. They were never
10 introduced into the record.

11 PRESIDING OFFICER HONIGBERG: Okay. Were
12 they discussed in a testimony?

13 MS. BRADBURY: Yes. They were. Yes. No.
14 The cemetery, dam and mill site were all
15 discussed usually in the same sentence. All
16 three. There's the gate to the cemetery, and
17 the discussion in the Prefiled is of these
18 places.

19 PRESIDING OFFICER HONIGBERG: Okay. Can we
20 pull up the Prefiled Testimony and see where
21 those references are?

22 MS. BRADBURY: Yes. Well, I hope.

23 PRESIDING OFFICER HONIGBERG: I have great
24 confidence in Dawn. Is it your testimony?

1 MS. BRADBURY: Deerfield Abutter 2, and the
2 references are on page 3, paragraph 5.

3 PRESIDING OFFICER HONIGBERG: Hang on.
4 Let's get the document up first. Okay, Jo Anne.
5 What page did you say?

6 MS. BRADBURY: Page 3, paragraph 5. The
7 fifth full paragraph where it discusses how you
8 get to the dam, mill site and cemetery. And
9 then on the next page, page 4, paragraphs 1,
10 full paragraphs 1, first full paragraph and the
11 second full paragraph, about halfway down the
12 paragraph where it says, refers to Thurston Pond
13 dam, mill site and cemetery being within a
14 natural and cultural landscape of high scenic
15 quality, and it lists the, going on it lists the
16 French, Philbrick, Rollins and Merrill families
17 that settled the area and who are actually
18 buried, some of whom are buried in the cemetery.
19 And that's those three.

20 PRESIDING OFFICER HONIGBERG: Dawn, can you
21 scroll up a little bit to the previous page
22 where the discussion starts? I don't know how
23 much value they have as illustrative of
24 anything, but they don't seem to be that, they

1 don't seem to do much harm either. So we'll let
2 them in, those three pictures associated with
3 that testimony.

4 MS. BRADBURY: Okay. Great. Thank you.
5 Then Deerfield Abutter 69 identifies the network
6 of recreational trails in Deerfield, and those
7 recreational trails are referred to in my
8 Prefiled on page 9, paragraph 4, where we are
9 discussing the fabric of life that's offered to
10 visitors and residents of Deerfield and the
11 rural and rugged beauty inviting them outdoors
12 to use hiking trails, parks and streams.

13 PRESIDING OFFICER HONIGBERG: Okay. We see
14 it. Can you go back to the exhibit, please? Is
15 it just this one page?

16 MS. BRADBURY: No. It's a book of trails
17 in Deerfield that's available for people to get
18 the book, find a trail and hike it. They're
19 scattered all over Deerfield.

20 PRESIDING OFFICER HONIGBERG: Okay. So
21 back in the testimony.

22 MS. BRADBURY: The testimony I refer to the
23 hiking, the rural and rugged beauty invites them
24 outdoors to use hiking trails.

1 PRESIDING OFFICER HONIGBERG: So the
2 paragraph itself doesn't say I've attached a
3 brochure of hiking trails or anything helpful
4 like that.

5 MS. BRADBURY: Nothing helpful like that.
6 I wrote the Prefiled Testimony and filed it and
7 then I filed the exhibits that illustrated what
8 I was writing about when the exhibits were due.

9 PRESIDING OFFICER HONIGBERG: We'll let it
10 in. I mean, if you ever do this again --

11 MS. BRADBURY: Believe me, it will look
12 different.

13 PRESIDING OFFICER HONIGBERG: Yes, it
14 probably would be helpful to have the reference
15 in the testimony, but it's pretty clear that's
16 what you were trying to do.

17 All right. Next?

18 MS. BRADBURY: Deerfield Abutter 78
19 identifies my homestead, the off-grid New
20 England saltbox and barn on Thurston Pond Road,
21 and I refer to that in my Prefiled Testimony on
22 page 1, paragraph 2, and also in paragraphs 1
23 and 2 on page 2. And the purpose of it, of the
24 testimony, I believe is relevant because it's

1 material to whether the Northern Pass has an
2 unreasonable adverse effect on orderly
3 development including property values.

4 PRESIDING OFFICER HONIGBERG: You said
5 there's a reference on page 2 as well?

6 MS. BRADBURY: Yes. The second full
7 paragraph. Describing the kind of home I have
8 built and the kind of person it would appeal to
9 and the expectation that my home would be a key
10 element in my financial security.

11 PRESIDING OFFICER HONIGBERG: Let me see
12 the picture again.

13 I'm not sure what the picture adds to the
14 description.

15 MS. BRADBURY: Well, not everybody is all
16 that familiar with completely off-grid homes,
17 and it's a special kind of buyer that would be
18 interested in getting involved in that kind of a
19 purchase.

20 PRESIDING OFFICER HONIGBERG: Honestly, I
21 don't know how significant this is, but we'll
22 let it in because it illustrates, again, what
23 you were describing in your testimony.

