STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE  

January 31, 2018 – 9:00 a.m.  DELIBERATIONS  
49 Donovan Street  DAY 2  
Concord, New Hampshire  Morning Session Only  

{Electronically filed with SEC 02-05-18}  

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

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

Dir. Craig Wright, Designee  Dept. of Environ. Serv.  
Christopher Way, Designee  Dept. of Resources &  
Economic Development  
William Oldenburg, Designee  Dept. of Transportation  
Patricia Weathersby  Public Member  
Rachel Dandeneau  Public Member  

ALSO PRESENT FOR THE SEC:  

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

Pamela G. Monroe, SEC Administrator  

(No Appearances Taken)  

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

<table>
<thead>
<tr>
<th>LAND USE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summary by Ms. Weathersby</td>
<td>6</td>
</tr>
<tr>
<td>VIEWS OF MUNICIPAL AND REGIONAL PLANNING COMMISSIONS AND MUNICIPAL GOVERNING BODIES</td>
<td></td>
</tr>
<tr>
<td>Presentation by Ms. Weathersby</td>
<td>6</td>
</tr>
<tr>
<td>Chairman Honigberg</td>
<td>24</td>
</tr>
<tr>
<td>DISCUSSION:</td>
<td></td>
</tr>
<tr>
<td>By Chairman Honigberg</td>
<td>24</td>
</tr>
<tr>
<td>Mr. Oldenburg</td>
<td>26</td>
</tr>
<tr>
<td>Mr. Weathersby</td>
<td>28</td>
</tr>
<tr>
<td>Mr. Oldenburg</td>
<td>29</td>
</tr>
<tr>
<td>Mr. Way</td>
<td>29</td>
</tr>
<tr>
<td>Commissioner Bailey</td>
<td>31</td>
</tr>
<tr>
<td>Dir. Wright</td>
<td>33</td>
</tr>
<tr>
<td>Chairman Honigberg</td>
<td>34</td>
</tr>
<tr>
<td>Ms. Dandeneau</td>
<td>35</td>
</tr>
<tr>
<td>Mr. Way</td>
<td>35</td>
</tr>
<tr>
<td>Ms. Bailey</td>
<td>37</td>
</tr>
<tr>
<td>Chairman Honigberg</td>
<td>39</td>
</tr>
<tr>
<td>Ms. Weathersby</td>
<td>40</td>
</tr>
<tr>
<td>Dir. Wright</td>
<td>42</td>
</tr>
<tr>
<td></td>
<td>Name</td>
</tr>
<tr>
<td>---</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>1</td>
<td>Ms. Weathersby</td>
</tr>
<tr>
<td>2</td>
<td>Ms. Dandeneau</td>
</tr>
<tr>
<td>3</td>
<td>Mr. Oldenburg</td>
</tr>
<tr>
<td>4</td>
<td>Chairman Honigberg</td>
</tr>
<tr>
<td>5</td>
<td>Mr. Way</td>
</tr>
<tr>
<td>6</td>
<td>Commissioner Bailey</td>
</tr>
<tr>
<td>7</td>
<td>Ms. Weathersby</td>
</tr>
<tr>
<td>8</td>
<td>Commissioner Bailey</td>
</tr>
<tr>
<td>9</td>
<td>Chairman Honigberg</td>
</tr>
<tr>
<td>10</td>
<td>Ms. Dandeneau</td>
</tr>
<tr>
<td>11</td>
<td>Mr. Way</td>
</tr>
<tr>
<td>12</td>
<td>Ms. Weathersby</td>
</tr>
<tr>
<td>13</td>
<td>Mr. Way</td>
</tr>
<tr>
<td>14</td>
<td>Dir. Wright</td>
</tr>
<tr>
<td>15</td>
<td>Commissioner Bailey</td>
</tr>
<tr>
<td>16</td>
<td>Joint Muni Brief, Page 37</td>
</tr>
<tr>
<td>17</td>
<td>Dir. Wright</td>
</tr>
<tr>
<td>18</td>
<td>Mr. Oldenburg</td>
</tr>
<tr>
<td>19</td>
<td>Ms. Dandeneau</td>
</tr>
<tr>
<td>20</td>
<td>Dir. Wright</td>
</tr>
<tr>
<td>21</td>
<td>Chairman Honigberg</td>
</tr>
<tr>
<td>22</td>
<td>Ms. Weathersby</td>
</tr>
<tr>
<td>23</td>
<td>Commissioner Bailey</td>
</tr>
<tr>
<td>24</td>
<td>Ms. Weathersby</td>
</tr>
</tbody>
</table>
Mr. Way

ECONOMY:

Presentation by Ms. Bailey

Chairman Honigberg

DISCUSSION:

Mr. Way

 Commissioner Bailey

 Dir. Wright

 Chairman Honigberg

 Mr. Way

 Commissioner Bailey

 Dir. Wright

 Commissioner Bailey

 Chairman Honigberg

 Commissioner Bailey

 Ms. Weathersby

 Commissioner Bailey

 Chairman Honigberg

 Commissioner Bailey

 Mr. Way

 Chairman Honigberg

 Dir. Wright

 Commissioner Bailey

 Chairman Honigberg
Commissioner Bailey

PROPERTY VALUES:

Presentation by Chairman Honigberg

DISCUSSION:

Mr. Way

Chairman Honigberg

Mr. Way

Commissioner Bailey

Chairman Honigberg

Ms. Weathersby

Dir. Wright

Chairman Honigberg

Ms. Dandeneau

Ms. Weathersby

Mr. Oldenburg

Chairman Honigberg

Dir. Wright

Ms. Weathersby

Mr. Way

Ms. Weathersby

Commissioner Bailey

Mr. Way
PROCEEDINGS

CHAIRMAN HONIGBERG: Good morning, everyone. We're going to resume deliberations. We were talking about a lot of things, but we were in the middle of Patty Weathersby discussing various issues in prevailing uses of land and the views of municipalities.

Ms. Weathersby, you want to pick up where you left off or start a new topic?

MS. WEATHERSBY: Sure. So yesterday when we left off, we were talking about land uses and Normandeau's report which described by category the different types of land uses along the corridor. And basically their conclusion is that the Project was consistent with those various land uses because it was primarily within an existing utility corridor. Very quick summation. And there's, of course, a lot more to it.

So, today I want to pick up with the second part of the land use question, which is the views of the municipal
and regional planning commissions and the 
municipal governing bodies.

CHAIRMAN HONIGBERG: Hang on.

Off the record.

(Discussion off the record)

CHAIRMAN HONIGBERG: I'm sorry,

Ms. Weathersby.

MS. WEATHERSBY: That's fine.

So, the rule that concerns 
this is 301.09, which has a number of parts, 
some of which I read yesterday. It does 
require certain things in the Application, 
and that is an expression of the views of the 
municipal and regional planning commissions 
and the municipal governing bodies if such 
views have been expressed in writing in the 
master plans and zoning ordinances -- master 
plans of the affected communities and the 
zoning ordinances of the host communities and 
unincorporated places. So it has been raised 
as to whether's there's compliance with that 
requirement.

The Applicant did not provide 
the Committee with the actual zoning
ordinances or master plans of either host or
affected communities. You probably recall
that during the hearings, Mr. Varney
discussed and later produced working drafts
of his summaries of those zoning ordinances
and master plans. It also didn't summarize
affected communities, but only host
communities in the master plan summary. So
there is a question that we should talk about
later as to whether the Subcommittee has the
information we need to make our determination
concerning undue interference with orderly
development.

A point the Applicant has
raised that I think would be good to keep in
mind is that, as we go through our analysis
of municipal and state plans and views, that
those don't preempt SEC jurisdiction. If we
find inconsistencies in the zoning
ordinances, et cetera, we don't necessarily
need to find that the orderly development is
affected; we just need to give the views of
the municipalities and regional planning
commissions due consideration.
So, the Applicant's opinion on this was contained in Appendix 41 of the Application. There was also prefiled testimony and various exhibits. Mr. Varney was the witness on this matter. Just a quick summary, I guess, of what happened.

As you probably recall, Mr. Varney testified that he reviewed the regional planing -- the regional plans for each of the regional planning commissions in the Project area, the local river corridor management plans and statewide plans that involved various aspects of land use, environment, energy transmission and infrastructure. He reviewed the master plans for the corridor communities and the master plans in communities where a high-voltage transmission line presently exists. He concluded that none of the master plans specifically discussed existing transmission lines or corridors as being inconsistent with local zoning or present any specific challenges to the aspirations set forth in the master plans of the various communities.
In towns with existing high-voltage transmission lines, none of the master plans he reviewed specifically identified them as a problem. So his overall conclusion was that there were no instances along any of the 192 miles of the proposed Project where the proposed facility is inconsistent with any of the prevailing land uses. There's a whole list of plans that he reviewed -- different regional plans, planning commission plans, resource management plans, river corridor plans -- and they're all in the record. Also, state plans, climate action plans, development plans, strategy plans, on and on. And there's, again, a list. And Mr. Varney concluded that the construction and the operation of the Project is consistent with the state and regional plans and will not interfere with their implementation.

One state statute actually that he didn't address, but others have raised, that New Hampshire RSA Section 162-R, specifically R:2, which is the Energy Infrastructure Corridors designation. That
statute, in part, Roman II, designates
certain roads as energy infrastructure
corridors and lists in Part (b) that
identifies an energy corridor as I-93 between
the Massachusetts border and the Vermont
border, excepting approximately 1.7 miles
located in the White Mountain National Forest
north of Franconia Notch State Park. That
statute actually also says, however, that
nothing in this chapter will require a
developer of energy infrastructure to site a
proposed -- to site energy infrastructure, or
any part thereof within an energy
infrastructure corridor designated in the
chapter. We learned this was -- there was
some testimony on this at various points of
the hearings. We learned, I believe, that
the reason for the 1.7-mile gap in the
corridor was a jurisdictional one, and that
that 1.7 miles is owned by the Federal
Government; therefore, New Hampshire couldn't
include it in the description. So that is, I
guess, a question we should talk about,
whether the siting of Northern Pass is
consistent with this section of the statute. But again, while this energy corridor is preferred, it's not required.

So, for master plans,

Mr. Varney indicates that he reviewed the master plans for all the corridor communities. Again, he didn't do the affected communities. But he really provides little in the way of analysis of towns' master plans. His summary states certain things that are found in the master plans, but he doesn't really analyze how the Project is consistent or inconsistent, but, in my opinion, jumps more to his conclusion that the Project is consistent.

In his -- for zoning ordinances, it was indicated that Pittsburg, Clarksville, Stewartstown, Stark, Dalton, Woodsville and Dummer don't have zoning ordinances. The rest of the communities do. And a working draft -- again, a working draft summary was provided. But again, there was very little in the way of analysis of the ordinances and how the Project would be
consistent or inconsistent, in my opinion. The focus of Mr. Varney's analysis seemed to be his review of the master plans and zoning ordinances. In researching those documents, he did not meet with any planning boards, zoning boards, selectmen or municipal economic development directors or committees to discuss their views or whether they felt it was -- the Project was consistent or inconsistent with those plans or ordinances. He did meet with regional planning commissioners and seven professional municipal planners to ensure that he had the most recent versions of the planning documents, but he didn't ask for their opinion as to the Project's impact on orderly development of the region or request that they provide documents for him to consider.

Various towns have taken positions in this matter, of course, and one way in which they did so was with warrant articles or town votes. As I was counting them up last night, I came up with the following -- I may have missed one or two:
But I think Pittsburg, in 2011, passed a warrant article opposing the Project; Clarksville, I think in 2012, passed a warrant article requiring the undergrounding of transmission lines; Pembroke, in 2014, passed a warrant article expressing opposition to the Project and a commitment to stop its construction; Deerfield passed ordinances in 2013 and 2017 -- sorry -- passed warrant articles; Franconia, in 2012, and that one was acknowledged, that since that -- since the dates of the early votes, the Project has changed. But Mr. Meth, when he was here testifying, indicated that Franconia was still opposed to the Project, and indeed, in 2016 and 2017, town voters approved additional funding to support efforts to oppose the Project.

In Clarksville, there was a warrant article in opposition, generally in opposition. There's also a petition by 515 residents that were in opposition. And Whitefield passed a warrant article.

Easton passed an article in...
2011 concerning funding supporting the opposition, and in 2012 and 2013 they approved additional funds. Easton also passed a number of zoning -- excuse me -- a number of ordinances that would specifically, they were hoping would specifically deal with this project concerning blasting, bore bole sealing, use of HDD drilling, thermal backfill, just, again, specifically addressing specific aspects of the Project if it goes through Easton.

Concerning these warrant articles, Mr. Varney acknowledged that many towns have passed warrant articles addressing the Project or taken other actions in opposition. He opined that these were not definitive actions inconsistent with the towns' plans or regional development plans. Then he also indicated that it wasn't clear to him that all of the facts were presented to the voters at the time of votes and discounts the votes as expressing -- as to whether it really expresses the views of the governing bodies.
There are 31 host communities along the route; of those, one municipality has intervened in favor of the Project, and that is Franklin. The only other municipality that's supportive of the Project is the City of Berlin, which is not a host community, but it is a host community to the Coos Loop, which they're hoping to upgrade. And the Applicant has promised to upgrade the Project if -- upgrade the loop if the Project is approved. So, Berlin supports this project, provided that the Coos Loop is upgraded and the Forward NH Plan and the North Country Job Association go forward as expressed, as the Applicant has committed to. Without compliance with those conditions, the City takes no position in support of or against the Project.

Twenty-two municipalities have intervened and objected in writing and in testimony to this project. Their testimony very generally is that the Project will unduly interfere with the orderly development of their respective towns or regions.
There's also three towns that have not intervened -- Campton, Lancaster and Thornton -- but they have passed -- those three towns have passed warrant articles at their town meetings to oppose the Project. There's four towns -- Allenstown, Hill, Northfield and Stark -- that have not participated in these proceedings. Dummer has participated by sending two letters, one in support generally of the Project, generally encouraging Northern Pass Transmission and the SEC to address concerns of property owners about the visual impacts and to consider mitigation efforts to alleviate them, and then a second letter expressing concerns about town roads.

