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APPEARANCES: **Reptg. Chinook Solar, LLC:**
 Douglas L. Patch, Esq. (*Orr & Reno*)
 Susan S. Geiger, Esq. (*Orr & Reno*)

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P R O C E E D I N G

1
2 CHAIRWOMAN MARTIN: Good afternoon,
3 everyone. We're here this afternoon in Docket
4 2019-02, which is the Chinook Solar, LLC,
5 Application for a Certificate of Site and
6 Facility. We are here today for deliberations on
7 the Application.

8 For planning purposes, we will need to
9 take a break from 1:00 to 1:30, so a Committee
10 member can attend to other business.

11 I have to make the findings because
12 this is a remote hearing.

13 As the Chairwoman of the Site
14 Evaluation Committee, I find that due to the
15 State of Emergency declared by the Governor as a
16 result of the COVID-19 pandemic, and in
17 accordance with the Governor's Emergency Order
18 Number 12, pursuant to Executive Order 2020-04,
19 this public body is authorized to meet
20 electronically. Please note that there is no
21 physical location to observe and listen
22 contemporaneously to this hearing, which was
23 authorized pursuant to the Governor's Emergency
24 Order.

1 However, in accordance with the
2 Emergency Order, I am confirming that we are
3 utilizing Webex for this electronic hearing. All
4 members of the Committee have the ability to
5 communicate contemporaneously during this
6 hearing, and the public has access to
7 contemporaneously listen and, if necessary,
8 participate.

9 We previously gave notice to the public
10 of the necessary information in the order
11 scheduling the hearing. If anybody has a
12 problem, please call (603)271-2431. In the event
13 the public is unable to access the hearing, the
14 hearing will be adjourned and rescheduled.

15 Okay. Let's start by taking a roll
16 call attendance of the Committee. When each
17 Committee member identifies him or herself,
18 please also state if anyone else is with you and,
19 if so, identify them.

20 My name is Dianne Martin. I am the
21 Chairwoman of the Site Evaluation Committee. And
22 I am alone.

23 Mr. Arvelo.

24 DIR. ARVELO: Good afternoon. My name

1 is Wildolfo Arvelo. I'm the Director of the
2 Division of Economic Development under Business &
3 Economic Affairs. I am home, in my office,
4 alone.

5 CHAIRWOMAN MARTIN: Thank you.
6 Mr. Pelletier.

7 MR. PELLETIER: Yes. I'm Rene
8 Pelletier. I'm the Assistant Director of the
9 Water Division at the Department of Environmental
10 Services. I am in my living room alone.

11 CHAIRWOMAN MARTIN: Excellent. Thank
12 you. Ms. Duprey.

13 MS. DUPREY: Can you hear me?

14 CHAIRWOMAN MARTIN: I can hear you.

15 MS. DUPREY: Okay. You can? Okay.
16 Yes. There we go.

17 I'm Susan Duprey. I'm a public member.
18 I'm in my home. And my house cleaners are in and
19 out, but they are not in this room.

20 CHAIRWOMAN MARTIN: All right. Thank
21 you. Mr. Oldenburg.

22 MR. OLDENBURG: William Oldenburg,
23 Assistant Director of Project Development at New
24 Hampshire DOT. I am in my office alone.

1 CHAIRWOMAN MARTIN: Thank you. And
2 Mr. Wilson.

3 DIR. WILSON: Benjamin Wilson, Director
4 of the Division of Historical Resources with the
5 Department of Natural & Cultural Resources. And
6 I'm in my office alone.

7 CHAIRWOMAN MARTIN: Okay. Thank you.
8 Let's take appearances please, starting with
9 Attorney Patch.

10 MR. PATCH: Good afternoon. Doug
11 Patch, with the law firm of Orr & Reno, on behalf
12 of Chinook Solar, LLC.

13 CHAIRWOMAN MARTIN: And Attorney
14 Geiger.

15 MS. GEIGER: Yes. Good afternoon.
16 Susan Geiger, with the law firm of Orr & Reno, on
17 behalf of Chinook Solar, LLC.

18 CHAIRWOMAN MARTIN: Attorney Iacopino,
19 do you know if Attorney Neville was planning to
20 attend? I don't see her on my screen.

21 MR. IACOPINO: I have not seen her on
22 the Webex. And she has not communicated with me
23 whether she intends or not to -- or, does not
24 intend to be here today.

1 CHAIRWOMAN MARTIN: Does Counsel for
2 the Public generally attend? I wonder if we
3 should reach out and see if she is having
4 connection issues?

5 MR. IACOPINO: I can try to give her a
6 call. In the past, sometimes they have attended,
7 sometimes they have not, during deliberations.
8 But I can try to give her a call.

9 CHAIRWOMAN MARTIN: Why don't we go off
10 the record until 12:20, just so Attorney Iacopino
11 can try to reach Attorney Neville.

12 *(Brief recess taken at 12:17 p.m.*
13 *and the deliberations resumed at*
14 *12:23 p.m.)*

15 CHAIRWOMAN MARTIN: Okay. Let's begin
16 deliberations.

17 I understand that the Committee has
18 historically deliberated by reviewing each of the
19 statutory criteria, discussing the evidence in
20 the record on each of those, and then taking a
21 straw poll on the issues before moving to the
22 next factor.

23 The plan is to have each Committee
24 member read a portion of the deliberations on a

1 particular topic. I will review the state agency
2 reports and permits; Mr. Arvelo will review the
3 financial, technical, and managerial capability;
4 Mr. Wilson will review the aesthetics and
5 historic resources; Mr. Arvelo, the air quality;
6 Mr. Pelletier, water quality and the Alteration
7 of Terrain Permit; Mr. Oldenburg, the natural
8 environment and the public health and safety;
9 Mr. Pelletier, the public health and safety
10 remaining areas other than decommissioning.