24 MS. BRADBURY: Thank you. And then

1 Deerfield Abutter Exhibit 3 identifies my data
2 responses. That was filed on December 30th with
3 everybody's data responses, and it includes the,
4 in response 1 it addresses the loss of economic
5 value in my off-grid home and rural property.
6 And response 3 deals with the endangered
7 Blanding's turtles and both of those topics are
8 discussed in my Prefiled Testimony. The
9 economic question in paragraph 2 on page 1, I
10 think that's what we were already -- yes. Same
11 paragraph. And then the same two paragraphs on
12 page 2, the first and second paragraphs on page
13 2. That's the economic, that's the economic
14 issue that I responded to. And then in respect
15 of the environmental, the Blandings turtle on
16 pages 5 and 6, paragraph 6, of my Prefiled
17 Testimony, I deal there with the endangered
18 Blanding's turtle, and I also deal with them on
19 page 7, all four paragraphs, 1, 2, 3 and 4 on
20 page 7 of my Prefiled Testimony. And I think
21 that the data responses are relevant to the
22 question of property value and orderly
23 development as well as the environmental impact
24 on the endangered Blanding's turtles.

1 PRESIDING OFFICER HONIGBERG: What's the
2 basis of the objection?

3 MR. FISH: My understanding is that the
4 reason Ms. Bradbury thinks these should be in is
5 because substantively they're similar to what's
6 included in her Prefiled Testimony. The
7 objection is that they were never introduced
8 during the course of hearings.

9 PRESIDING OFFICER HONIGBERG: Yes, I think
10 that's actually a pretty good objection. This
11 really just looks like Supplemental Testimony
12 that was never offered. What I gather, those
13 data responses were, can you go back to the data
14 responses so I can see what the questions were
15 and that you were responding to? Okay, next?
16 Next?

17 We're going to sustain the objection to
18 that. She didn't, it doesn't, they didn't
19 challenge you. They asked for the support. You
20 gave it to them. They didn't challenge you.
21 Your testimony stands as it is.

22 MS. BRADBURY: Okay. And finally,
23 Deerfield Abutter 4 is the easement that brings
24 me to these hearings. It is referred to in my

1 Prefiled Testimony on page 5 paragraph 2, and it
2 references the 1950s easement granted to PSNH,
3 and I think it's relevant for identification and
4 preservation of rights.

5 That's all. That's all I have. It's
6 really about granting the easement.

7 PRESIDING OFFICER HONIGBERG: So the basis
8 of the objection is the same as the pictures,
9 right?

10 MR. FISH: It's the same. She generally
11 references the easement, but the fact is the
12 actual easement was never introduced as an
13 exhibit.

14 PRESIDING OFFICER HONIGBERG: But it was
15 attached to the testimony?

16 MS. BRADBURY: No. I just refer to it in
17 my testimony. Then I filed all my exhibits.

18 PRESIDING OFFICER HONIGBERG: Oh, right,
19 right, right, right, right. So it is the same
20 as the pictures in that regard.

21 MS. BRADBURY: Yes.

22 PRESIDING OFFICER HONIGBERG: Yes. We'll
23 let that in.

24 MS. BRADBURY: Okay. Okay, Jeanne.

1 MS. MENARD: Okay. I'd like to have you
2 take a look at Deerfield Abutter number 6, and
3 once again, these are Data Request Responses of
4 myself.

5 PRESIDING OFFICER HONIGBERG: What other
6 documents do we need to have up and available to
7 understand what's happening. Do we need your
8 testimony as well?

9 MS. MENARD: I don't believe so. Not with
10 this.

11 PRESIDING OFFICER HONIGBERG: Okay. Let's
12 see the Data Responses then.

13 MS. MENARD: Deerfield Abutter 6.

14 MS. GAGNON: There's 6 different ones.

15 MS. MENARD: Question number 1. So it
16 should be first up. Should I put this on the
17 ELMO? Would that help?

18 PRESIDING OFFICER HONIGBERG: No. I mean,
19 can you see what's on the screen? Is that the
20 document we're talking about?

21 MS. MENARD: Not the one I wish to talk
22 about. That is a little bit further into this
23 set.

24 MS. GAGNON: They're all marked as Page 6,

1 6, 6, 6, 6.

2 MS. MENARD: That's it. Thank you, Dawn.

3 What I have here is a list of responses to
4 an Applicant question regarding a statement that
5 I made in my testimony, and so even though I did
6 not put this actual list on the ELMO during the
7 cross-examination, there were several topics
8 from this list which I did use in
9 cross-examination. For example, number 14, 27
10 Lang Road residence. I had a discussion with
11 Mr. Chalmers in my cross of him. Number 7,
12 Harvey Road. I had a question with regards to
13 Ms. Widell and possible having missed this
14 particular historic property. Certainly number
15 3, the Menard cabin was a topic.

16 So this is just, I believe, an important
17 record of properties that I feel the Project is
18 impacted, and I believe that it was introduced
19 in, not as a list as a whole but certainly
20 several of these topics were addressed formally.

21 PRESIDING OFFICER HONIGBERG: This seems
22 like additional testimony, but the good news for
23 you is you did use a lot of this information in
24 questions.

1 MS. MENARD: Yes. So I considered this
2 source material.

3 PRESIDING OFFICER HONIGBERG: And that's
4 fine. Again, you weren't, you're going to be
5 able to use whatever questions and answers you
6 used with witnesses. To the extent you referred
7 to these things it's there. Having it in this
8 form as additional testimony from you doesn't
9 make it any more persuasive so we're going to
10 keep this one out. What's next?