There are two counties that have intervened, Grafton County and Coos County, and they have intervened in opposition to the Project. There's a whole host of specific examples given by these municipalities of how the Northern Pass is inconsistent with their master plans or zoning ordinances. I can go through them all.
if you'd like, but I don't think that's probably a good use of our time right now, but perhaps when we're discussing things we can talk about some of them.

I guess very generally, the representative -- if I can paraphrase what I've heard and understand. The representatives of these municipalities feel as though the Project will unduly interfere with the orderly development in their respective regions or towns and find that the Project will be inconsistent with their master plans and other land use regulations. Many towns have testified about the scale of the Project, including the tower heights and the increased intensity of the use of the right-of-way, and they distinguish the Project from the existing transmission line and indicate its noncompliance in various ways with their town's zoning ordinances and master plans.

Many municipal representatives have testified about their concern with construction adversely affecting their towns.
in various ways: Aquifers in the towns of Easton and Bethlehem, other important water bodies, such as the Pemi, the Gale River, Coffin Pond, Turtle Pond and various other ponds in Concord. Towns have ordinances in place to protect these resources that the Project, in their opinion, is not following. Other municipalities have discussed how the Project is not in compliance with their town goals or regulations about the environment, particularly open-space wetlands and aquifers, buffer zones, aesthetics, noise, traffic, height restrictions, conservation efforts, character preservation efforts, scenic roads, historic resources, recreational uses, public safety and development goals. Still, others pointed to sections of their own ordinances which require the burial of utilities. Some have testified how their access roads don’t comply with town regulations and how there might be safety issues concerning site distance and access gates and bars, et cetera. So, those are the towns.
There's also some regional planning commissions that have expressed their views. This project runs through areas covered by four regional planning commissions: North Country Council, Lakes Region Planning Commission, Central New Hampshire Regional Planning Commission, and the Southern New Hampshire Regional Planning Commission. None of those commissions have intervened in this proceeding.

Mr. Varney and a staff member from Normandeau have met twice with staff from the North Country Council and once with staff from the remaining regional planning commissions. Mr. Varney's -- Normandeau's notes show that these regional planning commissions raised some concerns about the Project. The North Country Council told Mr. Varney that Pittsburg was one of three areas of most concern and also expressed concerns regarding the cumulative impact of large projects such as transmission lines and wind farms on tourism and their scenic resources and the visual impacts to the

In addition, the North Country Council submitted comments to the Committee regarding the Project. North Country Council submitted a written comment and spoke to this Committee during the public hearing on March 14th, 2016. Barbara Robinson, Executive Director of the North Country Council, told us that their regional plan contains a strategy statement about protecting this region's iconic and popular viewsheds from undue adverse impacts from incompatible land uses such as large transmission lines like Northern Pass, and she expressed support for burial in the roads.

She also indicated another policy of the North Country Council was to increase the region's production and use of renewable energy consistent with protection of other important natural and scenic
resources. And they urge the SEC to be sure the Project wouldn't provide a financial disincentive to the development of additional local energy generation facilities.

Tara Bamford, of the North Country Council, also submitted a comment to the Committee on June 23rd, 2016, stating that the viewshed analysis submitted by the Applicant was misleading and suggesting that the Applicant should be required to provide the SEC with a more meaningful viewshed analysis to enable the Committee to fully understand the scope of the impact.

The Lakes Region Planning Commission told Mr. Varney that following I-93 seems like the most direct route and expressed concerns about large river crossings, like the Pemigewasset. Those concerns are not referenced in Mr. Varney's report.

Grafton County and Coos County have intervened and oppose the Project.

In addition, we're required to take into account public comments, something...
like 3,000 comments. The vast majority are in opposition to the Project. In addition, there's a public comment of July 20, 2017, that was co-signed by 107 legislators from New Hampshire who oppose the Project. Residents in some municipalities have signed petitions in opposition to the Project which they presented to the Committee, including: New Hampton, with 700 signatures; Plymouth, with 6,554 signatures; Whitefield, 535 signatures. During the public comment hearing in July of 2017, Melissa Elander presented two petitions that she noted were signed by 20,000 people. Concord also received a petition requesting burial of the Project that had over 1,100 signatures.

CHAIRMAN HONIGBERG: Ms. Weathersby, I want to clarify something. I don't think Coos County is an intervenor in this proceeding. There's one county commissioner who sought intervenor status, but the county itself, I'm almost certain is not an intervenor here.

MS. WEATHERSBY: You're right.

Sorry. I misspoke. Mr. Sampson, right, a
Commissioner. And he's part of a group. No?

CHAIRMAN HONIGBERG: He was put into one of the relevant intervenor groups of North Country folks.

MS. WEATHERSBY: I'm not going to go on. I think that kind of summarizes the views of the regional planning commissions, counties, municipalities and citizens that have expressed things and their views in writing.

CHAIRMAN HONIGBERG: Anyone like to comment, discuss anything that Ms. Weathersby said yesterday afternoon about prevailing land uses or the summary she just provided of the municipalities' positions?

[No verbal response]

CHAIRMAN HONIGBERG: All right. Well, I'll offer something on the municipalities.

It is not surprising that the municipalities where the Project is proposed to be located have taken strong positions. The one that is -- or the major supporter, Franklin, has a large infrastructure project that would be part of the Northern Pass that
would be, obviously, to them a significant property tax contributor. Other communities where they have seen property tax increases projected as a result of this aren't persuaded that that's a good idea. I've just given you the information I was going to be providing later regarding property taxes. But the warrant articles, positions taken after the Project was proposed are important, something we need to consider. I am more impressed by the communities who took positions before Northern Pass was a glimmer in anyone's eye, who have planning documents, master plans or other zoning ordinances that have been on the books since before 2009 or 2010. And there are some. I don't remember which, off the top of my head. But we've seen some of those. And those are, to me, more significant because they're not project-specific. They are more general statements of what the communities believe their community should look like and weren't passed in response to rumors or projections about what this project would do in their
communities. I don't know that there's any significance beyond that feeling that I've carried from early on in this. But both sets of viewpoints are relevant. They're significant and something we all need to consider. And, you know, I've been thinking about those positions since the beginning of this process.

Somebody? Anybody? Mr. Oldenburg.

MR. OLDENBURG: Okay. I'll start. I know one of the intervenors' comments was that all the master plans weren't included as part of the record. But in Mr. Varney's summary, where he summarized all of the master plans, if they were available online, there was a link so that we could go and find those master plans. And while I appreciate not having in the record that 30 or some-odd master plans, there was the availability to go and review them. And his summary was the key components that he found. Take that for what it is. But it seems to me that they were available for our review and they were available to comment on.
The other thing that I think you had commented on was the route, the route selection and the whole discussion about I-93. I don’t want to belabor it because it isn’t really part of the Application, but I know the energy corridor and the legislation on the energy corridor and how it excluded the portion that was in the federally owned section of I-93. But there is a component that was -- and that’s the Franconia Notch State Park where I-93 goes through. It was brought up early on, I think it was brought up by Mr. Hodgdon, where there is an agreement among state agencies and other groups that would make that route very hard to go through. It’s an agreement that goes back to the 1970s when the Franconia Notch Parkway was built. And any work that’s done in the parkway requires basically an MOU with all those parties, which is the Department of Transportation and the agency previously known as DRED, SPNHF and AMC, and a group at the time which was the Franconia Notch Alternate Route Group, which I think has been
disbanded. But all four of those parties have to come to an agreement on whether or not work on the parkway or any modification of the parkway is done.

So I don't think it's just that 1.7 miles. I think there's other complications with going down I-93 that I don't think were fully explained. So I think the route not going down I-93 -- I think going down I-93 would have been just as complicated as going down 116. It might have been less obtrusive from an impact standpoint, you know, an abutter's standpoint. But technically it would have been difficult, I think. So the route is the route.

MS. WEATHERSBY: I was simply pointing out areas where it has been raised that the Project is inconsistent with government plans, and that has been raised. I agree that it would be complicated. I don't know if it's impossible. But it does not -- the Northern Pass Project is not in one of the energy corridors that's suggested by that statute.
MR. OLDENBURG: Right, and there was a reason why.

CHAIRMAN HONIGBERG: Mr. Way.

MR. WAY: Good morning. I guess some of the issues that I'm interested in as we discussed prevailing land use, I guess I'm interested -- well, first off, let me agree with Mr. Oldenburg. I do agree. I think we had access to the master plans. I feel satisfied that that condition was met. I do think, though, we may want to have some discussion on the content of those master plans and maybe how they were represented and to what extent we accept what they're saying, and then I think we can probably talk about maybe some of the zoning requirements that tend to spin off from a required master plan. I think that's important.

A transmission structure in an existing ROW -- right-of-way, rather, I'm interested in that. I think there was one discussion, and I believe I saw it in the brief and when I read the transcript. I need to feel in my mind when it couldn't be within the prevailing land use. What has to happen
for it to fail? I didn't get a sense of
that. So, you know, it was sort of a, you
know, on the far end of the spectrum, well,
what if it was 500 feet tall? You know, it
would still be within the prevailing land
use. But because it's a transmission
structure, it's in a right-of-way, that
right-of-way's been established for that,
it's been there, people know that. But, you
know, at what point do we go beyond the
boundaries of what is considered a structure
within that right-of-way. And this might be
it. I think it's just worthy of a discussion
that we do have to talk about is when does
something expand beyond its intended use, a
nonconforming structure, as I think as you
said yesterday, Ms. Weathersby.

I'm still interested, and I
brought this up yesterday, this idea of the
"region," everything being measured by the
region. And I understand that we say
"region" in the rules and in the statute.
But what constitutes that region? Because
the other thing, too, is you don't want to
minimize the municipalities that combined
make up that region. So if we're looking at
it as one whole, why are we even getting the
input of municipalities? So I think there's
got to be more discussion about, are we
looking at this project in chunks, in
regions? Is it the sum of its parts? I'm
not clear on that yet. I think that's
important here because I think there are
places where there are certainly concerns.
But I think, as the Applicant would say, but
if you look at it as a whole, regionally, the
whole project, it's not unreasonable. That's
my thoughts to get me started.

CHAIRMAN HONIGBERG: Commissioner
Bailey.

COMMISSIONER BAILEY: I was
thinking sort of along the lines you were about
how do we figure out when the land use has
changed and off an existing right-of-way to
determine whether it would unduly interfere with
orderly development. And I think the towns who
oppose the Project -- specifically thinking
about Deerfield and Whitefield, as examples --
they're saying that their master plan and their
planning has been to maintain the rural
character of their town. So I was thinking:
All right. Well, what does that mean, and how
does the existing right-of-way look today? And
I picture the right-of-way in Deerfield that we
passed that was on the side of the road there
was a pond. I think Ms. Menard was there with a
sign about herons. And so picture that in your
mind and that sort of rural. My memory of that,
and maybe we should pull up a picture of it, is
that it was wooden structures and they were kind
of old-fashioned-looking. And then think about
what the right-of-way in Loudon Road looks like
today. Very industrial, those big metal towers.
And I think what Deerfield is saying is if you
pick that picture up in Loudon Road and you
plunk it in Deerfield, according to Deerfield
and Whitefield and some of the other towns, that
looks very different than how it looks today,
and they're arguing that that's not consistent
with their rural character. I'm not persuaded
by Concord. I think it's pretty industrial up
there on Loudon Road. But for some of the other
towns, I think that's their argument, and I think that's what we need to think about.

MR. WAY: I actually was --

DIR. WRIGHT: Chris, could I just add to that? I kind of had the same thought. I think a lot of us tried to really ask that question of Mr. Varney when he was here: Is there a tipping point when we get to there is a prevailing change in the land use? I think that's a question we specifically asked. I don't think we ever got really an answer, other than a very generic, "It's a right-of-way, it's a right-of-way."

I also have some thoughts. I'm not sure how a new right-of-way in the North Country impacts land use as well. I think that's something we also need to think about and talk about. Some of that is, you know, through a working forest. You know, that may not be a big deal, but there are other areas that were not working forests. So that may be something we want to discuss as well.

CHAIRMAN HONIGBERG: I think with
respect to Mr. Varney's testimony, I agree with you, Mr. Wright, that he had one answer to a number of questions asked by intervenors, Counsel for the Public and members of the Subcommittee, that if it was placed in the existing right-of-way and it was a transmission line, it was consistent with the prevailing land use. And that was the answer to all of those questions. Like Commissioner Bailey, I think that it's different in different places. And even within Concord, although Loudon Road is not a good example for Concord. But just north of there, up north of the Broken Ground area, Turtle Pond, up toward Canterbury, you have a very different feel. If you put an additional line, an industrial tower in what is today wooden structures that are 60 feet high, and you put 100-foot or 90-foot towers adding to that that corridor, it's going to look different. I don't know that it would be helpful to pull up some of the view simulations. But I know when we were on Shaker Road in East Concord, looking across Shaker Road toward a place where you can kind of just see the tops of the existing
towers, there was a picture from a slightly
different location showing the simulation, and
you can see a lot more in what is now a very
rural location. You can all of a sudden see a
lot more towers, and they're not off in the
distance; they're across the street and about 60
or 70 yards past the other side of the street.
So there are places within Concord that are like
Deerfield, are like Whitefield in your examples,
Commissioner Bailey, where I think you make a
pretty good argument that those are going to be
very different from what they are today, even
though they are the same type of structure in
the existing corridor.

MS. DANDENEAU: I would just like
to add that up in the North Country, where we
have sections of this project potentially going
through areas that are not in an existing
right-of-way, that disparity is going to be
increased that much more because we don't have a
right-of-way at all and then we will. And the
structures are proposed to be very tall.