11 And we had Mr. Eaton doing the orderly
12 development (economics, employment and tourism).
13 And I may need to ask if there is a volunteer to
14 take that one on, which we would likely cover on
15 Monday, since Mr. Eaton is not here. And
16 Ms. Duprey, orderly development (land use, real
17 estate values, and property taxes).

18 Is that what everyone understood on the
19 Committee and is everyone comfortable with that?

20 *[No verbal response.]*

21 CHAIRWOMAN MARTIN: Okay. Any
22 questions from the Committee before we start?

23 *[No verbal response.]*

24 CHAIRWOMAN MARTIN: All right. Seeing

1 none. Then, I will start with the review of
2 state agency reports and permits. Attorney
3 Iacopino, anything you wanted to add before we
4 start?

5 MR. IACOPINO: No. I think that's a
6 good start.

7 CHAIRWOMAN MARTIN: Okay. Great.

8 All right. RSA 162-H:16, I, prohibits
9 the Subcommittee from granting an application for
10 a certificate of site and facility if any of the
11 state agencies with permitting or other
12 regulatory authority denies authorization for the
13 proposed activity over which it has permitting
14 authority. Let's start our deliberations with a
15 review of each of the state agency permit
16 requirements and the state agency status and
17 reports that we received during this proceeding.

18 Starting with the Division of
19 Historical Resources. On November 28th, 2019, we
20 received from DHR a report that the Application
21 is complete for its purposes. On December 4th,
22 2019, DHR, and I'm going to use that to speak to
23 "Division of Historical Resources", reported that
24 the Project would have no effect on historical

1 property. On January 28, 2020, DHR filed a
2 report indicating that the Fitzwilliam School
3 Number 2 is located outside the area of potential
4 effect. On April 17th, 2020, DHR filed a report
5 with the Subcommittee confirming that future
6 archeological studies are unnecessary and that
7 the Project area contains no historic properties
8 that are affected. That's contained in
9 Applicant's Exhibit 66.

10 The Division of Historical Resources
11 requested three conditions should be contained in
12 any certificate of site and facility that would
13 be granted in this case:

14 (1) If the Applicant changes plans for
15 the proposed Project and such changes lead to
16 newly discovered effects on historic properties,
17 the Applicant shall consult with the New
18 Hampshire Division of Historical Resources to
19 resolve any adverse effects to such properties.

20 (2) If any unanticipated archeological
21 resources, historic properties, or other cultural
22 resources are discovered as a result of Project
23 planning or construction, the Applicant shall
24 consult with the Division of Historical Resources

1 to determine the need for appropriate evaluative
2 studies, determinations of National Register
3 eligibility, and/or mitigative measures, if
4 needed, to resolve adverse effects.

5 Authorizing the Division of Historical
6 Resources to specify the use of any appropriate
7 technique, methodology, practice or procedure
8 associated with archeological, historical, or
9 cultural resources affected by the Project,
10 however, any action to enforce the conditions
11 must be brought before the Committee. That's the
12 third condition that was requested.

13 The following exhibits represent the
14 conclusions of the Division of Historical
15 Resources during the course of this process:
16 Applicant's Exhibit 30, which is Appendix 14B,
17 the New Hampshire Division of Historical
18 Resources Concurrence letter from Phase IA
19 Assessment; Applicant's Exhibit 32, Appendix 14D,
20 to the same -- actually, to Phase 1B Assessment;
21 Applicant's Exhibit 35, Appendix 14G, Project
22 Area Form Response letter; Appendix
23 [Applicant's?] 37, Appendix 14I, Concurrence
24 letter for Effects Evaluation; Applicant's

1 Exhibit 60, the DHR Project review finding;
2 Applicant's Exhibit 63, the DHR letter to Mack
3 dated 01/31/20; and Applicant's Exhibit 66, DHR
4 progress report filed 04/17/20.

5 So, that is all of the exhibits related
6 to this state agency and their filings. And
7 those are the three conditions that they
8 specifically requested be included in any
9 certificate.

10 Does any member of the Committee want
11 to discuss those conditions? Have any concerns
12 or changes that they think should be made? Or
13 any other issues related to the Division of
14 Historical Resources?

15 *[No verbal response.]*

16 CHAIRWOMAN MARTIN: Okay. Seeing none.
17 Let's move on to New Hampshire Fish & Game
18 Department.

19 On November 27, 2019, New Hampshire
20 Fish & Game provided a preliminary report. That
21 report summarized that the Applicant and the
22 agency engaged in consultation and continue to
23 cooperate. This report recognized that New
24 Hampshire Fish & Game has no direct permitting

1 authority and was acting in a consultative
2 capacity.

3 It should be noted that New Hampshire
4 Fish & Game is required to consult with DES, the
5 Alteration of Terrain Bureau, with respect to an
6 Alteration of Terrain permit. As part of the DES
7 final decision, DES required the Applicant to
8 provide revised plans that incorporate all of New
9 Hampshire Fish & Game recommendations related to
10 state or federal threatened or endangered
11 species. The revised plan incorporating all of
12 those recommendations was submitted to the
13 Committee in Applicant's Exhibit 84 and is
14 included in the current DES Alteration of Terrain
15 permit plans, Applicant's Exhibit 82, at Bates
16 Page 015. The exhibits demonstrating the
17 consultative process with New Hampshire Fish &
18 Game are contained in Applicant's 82 and 84.