11 While we're looking at that, just looking
12 at Dawn's menu there on the left side of the
13 screen, there's a bunch of things that are
14 labeled as Exhibit 6.

15 MS. MENARD: Yes.

16 PRESIDING OFFICER HONIGBERG: That's
17 confusing.

18 MS. MENARD: These are other data
19 responses.

20 PRESIDING OFFICER HONIGBERG: But they're
21 all within Exhibit 6?

22 MS. MENARD: That is correct. I didn't
23 want to file them individually.

24 PRESIDING OFFICER HONIGBERG: Are there

1 other portions of Exhibit 6 in or out?

2 MS. MENARD: I believe that a number of
3 these other data responses, for instance, if you
4 scroll in further, I did use them quite
5 extensively. And so even though this is out,
6 the material is in because I used them in
7 response to either questions being asked of me
8 or in my cross-examination of other witnesses.

9 MR. IACOPINO: So all of the Exhibit 6s are
10 out?

11 MS. MENARD: Pardon me?

12 PRESIDING OFFICER HONIGBERG: As documents
13 themselves, everything that's in Exhibit 6 is
14 out? That's a question. That's not a
15 statement.

16 MS. MENARD: I would hope not, but --

17 PRESIDING OFFICER HONIGBERG: Mr. Fish,
18 help me out here.

19 MS. MENARD: I'm going to rely on your
20 judgment in terms of --

21 PRESIDING OFFICER HONIGBERG: It's not
22 clear to me what the objection was to. If it
23 was just to that one piece of the exhibit and
24 the rest of it is in, that's one thing. If he

1 objected to the whole thing, that's a different
2 thing.

3 MS. MENARD: See, for example --

4 PRESIDING OFFICER HONIGBERG: Let me find
5 out from him what he objected to.

6 MR. FISH: Well, the objection, again, was
7 on the understanding that this was not
8 introduced during the course of hearings, and it
9 was not tied to any specific testimony. I
10 didn't, I wasn't under the understanding that
11 there were multiple Data Requests involved. It
12 was just the basis that none of the Data Request
13 responses were referred to or introduced.

14 PRESIDING OFFICER HONIGBERG: Okay. I'm
15 interpreting that to mean he objected to all of
16 what's in Exhibit 6, you offered up one piece of
17 it, and I ruled on that one piece of it.

18 MS. MENARD: Correct. I wanted to bring
19 your attention, for example, and I think you
20 might recall if you look at Data Response number
21 2, and, again, I apologize if it's not showing
22 up in the order.

23 PRESIDING OFFICER HONIGBERG: That's the
24 same, that's also within Exhibit 6.

1 MS. MENARD: Correct.

2 PRESIDING OFFICER HONIGBERG: Is that the
3 document that is now up on the screen?

4 MS. MENARD: I have my reading glasses on.

5 MR. IACOPINO: Is this about the heron?

6 MR. MENARD: If you go to the one, it's
7 like, it's not II, but --

8 MR. IACOPINO: It addresses the heron?

9 MS. MENARD: No. Keep going. Might be
10 another set.

11 It's the question that reads, "Please
12 provide all documents and communication that
13 support the testimony on page 4 that the
14 residential lot on Mt. Delight Road sold for
15 less than market value." And it had all my
16 listing sheets.

17 PRESIDING OFFICER HONIGBERG: What exhibit
18 number do you think it is?

19 MS. GAGNON: It's on the screen.

20 PRESIDING OFFICER HONIGBERG: Oh, it's on
21 the screen. Okay.

22 MS. MENARD: Part of that is all the
23 listing sheets regarding the subdividable lots
24 that we discussed at great length during my

1 cross-examination.

2 PRESIDING OFFICER HONIGBERG: So you used
3 all these documents?

4 MS. MENARD: Correct.

5 PRESIDING OFFICER HONIGBERG: In examining
6 another witness?

7 MS. MENARD: That's correct.

8 PRESIDING OFFICER HONIGBERG: Are they
9 marked separately from Deerfield Exhibit 6?

10 MS. MENARD: I believe that I used, that
11 these were used when I was testifying and being
12 asked questions. And I brought forth some of
13 these. Actually, I did, in my cross-examination
14 of Mr. Chalmers. I most certainly did bring all
15 this forward during that session.

16 PRESIDING OFFICER HONIGBERG: Mr. Fish?

17 MR. FISH: I guess I would need some
18 clarification whether the Data Request, this
19 package of Data Requests, or you're saying, it
20 seems that what Ms. Menard is saying that she
21 used portions of these Data Requests either in
22 the cross-examination of other or on her own
23 Direct Testimony, but as a whole, this set of
24 Data Requests which appears to be five or six

1 separate documents, again, it was not tied to
2 any specific testimony and was not introduced as
3 exhibits. So to the extent that portions of
4 this were introduced I think the record will
5 reflect that with the exhibit numbers that were
6 attached to them at the time, but the record
7 shows that this package of exhibits was never
8 used.

9 MS. MENARD: I would agree with Viggo in
10 the sense that I did not use it as a packet, but
11 I was relying on a number of the, a lot of the
12 information in this in my questioning of
13 witnesses or when I was being questioned.