MR. WAY: And I was going to say
that the Concord argument I think I bought, or
at least I agreed with. And they have --

forgive me if I forget her title, professional
economic development planner. I think it was
Ms. Shank. And she talked about the Loudon Road
area. And I guess one of the thoughts I had is
that I thought she laid out a pretty good
reasoning for what they're looking at for
economic development and orderly development in
the Loudon area. And I don't know if I
necessarily agree that that's exactly how it
should happen. That's for them to decide. But,
you know, within that zone that encompasses some
of these structures, they seem to have a plan.

So it also brings up the

question that, if I go to a community and I
ask that community about orderly development,
who's best to know what the orderly
development is going to be? If we hear from
Deerfield that this is not in line with their
orderly development, I know I tend to listen
more to that. So when Concord says it's not
in line with their orderly development, it's
not in their plans of where they'd like to
go, however this works out, I tend to listen
to that. And once again, I think it's going
to come down to are we listening to the
individual communities and then summing that
up to a region? Or do you buy, as Mr. Varney
said, it's a region, and on the whole the
region? I think that's hard. But I tend to
listen to the communities that know best what
their development is going to be.

CHAIRMAN HONIGBERG: Commissioner
Bailey.

COMMISSIONER BAILEY: I agree
with you that communities know what --
communities who have taken the time to plan
development should be very carefully considered.

I respectfully disagree with
you, your analysis about Concord's
development, because I think that the
testimony from Ms. Shank was -- and maybe we
can pull this up to see if I have it right or
you have it right. I had a different
impression from that discussion, though. And
my impression of the testimony from Ms. Shank
was that was kind of her vision for the
future, but the master plan hadn't been
updated to articulate that vision. So it's something that she's thinking about as a professional planner, but the Town of Concord hasn't voted on that yet. And the Town of Concord has -- the existing master plan does, in Concord, I think does say that the zone up on Loudon Road is industrial. And there's an existing transmission line there. And in order to implement Ms. Shank's vision of the future, if it can get through town voting, they'd have to bury all those transmission lines. So I think that's a pretty high hurdle. I'm not sure -- I wasn't convinced that that's ever going to happen. That being said, there are other areas of Concord, as Chairman Honigberg articulated, that the plan does say should be rural, and they want to maintain the rural character. And so I just wanted to add that.

And the other thing that I wanted to add was I think Mr. Varney's position is that the overwhelming precedent from past Site Evaluation Committees has been that if you put a transmission line in an
existing right-of-way, that's not
inconsistent with orderly development. So I
think that's where he was coming from. And I
think that's a reasonable argument to make,
but I'm not sure it outweighs the
overwhelming information that we have from
municipal officials.

CHAIRMAN HONIGBERG: Mr. Way, I
guess a thought in response to your question
about what does the "region" mean, or what areas
do we have to consider. It's different in
different parts of the statute and different
parts of our own rules. In some places we are
directed to look at what's going on within the
affected municipalities, and in some instances
it seems like we're being directed to talk about
a region that may even be larger than the state
of New Hampshire, and there are gradations in
between. That's something I think that we might
want to have a non-meeting with our own lawyer
to talk about that. But it's also something
that in some areas we're just going to have to
wrestle with and decide what's important, given
the particular criterion or set of criteria that
we're considering at the time. For example, I happen to know because I've just been looking at it, that the property values inquiry in the rules is directed at the specific municipalities. Doesn't talk about anything beyond that when you're talking about property values. So... Ms. Weathersby.

MS. WEATHERSBY: Wasn't sure I was going to weigh in just yet.

CHAIRMAN HONIGBERG: Let me, before you start. I'll just say that at the request of the court reporters, I'm going to try to identify speakers because it will help us get what will be a great transcript either way, but it'll make it easier for the stenographers to give us a great transcript.

MS. WEATHERSBY: So, a number of thoughts running through my head. One is when Normandeau had to do its analysis. You know, I kind of feel for him a little bit because you've got all these different land uses. You've got beautiful farmland, town centers, agricultural, recreational, industrial land, all different kinds of land uses. And putting this project
with its towers and lines and underground portions through those various areas, you know, it clearly is a different type of use than, you know, say farmland as it goes through. And there's really no way to say it's compatible with that agricultural use, for example. So you have to say, well, it's an existing corridor and it's already there and it's better than going -- a new corridor through that same land. And, you know, I agree with that. And there really isn't a whole lot of other arguments that could be made because it's not consistent with that agricultural use in my example. But that said, we've heard of other alternatives: One, a no-build alternative; and, two, one that perhaps, particularly like up north with the agricultural, most of where the agricultural land is, you know, down Route 3, you know, there are other alternatives that we've heard about that have different effects on land use that may be less. And I know we're not here to study all the alternatives. But I think that since we've heard about them, we can consider them. I'll stop there.
CHAIRMAN HONIGBERG: Mr. Wright.

DIR. WRIGHT: Ms. Weathersby, I think you actually brought up a good point that I kind of thought about previously, and that's the idea -- there's a reason we have utility corridors, because we don't want utilities running all over the place. We do want to congregate them so that I guess it would be less disruptive overall. If we need the energy, we want to congregate them. That's why we put pipelines in existing transmission lines, so that we don't have another pipeline.

That being said, I just keep coming back to the scale, scope and nature of this project. And not only is it significantly different than what's in the corridor, in order to place it in the corridor they need to make other changes in the corridor as well, like moving existing lines, increasing the heights on those. So that's something that kind of piles on me a little bit, too.

CHAIRMAN HONIGBERG: Ms. Weathersby.
MS. WEATHERSBY: So that's partly where I get hung up, too. And we were pressing Mr. Varney on this point, is at what point is it too much? At what point does it have such an effect on the abutting land uses or regional land uses that it just does affect the orderly development of the region? And for what it's worth, I look to the guidance of land use law concerning -- from a zoning perspective. And I talked about it yesterday. There's the concept of, okay, there's a non-conforming use. You know, there's a commercial facility right in the middle of a agriculturally zoned area. And that is allowed to stay there because it either got permission or it was grandfathered, or whatever it is. However, it was allowed to be there lawfully. But then as it expands, at some point it becomes a different use because of its intensification. And there's a whole line of cases pretty consistently throughout three factors to consider when making that determination. And I'm not giving you legal advice. This is probably something Mr. Iacopino could speak to. But for me, I use this as
guidance. And those three factors that are generally used when considering whether there's been a substantial change in that pre-existing nonconforming use is: The extent to which the use being questioned reflects the nature and purpose of the pre-existing nonconforming use; whether the use is merely a different manner of using the original nonconforming use or whether it constitutes a use that's different in its character, nature and kind; and third, whether the use will have a substantially different effect upon the neighborhood. And when I look at those, I think in certain places this project will have a substantially different effect on the neighborhood. And I think in other certain places the use is different in its character, nature and kind. You know, going from a set of 40-foot wooden poles to a series of towers over a 100 feet, it's such an expansion, in my mind, that it tips, such that it becomes a different use than what is presently in the corridor.

CHAIRMAN HONIGBERG: Ms.

Dandeneau.

MS. DANDENEAU: I love that you
just used the term "neighborhood" in citing those three -- are those considered rules, land use rules?

MS. WEATHERSBY: Case law.

MS. DANDENEAU: Case law.

Because a "neighborhood" in Coos County might encompass many square miles of land versus in Concord or elsewhere it might be a block or two. So, again, I think this goes back to that question of yours, Mr. Way, about what constitutes a "region." And I think in agreement with some other people that have spoken, a region is very different if we're talking about maybe Coos County versus some of the other counties or some of the other municipalities. I guess that's all I'll say for now.

CHAIRMAN HONIGBERG: Mr. Oldenburg.

MR. OLDENBURG: You're making me think about this a lot harder than I originally thought.

CHAIRMAN HONIGBERG: Don't hurt yourself.
MR. OLDENBURG: Because this was -- my thought originally, my thought, my initial thought was you're in an existing corridor. There's a transmission line in the existing corridor. The expectation at some point is that line could be expanded, that it's not going to stay as it is forever, that there could be an expansion of that line. Now, whether or not this expansion is more than should be allowed or is outside the character of -- to me, there's an easement there. There might be wood poles today, there might be steel poles tomorrow. I didn't see it as such a big thing. Now you're making me think about it. My concern, and I'll go back to the North Country, where there isn't an easement, where there's -- it's a new line. And is that in line with the land use? So, yeah, that was -- yeah, I'm thinking a lot more about it.

CHAIRMAN HONIGBERG: I'll make you feel better, Mr. Oldenburg. When you're on a right-of-way, when you abut a right-of-way, when you're near a right-of-way, that right-of-way can be changed as long as the work
is done within the right-of-way. The notion is that, if today there is 20 or 30 feet of vegetation in the right-of-way between where you are or your house is and the cleared area, there's nothing preventing the utilities from clearing right up to the edge of the right-of-way. I mean, there was a lot of testimony from landowners and folks that somehow that's wrong, that that's not allowed. It is. I mean, there may be other things that have to happen for it to take place. But those rights-of-way are utility rights-of-way, and they can be cleared right up to the edge if necessary. That's not to diminish the other parts of what you said, Mr. Oldenburg. I'm trying to agree with a lot of what you just said. It's a utility corridor. They're going to put utilities in. It makes perfect sense that that's what they would be looking to do. But the other comments that have come largely from folks sitting to my right, they're right, too, that if you put, I think someone said a 500-foot tower, does that change it sufficiently? There's going to be a point at
which it's no longer the same kind of use. And
that's completely separate and apart from the
property rights aspect of things, the overuse of
the easement. That's not something we can
adjudicate. That's not something we're here to
adjudicate. We're looking at our statute and
our rules regarding the economic development of
the region and whether the Project is consistent
with prevailing land uses as a subset of that.

Mr. Way.

MR. WAY: And I think we're
coming to a point that I think we all agree
upon, and I think you, Chairman, I think you
summarized it well, is that there's the
realities of having a right-of-way in your
property. There is a reality that it's going to
be expanded, that they have rights to clear.
And sometimes it's not great and it's not
welcome and it's not something you'd like to see
happen. But it could happen nonetheless, and
that is all within right. And where we're
focusing upon I think is, as someone said, that
"tipping point." There is that tipping point
where it isn't something that one would come to
expect or ever expect in that right-of-way. Not
saying this is it. I'm just saying that's what
we're talking about. And then the question is,
and I've got to look at this even more, is how
do we take that tipping point and meld it into
our rules. There's an on/off thing. It's
either with prevailing land use or it's not.
I'm also thinking we're talking about aesthetics
here, particularly as we talk about
intensification, the aesthetics from the
neighborhood and the rural character that's
encouraged by master plans. So I'm trying to
think if we take some of these pieces together,
that might help us figure out what is that
tipping point. I'm not exactly sure myself
where it is. And some places I have a concern.
I think Turtle Pond was mentioned. That was
one. Definitely up north I think there's a
discussion about the rights-of-way being created
that we should have. I'll stop there.

CHAIRMAN HONIGBERG: Commissioner
Bailey.

COMMISSIONER BAILEY: I think
Mr. Varney's testimony, and I'm trying to find
it and I can't, was that there is no tipping point. Does anybody else remember that?

MR. WAY: I think he's Day 37, I think.

COMMISSIONER BAILEY: He's a lot of days. That's the problem.

MS. WEATHERSBY: As I recall --

COMMISSIONER BAILEY: Go ahead.

MS. WEATHERSBY: I'm sorry. I think I was pressing him on this because in my mind there had to be some tipping point. And we discussed, you know, a larger number of towers, higher towers. I think I threw in a wind turbine or something in there, or some tower, you know. And as I recall, maybe we should look back at it, he was saying that as long as it's a utility corridor and this is a utility -- which he booted out my cell tower example because of this -- as long as it's a utility corridor and it's a utility, that it was allowed and there was no tipping point. That's what I recall.

COMMISSIONER BAILEY: Okay. So now we have to figure out whether that's reasonable, whether that proves that it's
consistent with orderly development. If we believe that, then the answer is, yes, it's not inconsistent with orderly development.

CHAIRMAN HONIGBERG: Well, I think the extreme answers that question, because if the proposal is for a series of 500-foot towers, I don't think anyone would say that's the same. I don't think that's a reasonable position to take. Maybe others disagree. But, I mean, that's not the proposal. That's the extreme example trying to prove that it's not as simple as I think we all heard Mr. Varney articulate. There is a point, and I don't think you can stop at just saying it's a utility line so it's okay.

MS. DANDENEAU: I agree. I think that there is definitely a tipping point. I think the struggle that I have is that that's subjective. Every single person in this room would give a different number for the height of a tower that would make a difference for them, what their tipping point would be. So I think that maybe goes back to something Mr. Way said, which is that we should be listening to feedback.
that we've gotten from the communities and
really internalizing that as we try to form our
own opinions about that.

CHAIRMAN HONIGBERG: Mr. Way.

MR. WAY: Part of the problem, I
think, throughout this process, and I saw this
with orderly development and tourism and
aesthetics, there was a reticence to speak
directly with the community and sit down with
them and maybe necessarily get their views. I
understand why and -- you know, I understand.
But I think, as Ms. Dandeneau said, or what I
think you were saying, is orderly development is
local. And this is something that you're going
to get a sense of by sitting down with the
community. But I think, once again, we go to
the master plans. I think there's a few things
that we look at. But we go to the master plans
and we look at the zoning. Because master
plans, I mean, they don't -- they look at the
entire community. They don't look at the
community minus the right-of-way. It's in there
as well. So one shouldn't interpret that if we
say we're trying to maintain the rural character
of that community, that somehow that means
everything outside the right-of-way. With that
said, the right-of-way is there, and it's going
to have a presence. So master plans have -- I
think suggest a value. But I don't give them
the weight that maybe both sides will give them.
They're guidance. Sometimes zoning is more
important. As the Chairman said, sometimes the
ordinances and zoning that came up before
this -- and maybe I think I'd have to look at
that again to get a sense. I think it's really
important. But it is subjective, but it's not
as subjective at the local level, I think.