19 So, we have a potential condition for
20 consideration.

21 Ms. Duprey, did you have your hand up
22 or just moving? Okay.

23 I will put that on the table. And, if
24 Committee members want to discuss, we can discuss

1 that.

2 "New Hampshire Fish & Game is
3 authorized to monitor the Applicant's methods and
4 actions relating to the protection of rare,
5 threatened, and endangered species and species of
6 special concern, rare and endangered exemplary
7 communities during the construction and operation
8 of the Project including all laydown and staging
9 areas. New Hampshire Fish & Game is authorized
10 to specify the use of any appropriate technique,
11 methodology, practice or procedure approved by
12 the Subcommittee within the certificate, as may
13 be necessary to effectuate conditions of the
14 certificate addressing the protection of wildlife
15 and rare and exemplary communities. The
16 Applicant shall allow representatives of New
17 Hampshire Fish & Game on the premises for the
18 purpose of inspection and consultation as New
19 Hampshire Fish & Game deems necessary. New
20 Hampshire Fish & Game may modify the plans to
21 protect Blanding's turtle and wood turtle
22 including, but not limited to, any modifications
23 to fencing, turtle ramps, and inspections deemed
24 appropriate. Any action to enforce these

1 conditions must be brought before the Committee."

2 Does anyone on the Committee want to
3 discuss that condition? Mr. Arvelo.

4 DIR. ARVELO: I have a question. If
5 the New Hampshire Fish & Game is acting in a
6 consulting -- on a consulting basis, and they
7 have no permitting authority, can they make that
8 request, to go in and monitor and make changes
9 that may be needed?

10 CHAIRWOMAN MARTIN: Attorney Iacopino,
11 do you want to respond to that?

12 And before we proceed, I notice that
13 Mr. Eaton is on.

14 MR. EATON: Yes, I am, Madam Chair. My
15 apologies for my delay. And, also, I wanted to
16 make reference that the meeting that I was not at
17 on the -- in September, I have read the minutes
18 for it.

19 CHAIRWOMAN MARTIN: Okay. Great. I
20 want to get on the record that you -- where you
21 are, and, if you're not alone, if you could
22 identify anyone who is with you.

23 MR. EATON: I am alone. And I'm at my
24 house.

1 CHAIRWOMAN MARTIN: Okay. Excellent.
2 Thank you for joining.

3 Attorney Iacopino.

4 MR. IACOPINO: Thank you, Madam Chair.
5 I think that Mr. Arvelo asked "whether or not New
6 Hampshire Fish & Game has the authority to carry
7 out this condition?"

8 If the Committee is inclined to include
9 this condition as a condition of the certificate,
10 the answer is "yes". Because the Committee has
11 the authority to authorize a state agency to
12 monitor and to make changes and accommodations in
13 accordance with methods that are discussed in the
14 certificate. And, obviously, the condition would
15 be a part of the certificate. And so, that it
16 would give -- it would be this Committee actually
17 giving Fish & Game the authority to undertake
18 these inspections.

19 This is a condition that is very
20 similar to one that was issued in the Antrim Wind
21 Certificate of Site and Facility, and in at least
22 one other certificate in the past that I can
23 remember.

24 CHAIRWOMAN MARTIN: Any other questions

1 related to that potential condition?

2 Attorney Iacopino, is it helpful to you
3 if we discuss inclusion at this point, or do you
4 want us to wait until the end of everything for
5 any motions?

6 MR. OLDENBURG: Madam Chair?

7 CHAIRWOMAN MARTIN: Yes, Mr. Oldenburg.

8 MR. OLDENBURG: I just wanted to
9 mention that that condition is also in the
10 "natural environment" discussion, pertaining to
11 the natural environment, that same condition is
12 in there. So, I don't know if we want to take it
13 up now or wait until we discuss the natural
14 environment.

15 MR. IACOPINO: And I was going to also
16 inform the Chair of that. And so, that is -- I
17 mean, in my memo to you, I did put that in there,
18 so that, in the event there was -- if it wanted
19 to be discussed early on, it could be. You could
20 discuss it at the time when you're discussing --
21 whether there's any unreasonable adverse impact
22 on the natural environment as well.

23 But it would effect the Fish & Game
24 Department and what they prepared for the

1 Committee. So, I have included it in both
2 places. It's up to the Committee as to when you
3 wish to actually determine whether or not you
4 want to create such a condition or not.

5 CHAIRWOMAN MARTIN: Okay. Does anyone
6 have a preference? I think it makes some sense
7 to wait, because it's going to be addressed later
8 as well, just in case something comes up in that
9 discussion that we want to consider.

10 *[No verbal response.]*

11 CHAIRWOMAN MARTIN: Okay. Looks like
12 everyone agrees with that. Okay. Then, moving
13 on to the Natural Heritage Bureau.

14 On November 27, 2019, the Natural
15 Heritage Bureau determined that, for its
16 purposes, the Application was complete. The
17 Bureau identified Blanding's turtle, a state
18 endangered species, and wood turtle, a state
19 species of special concern within the vicinity of
20 the Project. On March 15th, 2019, the Bureau
21 provided a memo indicating the site is unlikely
22 to support rare plant species in Applicant's
23 Exhibit 40. That exhibit contains the documents
24 demonstrating the consultations between the

1 Applicant and the Bureau.

2 Does the Committee have any issues here
3 that they would like to talk about? Any
4 conditions that they might want to suggest
5 related to the Natural Heritage Bureau?