14 PRESIDING OFFICER HONIGBERG: I don't want
15 to leave you in a situation where you've got
16 testimony that you gave or that you elicited
17 from others using the documents that are in
18 here, but then have this exhibit excluded, it
19 won't make sense. We'll have the testimony
20 without the documents.

21 So I guess I'll, I want to try and
22 understand what was used and what wasn't. I
23 don't remember the Data Request in the response,
24 the page that's up right now. I remember a

1 whole bunch of listing sheets and other types of
2 drawings and plans that you showed. If that's
3 the other documents, then maybe what we need to
4 do is peel off the Data Request and the response
5 but leave the documents. But since I don't
6 remember, I'm sure nobody else in the room
7 remembers how they were referenced when you used
8 them, I don't know if we're going to be getting
9 it right if that's what we do.

10 MS. MENARD: I remember Ms. Walkley, she
11 used a portion of the data response when she was
12 questioning me with the multiple lot scenario.
13 There's one here, the vacant land sale, from
14 Nottingham. She pulled that out and was asking
15 me questions about this information. So they've
16 used it as well as myself.

17 PRESIDING OFFICER HONIGBERG: Okay. What's
18 the "this" in that sentence though?

19 MS. MENARD: Pardon me?

20 PRESIDING OFFICER HONIGBERG: What's the
21 this? They used "this." What is the "this"
22 that they used?

23 MS. MENARD: It's one of the pages of the
24 responses to this Data Request.

1 PRESIDING OFFICER HONIGBERG: Mr. Fish, do
2 we get it right if we peel off the data request
3 in response but leave all the attachments to it?
4 How many pages does it go on beyond this?

5 MS. GAGNON: Eight pages.

6 PRESIDING OFFICER HONIGBERG: Can you just
7 scroll through the other 7, and we'll take a
8 quick look at them?

9 Now, do you think you used or were asked
10 about each of those pages after the first one?

11 MS. MENARD: There was one expired listing
12 that no one asked me a question about.

13 PRESIDING OFFICER HONIGBERG: That we just
14 scrolled through?

15 MS. MENARD: Yes. I was disappointed that
16 no one asked me. That was a great exhibit.

17 MR. FISH: Mr. Chair, I think we got some
18 clarification that Ms. Walkley did in fact
19 introduce this exhibit in its entirety. Oh,
20 just this one. Sorry. Deerfield Abutter 6,
21 Data Request 11.

22 PRESIDING OFFICER HONIGBERG: So this page
23 and all of its attachments? Outstanding.

24 MR. FISH: We would have no objection to.

1 PRESIDING OFFICER HONIGBERG: All right.
2 What about the rest of Exhibit 6? So Dawn is
3 shaking her head that she doesn't have a record
4 of the other parts of Exhibit 6 being used, at
5 least by Ms. Walkley. Okay. So so far what
6 we've got is this 8-page portion of Exhibit 6 is
7 going to come in.

8 MS. MENARD: My feeling, Mr. Chairman, is
9 the only two that I feel strongly about that
10 were, you know, have been introduced and
11 possibly not in full as I said regarding the one
12 list of the multiple properties that have a
13 number 1 through 14, all the other ones were not
14 used, and I'm not going to argue that they be
15 included if you need to separate out data
16 responses that, for instance, my response about
17 the heron. That was never asked of me, and I
18 did not produce any evidence about that.

19 PRESIDING OFFICER HONIGBERG: So what's the
20 other one you're talking about, the one with the
21 list?

22 MS. MENARD: The one that we spoke first
23 about.

24 PRESIDING OFFICER HONIGBERG: The one I

1 already excluded.

2 MS. MENARD: Right.

3 PRESIDING OFFICER HONIGBERG: Okay.

4 MS. MENARD: That is one that I would
5 really appreciate a reconsideration because it
6 was, even though as a list as a whole, there are
7 important aspects of it being part of a whole.

8 PRESIDING OFFICER HONIGBERG: Okay. I'm
9 not persuaded to change my mind on that.

10 MS. MENARD: Okay.

11 PRESIDING OFFICER HONIGBERG: So the only
12 part of Exhibit 6 then that's going to come in
13 is the 8 pages that start with number 11.
14 That's what it looks like anyway.

15 MS. MENARD: Thank you.

16 PRESIDING OFFICER HONIGBERG: What else we
17 got?

18 MS. MENARD: We have, I'm going to jump to
19 Deerfield Abutter 55, 56, and 57, and this is a
20 collection of three articles in full that are
21 mentioned, cited in my Deerfield Abutter Exhibit
22 52, which is our group environmental testimony.

23 PRESIDING OFFICER HONIGBERG: Let's get the
24 testimony up.

1 MS. MENARD: So Deerfield Abutter Exhibit
2 52.

3 PRESIDING OFFICER HONIGBERG: She's got it.

4 MS. MENARD: And I believe right on page 1,
5 there's a reference to these various articles.
6 Miller, Beaudry, and Refsnider and Linck
7 landscape approach. So these are the articles
8 in full. These exhibits are the articles in
9 full that are referenced in our testimony.

10 PRESIDING OFFICER HONIGBERG: I see this
11 first one. I think it was three pages long.
12 Are the others similarly short documents?