CHAIRMAN HONIGBERG: Ms.

Weathersby.

MS. WEATHERSBY: Sure. Mr. Way,
how would you respond to Normandeau's assertion
that when they looked at the communities that
are encumbered by a utility corridor with a
high-voltage transmission line, that the master
plans of those communities didn't single that
out as a problem?

MR. WAY: I think in my
experience, oftentimes master plans are a
process of consensus and compromise in a community, and oftentimes you're not going to get to a level of specificity. I think, as I heard one witness say, you know, you're not trying to envision all the things you don't want; you're trying to envision more the things that you do want because sometimes that's easier to get consensus in the master plan process. That's why master plans, sometimes they're quite old and some are outdated, because they're a bear to get through communities, in my opinion. So the fact that a master plan doesn't specifically call out a transmission corridor, I don't think that is permission -- not permission -- but a willingness or acknowledgment that it should happen. I think you have to look at sometimes the intent of the master plan and what they're trying to say.

And while we're on the subject, too, let's look at the intent of regional planning commissions as well, which I think were more silent. We did hear from North Country Council, and I believe there was a couple comments from Lakes Region
Planning Commission. There's four regional planning commissions in all. But they have their regional plans. I mean, I don't think anyone says, you know, we want a transmission corridor here. But that shouldn't preclude it from happening. But you do have to look at the intent of the plan.

DIR. WRIGHT: Mr. Chairman, my mind's bouncing all over the place now at this point on these master plans. Are we talking systematically going through every one of them and looking at -- I don't think that's what Mr. Way is suggesting or anybody else is suggesting. But were there some specific master plans, I think, Mr. Chairman, that you noted that may have addressed at least at that community level?

CHAIRMAN HONIGBERG: I'd have to go back and look.

DIR. WRIGHT: I thought New Hampton may have been one?

CHAIRMAN HONIGBERG: It's one of the towns around. It's New Hampton or Ashland --
DIR. WRIGHT:  I mean, is that helpful for us to look at one community's master plan and see how it -- but, I mean, that doesn't obviously represent all of the communities.

CHAIRMAN HONIGBERG:  Commissioner Bailey.

COMMISSIONER BAILEY:  I was just going there. And if we look at the Joint Muni brief, starting on Page 37, they go through several examples of town master plans where they suggest that this issue is covered. And so I suggest that we take a look at that.

CHAIRMAN HONIGBERG:  Do you suggest that we take a look at that while we're all sitting here, or do you suggest that we break for 30 minutes and take a look at the brief and the references on our own and then come back and discuss them?

COMMISSIONER BAILEY:  I don't know.

I have it highlighted, so I could go through it. But I --

MR. OLDENBURG:  What page?

COMMISSIONER BAILEY:  Starting on
MR. WAY: Did you say Joint Muni 37?

COMMISSIONER BAILEY: Page 37.

CHAIRMAN HONIGBERG: It's the post-hearing brief field by the Joint Municipal group.

MR. WAY: Okay.

(Committee members review document - Joint Municipal Group Post-Hearing Brief, Page 37.)

COMMISSIONER BAILEY: All right. Give it a shot.

MR. WAY: Is it the first or second one on the Joint Muni post-hearing?

COMMISSIONER BAILEY: There's only one Joint Muni, I think.

CHAIRMAN HONIGBERG: Mr. Way, there's a redacted version and a public version. I think everything that Commissioner Bailey is looking at is in the public version of this.

COMMISSIONER BAILEY: So I think these are examples of towns' master plans. So if we start with Bethlehem, on Page 37, in the
second paragraph it says that the master plan
focuses on maintaining a quiet, rural
environment and emphasizes development that is
in character with the history and character of
the town. And among the guiding visual
principles is maintaining the rural landscape.
I'm not going to go over every single point that
they make. I'll just go through some of the
things.

On the next page, in the first
paragraph on the next page, it says that
Ms. Laleme also opines that the Project is
inconsistent with Bethlehem's zoning
ordinance that says no building or structure
shall be greater than 40 feet unless a
special exception is granted by the zoning
board. In no circumstance, however, may a
building or structure exceed 60 feet. So the
Project is inconsistent with the master plan
and zoning ordinance of Bethlehem. That's
what the Joint Muni brief is arguing.

In Bristol, Mr. Coates opined
that the Project conflicts with the town's
master plan because it would adversely impact
the town's rural character, the scenic
viewsheds and its protected wetlands. The
master plan seeks to protect and preserve,
among other things, the rural quality of the
town of Bristol, conserving and showcasing
the town's natural assets. The Project is
also inconsistent with the town's zoning
ordinance on the next page. The Project
would violate Bristol's Pemigewasset Overlay
Zoning District. Several overhead towers are
in violation of the restrictions as they are
within the overlay district or located on
slopes which exceed 15 percent. And then
they point to specific towers that are
inconsistent with their zoning ordinances
regarding the Pemi Overlay District.

The next city is Concord.

Increased visibility of the Project
structures due to their increased height and
number will undermine the goals and
objectives of the city's master plan, zoning
ordinances and current objectives for
redevelopment. There are repeated references
throughout the Vision section in Concord's
master plan about the importance of retaining Concord's extensive rural landscape. In order to achieve the vision of the citizens of Concord, the Land Use section in the master plan includes, among other things: Land use goals to protect and conserve important open space, environmentally sensitive areas and natural resources outside the urban growth boundary; promote orderly transmission among land uses and separate or buffer incompatible uses to the greatest extent possible; provide for the reservation of land area of adequate size and in appropriate location for public facilities and utilities that will serve future land uses; improve and enhance the overall appearance and aesthetics of the community, inclusive of architectural features, streetscapes, landscapes and signage; discourage sprawl by focusing future development and concentrating demand for services within the limits of the urban growth boundary.

And then on the next page they
say that Ms. Shank discusses the inconsistency of the proposed project with Concord's master plan. It fails to adequately separate and buffer incompatible uses; the location of the high-voltage transmission line in close proximity to residential homes; the removal of tree vegetation and the impacts of the character and feel of the neighborhoods where the lines are proposed to be located; as well as overall appearance, character and aesthetics for Concord. And there's more examples of Concord, but...

The next town they cover is Deerfield. And Deerfield's master plan goes on to specify how to maintain those qualities by espousing certain relevant guiding principles: A well-managed town that controls its growth and development, keeping it in line with the existing character, appearance and beauty of the town. Another goal is an attractive town that values its history, environment, scenic beauty, open space, clean water, clean air and wildlife,
and seeks to protect these and other community resources through managed growth and careful planning. And then they list several goals of how the town should accomplish the vision and guiding principles: Promote development that will preserve the natural and cultural features that contribute to Deerfield's rural character; encourage limited economic development that will be consistent with the town's rural character, as well as support the needs of the community to create a sustainable local economic base; recognize that the town's natural resources and open space form the basis of the overall character and well-being of Deerfield; promote the preservation and protection of historic and cultural resources.

You know, it goes on to provide similar information about Easton town planning, New Hampton town planning. And New Hampton is really interesting, because I remember from the record that they have a section in their zoning ordinances from, I think it was 2005, that says, where
appropriate, installation of any new utilities and/or transmission lines shall be buried underground, and new structures within the zoning district are limited to 35 feet.

Pembroke is another example, Sugar Hill, Whitefield. And that's it.

So I think the Joint Muni's brief show us that there are master plans that specifically apply to orderly development and can be interpreted to say something about this subject even though the word "transmission line" is not used in the document.

CHAIRMAN HONIGBERG: Mr. Wright.

DIR. WRIGHT: I guess I would just add, based on just what you walked through, that I haven't read through all of that word for word, but I would tend to agree with your assessment, though, that it does -- it can be interpreted to speak to something like this without using the words "transmission lines."

CHAIRMAN HONIGBERG: All right.

We're going to need to take a break soon, anyway, so why don't we take a ten-minute break
now.

   (Recess was taken at 10:18 a.m.
and the hearing resumed at 10:40 a.m.)

   CHAIRMAN HONIGBERG: All right.

   I'll do a couple things. One housekeeping
   matter. For those who weren't here yesterday,
   if you see one of us in the hallway or out in
   the parking lot or something, we're not being
   rude if we don't talk to you. We would ask you
   not to try to talk to us. Think of us as jurors
   right now in a trial, and if you were there, you
   would be asked not to speak to the jurors. So
   we're going to ask you not to approach us.
   We're not being rude. We love you all, some
   more than others [laughter], but I just need to
   do that.

   For context for the
   Committee's benefit, I talked with counsel,
   so I want to do something to give us some
   context for where we are right now. We've
   been discussing the criterion related to the
   orderly development of the region and the
   Applicant's responsibility to show that the
   proposed facility will not unduly interfere
with the orderly development of the region. There are three subcomponents of that criterion having to do with the views of municipal and regional planning commissions which we've been discussing: One related to decommissioning, which we haven't been discussing today, and then a third, which has a number of subcomponents of its own, whether the siting and construction and operation will affect land use, employment and the economy of the region. Largely, we've been talking about land use. We are going to continue that, but we also have to talk about employment and the economy within this larger criterion. I think I may be the only person who found all of that helpful. But since this is all about me, that's what we're going to do right now.

We had long discussions about the proposal and how use of the existing corridor to put additional above-ground facilities in it is or isn't consistent with prevailing land uses. There were allusions to the right-of-way in the North Country and
some discussion yesterday about the
underground portions.

Mr. Oldenburg, I think, you
wanted to talk some about the new
right-of-way in the North Country.

MR. OLDENBURG: To me, that's the
difficult one is where there isn't a
right-of-way today with the towers and the lines
and what impact that's going to have on the land
use. I mean, we heard from a lot of people, not
only the communities themselves, but the
residents in the area. You know, they bought
their homes. The land use is for the view, you
know, and that's going to break up that. So I
know part of that's aesthetics. But, you know,
the land use up there, to me that changes what
that land use is. So, that, to me, that's a
harder component than the existing easement that
we've been talking about. But that was a harder
hurdle for me to get over.

The underground section and
the change of land use, we really haven't
talked about that. I think, sort of my
limited understanding of it, I think the
Applicant has made some concessions of if it affects land use, like if a municipality or state agency wants to do something in the road and the line causes an issue, their ability to use the land the way they want to, they've offered a mitigation effort for that. So I'm not sure how it would impact the land use in the underground section, with the exception of maybe the downtown Plymouth area. I'm not quite sure on that, but that's sort of my two cents on the northern section, the underground section.

CHAIRMAN HONIGBERG: Ms. Dandeneau.

MS. DANDENEAU: I'd be curious to know what the rest of the Subcommittee thinks about this aspect of it, and that is when we've heard testimony about the new right-of-way through the Wagner Forest, there's been a lot of emphasis on the fact that it's a working forest. And what I've read from that or what I've gotten the impression from that is, because it's a working forest, the impact of this overhead portion is lessened. And I'd be curious what
others think about that.

CHAIRMAN HONIGBERG: Anyone want to engage? Mr. Wright.

DIR. WRIGHT: I guess to me it matters a little bit what aspect of this we're talking about. If we're talking about potential visual or aesthetic impacts, I think that could be -- that could fall in one camp for me. If we're talking land use where it's under private ownership, you know, they're making a conscious decision if it is a change in land use. They're at least making that conscious decision that that's what they want to do with their private property. I think that's how I kind of feel about it.

CHAIRMAN HONIGBERG: Commissioner Bailey.

COMMISSIONER BAILEY: I agree. I think there was testimony that the Wagner Forest actually preferred that the construction be above ground through the forest so they know where it is. And, you know, it's a working forest, so from time to time there's going to be clearing. And it's their property and they've
decided that it's okay. So I agree with Mr. Wright. It may be a different question about the visual impact running through the forest on that pond that we saw so many times.

MS. DANDENEAU: Big Dummer Pond, yeah.

COMMISSIONER BAILEY: Big Dummer. But as far as land use, I think I don't have a problem with that.

MS. DANDENEAU: Okay.

CHAIRMAN HONIGBERG: Ms. Weathersby.

MS. WEATHERSBY: So I think because it's a new corridor, it may be a change in the land use, but I don't find that unacceptable in the Wagner Forest part. The descriptions that we've heard of the Wagner Forest is there's various logging roads, there's commercial activity of the cutting and the loading of the trucks and the skidders and what have you. And I also take -- give a fair amount of weight to the fact that Wagner Forest is compensated for the right-of-way going through
their property.

Do you think there's other
issues associated with it, for the forest
fragmentation issues and other topics? But
as far as land use, while it may be a change,
I don't find it necessarily an objectionable
one.

MS. DANDENEAU: Okay.

CHAIRMAN HONIGBERG: On this
topic, I guess I'd note we heard from a number
of Yale graduate students who were concerned
about the use of that land, which is -- I'm not
sure how indirectly, but in some way under the
control of the trustees of the Yale University.
And it's really beyond our jurisdiction to tell
the owners of that land what they can or can't
do with it. They made a decision. That's
really up to them. And the grad students at
Yale should take that up with the trustees
directly, which I actually think they're doing
in some ways.

The other part of the
above-ground, new right-of-way is not in the
forest, however. It enters at the border,
the Canadian border, and goes to Transition Station 1. There's a new right-of-way -- I think 2 to 3 is largely in the forest; right?
I think that's right. And then from 4 to 5, that's, again, not in the forest.

COMMISSIONER BAILEY: Right,
that's Stewartstown and Clarksville.

CHAIRMAN HONIGBERG: Right. So there's more new right-of-way being cut up there. I mean, do people have opinions about that? Ms. Weathersby.

MS. WEATHERSBY: Sure. I think that there's eight miles of new right-of-way up there. And the Applicant tells us it's consistent with land use up there because the area is mostly forested and doesn't -- of course I'm paraphrasing it -- doesn't affect a lot of people, it's sparsely populated, very forested. And I think that kind of shortchanges the folks up there a bit. There are -- it's definitely a different land use. Can the non-actively-managed forest use continue? Yes, except where the corridor is. But I don't think just because an area is sparsely populated that
the effect on those people should be discounted as compared to an urban area.