6 *[No verbal response.]*

7 CHAIRWOMAN MARTIN: Okay. Seeing none.
8 Let's move on to the Department of Safety, Office
9 of the Fire Marshal.

10 On November 26, 2019, the Fire Marshal
11 provided an email to the administrator. That
12 email indicated that Fitzwilliam requested the
13 assistance of the Fire Marshal in enforcement of
14 the state fire code at the proposed Project. The
15 email further provided that Fitzwilliam will
16 submit a written request for the Fire Marshal to
17 enforce the state building code at the Project
18 under RSA 155-A:7. The Subcommittee has not
19 received further communication from the Fire
20 Marshal.

21 One potential condition for the
22 certificate that we could consider is as follows:
23 "The Applicant shall provide a copy of the final
24 construction plans, electrical plans and

1 emergency response plans to the Fire Marshal for
2 reference. The Applicant shall consult with the
3 Fire Marshal in the event of any changes to those
4 plans. The Applicant shall cooperate with the
5 Fire Marshal in the exercise of his enforcement
6 authority. The Fire Marshal retains all of his
7 powers and duties of enforcement, pursuant to RSA
8 162-H:12, IV. Any action to enforce the
9 conditions of the Certificate must be brought
10 before the Committee."

11 Does the Committee want to discuss
12 anything about that proposed condition? Are
13 there questions? Changes?

14 *[No verbal response.]*

15 CHAIRWOMAN MARTIN: Okay. Attorney
16 Iacopino, let me go back to you. Do you want a
17 motion on each of these conditions at the time or
18 shall we wait till the end?

19 MR. IACOPINO: Madam Chair, during
20 this, while you're discussing the state agency
21 permits, I don't think we -- that this is the
22 best time to take a vote on the conditions. Each
23 of these will be also part of a statutory impact
24 analysis as well, and that's probably the better

1 time to address potential conditions.

2 So that, for instance, with the Fire
3 Marshal, when you get to public health and
4 safety, it might be best to address that
5 condition there, along with any other public
6 health and safety conditions that the Committee
7 may wish.

8 CHAIRWOMAN MARTIN: Okay. That makes
9 sense to me. Is there any objection from the
10 Committee to proceeding that way?

11 *[No verbal response.]*

12 CHAIRWOMAN MARTIN: All right. Moving
13 on to the Department of Environmental Services,
14 Alteration of Terrain Bureau.

15 The Project is required to obtain an
16 Alteration of Terrain permit from the Department
17 of Environmental Services. The Applicant and DES
18 engaged in a lengthy process of negotiation,
19 which ultimately led to a final report from DES
20 recommending approval of the Alteration of
21 Terrain permit with certain conditions.

22 On April 3rd, 2020, DES filed a
23 progress report with draft permit conditions and
24 requested additional information from the

1 Applicant. That can be found in Applicant's
2 Exhibit 65. The progress report contained 22
3 requests for additional information. The most
4 serious concerns expressed in this report
5 centered around the fact that the alteration of
6 terrain plans were based on guidance issued with
7 respect to impervious solar panels by DES in
8 2019, rather than the document entitled "2020
9 Guidance With Regard to Imperviousness of Solar
10 Panels and Modeling Of Solar Arrays", issued by
11 DES on February 22nd, 2020. In addition, the
12 progress report indicated that the plans did not
13 include recommendations from New Hampshire Fish &
14 Game nor an accurate statement of the concerns of
15 the Natural Historical **[Heritage?]** Bureau.

16 On July 31st, 2020, the Applicant wrote
17 a letter to DES objecting to the requirement that
18 the plans be based on the 2020 guidance rather
19 than the 2019 guidance. The Applicant asserted
20 that the 2019 guidance was in effect at the time
21 the plans were developed and provided to DES.

22 Attorney Iacopino, you had your hand
23 up. You are on mute.

24 MR. IACOPINO: I would just point out,

1 you mentioned the "Natural Historical Bureau".
2 It's Natural Heritage Bureau that is contained in
3 Applicant's Exhibit 65.

4 CHAIRWOMAN MARTIN: Okay. Thank you
5 for the clarification.

6 DES responded to the objection on
7 August 18th, 2020 stating that the 2019 nine
8 guidance did not include comprehensive guidance
9 regarding the hydrologic modeling of solar
10 arrays, and that the DES administrative rules,
11 Environment- WQ 1500, likewise, did not include
12 guidance regarding hydrologic modeling of solar
13 arrays. Therefore, DES advised the Applicant
14 that it was using its best engineering judgment
15 in requiring compliance with the 2020 guidance.
16 The letter included an invitation for further
17 consultation.

18 That consultation occurred. And, on
19 August 31st, 2020, DES issued a final decision
20 recommending approval of the Alteration of
21 Terrain permit as part of the Certificate of Site
22 and Facility with conditions. The decision
23 contained 20 conditions. Conditions 1 through 3
24 required additional information to be provided to

1 the AoT Bureau, in Appendix -- Applicant's
2 Exhibit 86. The Applicant revised the plans
3 accompanying the AoT Application, in Exhibit 82.
4 The Applicant also had further consultation with
5 New Hampshire Fish & Game and provided a wildlife
6 assessment in Exhibits 84 and 87. The deadline
7 for provision of the information was September
8 4th, 2020. That information was provided, and
9 DES updated its final decision on September 19th,
10 2020. That is contained in Exhibit 92. The
11 final decision makes clear that the Applicant
12 provided the requested information and recommends
13 that the Certificate of Site and Facility be
14 granted with 18 additional conditions. The
15 conditions include construction phasing,
16 environmental monitoring requirements and
17 reports, changes and amendments to construction
18 plans, stormwater practices, and erosion control.
19 Those are contained in Applicant's Exhibit 92.