13 MS. MENARD: Yes. Just the scientific
14 evidence of Blanding's turtle impacts.

15 PRESIDING OFFICER HONIGBERG: Okay.
16 Mr. Fish, is this similar to the conversation we
17 had with Mr. Kimball?

18 MR. FISH: Yes. I believe it is similar,
19 and I'm inclined to withdraw the objection on
20 that ground.

21 PRESIDING OFFICER HONIGBERG: Okay. Thank
22 you.

23 MS. MENARD: And on a different topic,
24 there was Deerfield Abutter 50 and 51, and this

1 is basically further information. We discussed
2 these two properties in my cross-examination of
3 Mr. Chalmers, and these are MLS listings that
4 had some errors reported.

5 PRESIDING OFFICER HONIGBERG: Did you show
6 these documents to Mr. Chalmers?

7 MS. MENARD: Yes. I didn't show the full
8 listing sheets. What I did show is a
9 MLS-generated sheet that had the numbers and
10 that had the correct numbers, what I believed to
11 be the correct numbers. So basically this is
12 just further evidence of my concerns about the
13 errors. So once again, this is your discretion.
14 If anyone were to challenge my accuracy, this is
15 just further evidence of the information.

16 PRESIDING OFFICER HONIGBERG: But it seems
17 like you were able to cross-examine him using
18 information from these documents. I'm not sure
19 these documents are helpful. They sound like, I
20 think you used the phrase a moment ago, further
21 evidence.

22 MS. MENARD: Correct.

23 PRESIDING OFFICER HONIGBERG: So we're
24 going to not allow 50 and 51.

1 MS. MENARD: Okay. Given your decision on
2 these two, I will remove the listing sheet from
3 Deerfield Abutter 48 as well because that's in
4 the same category.

5 PRESIDING OFFICER HONIGBERG: Hang on one
6 sec. For purposes of preserving your rights to
7 appeal and making a proper record, if you would
8 use 48 and 49 but because I just told you you
9 can't use 50 and 51, you don't think you'll be
10 able to use 48 and 49, offer them, but I'll make
11 the same ruling so you've offered them and I've
12 said no rather than you withdraw them. Okay?

13 MS. MENARD: Okay. So --

14 PRESIDING OFFICER HONIGBERG: We'll
15 consider that done if you agree.

16 MS. MENARD: Thank you very much. Okay.

17 PRESIDING OFFICER HONIGBERG: So let me
18 circle back to Mr. Fish. Do you want to
19 reconsider the withdrawal of your objections to
20 the other exhibits because I overruled the
21 objections on Mr. Kimball's and I just asked you
22 if that's the same thing, you said yes so you'll
23 withdraw. Do you want to preserve anything on
24 that one and just say I overrule my objection?

1 MR. FISH: My understanding is that
2 Mr. Kimball's exhibits were allowed in.

3 PRESIDING OFFICER HONIGBERG: They were.
4 So I rejected the position you guys took.

5 MR. FISH: Right.

6 PRESIDING OFFICER HONIGBERG: Do you want
7 me to reject the position again on Ms. Menard's
8 offer so you're preserved?

9 MR. FISH: Oh, yes. Yes. Absolutely.

10 PRESIDING OFFICER HONIGBERG: So that, what
11 were the numbers in that?

12 MR. FISH: 55, 56, 57.

13 PRESIDING OFFICER HONIGBERG: The record
14 will reflect that the Applicant objected to the
15 use of 55, 56, 57, and I overruled the
16 objection.

17 MS. MENARD: Could we take a look at number
18 58, please, Dawn? And these are Applicant
19 responses to Data Requests, different Data
20 Requests. And the topic here of this is
21 regarding 41 Haynes Road, and our attempt to get
22 information regarding whether or not the
23 Applicant had any interest or involvement in the
24 purchase of 41 Haynes Road, and it wasn't until

1 we entered into cross-examination where that
2 information was derived. So this is more of a
3 historical history, if you will, if our attempt
4 to get the facts, and the answer ultimately was
5 no, that they were not involved whereas the
6 hearing brought out other information.

7 PRESIDING OFFICER HONIGBERG: Was this used
8 at all?

9 MS. MENARD: No.

10 PRESIDING OFFICER HONIGBERG: Can we scroll
11 down and see the rest of this document? Is this
12 a series of Data Requests and Responses?

13 MS. MENARD: Correct.

14 PRESIDING OFFICER HONIGBERG: And you
15 didn't then use them with any witness.

16 MS. MENARD: I did not. And it's a kind of
17 an awkward situation because I didn't understand
18 why they couldn't just tell me the truth in the
19 first place.

20 PRESIDING OFFICER HONIGBERG: That's for
21 another day.

22 MS. MENARD: That's what it comes down to.
23 It's a lot of effort to get information that
24 would have been very helpful for me.

1 PRESIDING OFFICER HONIGBERG: We're going
2 to sustain the objection because these documents
3 weren't used. Off the record.

4 (Discussion off the record)

5 MS. MENARD: I think we can take a look at
6 Deerfield Abutter 165, and this was an exhibit
7 that I believe was relevant, but I wasn't able
8 to actually produce it because I wasn't
9 successful in carrying out my questions with Mr.
10 Sansoucy who is the appraiser that I wanted to
11 use this. So I did not use it. But it is
12 information which is supporting many of my
13 questions with Mr. Chalmers regarding the site
14 location, the case study, some of the errors in
15 the case studies.