CHAIRMAN HONIGBERG: Anyone else on that topic? Anyone want to offer thoughts on the underground section, whether that is a land use issue? Commissioner Bailey.

COMMISSIONER BAILEY: I think some of the testimony was that in the underground section, since they don't know where the right-of-way is, they might impact -- they might cut some trees that are in the right-of-way that people didn't realize were in the right-of-way, that they thought were on their property.

As far as land use is concerned, I believe that if they put it underground, it doesn't -- it's not going to impact land use for the same reasons that Mr. Oldenburg articulated. You know, there may be temporary impacts, but I don't think that it's inconsistent with orderly development if it's buried.

CHAIRMAN HONIGBERG: Anybody else? Ms. Weathersby.
MS. WEATHERSBY: Sure, I'll chime in here as well. The only concern I heard in addition to what's already been said was the present use of some of the areas where the underground portion will go through for aquifers and the concern that a couple towns had concerning the effect that this may have on those aquifers. I don't think it's been proven that it will have an effect, but I certainly understand the concern to have a safe drinking-water aquifer.

CHAIRMAN HONIGBERG: Mr. Way.

MR. WAY: I agree with what I'm hearing, Commissioner Bailey. I think I agree with you as well, is that underground with regards to land use may not necessarily fit. I guess part of the problem is there may be situations where land use does, in the underground portion, does have an effect. I don't necessarily have a feeling exactly where, back to your point of aquifers, back to the point of existing structures within the road. Those are things that I have a concern with, but I don't necessarily have enough information.
But I think generally I'm sort of putting land
use and the underground portion sort of in
separate buckets.

CHAIRMAN HONIGBERG: All right.
I don't see anybody else clamoring to talk about
that.

I think we're going to move to
a different sub-element of the orderly
development having to do with the economy.
And Commissioner Bailey you were prepared to
discuss markets, electric markets?

COMMISSIONER BAILEY: I am. Good
night.

CHAIRMAN HONIGBERG: Actually,
Commissioner Bailey, there are people in the
back of the room who will be interested in this.

COMMISSIONER BAILEY: All right.
Site Rule 301.09 requires the Applicant to
estimate the effects of construction and
operation of the Project on the economy of the
region, including an assessment of the economic
effect of the facility on affected communities
and on in-state economic activity during
construction and operation.
The Applicant presented evidence in the testimony of Julia Frayer Exhibits 1, Appendix 43, which was the original LEI report; Exhibit 28, which was Ms. Frayer's prefilled testimony, the confidential version; Exhibit 81, which was the updated LEI report that re-analyzed the economic impact based on the change in the Forward Capacity Demand Curves; Exhibit 82, which updated her testimony; Exhibit 101, which was a supplemental testimony of Ms. Frayer; 102, which was a rebuttal LEI report; 180, which was the response to the Committee record request for calculation of savings and their present value; 181, which was an update of Figures 1 and 10 from the updated LEI report, including the net present value calculations; and Exhibit 503, which responded to a record request for explanation of the difference between the LEI and Brattle MOPR calculations. The Applicant claims the Project will result in significant economic benefits for New England and New Hampshire. I'll focus on the benefits for New Hampshire.
The Applicant claims its expert, Ms. Frayer, and Counsel for the Public's experts, agree there will be significant energy savings if the Project is constructed when compared to a world without Northern Pass.

Now, retail rates are a combination of wholesale costs, among other things, from two buckets: The energy market and the capacity market. And there's no disagreement that there will be some savings from the energy market. Local economic benefits occur during operation of the Project because of the reduction in the retail cost of electricity. The amount of the savings is important because it serves as the primary input to the model that calculates the amount of economic growth expected. And in addition to the input from the energy market -- electricity market savings, the model also includes the $205.3 million in the Economic Development Fund for the 20 years of operation.

LEI also forecasted production
cost savings for the ISO-New England system
based on the change in total marginal costs
of production to be about $389 million a
year. The Applicant also claims the Project
will displace older, less-efficient
generation and reduce greenhouse gas
emissions by 3.2 million metric tons per year
in New England, creating 189 million in
annual incremental social benefits from those
reductions.

Finally, the Applicant says
the Project will provide insurance to
customers by mitigating increased energy
prices when the price of national -- sorry --
the price of natural gas spikes. And they
estimate that those -- well, actually,
Counsel for the Public. They say -- Counsel
for the Public, I think, estimated that those
savings could be about $5 million a year if
New England experiences extremely cold
weather conditions every year like it did
during the polar vortex a few years ago.

Counsel for the Public

sponsored witnesses, Jurgen Weiss and Sam
Newell from the Brattle Group, to testify about the wholesale electricity markets. And I haven't outlined each of their exhibits, but I can summarize them.

Counsel for the Public said that it agreed that potential savings in the energy market are expected, but they're relatively small, and the larger amount of savings from the capacity market was more uncertain. Counsel for the Public pointed out that, in order for there to be any savings from the capacity market, the Project would have to quality for and clear in the Forward Capacity Market. Uncertainties include Hydro-Quebec's ability to demonstrate to the ISO that it has sufficient excess capacity during winter peak periods to sell into the capacity market, and if they can't do that, then they won't qualify for the market and there won't be any savings. Mr. Weiss of Brattle testified LEI's estimate of Hydro-Quebec's excess capacity was not reliable and that his review of the source documents indicated Hydro-Quebec had
substantially less than 1,090 megawatts available during the winter peak periods, calling into question whether the Project would qualify. If the ISO determines that only some amount of capacity would qualify, then the amount of savings anticipated from the capacity market would be reduced. Counsel for the Public also pointed out that, even if the full amount of capacity qualified to bid in the Forward Capacity Auction, the minimum price required by the Internal Market Monitor may be too high to clear the auction. Uncertainties about the minimum offer price calculation include whether the Internal Market Monitor will consider Hydro-Quebec's capacity new or existing and whether the amortization should be 20 years or 40 years. Counsel for the Public believes with certainty that the Internal Market Monitor will include the cost of the new transmission facilities in Canada. And if the Internal Market Monitor includes $500 million for that cost, the minimum price would be above last year's clearing price of $5.30 a kilowatt.
Counsel for the Public also suggested the possibility that existing generators could decide to retire if Northern Pass lowers the capacity price, as it suggests it will. If an existing generator retires, the price-suppression benefits of the Project would be negated and prices would rise.

In order to address the uncertainties, Counsel for the Public's experts modeled four different scenarios comparing projected market conditions without the Project to various test cases with the Project. Scenario 1, which they claim is the most optimistic, assumes the Project would qualify and clear 1,000 megawatts in the capacity auction. Under that scenario, Brattle determined the Project would provide $26 million in average annual capacity market savings. Total savings included in energy market savings would be -- including the energy market savings would be $34 million a year from 2020 to 2032. That's about $21 a
year for a residential customer using 621 kilowatt hours per month. Results of Brattle's Scenario 1 were similar to LEI's analysis. In order to address the uncertainties that they raised, Brattle created other scenarios.

Scenario 2 addressed the possibility that the Project may cause existing generation to retire. It calculated the savings in the capacity market if 500 megawatts of existing generation retires or if only 500 megawatts of Northern Pass qualifies and no existing generation retires. And under that scenario, the savings from the capacity market was cut in half. Combining the capacity market savings from that scenario with the energy market savings, Brattle estimated the average residential bill savings to be about $14 a year for a customer with 621 kilowatt hours a month, which is from the PUC's -- from my experience at the PUC, that's sort of what we use when we're talking about a typical residential customer.
Scenario 3 models the Project's impact on the energy market alone to deal with the uncertainties about whether the Project will qualify and clear. The impact on the energy market is $8 million average annual savings, and that equates to about $5 a year for the typical residential electric customer, $5 a year in savings.

And then, finally, Scenario 4 looks at what the impact would be if Northern Pass displaces another project that could supply 1,000 megawatts of clean energy and demonstrated that the Project would not provide any savings that another project located somewhere else could not have provided.

With respect to carbon emissions, Counsel for the Public advised that, when looking at greenhouse gas emissions from a global perspective, reductions can only be realized if new incremental hydro is being delivered to the Project. If hydropower is being diverted from Ontario or New York, no actual
greenhouse gas emission reductions will be realized. Counsel for the Public suggested that if no new incremental generation is being included in the costs used for the minimum price calculation, then it can't simultaneously claim that there are emission reductions.

Counsel for the Public said that production cost savings should not be added to retail savings because they represent the same value expressed in a different manner. Brattle acknowledged the Project's fuel diversity and insurance against gas price spikes that may increase the wholesale market savings slightly.

NEPGA had a very technical and complicated argument. It sponsored the testimony of William Fowler, who is a uniquely qualified expert that they claim is like no other in the case because he lives and breathes this industry. He helped develop the wholesale market rules, and he currently serves as vice-chair of the NEPOOL Markets Committee. NEPGA argues that the
Applicant has failed to show by a preponderance of the evidence that the Project will produce the wholesale market benefits the Applicant asserts. NEPGA highlights some of the same uncertainties in qualifying for and clearing in the Forward Capacity Market as Counsel for the Public, and raising a few more, including a deliverability test, which is much more difficult than a system impact test, has not yet been conducted and is likely to significantly increase the cost of transmission upgrades or prevent the Project from qualifying. NEPGA says that the assumptions in the minimum offer price calculation have to be consistent. So if they're using a 40-year amortization schedule, then they must also consider the generation costs over the same period, and they didn't do that. NEPGA criticized LEI's analysis of capacity market savings, suggesting the clearing prices it used in the base case are too high. Since it's the difference between the clearing price and the
project -- sorry -- the clearing price with
the Project and without the Project that
generates the capacity savings, if the base
case is too high, the capacity savings are
exaggerated. NEPGA also points out that the
net installed capacity requirement has
decreased and is expected to decrease more,
which decreases the clearing price in the
auction, further exacerbating the inflated
prediction in LEI's base case. If Northern
Pass does not clear the capacity auction,
NEPGA points out that the Project may have an
opportunity to obtain a capacity supply
obligation outside the Forward Capacity
Auction and subsequently be permitted to
clear it through a change to the market rules
currently pending before FERC, known as
CASPR -- that's Competitive Auctions with
Sponsored Policy Resources. And it's a
change in the market design that has been
filed at FERC. So it's a little more sure
than it was when we were talking about it.

According to NEPGA, though,
CASPR, by design, would almost certainly
require an existing generator in Maine or New Hampshire to retire, resulting in lost jobs and lost tax revenue in Maine or New Hampshire and no capacity market savings.

The Deerfield Abutters were not convinced there would be any savings from the capacity market, although estimating those savings is critically important. They highlighted the difference between Northern Pass's estimates and Brattle's and pointed out that LEI's forecast for the Forward Capacity Auction 11 was 20 percent greater than what actually occurred.

Dummer, Stark, Northumberland argue that the Applicant can't prove it will qualify for the capacity market because Hydro-Quebec hasn't been involved in the proceeding.

So that sort of summarizes the positions. Well, actually, let me say one more thing.

The Applicant says that the discussion or the debate about whether it will clear the capacity market is
"intellectually interesting, but not outcome-determinative." And I think I may agree with that. I think what that means is that, if there are no -- assume there are no savings from the capacity market. Everybody agrees there's going to be some amount of savings from the energy market, even if it's only $5 a year for an average, typical residential customer. And so that doesn't negatively impact orderly development, therefore it's okay.

So I can go further into it, but I don't think we necessarily need to for -- you know, all things, or all other things being equal, if there's any savings from the energy market, then on net it has a positive impact on the economy. The thing that that also affects, however, is that's the major input to the REMI PI+ model which generates the gross state product and number of jobs. So, you know, I think, even assuming that it's only $8 million a year in savings, if you plug that into the REMI model, the impact after construction on jobs
will be positive, but much smaller than it
would be if there were savings from the
capacity market.

CHAIRMAN HONIGBERG: I was going
to ask you about that. The capacity market, the
projected capacity market savings are, as you
said, a huge input into the REMI model, which is
what calculates the state product benefits of
any change in the economy that you want to run
through that model. That's right, isn't it?

COMMISSIONER BAILEY: Yes. And
Ms. Frayer testified that it's the majority of
the impact on the economy during operations.

CHAIRMAN HONIGBERG: Okay.

COMMISSIONER BAILEY: It's
different during construction.

CHAIRMAN HONIGBERG: Thank you.

I want to provide a little
bit, or one additional data point or another
piece of perspective about that "typical
usage" number of 620 or 650 per month. I
think most people in this room will find if
they look at their electric bills, they use
more than that. Those numbers, that tends to
be a relatively low-usage residential
customer who would come in the 600 to 650
range. I'm sure there are people out there
with numbers lower than that. Some of the
folks in Deerfield I know have very green
homes, who have been part of this proceeding,
have testified about being off the grid. So
their numbers are going to be different. But
for most of the folks in this room who are
connected to the grid and use their power
from Unitil or Liberty or Eversource or the
Co-op, your numbers are probably higher than
that. But that's a number that is a commonly
used number in the utility world. That was
the only additional information I wanted to
provide there.

People have questions or
comments on what Commissioner Bailey said?

Mr. Way.

MR. WAY: Quick question.

Commissioner and Chairman, you may have
mentioned this, but I seem to recall we had a
discrepancy between Julia Frayer's estimates in
the market and the Brattleboro [sic] Group. And
I've got to say, I found both groups to be on top of their game. But as I recall, didn't we send the both of them back to work on some estimates and to report back to us? Did that happen?

COMMISSIONER BAILEY: Yes, it did. I mentioned that in my exhibits. That was -- I don't have, of the top of my head, the number for Brattle. But Brattle basically said that had to do with the MOPR calculation. And if we're not worried about the capacity market savings, the MOPR calculation doesn't matter. But what I asked them to do is try to explain to me what the difference in the calculations were. And what Brattle said was they estimated the -- I think they said they estimated the savings -- hang on a second. I have it. Just a minute.