20 We have potential conditions for
21 consideration: The first is that "The New
22 Hampshire Department of Environmental Services
23 Alteration of Terrain permit shall issue and the
24 certificate is conditioned upon compliance with

1 all conditions inside that permit. DES is
2 authorized to monitor the construction and
3 operation of the Project to ensure that the terms
4 and conditions of the Alteration of Terrain
5 permit are met. DES retains the authority to
6 enforce the conditions of the Alteration of
7 Terrain permit, pursuant to RSA 162-H:12, IV;
8 however, any action to enforce the provisions of
9 the Certificate of Site and Facility must be
10 brought before the Committee. DES is authorized
11 to specify the use of any appropriate technique,
12 methodology, practice or procedure approved by
13 the Subcommittee within the certificate, as may
14 be necessary to effectuate conditions of the
15 certificate and the conditions of the Alteration
16 of Terrain."

17 Anyone have any discussion on that?

18 Changes?

19 *[No verbal response.]*

20 CHAIRWOMAN MARTIN: Okay. Seeing none.

21 Second potential condition for
22 consideration: "The conservation easements
23 addressed in the MOU between the Applicant and
24 the Town of Fitzwilliam shall specifically

1 provide that the purpose of the conservation
2 easement is to conserve and protect habitat for
3 wildlife." This was requested by DES in
4 Applicant's -- see Applicant's Exhibit 92.

5 Any Committee members wish to discuss
6 that potential condition?

7 *[No verbal response.]*

8 CHAIRWOMAN MARTIN: Okay. Seeing none,
9 we'll move to the statutory criteria. And
10 Mr. Arvelo will lead the discussion on financial,
11 managerial, and technical capability.

12 Mr. Arvelo. You're on mute.

13 DIR. ARVELO: Thank you.

14 The Applicant is required to meet
15 financial, managerial, and technical capabilities
16 under RSA 162-H:16, IV(a); Site 301.13.

17 Statutory requirement: Before the
18 Subcommittee can issue a certificate it must
19 determine whether the Applicant has "adequate
20 financial, technical, and managerial capability
21 to assure construction and operation of the
22 facility continuing compliance with the terms and
23 conditions of the certificate." RSA 162-H:16,
24 IV(a).

1 Rule requirements: In addressing this
2 statutory requirement, the Site Evaluation
3 Committee rules require the Subcommittee to
4 consider the following:

5 Financial Capability, Section (a): In
6 determining whether an Applicant has the
7 financial capability to construct and operate the
8 proposed energy facility, the Committee shall
9 consider: (1) The Applicant's experience in
10 securing funding to construct and operate energy
11 facilities similar to the proposed facility; (2)
12 The experience and expertise of the Applicant and
13 its advisors, to the extent the Applicant is
14 relying on advisors; (3) The Applicant's
15 statements of current and *pro forma* assets and
16 liabilities; and (4) Financial commitments the
17 Applicant has obtained or made in support of the
18 construction and operation of the proposed
19 facility.

20 Technical Capability: In determining
21 whether an Applicant has the technical capability
22 to construct and operate the proposed facility,
23 the Committee shall consider: (1) The
24 Applicant's experience in designing,

1 constructing, and operating energy facilities
2 similar to the proposed facility; and (2) The
3 experience and expertise of any contractors or
4 consultants engaged or to be engaged by the
5 Applicant to provide technical support for the
6 construction and operation of the proposed
7 facility, if known at the time.

8 Managerial Capability: In determining
9 whether the Applicant has the managerial
10 capability to construct and operate the proposed
11 facility, the Committee shall consider: (1) The
12 Applicant's experience in managing the
13 construction and operation of energy facilities
14 similar to the proposed facility; and (2) The
15 experience and expertise of any contractors or
16 consultants engaged or to be engaged by the
17 Applicant to provide managerial support for the
18 construction and operation of the proposed
19 facility, if known at the time.

20 The record: The financial, technical,
21 and managerial capabilities of the Applicant
22 or -- of the Applicant, as discussed in the
23 Application, in detail, at Pages 40 and 50 -- are
24 discussed in detail on Pages 40 through 50. The

1 exhibits that are relevant to the determination
2 of financial, technical, and managerial
3 capability are set forth in the following
4 exhibits: Applicant Exhibit 3, Prefiled
5 Testimony Joseph M. Balzano (financial);
6 Applicant Exhibit 4, Prefiled Testimony Paul
7 Callahan (technical/managerial); Applicant
8 Exhibit 17, Appendix 5, Project Schedule;
9 Applicant Exhibit 26, Appendix 12A, NextEra
10 Energy 2018 Annual Report (financial);
11 Appendix 20 -- Applicant Exhibit 27, Appendix
12 12B, Financial Statement-redacted (financial);
13 Applicant Exhibit 27, Appendix 12B, Financial
14 Statement-CONFIDENTIAL (financial); Applicant
15 Exhibit 69, Supplement Testimony Joseph Balzano
16 (financial); Applicant Exhibit 76, Supplemental
17 Testimony Keith Delallo (technical/managerial);
18 and Applicant Exhibit 90, Applicant's Response to
19 Hearing Record Request Number 4, Record Request
20 Proposed Ownership Condition and Definition of
21 Operational Control (financial).

22 I would like to add for the record also
23 Application Exhibit 2, which is the Prefiled
24 Testimony of Heath Barefoot.

1 Position of the Parties: The
2 Applicant: The Applicant argues that its parent
3 companies, NextEra Energy, NextEra Energy
4 Resources, NextEra Energy Capital Holdings
5 provide a financial foundation that is more than
6 sufficient to establish the Applicant -- that the
7 Applicant has the financial capability to
8 construct or operate the Project. In addition,
9 the Applicant relies upon its parent company's
10 ownership of the Seabrook Nuclear Power Plant, as
11 well as more than 90 solar power plants, as
12 evidence that it has the technical and managerial
13 capability to successfully construct and operate
14 the Project.