16 PRESIDING OFFICER HONIGBERG: But, again,
17 it wasn't used?

18 MS. MENARD: No.

19 PRESIDING OFFICER HONIGBERG: I think we're
20 going to keep it out.

21 MS. MENARD: Similar with 82, Deerfield
22 Abutter 82 is not used.

23 PRESIDING OFFICER HONIGBERG: What is it?

24 MS. MENARD: It's a Heritage barn survey

1 and just supporting evidence of the historical
2 value of the Deerfield Parade area.

3 PRESIDING OFFICER HONIGBERG: But wasn't
4 used with a witness?

5 MS. MENARD: No, it was not.

6 PRESIDING OFFICER HONIGBERG: We'll keep it
7 out.

8 MS. MENARD: The only other comment, I
9 believe this has been mentioned, Deerfield
10 Abutter 83. It was withdrawn because it was the
11 same because it was the same exhibit as 126. So
12 just to make sure you don't have a duplicate
13 listing, Attorney Iacopino, for his record.

14 PRESIDING OFFICER HONIGBERG: Okay. Is
15 that it?

16 MS. MENARD: I believe so. We have one
17 more set.

18 PRESIDING OFFICER HONIGBERG: There's one
19 more?

20 MS. MENARD: For Mr. Berglund.

21 MS. BRADBURY: Mr. Berglund's, his exhibits
22 that we're going to be asking to include are
23 Deerfield Abutter 40, 41, and 42 and they are
24 the Data Requests from the 15th of November, the

1 30th of December, both in 2016, and then
2 February of 2017. So can we get those up?

3 PRESIDING OFFICER HONIGBERG: Okay. I see
4 40 is Data Requests that were sent to and then
5 answered by Mr. Berglund.

6 MS. BRADBURY: Yes.

7 PRESIDING OFFICER HONIGBERG: As 41 and 42
8 also?

9 MS. BRADBURY: Yes. Can we pull it up?
10 Bigger was better. Okay. And 42.

11 PRESIDING OFFICER HONIGBERG: This just
12 looks like the requests. It's only a one-page
13 document.

14 MS. BRADBURY: Are the answers there?

15 PRESIDING OFFICER HONIGBERG: Not in this
16 file. Okay. But let's assume there were
17 answers. Were these documents used with anyone?

18 MS. BRADBURY: I honestly am not sure.

19 PRESIDING OFFICER HONIGBERG: Hang on.
20 Dawn says these were the attachments.

21 MS. BRADBURY: Yes. 43 is already in, I
22 think.

23 PRESIDING OFFICER HONIGBERG: Okay. So
24 what's the deal with 41 and 42 and 40?

1 MS. BRADBURY: 40, 41, 42.

2 PRESIDING OFFICER HONIGBERG: Were they
3 used?

4 MS. BRADBURY: Can I go back to 40? I'm
5 trying to remember. And bigger.

6 PRESIDING OFFICER HONIGBERG: Patience.

7 MS. BRADBURY: If she can.

8 PRESIDING OFFICER HONIGBERG: She can.
9 Just patience.

10 MS. BRADBURY: Right. Well, he testified
11 to that one.

12 PRESIDING OFFICER HONIGBERG: Yes, it
13 doesn't seem like the Data Response is going to
14 do anything other than repeat his testimony.
15 And again, let me ask again. Were these
16 documents used?

17 MS. BRADBURY: 43, well, 43 is not an
18 issue.

19 PRESIDING OFFICER HONIGBERG: We're just
20 talking 40, 41 and 42, and at least all we see
21 in 42 is the questions. Ms. Menard, you look
22 like you wanted to say something.

23 MS. MENARD: The only thing that I would
24 like to suggest is when Mr. Berglund was on the

1 stand he was asked about his experience level,
2 and one of these does reference his work with
3 the Extension Service as a covert educator and
4 so it is just helping his credibility in terms
5 of his wetland background.

6 PRESIDING OFFICER HONIGBERG: He testified
7 to it.

8 MS. MENARD: Yes, he did.

9 PRESIDING OFFICER HONIGBERG: And I don't
10 believe the Applicant is going to be saying
11 reject Mr. Berglund's testimony because he
12 doesn't know what he's talking about. There may
13 be others they say that about, but I don't think
14 it's going to be Mr. Berglund on this particular
15 point. But these documents weren't used. We're
16 going to keep them out. Anything else?

17 MS. BRADBURY: I do believe that's it.

18 PRESIDING OFFICER HONIGBERG: Mr. Fish, is
19 that consistent with the list that you're
20 maintaining?

21 MR. FISH: I'm afraid to say no.

22 PRESIDING OFFICER HONIGBERG: Rats.

23 MR. FISH: I do have Deerfield Abutter 166,
24 and, Ms. Menard, I believe you said you were

1 going to check on this.

2 MS. MENARD: Yes. This is another exhibit
3 that I wanted to use but was shut down on my
4 line of questions so it's a response to the
5 sheet notes which was an August submission about
6 search sites, but it was not used. We had our
7 local wetlands scientist put this together for
8 us to demonstrate the inconsistencies of
9 information on the sheet notes versus reality
10 check of what would happen in the field.