(Pause)

MS. MONROE: What is the exhibit number, Sandy?

MS. MERRIGAN: The redacted version is Counsel for the Public's 669, and the confidential version is 669A.

MS. MONROE: Thank you.
COMMISSIONER BAILEY: I think that LEI's [sic] calculation assumes similar energy revenues as LEI through 2030, but they assumed higher revenues than LEI thereafter. So that was lower -- the way the MOPR works is they take all the costs that are associated with the build of the Project and they subtract the revenue that they're expected to receive from the energy market and the net of that is the minimum price that they can offer in the capacity auction. And so LEI -- I mean, sorry -- Brattle assumed that they were going to get more offsetting revenue than LEI did. That was Brattle's explanation.

And, you know, again, if we -- I'd like -- I'd be interested to hear if you guys want to talk about whether the capacity market savings are outcome-determinative or not.

DIR. WRIGHT: Can I just -- this capacity market stuff, I love it.

COMMISSIONER BAILEY: I know.

It's intellectually stimulating.

DIR. WRIGHT: I don't know about
that. So it's an intellectual exercise, in that in one case it doesn't matter because if there's other market savings, there's still economic positive gains; is that right?

COMMISSIONER BAILEY: That's right. Small. Very small, but --

DIR. WRIGHT: Because it's a smaller part --

COMMISSIONER BAILEY: Right.

DIR. WRIGHT: -- the capacity -- the market energy savings are small --

COMMISSIONER BAILEY: The energy market savings, yeah --

DIR. WRIGHT: -- compared to the energy market savings. But we still care about it, though, right, because it does impact, as you said, that's the number -- the combined number is what goes into Julia Frayer's economic analysis on overall economic growth; right?

COMMISSIONER BAILEY: Yes. And I think, at least I interpret that the Applicant's brief to mean that, for orderly development, the impact on the economy is positive even without the capacity market savings.
DIR. WRIGHT: And that's all that matters.

COMMISSIONER BAILEY: And that's all that matters for orderly development. I think it may be a different calculus when we're talking about public interest.

DIR. WRIGHT: Okay.

COMMISSIONER BAILEY: I mean, if the savings were enormous, it may have a different -- we may come to a different public interest finding than if the savings are minimal.

DIR. WRIGHT: Because that could outweigh something else --

COMMISSIONER BAILEY: Yeah.

DIR. WRIGHT: -- that we balance on that scale.

COMMISSIONER BAILEY: Right.

DIR. WRIGHT: Okay.

CHAIRMAN HONIGBERG: I hesitate to have people fall into balancing harms and --

DIR. WRIGHT: Okay. Yes.

CHAIRMAN HONIGBERG: You can talk about context, you can talk about, you know,
things that are significant to you in
determining whether something's in the public
interest, but I think we don't need to go there
to have that discussion.

DIR. WRIGHT: Okay.

CHAIRMAN HONIGBERG: I want to
make a comment on the NEPGA expert who was
offered up. I did not -- while I appreciate his
credentials, and I agree with the
representations that NEPGA made about him and he
makes in his own testimony, that he is maybe
uniquely qualified to provide information about
how the ISO-New England markets work. His task
was limited. The task of him by the people who
retained him was limited, and it limited the
utility ultimately of his testimony to me. I
just didn't find his broad conclusions, and
NEPGA's broad assertions about his testimony, to
be supportable ultimately. I thought that
Counsel for the Public's experts were really
talking the same language as Ms. Frayer. And
the debate, as it went on with the two of them
not really talking to each other at the same
time, but talking about the same things, I think
highlighted and allowed me, anyway, to narrow
the areas where they disagreed. The work that
both of them did afterwards in response to our
request I found helpful in understanding the
nature of the disagreement and just how
significant it was.

I think for purposes of
discussing orderly development, I think,
Commissioner Bailey, I agree with you that
there are undisputed energy market benefits
if this project is built. They are small. I
think the capacity market benefits, if they
exist, are likely to be larger. Like I said,
if they exist, therefore, significant to
other elements that we may have to talk about
later. But that's where I am on this markets
discussion. Mr. Way.

MR. WAY: Chairman and
Commissioner Bailey, the concern about entering
the Forward Capacity Market and the potential
for forcing retirement, what are your thoughts
on that? What's the potential likelihood?

COMMISSIONER BAILEY: Well,
Ms. Frayer said that the Project would not cause
retirements; that there would be retirements
during the life of the Project, but not because
of the Project forced the retirement. Brattle
said that that's really uncertain. And they
just didn't buy that. You know, I don't know
how to quantify the likelihood that retirements
will happen because of Northern Pass. But NEPGA
points out in its brief, with respect to CASPR,
that the way that that will work, he says,
almost with certainty, is it will force a
generator in New Hampshire or Maine to retire so
that Northern Pass can obtain its capacity
supply obligation. And if that happens,
according to NEPGA, if a generator closes
there's going to be tax revenue impacts and loss
of employment at that generator. And I don't
know -- you know, if -- and he says that there
won't be any savings from the capacity market
because Northern Pass won't have influenced the
price of the capacity market.

CHAIRMAN HONIGBERG: If it enters
the market through CASPR, or something like
CASPR.

COMMISSIONER BAILEY: Correct.
Yeah.

DIR. WRIGHT: What's the status of CASPR? That was something that was being developed; right?

COMMISSIONER BAILEY: Yeah, it's been developed and it's been filed at FERC, so --

DIR. WRIGHT: But not approved at this point.

COMMISSIONER BAILEY: No, but I think it's likely that it will be approved. The New Hampshire Commission actually filed comments supporting it.

CHAIRMAN HONIGBERG: But regardless, we heard testimony about how CASPR works and how capacity would enter the market and what effect it would have. By definition, if a resource is entering the market through CASPR, through the CASPR mechanism, something has to retire because it's a replacement auction. It's a second auction after the first-level auction. So that's a feature of the proposal.

One of the other things that
is significant, and one of the things I do
agree with NEPGA and NEPGA's expert, is there
will be retirements. I mean, whatever their
cause is, there will be retirements if a
project like this is built or not. Over the
course of 20 or 40 years, many of the
resources that are generating power today
will not be generating power during that time
because they're too old or they're taken
offline for other reasons. So that's a true
statement. It's a harder call to determine
whether those retirements are going to be
causd by the entry of any particular
resource or set of resources.

COMMISSIONER BAILEY: I think
that there's also -- there was also testimony
that if Northern Pass enters through CASPR, and
it replaces a generator that was a price taker
in the capacity market, so it didn't change the
price of the market, didn't raise the price of
the capacity market, that Northern Pass will
keep the capacity market price lower, because
when a generator retires, usually the capacity
price goes up because somebody needs to build a
new project to fill the void. And if Northern
Pass just kind of slides in there through CASPR,
then they'll take the price that the market
determines without Northern Pass, but that will
keep the price lower for longer.

CHAIRMAN HONIGBERG: Didn't
Counsel for the Public's experts say that there
could be delays or time shifts in the savings,
but the savings wouldn't disappear?

COMMISSIONER BAILEY: Yeah.

CHAIRMAN HONIGBERG: Ms.

Weathersby.

MS. WEATHERSBY: I have a
question about the capacity markets. It seemed
like everything hinged on clearing 1,000
megawatts in the capacity auction. And I'm
wondering what effect, if any, if you can speak
to it, if they -- if Northern Pass has won,
which I understand they have, the Massachusetts
Cleaning Energy RFP for 1,000 megawatts of
energy, what effect that has on some of these
calculations, if you're able to say. I know
that evidence isn't in the record, but --

COMMISSIONER BAILEY: No, it kind
of is.

MS. WEATHERSBY: -- from your experience --

COMMISSIONER BAILEY: It kind of is. I think that Counsel for the Public's Scenario 4 was suggesting that if another project won the Massachusetts RFP, then another project could be built. And it may not have the same impacts in New Hampshire if it was built somewhere else, but it would have the same savings as Northern Pass would give us.

CHAIRMAN HONIGBERG: Ms. Frayer testified to that as well. She was asked by me, and I think by others, if something is built, would these characteristics -- whether it's Northern Pass or something else -- will it have the same effects on the capacity market, and her answer was "Yes."

COMMISSIONER BAILEY: So now we know that Massachusetts selected Northern Pass, so Scenario 4 I don't think is relevant. Because Massachusetts picked Northern Pass, so Northern Pass is the project that -- I mean, there isn't another project that might be built
instead of Northern Pass right now. So in order
to get capacity market savings, if there are
any --

CHAIRMAN HONIGBERG: Mr. Way.

MR. WAY: Regarding the
Massachusetts RFP, is there a downside to New
Hampshire as a result of the RFP, of the RFP
being awarded to the Project?

COMMISSIONER BAILEY: Well, I
think that's what we're here to figure out.

MR. WAY: In your opinion, do you
see a downside to that award?

COMMISSIONER BAILEY: I think it
makes the record -- it makes some of the
questions in the record clearer.

CHAIRMAN HONIGBERG: There were a
number of questions asked, particularly of early
witnesses for the Applicant -- Mr. Quinlan, Mr.
Auseré -- and a number of other witnesses were
asked in one way, shape or form, "Are you really
going to build this if you don't win the Mass.
RFP?" And they gave answers like, "Well, we'll
make that decision when the time comes. We're
committed to going forward," et cetera, et
cetera, et cetera, "We'll talk with our partners." I mean, what the Mass. decision does is it removes that uncertainty element to it.

MR. WAY: That's my interpretation.

CHAIRMAN HONIGBERG: Over the lunch break we'll all be studying the capacity market. Closed book exam at 1:00.

Other questions or comments about this element? Just one moment.

(Discussion off the record between Chairman Honigberg and Counsel.)

DIR. WRIGHT: Marty, could I just maybe follow up on --

CHAIRMAN HONIGBERG: Sure.

DIR. WRIGHT: Commissioner Bailey, you brought up the issue of potential carbon emission savings of the Project, and I don't think we discussed that at all. Is that something that we should discuss in this context, or is it something we should discuss in the context of environmental stuff when we get to air quality?

COMMISSIONER BAILEY: Well, I
think if we're talking about impacts on the
economy, and Ms. Frayer says that it's going to
have a societal cost -- a society benefit -- let
me see. Hang on.

DIR. WRIGHT: A social cost of
carbon.

COMMISSIONER BAILEY: Yeah,
but -- so that there is a savings there, you
know, that there is a benefit because there's
less carbon, so more people might move to the
region because we have a renewable-friendly
policy, and so if more people move to the
region, then that will create more jobs. And
she estimates that the impact of that, I think,
was $389 million, or something like that.

DIR. WRIGHT: And I think Brattle
Group estimated a number as well, but it was
slightly different.

COMMISSIONER BAILEY: I don't
remember that.

DIR. WRIGHT: I think I do. It's
a little bit different, but it was still in the
hundreds of millions of dollars.

COMMISSIONER BAILEY: But that is
only the case if they're not displacing hydro
resources --

    DIR. WRIGHT: That's currently

being used elsewhere.

    COMMISSIONER BAILEY: Yeah, and

I --

    CHAIRMAN HONIGBERG: Put it

another way. If all they're doing is shifting
generation that's currently being sold somewhere
else, like New York or somewhere --

    COMMISSIONER BAILEY: Ontario.

    CHAIRMAN HONIGBERG: -- west of

us, or Ontario, if all they do is take existing
hydro generation and move it to New England,
there's no net change. And I think there was

    COMMISSIONER BAILEY: 

    testimony from a couple different witnesses on

that point. So there was a -- I've forgotten

which witness it is, but I think it was Counsel

    CHAIRMAN HONIGBERG: 

    for the Public, and I think you alluded to it,

Commissioner Bailey, that there's a -- two

    COMMISSIONER BAILEY: 

    things can't be true at the same time. They
can't have new generation to get the

    COMMISSIONER BAILEY: 

    environmental benefits and not include the cost

of that new generation when they're calculating
a minimum offer price for the ISO bid. If they're using existing generation, they can avoid having those costs included, but they can't really be claiming the same level of environmental benefits.

COMMISSIONER BAILEY: Same thing for production costs, just to close the loop. And I think it was the Brattle witness who explained to me that production cost savings are not additive to the savings from the energy market and that we shouldn't count both as benefits, because the benefits from the production costs savings are already included in the savings in the wholesale electricity market. So I would not count the production cost savings.

CHAIRMAN HONIGBERG: All right. We have a little more time before we take a lunch break. I'll start a discussion of another one of the economics elements, and that has to do with property values. The rule element that we're talking about is still the same, orderly development. The Applicant is required to provide information about real estate values in
the affected communities. This is a place where
the rules are specific in terms of what the
Applicant has to do.

The Applicant offered the
testimony of Dr. James Chalmers. He had a
report and his testimony, both original and
supplemental, and he spent a fair bit of time
on the witness stand in front of us. He
relied on his knowledge of the industry and
work he's done elsewhere and studies to
conclude that high-voltage transmission lines
have minimal effect on real estate values and
real estate markets. And he had some New
Hampshire-specific research initiatives that
he relied on as well. The three New
Hampshire-specific studies were case studies
analyzing 58 residential sales of properties.
He had 13 subdivision studies, and he had
market activity research, reviews of sales
prices to list price ratios and analyzing the
market in different parts of the state using
what he said were "real sales." He relied on
the work of appraisers locally to do much of
the groundwork, collect the paperwork and
then interview selling brokers to determine if there were other explanations for the difference in sales prices from asking prices, and whether they also affected time on the market. His ultimate conclusion was that the only significant effects on real estate occur within 100 feet of the edge of the right-of-way. It requires seeing new structures. He was less concerned about visibility of other parts of the line, the conductors or the wires themselves. He was more concerned about the structures. He concluded that there were only, I think the number was nine properties along the course of the entire Project that would be affected or could be affected. He was criticized at length [laughter].