15 The Applicant opposes Counsel for the
16 Public's proposed condition that the Applicant be
17 required to post a bond with the State of New
18 Hampshire as an obligate to ensure its financial
19 commitment. See Applicant closing argument,
20 Pages 3 through 4.

21 Counsel for the Public: Counsel for
22 the Public did not represent *[sic]* any evidence
23 contradicting the financial, technical, or
24 managerial experience of the Applicant and its

1 parent companies. However, Counsel for the
2 Public recommends that the Subcommittee, as a
3 condition of the certificate, require the
4 Applicant to post a bond to financially assure
5 the construction and prompt operation of the
6 facility. It is unclear whether the Counsel for
7 the Public expects this bond to be in addition to
8 the decommissioning bond which the Applicant has
9 offered. In any event, the Counsel for the
10 Public opines that any bond should name the State
11 of New Hampshire as an obligee and the state
12 should have the ability to call the bond if
13 warranted. See CFP closing argument, Page 2.

14 Potential conditions for consideration:
15 Applicant proposal for change of ownership or
16 operational control: The Applicant proposes the
17 following language concerning any change in
18 ownership of the ownership structure of the
19 Applicant: "The Applicant must immediately
20 notify the Site Evaluation Committee of any
21 financings that create a change in ownership or
22 ownership structure of the Applicant or its
23 affiliated entities but that do not result in a
24 change in the operational control of the Chinook

1 Solar facility. For all other changes in
2 ownership or ownership structure of the Applicant
3 or its affiliated entities, the Applicant must
4 immediately notify the Site Evaluation Committee
5 and shall seek approval of the Subcommittee of
6 such changes -- of such change."

7 "The term "operational control" as used
8 in the proposed condition set forth above has the
9 following meaning: The authority and
10 responsibility to manage, direct and control the
11 day-to-day operations of the Project, excluding
12 certain limited rights given to the passive
13 investor that are necessary to protect its
14 investment. These limited rights typically
15 include, but are not limited to, incurring
16 certain types of indebtedness, selling or
17 transferring assets, making capital expenditures
18 above a certain threshold, and changing the
19 purpose of Chinook Solar, LLC."

20 Counsel for the Public Bond Proposal:
21 Counsel for the Public does not propose specific
22 language, but requests a condition requiring
23 financial assurances for the state. She requests
24 that the state be an obligee of any such

1 assurances and that the state have the option to
2 call on such assurances.

3 Typical Change in Ownership Provisions:
4 The Subcommittee is required by our rules to
5 consider whether or not to include the following
6 condition: "A requirement that the certificate
7 holder promptly notify the Committee of any
8 proposed or actual change in the ownership or
9 ownership structure of the holder or its
10 affiliated entities and request approval of the
11 Committee of such change."

12 Madam Chair, I have -- that's the end
13 of that, that's the end of that section. I have
14 prepared some -- I have pulled out some quotes
15 and statements from certain exhibits. I don't
16 know if we want to go into that beyond what I've
17 already read.

18 But the bottom line is, in my reading
19 of all the Application exhibits related to
20 financial, managerial, and technical capability,
21 is that Chinook Solar and its parent companies
22 have the financial, managerial, and technical
23 capabilities to manage this Project.

24 As mentioned already, they have -- they

1 already have 90 projects under their belt related
2 to -- particularly to solar and wind, throughout
3 30 -- I believe 33 states. And this is one of
4 the larger ones. But they have -- they have a
5 significantly large solar facility in Maine, they
6 have one in Vermont. They have other facilities
7 related to energy in Massachusetts and
8 Connecticut. So, New England is well represented
9 in their portfolio of energy projects. And, so,
10 this is -- this is not anything new to them.

11 And I would happy to go into further
12 detail, go exhibit by exhibit, if that's the wish
13 of the Committee at this point, or we can stop
14 and discuss.

15 CHAIRWOMAN MARTIN: I'll defer to you,
16 Mr. Arvelo, as to whether you have specific
17 quotes you'd like to pull out that might be
18 helpful to the Committee. And, if the Committee
19 has a preference, certainly they can let me know.

20 DIR. ARVELO: Okay. Okay. Will do.
21 Thank you.

22 So, I will read from -- I will read
23 from Application Exhibits 2, 3, 4, 17, 27, 69,
24 76, and 90. And these are all prefiled.

1 Under Application Exhibit 2, testimony
2 from Heath Barefoot, Project Director for Chinook
3 Solar, Lines 34 to 40. "Chinook Solar is an
4 indirect, wholly owned subsidiary of NEER.
5 NextEra Energy, Incorporated, or NextEra, the
6 parent company of NEER, is a Fortune 500 company
7 included in the S&P 100 index. NextEra will
8 oversee the development, financing, construction,
9 and operation of the Project. NextEra is the
10 number one generator of wind and solar energy in
11 the world; it owns over 90 solar projects in
12 North America. NextEra has investments in 36
13 states and Canada, and it has invested more than
14 85 billion in energy infrastructure since 2004."

15 Application Exhibit 2, Lines 226 to
16 229: "As an indirect, wholly owned", I don't
17 know if I'm pronouncing that correctly, "wholly
18 owned subsidiary of NEER, the Project" -- "the
19 parent company of which is NextEra, Chinook Solar
20 will have the access to the financial capability
21 of NextEra and its affiliated entities. As noted
22 above, NextEra owns over 90 solar projects in
23 North America."