11 PRESIDING OFFICER HONIGBERG: We're going
12 to --

13 MS. MENARD: I wasn't able to press it.

14 PRESIDING OFFICER HONIGBERG: We're going
15 to keep it out. Anything else, Mr. Fish?

16 MR. FISH: That's it.

17 PRESIDING OFFICER HONIGBERG: All right.

18 MR. IACOPINO: Hold on.

19 PRESIDING OFFICER HONIGBERG: Don't touch
20 that dial.

21 MR. IACOPINO: Walter Palmer's group at
22 853.

23 MS. GAGNON: I'm sorry. I'm tired. I need
24 to know which group is that.

1 ADMINISTRATOR MONROE: APOBP.

2 MR. IACOPINO: Yes. APOBP. File date.
3 Witness list. No, Exhibit list. I'm as bad as
4 everybody else. I don't know how that jives
5 with what the Applicant's position is. It
6 appears as though there are a number of exhibits
7 that are not on there that may have been
8 withdrawn or taken off their list. Question is
9 was this the result of agreement with you guys?

10 (Discussion off the record)

11 PRESIDING OFFICER HONIGBERG: So Exhibit
12 DWBA 7 has pictures attached which the Applicant
13 has said if they have the same proviso language
14 as others have agreed to, they'll not object to
15 their admission so we'll allow them on that
16 condition. The pictures, that is.

17 MR. IACOPINO: What about the Clarksville
18 and Stewartstown exhibits?

19 MR. GETZ: I think we covered all of those.
20 Those were Brad's sketches and a few of the
21 photos and Bob Baker's photo.

22 MR. IACOPINO: And you determined that
23 Grafton County was responsive?

24 MR. GETZ: I need to look at 55 and 63 to

1 see what they are. Yes. Can you pull up
2 Grafton County? She didn't use it, but that's
3 fine.

4 MR. FISH: It's the Word document.

5 MR. GETZ: 63 is a screen shot from the DOT
6 or something?

7 MR. IACOPINO: I actually recall her asking
8 questions about those trails and stuff, but I
9 don't remember if she actually used the screen
10 shots.

11 MR. FISH: I do recall this.

12 MR. IACOPINO: Do you?

13 MR. FISH: Yes.

14 MR. IACOPINO: That sounds like she used
15 it. How about the Historic NGOs?

16 MR. FISH: We're good with them.

17 MR. IACOPINO: Good with them? Okay.

18 MR. FISH: There were some on our list that
19 they gave me transcript references for so we
20 moved them to the "used" column, but other than
21 that there were no objections.

22 PRESIDING OFFICER HONIGBERG: Off the
23 record.

24 (Discussion off the record)

1 MR. IACOPINO: The Bilodeaus. No issues?

2 MR. FISH: No issues.

3 MR. IACOPINO: And the Sansoucy exhibits
4 were all dealt with with the Munis, Right? The
5 ones that are marked Sansoucy? SAN?

6 MR. FISH: I believe we did settle that all
7 those were used and in.

8 MR. GETZ: Sansoucy were all used. We had
9 included them with the Munis as part of their
10 package.

11 MR. IACOPINO: I think we've got everybody
12 then except for Grafton. We just agreed to
13 Grafton.

14 ADMINISTRATOR MONROE: 55 and 63 are
15 admitted.

16 MR. IACOPINO: Palmer is the one that is
17 still --

18 MR. GETZ: Yes, that requires some work on
19 our part. We're narrowing down with Counsel for
20 the Public still on the unused. We haven't got
21 through the list.

22 PRESIDING OFFICER HONIGBERG: On the APOBP
23 exhibits, we're not going to let in any of the
24 transcripts. Transcripts are transcripts. He

1 can cite them however he wants so those don't
2 need to be separate exhibits.

3 And the Applicant is going to get back to
4 us on the rest of his exhibits? The rest of his
5 additional exhibits? Is that right?

6 MR. GETZ: Yes.

7 MR. FISH: Yes.

8 PRESIDING OFFICER HONIGBERG: Anything else
9 we can do this evening?

10 MR. ASLIN: I think we could, 15 minutes
11 may be enough to resolve our differences.

12 PRESIDING OFFICER HONIGBERG: Nothing would
13 make me happier than to stay here for another 15
14 minutes while you guys have that discussion.

15 MR. GETZ: We're identifying a number of
16 things. I'm not sure if I'm going to be able to
17 answer all of them. But there were a couple of
18 items that I think we can deal with that we had
19 cross objections on that we can put on a couple
20 of provisos on the record.

21 PRESIDING OFFICER HONIGBERG: We'll go off
22 the record.

23 (Recess taken 10:10 - 10:32 p.m.)

24 MR. ASLIN: So we have two exhibits, one

1 each, that they are objections to, but we've
2 agreed to provisos to allow them to come in so
3 we just need to put that on the record.

4 And then there's a third exhibit that the
5 Applicants object to our using that I think will
6 come in based on prior rulings but they would
7 like to have it in a formal objection.

8 PRESIDING OFFICER HONIGBERG: Okay.

9 MR. ASLIN: Other than those three which
10 we'll address in a second, we've gotten through
11 all the "not used" category, and we're resolved
12 90 percent of those. We expect that we can
13 resolve the rest of them informally without any
14 further rulings from the Chair, and we'll be
15 able to submit something tomorrow with our final
16 lists with the caveat that there's always the
17 potential that there might be one thing that we
18 have to resolve, but we expect that we can get
19 through it without needing a formal ruling on
20 any of those.