There were lots of people who had opinions that were instinctive. We received a lot of public comment. A lot of the thousands of public comments that we received were related to property values and the effect this Project would have on property values. And the overwhelming
feeling among those comments was that there would be far greater negative impacts on property values than Dr. Chalmers opined.

We had a number of witnesses testify under oath regarding property values. I don't have the specific numbers. I'm not going to go through them individually. But there were roughly a dozen individual property owners who testified that they believed their properties would be affected adversely in terms of the value if the line were built. They ranged from people who currently live on the right-of-way and people who don't.

We had a few people who are in one way, shape or form in the industry, the real estate industry. Mr. Powell in -- he's a realtor in Lancaster who has direct experience that he testified to about the effect that the proposed line has had on specific properties that he's been involved with. Ms. Menard, in a couple of different contexts, is in this industry and provided her own research and also extensive
cross-examination of Dr. Chalmers and others regarding work that was done, pointing out errors, omissions and things that couldn't be true in her view based on facts on the ground.

The other criticisms of Dr. Chalmers' work were there was a large range of reasons why people had specific reasons to disagree with what he had done. He limited his studies to single-family homes, which eliminated consideration, at least at first, of condominiums and other types of ownership. He did then, I think, go back and take a look at areas like McKenna's Purchase here in Concord, ultimately did not change his view that the Project, if it's built, will have minimal impacts on real estate values. Give me a moment. (Pause)

Dr. Chalmers did acknowledge and agree with some of the criticisms that he received. Specifically, he reminded us and everyone of the danger in relying on small numbers when you're doing analyses of larger phenomena. He was also, as I indicated, of
the opinion that only those properties that are closest to the line, and in most instances encumbered by the line, meaning that the line went over a portion of the parcel, were likely to be affected. The Applicant also offered at varying levels of specificity a plan to address and assist property owners whose properties are adversely affected if the Project is built and they attempt to sell and have to take a price cut. In very general terms, the idea is they would offer a lump sum, small, I think $1500. Or if there was appraisal evidence that the property sold for a large amount less than it, quote, unquote, should have, then the Company would cut a check to the property owner to make up for that. That was criticized as inadequate by a number of people. But I think it's fair to say that that proposal is a proposal and the Company would be open to revisions or expansions if the Committee felt it was important to do so. I'm sure there are other things that people will remember about the
guaranty program, about Dr. Chalmers and about some of the other evidence we heard, but that's sort of an introduction to the issue. Just for planning purposes, we're probably going to break sometime in the next 15 minutes.

We've stumped the band.

Mr. Way.

MR. WAY: So, in looking at his studies, Dr. Chalmers, I think when he said that there's potential for losses due to the impact, I think we settled to, like, one percent to six percent? Was that --

CHAIRMAN HONIGBERG: His opinion was one to six percent. He acknowledged that there were studies that showed much, much higher effects of high-voltage lines, but they were elsewhere, and he didn't believe were correct for this environment.

MR. WAY: Well, one part of that that I seem to recall, that one to six percent was like a third iteration of a similar study he had done with sort of similar findings, and that percentage was a bit different. I believe it
was like three to six percent or three to nine percent. And so that number changed to a low number. And I really wasn't convinced by the explanation that he gave that he sort of evolved in his opinion, and I didn't know if anybody else felt that way.

[No verbal response]

CHAIRMAN HONIGBERG: You've thrown the line out. I'm not sure anybody's going to bite right now.

MR. WAY: Anybody? Anybody?

So that was one concern that I have is because obviously that could be a big difference.

The McKenna's Purchase, I did have kind of a hard time with that. McKenna's Purchase, I had some concerns about that. I know he went back and took a look at that more so. The question I would have is when we look at the Guaranty Program that's been proposed, is McKenna's Purchase, since it's not a single-family home, is that going to fall into that agreement? Is that something we can possibly request? Do we
want to request that? Because I think I
heard that the Applicant was fairly flexible
in how they're going to do that agreement.
They're willing to tailor it. But I think
we've got to look at what universe might not
be included in it right now.

CHAIRMAN HONIGBERG: You heard
the same thing I heard. I think there's -- that
as it was originally written up, it would not
cover McKenna's Purchase. But I sensed
flexibility and an openness to discussion of how
to improve that program if the Committee felt
that were important.

MR. WAY: I'd be interested in
doing that. I guess the question I have for the
Committee, and I'm not suggesting anything here,
but is everybody accepting the fact -- is it
straight face that there's not going to be an
impact on property values as a result of this
structure, this project?

CHAIRMAN HONIGBERG: I'm not sure
I understand the question. Ask that again,
because the way you framed it in the negative,
I'm not sure I understood what you just asked.
MR. WAY: That's a good point.

CHAIRMAN HONIGBERG: Was the question do we think Chalmers is right?

MR. WAY: Thank you. Well, I mean, there's no impact to property values that's being proposed. Do we accept that as a committee?

CHAIRMAN HONIGBERG: Commissioner Bailey.

COMMISSIONER BAILEY: I think that there were some significant errors in his analysis that were pointed out. I think Ms. Menard showed us some sales that he counted that were, I'm not going to get the language right, but had something to do with qualified sales and unqualified sales. And I think that she showed that he counted some sales between family members, which really isn't a fair market value price in his analysis. And so if you do that, then you don't really get the impact on the transmission line. If, you know, I sell my son my property and he gives me whatever he's going to give me because that's what he does, then that's not a true market sale, I think. So, I
mean, that was one error. Unfortunately, I didn't find Dr. Chalmers very convincing at all.

CHAIRMEN HONIGBERG: I think Ms. Menard and others identified other flaws in Dr. Chalmers' work, or the underlying work that went into Dr. Chalmers' opinions, errors regarding the subdivision studies, errors regarding comparable sales, what should be included and what shouldn't. He stuck by his opinions saying that, even accepting some of those as errors, which I think he had to in some instances, he stuck by his guns. I, like Commissioner Bailey, did not find him an especially credible witness on this because of the mistakes that he did not seem to recognize were mistakes until they were put in front of him, some things that to hear others who are in the industry just didn't make sense.

Ms. Weathersby, then Mr. Wright.

MS. WEATHERSBY: In addition to the flaws and errors, I think Mr. Chalmers -- I think there were also gaps in his analysis, and I'm thinking particularly that his non-analysis
of commercial properties, particularly hotels, commercial properties of a more residential nature, hotels, bed and breakfasts, Percy Lodge and campground, places that are primarily tourist-driven, where people come to the areas in part for the views and also, of course, for recreation and other reasons, that those properties were not analyzed. On the flip side, I do want to point out that we did hear from the developer of the Balsams Hotel, Mr. Otten, who did say he didn't think that this project would affect development of that resort. But I think that Mr. Chalmers' failure to analyze commercial businesses, second homes, specifically second homes, that was a shortcoming.

CHAIRMAN HONIGBERG: Mr. Wright.

DIR. WRIGHT: Well, I was largely going to go to the area of the second homes that Ms. Weathersby just went to as what I thought was somewhat of a flaw, and others have already pointed out the other gaps. I don't know. My gut reaction, and I don't know if I should say "gut reaction," but the fact that the conclusion's that would be no impacts outside of
things 100 feet away doesn't seem to me to be credible. I'm not sure I can pinpoint something to that, but it just doesn't seem credible to me.

CHAIRMAN HONIGBERG: One other witness I should have mentioned who was in another way in this real estate area is Mr. Sansoucy, who has lots of areas in which he claims expertise. He had a number of criticisms about the way Dr. Chalmers did his work, presented some of his own work, arguing that there would be more significant effects. Personally, I don't find Mr. Sansoucy credible in virtually anything. But that doesn't mean he's necessarily wrong. But I don't credit much of what Mr. Sansoucy says on this topic. But we're hashing through other things that we all found about Dr. Chalmers. Ms. Dandeneau.

MS. DANDENEAU: I just wanted to say that I agree with what the Committee is saying so far and that one other gap that kind of stuck out to me was that Mr. Chalmers didn't even evaluate some properties in some of the municipalities that are going to be affected by
this project. So that was an additional gap
that I struggled with.

CHAIRMAN HONIGBERG: Ms. Weatherby.

MS. WEATHERBY: Just also
another gap was vacant land, particularly up
north that also wasn't in and I think that
should be.

CHAIRMAN HONIGBERG: Mr. Oldenburg.

MR. OLDENBURG: I guess one of
the things in looking at the studies that were
done, I didn't get a -- I guess I didn't get a
warm and fuzzy feeling. You know, how much of
the line do you see? So I'll use the example of
McKenna's Purchase.

When we walked behind
McKenna's Purchase, much of the line, many of
the towers today are hidden by vegetation.
So if the new line goes in and you clear a
lot of that vegetation, some of those units
may see the line more than others. So do you
lump -- do you pick out those units
specifically that have a more significant
view and say what's the property value, or
the one next to it which may not see it at
all? I didn't -- it was almost like a look
at a whole subdivision. You had 12 lots, and
these are the sales of the 12 lots. I don't
remember the analysis of how much of the
transmission line was seen. I mean, maybe my
memory is shot. But, you know, that's the
way I'd look at it. Just McKenna's Purchase,
one unit next to the other, may sell for a
different price just because of the view of
the line, or there may not be a difference at
all. I didn't -- you know, to me, a lot of
it had to do with the property, the effects
of the property. I don't know how -- I
didn't understand how it was grouped
together.

CHAIRMAN HONIGBERG: Well, I
think one of the things Dr. Chalmers testified
to was that it is the change in view that is
significant.

MR. OLDENBURG: Right.

CHAIRMAN HONIGBERG: He agreed
with that proposition. And I think I even asked
him about this, that those who see something
today, if they see a little bit more tomorrow,
that's not as significant a change as someone
who sees nothing today and sees something
tomorrow. I believe his testimony was that he
didn't go to any of the properties to actually
see what can be viewed today, that he relied on
people on the ground here to talk about existing
properties and existing sales. And he relied
on, I don't know if it was computer analyses, or
other ways of determining what you can see today
or can't see today that you could see tomorrow.

DIR. WRIGHT: Am I wrong? I
thought there was some eyeball test done by Dr.
Chalmers or somebody with Dr. Chalmers.

CHAIRMAN HONIGBERG: In some
places I think.

DIR. WRIGHT: In some places.
And it was visible partially or not visible.

CHAIRMAN HONIGBERG: Right.

MS. WEATHERSBY: I think he
talked about the "windshield test" or something.

DIR. WRIGHT: Yes.

MS. WEATHERSBY: So he did go --
of course he went to McKenna's Purchase. He
didn't go onto the private property when he took
the -- looked at the places from the roadway,
calculated at the distance to the front door,
you know, that kind of thing. But he referred
to some of the studies. I think he did go to
the -- again, staying on public property, not
going onto private property and doing the
windshield test of how much they could see.

CHAIRMAN HONIGBERG: Mr. Way.

MR. WAY: I mean, did you get the
feeling like it wasn't like a real robust,
boots-on-the-ground type of exercise, though? I
mean, however this worked out, this wasn't
tracing the route and looking at every property
and looking at the visuals, because I don't
think he considered the visuals from DeWan
Associates in his assessment as well.

CHAIRMAN HONIGBERG: No, he
didn't. He testified to that.

MS. WEATHERSBY: I also think
when he looked at where there's existing
transmission lines, that a lot of those
properties weren't necessarily similar to what
the Northern Pass is going to look at. Like he
had that study -- one of the studies, there was
one in Portsmouth which I'm familiar with. And,
you know, there's no comparison between the
visual impact of that line which goes through a
very nice residential area. The houses will
sell for a fair amount of money, in part because
some of them are on the water. But my point, I
guess, is that the impact of that transmission
line versus Northern Pass, I don't think they
could be equated, and yet he used it as one of
the studies.

CHAIRMAN HONIGBERG: Commissioner
Bailey.

COMMISSIONER BAILEY: My
recollection is about some of the critique about
his "boots on the ground" or his "windshield
test." And I think -- and I don't remember who
this was -- but they suggested that, you know,
he went and he stood in the street and he looked
at the house and he looked at what the visual
impact behind the house would be to determine
whether the change would be significant or not.
But the criticism was that, and he couldn't have
possibly done this, but the view could be very
different from the bedroom window in the house
on the second floor, and that if somebody were
looking to buy a property, they wouldn't be
looking at it just from the street. They would
be inside the house, and if it felt like the
towers were inside the house, then that would
have an impact on property value. And he was
unable to deal with that because he didn't have
access.

MR. WAY: And if he went to a
property, as you said, and he's doing the visual
and he doesn't have a visual assessment, so a
lot of what he's looking at is can I see a
structure. And if I can see a structure, it
doesn't really matter because I've already
identified that the height of the structure
isn't going to impact my thoughts on this. He's
just trying to assess whether he'll see a
structure where he did not see before. That's
my understanding. And we're doing that without
a visual assessment at that point.

CHAIRMAN HONIGBERG: All right.
We need to take a lunch break. We will return
as close to 1:00 as we can, but it will probably
be a few minutes later.

(Lunch recess taken at 11:56 a.m. and
concludes the Morning Session. The
hearing continues under separate cover
in the transcript noted as Afternoon
Session.)
CERTIFICATE

I, Susan J. Robidas, a Licensed Shorthand Court Reporter and Notary Public of the State of New Hampshire, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes of these proceedings taken at the place and on the date hereinbefore set forth, to the best of my skill and ability under the conditions present at the time.