24 CHAIRWOMAN MARTIN: Mr. Arvelo?

1 DIR. ARVELO: Yes.

2 CHAIRWOMAN MARTIN: Ms. Duprey has her
3 hand up.

4 MS. DUPREY: I do. Chairwoman Martin
5 and Mr. Arvelo, --

6 DIR. ARVELO: I can't hear.

7 CHAIRWOMAN MARTIN: We can't hear you,
8 Ms. Duprey. Ms. Duprey, --

9 MS. LEMAY: We can't hear you.

10 MS. DUPREY: I'm sorry.

11 MS. LEMAY: Your audio --

12 CHAIRWOMAN MARTIN: Your internet isn't
13 working.

14 MS. DUPREY: *[Indecipherable audio]*
15 Now?

16 CHAIRWOMAN MARTIN: No.

17 MS. DUPREY: All right. Hold on.

18 *[Indecipherable audio.]*

19 MS. DUPREY: All right. Let me move.

20 CHAIRWOMAN MARTIN: Let's go off the
21 record for a second, Mr. Patnaude.

22 *(Off the record.)*

23 CHAIRWOMAN MARTIN: Let's go back on
24 the record and see if that works. Go ahead.

1 MS. DUPREY: Okay. I was just saying
2 that I feel like we're belaboring this point.
3 We've all read the prefiled testimony. Mr.
4 Arvelo has already explained why this meets the
5 terms of the regulations and the statute. And I
6 just don't think that we need to go through a lot
7 more detail, unless someone feels that legally
8 we're lacking.

9 CHAIRWOMAN MARTIN: Any other Committee
10 members have a preference?

11 DIR. WILSON: I agree with Ms. Duprey.

12 CHAIRWOMAN MARTIN: Okay. Mr. Arvelo.

13 DIR. ARVELO: I also agree. I just
14 didn't know to what extent the Committee wanted
15 detail on this.

16 CHAIRWOMAN MARTIN: Okay. No, I found
17 some of that helpful. But I think I agree with
18 Ms. Duprey at this point, we probably have
19 sufficient information to make a determination as
20 to their financial, technical, and management
21 capabilities.

22 DIR. ARVELO: Okay. So, we should --
23 should we take a straw vote now and discuss any
24 of the conditions or provisions?

1 CHAIRWOMAN MARTIN: Attorney Iacopino,
2 straw poll on the findings themselves, and then
3 discussion of conditions?

4 MR. IACOPINO: I think that would be
5 appropriate. I would do your straw poll first.
6 And then, the record would probably be best
7 served if you then address on whether or not you
8 wish to impose the condition requested by the
9 Applicant or some other condition, with respect
10 to what happens if there's a change in the
11 ownership.

12 DIR. ARVELO: Okay. Should we do a
13 straw poll for all three -- all three of the
14 sections, financial, managerial, and technical,
15 at the same time, or should we do them one by
16 one?

17 MR. IACOPINO: And that's up to the --
18 that's up to the Chair. Either way is fine. I
19 think that you have laid out the various portions
20 of the record upon which the Committee will be
21 voting. So, I think that would be up to the
22 Committee.

23 DIR. ARVELO: Madam Chair, do you have
24 any preference?

1 CHAIRWOMAN MARTIN: My sense is that we
2 could do this all as one, "adequate financial,
3 technical, and managerial capabilities to assure
4 construction and operation of the facility in
5 continuing compliance with the terms and
6 conditions of the certificate."

7 Why don't we do that. And, if anybody
8 has a particular one they think we need to break
9 out, let me know now?

10 *[No verbal response.]*

11 CHAIRWOMAN MARTIN: Okay. It doesn't
12 look like that's the case.

13 So, why don't we poll, starting with
14 Mr. Wilson?

15 I'm sorry, Mr. Wilson. I caught you
16 off guard.

17 DIR. WILSON: That's all right. Sorry.
18 I would vote in favor.

19 CHAIRWOMAN MARTIN: Okay.
20 Mr. Oldenburg?

21 MR. OLDENBURG: I agree, in favor.

22 CHAIRWOMAN MARTIN: Mr. Pelletier?

23 MR. PELLETIER: I agree, in favor. I
24 agree with Ms. Duprey that they sent plenty of

1 information for us to make a value judgment.

2 CHAIRWOMAN MARTIN: Thank you. Ms.

3 Duprey?

4 MS. DUPREY: Yes.

5 CHAIRWOMAN MARTIN: I'm sorry, I

6 couldn't hear you.

7 MS. DUPREY: Yes.

8 CHAIRWOMAN MARTIN: Okay. Great.

9 Thank you. Mr. Arvelo?

10 DIR. ARVELO: Yes.

11 CHAIRWOMAN MARTIN: Mr. Eaton? You're

12 on mute. We can't hear you.

13 Down at the bottom of your screen,

14 there should be a mute/unmute, and you click on

15 it. It's not working?

16 MR. EATON: There it is. Madam Chair,

17 I agree. It was not working.

18 CHAIRWOMAN MARTIN: Okay. Great.

19 Thank you.

20 And I also agree that they have met

21 that standard.

22 So, Mr. Arvelo, if you would like to

23 lead the discussion on the conditions.

24 DIR. ARVELO: Okay. Thank you.

1 CHAIRWOMAN MARTIN: Mr. Patnaude?

2 [Court reporter interruption.]

3 CHAIRWOMAN MARTIN: Okay. Mr. Eaton,
4 could you make your statement again?

5 MR. EATON: Madam Chair, I agree.

6 CHAIRWOMAN MARTIN: Okay. Thank you.
7 Mr. Arvelo.

8 DIR. ARVELO: Okay. Thank you, Madam
9 Chair.

10 The Counsel for the Public [sic] is
11 proposing a potential condition for
12 consideration, which has to do with the change of
13 ownership or operational control. Just to remind
14 everybody, I'll quickly reread: The Applicant
15 proposes the following language concerning any
16 change in ownership of the ownership structure of
17 the Applicant: "The Applicant must" -- somebody
18 needs to go on mute.