21 PRESIDING OFFICER HONIGBERG: Okay. Where
22 do you want to start?

23 MR. GETZ: We can start with our objection
24 to Counsel for the Public Exhibit 596 and this

1 you'll recognize. This is a drawing, appears to
2 have been sketched out by Mr. Thompson, and it
3 was used by Counsel for the Public, and this is
4 in Redirect of Dewberry.

5 And so the same objection that we had with
6 the other sketches, and we were trying to recall
7 exactly what your ruling was with respect to the
8 previous objections. I think you let them in
9 because they were mentioned as hypotheticals.

10 PRESIDING OFFICER HONIGBERG: Yes. They
11 were presented by Mr. Thompson in the nature of
12 hypotheticals. I think that's maybe how we
13 allowed him to use them. And so if that's the
14 same situation that Counsel for the Public was
15 doing, same way Counsel for the Public was using
16 them, I don't see any reason why they wouldn't
17 come in on the same grounds.

18 MR. ASLIN: The way that we used them in
19 this case was for the proposition that if the
20 construction is done in-line which there's
21 testimony about that it would require a longer
22 boom length to drop the splice vaults than if
23 they were done next to each other, and that was
24 pretty much the extent of what this was used

1 for. It was not meant to be --

2 PRESIDING OFFICER HONIGBERG: Not drawn to
3 scale.

4 MR. ASLIN: -- That this is exactly how
5 this is going to work or these are the numbers,
6 but this is exemplary.

7 PRESIDING OFFICER HONIGBERG: Understood.
8 So overrule the objection and allow that in.

9 MR. ASLIN: Thank you. So we had, well,
10 why don't we do your other objection first, Tom.

11 MR. GETZ: We had an objection to Counsel
12 for the Public 130 was testimony by Dewberry.
13 Attached to that there were some photographs or
14 simulations that were -- go to the very end,
15 Dawn. There's a number of these that were
16 marked as proposed work zone simulations.

17 PRESIDING OFFICER HONIGBERG: Yes. I know
18 Mr. Needleman didn't like these at all.

19 MR. GETZ: Counsel for the Public proposed
20 some language that I've agreed to.

21 PRESIDING OFFICER HONIGBERG: Mr. Aslin?

22 MR. ASLIN: So we've agreed that with the
23 following proviso the objection will be
24 withdrawn to these pages, and so I'll read it

1 into the record.

2 Counsel for the Public Exhibit 130 work
3 area photo simulations are offered as Dewberry's
4 expert opinion of how the work areas may appear
5 based on the information provided to the record.
6 The photo sims are offered as representative
7 examples of work areas, but do not purport to
8 show all configurations of the work areas that
9 may exist during construction of the Project if
10 approved.

11 PRESIDING OFFICER HONIGBERG: Okay. That
12 seems perfectly reasonable.

13 MR. ASLIN: Then the last objection was
14 that Counsel for the Public had an objection to
15 Applicant's Exhibit 135 which is a set of
16 specifications for HDD drilling. Our objection
17 is two-fold. One, we haven't been able to
18 confirm that this document was actually used
19 during the proceedings, but more importantly, we
20 were concerned that it was unclear whether this
21 was being offered as specifications that would
22 apply to this Project as opposed to
23 specifications that are just exemplary of HDD
24 drilling, and Applicants have agreed to the

1 proviso to that latter effect; that this is not
2 offered as how HDD drilling will be done
3 specific for this Project, but that it's offered
4 as an example of specifications for HDD drilling
5 in general.

6 PRESIDING OFFICER HONIGBERG: That seems
7 reasonable. I mean, I'm looking at the
8 document. Right at the top it says "example" on
9 it so calling it exemplary is true to the
10 document's own nature.

11 MR. ASLIN: With that proviso, we would
12 withdraw our objection.

13 PRESIDING OFFICER HONIGBERG: Okay. Sounds
14 good.

15 So I think the only thing left to do, the
16 only thing left outstanding is Palmer exhibits.
17 That group's exhibits. We are going to leave
18 the record open for resolution of the issues,
19 just through tomorrow, the resolution of the
20 issues, Mr. Aslin, that you and the Applicant
21 still are going to try and work out, for
22 resolution of whatever issues there are with
23 Mr. Palmer's group, and for public comment
24 because that's, as long as the record is open

1 public comment can and will come in.

2 MR. PAPPAS: Can we go off the record for a
3 second?

4 PRESIDING OFFICER HONIGBERG: Sure. Let's
5 go off the record for a second.

6 (Discussion off the record)

7 PRESIDING OFFICER HONIGBERG: So thank you
8 all for your hard work today, tonight, for the
9 last number of months, years for those of who
10 have before working on it for years. We'll
11 adjourn the hearings, and, as I said, leave the
12 record open as we specified earlier in the
13 transcript. Thank you all.

14 MR. PAPPAS: Thank you.

15 MR. GETZ: Thank you.

16 (Hearing recessed at 10:45 p.m.)

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C E R T I F I C A T E

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

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

Dated at West Lebanon, New Hampshire, this 30th day of December, 2017.

Cynthia Foster, LCR