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

__________________________________________
Susan J. Robidas, LCR/RPR
Licensed Shorthand Court Reporter
Registered Professional Reporter
N.H. LCR No. 44 (RSA 310-A:173)
| computer (1) | 120:10 |
| concept (1) | 43:10 |
| concern (10) | 18:23;20:20;46:15;49:16;73:2;6,10,23;95:19;112:12 |
| concerned (4) | 70:11;72:16;107:9,12 |
| concerning (7) | 8:12;15:1.7,12;19:22;43:9;73:7 |
| concerns (9) | 7:9;17;12:16;20:17;21:22;17,19;31:10;112:17 |
| concessions (1) | 67:1 |
| conclude (1) | 106:11 |
| concluded (3) | 9:19;10:16;107:13 |
| concludes (1) | 124:4 |
| conclusion (4) | 6:17:10:4;12:14;107:5 |
| conclusions (1) | 94:17 |
| conclusion's (1) | 116:24 |
| Concord (19) | 19:5;23:14;32:23;34:11,12;22;35:8,24;36:21;38:3;5,6,15;45:8;54:17;60:4;61:12;13:109:15 |
| Concord's (4) | 37:16;59:24;60:2;61:3 |
| condition (1) | 29:10 |
| conditions (3) | 16:16;77:21;80:13 |
| condominiums (1) | 109:12 |
| conducted (1) | 84:11 |
| conductors (1) | 107:11 |
| confidential (2) | 75:6;90:23 |
| conflicts (1) | 58:23 |
| congregate (2) | 42:8;10 |
| connected (1) | 89:10 |
| Connecticut (1) | |

| convincing (1) | 115:2 |
| Co-op (1) | 89:12 |
| Coos (7) | 16:8;12;17;18;22;21;23;19;45;6:14 |
| corridor (31) | 6:16;20:9;11;16;10:11;14;14,19;12;2:6;27:6;7;34;19;35:14;41:7;9:42;17;18;19;44:21;46;4:5;47;17;50;17;19;53;19;54:13;55:5;65:21;69:14;71:23 |
| corridors (5) | 9:21;10:24;11:3;28;24;42:6 |
| co-signed (1) | 23:4 |
| cost (11) | 76:15;77:1;79:20;23;83:9;84;12;103:3;5;104:23;105:9,15 |
| costs (8) | 76:8;77:2;83:4;84:19;91:6;105:3,7,13 |
| Council (9) | 20:5;13;18;21;6,7;12;21;22;6;54:23 |
| Counsel (22) | 34:4;64:18;76:2;77;17;17;23;78:5,10;79;8;18;80:2;11;82;18;83:2;8;84:7;92;22;94:20;99:7;100;5;102:12;104:18 |
| count (2) | 105:11;15 |
| counted (2) | 114:13;17 |
| counties (3) | 17;17;24;8;45:15 |
| counting (1) | 13;22 |
| Country (16) | 16:14;20;5,13;18;21;5;7;11;21;22;6;24;4;33;16;35;16;46;15;54;23;65:24;66:5 |
| County (9) | 17;18;19;22;21;21;23;19;20;21;45;6:14 |
| couple (5) | 54;24;46;5;73:6;104:16;108:22 |
| court (1) | 40:12 |
| cover (3) | 61:14;113:10;124:5 |
| covered (2) | 20:4;56;11 |
| create (2) | 62;12;103:13 |
| created (2) | 49;19;81:6 |
| creating (1) | 77:8 |
| credentials (1) | 94:9 |
| credible (4) | 115;13;17;2;3,13 |
| credit (1) | 117:15 |
| criteria (1) | 39:24 |
| criterion (4) | 39;24;64;21;65:3,15 |
| critically (1) | 86:8 |
| criticism (1) | 122:24 |
| criticisms (3) | 109;6;20;117:9 |
| criticized (3) | 84;20;107;16;110:18 |
| critique (1) | 122;16 |
| cross-examination (1) | 109:1 |
| crossing (1) | 21;3 |
| crossings (1) | 22;18 |
| cultural (2) | 62;7;17 |
| cumulative (1) | 20;21 |
| curious (2) | 67;15;24 |
| current (1) | 59:22 |
| currently (5) | 83;23;85;17;104:3;9;108:13 |
| Curves (1) | 75:9 |
| customer (6) | 81:1;20;4;82:8;87;9;89;2 |
| customers (1) | 77:13 |
| cut (5) | 71;9;72;11;81:15;110;11;16 |
| demand (2) | |
perhaps (2) 18:3;41:16
period (1) 84:19
periods (2) 78;17;79:2
permission (3) 43:15;54:14,15
permitted (1) 85:15
person (2) 51:19;65:15
Personally (1) 117:13
perspective (3) 43:9;82:20;88:20
persuaded (2) 25:5;32:22
petition (2) 14:21;23:15
petitions (2) 23;7;13
phenomena (1) 109:24
PI+ (1) 87:19
pick (4) 6:10;22;32;17;
118:23
picked (1) 100:22
picture (5) 32:6;9;11;17;35:1
piece (1) 88:20
pieces (1) 49:13
piles (1) 42:21
pinpoint (1) 117:2
pipeline (1) 42:12
pipelines (1) 42:11
Pittsburg (4) 12;17;14:1;20:19;
21:1
place (7) 19;6;34;23;42;7;
17;47;11;55;9;106:1
placed (1) 34:5
places (12) 7;20;31;10;34:10;
35;8;39;13;44;13;16;
49;16;11;6;4;120:17;
18;12;13
plan (25) 8;8;16;13;21;12;
29;17;32;1;36;13;
37;13;24;38;5;16;
54;8;12;18;55;7;
planning (1) 9;9
planner (2) 36;33;8;38:3
planners (1) 13:13
planning (27) 7;1;18;23;9;10;
10;10;13;5;11,14;
20;2;4;6;7;8;14;16;
22;14;24;25;13;
32;5;24;21;5;12;
63;2;20;65;4;
111:4
plans (57) 7;17;18;8;1;6;17;
9;9;12;15;12;17,19;
24;10;2;9;10;10,11;
12;13;13;14;14;18;
12;4;6;10;11;13;3;10;
15;18;18;17;23;
18;13;21;25;14;
26;13;16;18;19;
8;20;29;9;12;36;23;
49;12;52;17;18;20;
53;4;21;24;54;5;53;
10;15;56;10;57;23;
63:8
plug (1) 87:23
plunk (1) 32;18
Plymouth (2) 23;9;67:9
point (33) 8;14;30;10;33;8;
42;3;43;3;3;4;17;
46;6;47;24;48;12;23;
23;49;5;15;20;21;11;
21;5;13;17;22;
55;10;58;5;59;14;
73;21;22;88;19;97;9;
104;17;11;14;11;6;9;
122;8;12;23
pointed (6) 19;17;78;10;79;8;
86;10;11;12;11;6;21
pointing (2) 28;18;109:2
points (4) 11;16;85;5;12;96:8
polar (1) 77:22
poles (3) 44;18;46;12;13
policy (3) 21;21;85;19;
103;12
Pond (7) 19;4;4;32;8;34:14;
49;17;69;4;5
ponds (1) 19;5
popular (1) 21;14
populated (2) 71;18;24
portion (6) 27;8;67;24;73;5;
19;74;2;110;4
portions (2) 41;2;66:2
Portsmouth (1) 122:3
position (3) 16;17;38;22;51;9
positions (7) 13;20;24;14;21;
25;8;12;26;7;86:20
positive (4) 87;17;88;1;92;4;23
possibility (2) 80;3;81:8
possible (1) 60:12
possibly (2) 112;24;123:1
post-hearing (3) 57;6;10;15
potential (6) 68;7;68;95;20;
22;102;17;111;11
potentially (1) 35:17
Powell (1) 108:17
power (3) 89;10;98;7;8
precedent (1) 38:22
precede (1) 55:5
prediction (1) 85:10
preempt (1) 8;18
pre-existing (2) 44;3;6
preferred (2) 12;3;68;20
prefiled (2) 9;3;75:5
prepared (1) 74:10
preponderance (1) 84:2
presence (1) 53:4
present (4) 99;7;23;74;15;17
Presentation (2) 4:3;5
presented (5) 15;20;23;8;13;
75;1;117;11
presently (2) 9;18;4;42:1
preservation (2) 19;14;62:16
preserve (2) 59:3;62:6
pressing (2) 43;2;50:10
pretty (5) 32;23;35;11;36;6;
38;12;43:20
prevailing (11) 6;7;10;8;24;12;
29;6;24;30;5;33;9;
34;7;4;9;49;7;65:23
prevent (1) 84:13
preventing (1) 47:5
previously (2) 27;21;42:4
price (27) 77;14;15;79;11;13,
23;24;80;5;83;5;14;
84;15;24;85;1;8;
91;10;96;20;98;18,
20;20;22;24;99;3;5;
105;1;106;20;
110;11;114;19;
119;11
prices (6) 77;14;80;8;84;22;
106;20;107;3;4
price-suppression (1) 80:7
primarily (2) 6;19;116:4
primary (1) 76:17
principles (3) 58;6;61;18;62:5
private (4) 68;9;13;121;2,8
probably (8) 8;2;9;7;18;2;
29;15;43;23;89;12;
111;5;124:1
problem (6) 10;4;50;6;52;5;
53;22;69;9;73;17
proceeding (4) 20;10;23;86;18;
89:6
proceedings (1) 17;8
process (4) 26;8;52:6;54:1;8
produce (1) 84:3
produced (1) 8:4
Shank (4) 36:4;37:18;22:61;1
Shank’s (1) 38:9
shape (2) 101:20;108:16
shifting (1) 104:8
shifts (1) 99:8
shortchanges (1) 71:19
shortcoming (1) 116:15
shot (2) 57:13;119:8
show (4) 20:16;63:8;64:23;8:41
showcasing (1) 59:5
showed (3) 111:16;114:13,16
showing (1) 35:2
side (3) 32:7;35:7;116:8
sides (1) 53:6
sign (3) 48:2;59:1;60:19
signatures (4) 23:9;10,11,16
signed (2) 23:6,14
significance (1) 26:2
significant (16) 25:1;19:26;5;75:22;6:4;94:1;95:6,14;98:1;107:6;114:1;117:12;118:24;119:21;120:3;122:23
significantly (2) 42:16;84:12
silent (1) 54:22
similar (6) 62:19;81:3;91:2;111:22;23;121:4
simple (1) 51:12
simply (1) 28:17
simulation (1) 35:2
simulations (1) 34:21
simultaneously (1) 83:6
single (3) 51:19;53:21;58:7
single-family (2) 109:10;112:22
sit (1) 52:9
site (5) 11:11;12:19;22;38:23;74:18
sitting (2) 11:24;65:9
sitting (3) 47:21;52:15;56:15
situations (1) 73:18
six (4) 111:13,15,21;112:1
size (1) 60:13
skidders (1) 69:20
slides (1) 99:2
slightly (3) 35:1;83:15;103:18
slopes (1) 59:13
small (7) 78:8;92:6,6,11;95:11;109:22;110:12
smaller (2) 88:1;92:8
social (2) 77:9;103:5
societal (1) 103:3
society (1) 103:3
sold (2) 104:9;110:14
Somebody (4) 26:9;98:24;120:15;123:3
somehow (2) 47:5;83:1
some-odd (1) 26:19
someone (3) 47:22;48:22;120:3
something’s (1) 94:2
sometime (1) 111:5
spoke (1) 77:15;83:14
Spin (1) 29:16
SPNH (1) 27:22
spokes (1) 21:8
spoken (1) 45:13
sponsored (3) 77:24;83:17;85:19
sprawl (1) 60:20
square (1) 45:7
staff (3) 20:11;12,14
stand (1) 106:8
standing point (2) 28:13,14
Stark (3) 12;18;17:7;86:14
start (5) 6:10;26:12;40:11;57:24;105:19
starting (1) 31:14
starting (2) 56:9,24
state (12) 8:17;10:13,18,20;11:8;27:11,14;39:17;67:3;87;20;88:8;106:21
statement (2) 21;13;98:11
statements (1) 25:21
states (1) 12:10
statewide (1) 9:12
stating (1) 22:7
Station (1) 71:2
status (2) 23:21;97:2
stay (2) 43:14;46:7
staying (1) 121:7
steel (1) 46:12
stenographers (1) 40:15
Stewartstown (2) 12:18;71:7
still (8) 14:15;19:17;30:5;18:92:3;15;103:22;105:22
stimulating (1) 91:23
stood (1) 122:20
stop (4) 14:8;41:24;49:20;51:14
straight (1) 113:18
strategy (2) 10:14;21:13
<table>
<thead>
<tr>
<th>Term</th>
<th>Frequency</th>
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</thead>
<tbody>
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<td>2010</td>
<td>71:4, 500 (3), 94 (1), 95 (2)</td>
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<td>2011</td>
<td>30:4; 81:11, 12, 95 (2), 97 (3)</td>
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<td>2012</td>
<td>47:23; 51:6, 503 (1), 12; 13, 14</td>
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<td>2013</td>
<td>75:18, 515 (1), 4:15</td>
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<tr>
<td>2014</td>
<td>14:21, 535 (1), 4:16</td>
</tr>
<tr>
<td>2016</td>
<td>23:10, 58 (1)</td>
</tr>
<tr>
<td>2017</td>
<td>106:17</td>
</tr>
</tbody>
</table>

| 2020 | 80:24 |
| 2030 | 91:3 |
| 2032 | 34:17; 35:6; 58:18 |
| 23rd | 89:2 |
| 28 | 88:21 |

| 3 | 6,554 (1), 23:10 |
| 30 | 60 (3), 34:17; 35:6; 58:18 |
| 301.09 | 600 (1), 89:2 |
| 31 | 620 (1) |
| 35 | 88:21 |
| 37 | 621 (2), 81:1, 20 |
| 650 | 88:21; 89:2 |
| 669 | 90:22 |
| 669A | 90:23 |

| 30 (3) | 70 (1), 35:7 |
| 31 (1) | 700 (1), 23:9 |
| 35 (1) | 73 (1), 4:1 |
| 37 (7) | 74 (1), 4:3 |

| 4 | 81 (1), 75:6 |
| 40 (3) | 82 (1), 75:9 |
| 40-foot | 88 (1), 4:4 |
| 40-year | 89 (1), 4:6 |
| 41 (1) | 90 (1), 4:7 |
| 43 (1) | 90-foot (1), 34:18 |

| 5 | 91 (1), 4:8 |