19 CHAIRWOMAN MARTIN: Ms. Duprey, that
20 may be you.

21 MS. DUPREY: Okay.

22 CHAIRWOMAN MARTIN: Okay.

23 DIR. ARVELO: Okay. Just to read this
24 again: "The Applicant must immediately notify

1 the Site Evaluation Committee of any findings" --
2 "financings that create a change in ownership or
3 ownership structure of the Applicant of its
4 affiliated entities but that do not result in a
5 change in the operational control of the Chinook
6 Solar facility. For all other changes in
7 ownership or ownership structure of the Applicant
8 or its affiliated entities, the Applicant must
9 immediately notify the Site Evaluation Committee
10 and shall seek approval of the Subcommittee of
11 any [sic] change."

12 So, that's the proposed condition for
13 consideration.

14 MR. IACOPINO: I'll just point out that
15 there is also a definition of "operational
16 control" that the Applicant has asked the
17 Committee to adopt as part of that condition.

18 DIR. ARVELO: Right.

19 CHAIRWOMAN MARTIN: Yes. And I think,
20 Mr. Arvelo, you read that when we went through?

21 DIR. ARVELO: I did. I can, I guess,
22 if everybody would like, I could read it again.

23 "The term "operational control" as used
24 in the proposed condition set forth above" -- is

1 somebody in a dental chair?

2 CHAIRWOMAN MARTIN: It looks like
3 everyone's on mute. So, I'm not sure why that's
4 happening.

5 DIR. ARVELO: Okay. Well, let me start
6 again.

7 "The term "operational control" as used
8 in the proposed condition set forth above has the
9 following meaning: The authority and
10 responsibility to manage, direct and control
11 day-to-day operations of the Project, excluding
12 certain limited rights given to a passive
13 investor that are necessary to protect its
14 investment. These limited rights typically
15 include, but are not limited to, incurring
16 certain types of indebtedness, selling or
17 transferring assets, making capital expenditures
18 above a certain threshold, and changing the
19 purpose of Chinook Solar, LLC."

20 So, that is the -- that is the proposed
21 language for ownership and/or operational
22 control.

23 CHAIRWOMAN MARTIN: I wanted to discuss
24 this. I don't know, Mr. Arvelo, if you're done

1 with that portion, or if you're opening it up for
2 discussion?

3 DIR. ARVELO: Yes, please. Let's open
4 it up to discussion, Madam Chair.

5 CHAIRWOMAN MARTIN: Okay. I note that
6 we're required to consider a requirement that the
7 certificate holder promptly notify the Committee
8 of any proposed or actual change in ownership or
9 ownership structure of the holder or its
10 affiliated entities, and request approval of the
11 Committee of such change.

12 And I think what the Applicant
13 proposes, related to changing that to a "change
14 in control" is reasonable, given the way these
15 companies are structured.

16 I think my concern is that the
17 definition -- the use of the term "operational
18 control" and the definition may be too broad.
19 Because, well, it says "these" -- let's see,
20 "excluding certain limited rights given to a
21 passive investor that are necessary to protect
22 its investment."

23 My understanding of a "passive
24 investor" is generally that they invest, but

1 don't ultimately end up having control. The
2 definition, though, says that "These limited
3 rights typically include, but are not limited to,
4 incurring certain types of indebtedness, selling
5 or transferring assets, making capital
6 expenditures above a certain threshold, and
7 changing the purpose of the LLC." Those are all
8 things that I would typically consider "control".
9 And, so, it seems to me that this definition sort
10 of swallows the meaning whole.

11 So, I wanted to at least open that up
12 for consideration. I think, on balance, it makes
13 sense to consider whether the ability to approve
14 a change in control or change in ownership is
15 important in this situation first. But, if it
16 is, I do think that this goes too far.

17 Does anyone else have thoughts on this?

18 DIR. ARVELO: Well, do you -- are
19 you -- do you have any suggestions for language
20 other than what's there?

21 CHAIRWOMAN MARTIN: Well, if the
22 Committee feels that approval of a "change in
23 control" is important in this situation, first of
24 all, I think the Committee needs to decide

1 whether it's comfortable changing to a "change in
2 control", as opposed to a "change in ownership".
3 And, if it is, then I would suggest that we just
4 permit "change in control", as opposed to the
5 definition that's provided for "operational
6 control". I know it's a technical topic.

7 The concern is that applying this
8 definition of "operational control", essentially
9 meaning that there wouldn't be a change in
10 control, that they would not need to get
11 approval, because it's so broad.

12 Ms. Duprey. I can only see the corner
13 of your hand at this point. There you are. Go
14 ahead.

15 MS. DUPREY: Can you hear me?

16 CHAIRWOMAN MARTIN: We can.

17 MS. DUPREY: Where did this condition
18 come from?

19 CHAIRWOMAN MARTIN: I believe it was
20 proposed by --

21 MS. DUPREY: Suggested by the parties?

22 CHAIRWOMAN MARTIN: By the Applicant.
23 And it was the topic of some conversation with
24 the witness and Counsel for the Public about what

1 was meant there as well.

2 MS. DUPREY: They proposed it -- since
3 they proposed it, and everyone has looked at this
4 previously, I'd rather limit it, rather than
5 extinguish it.

6 CHAIRWOMAN MARTIN: How would you limit
7 it?

8 MS. DUPREY: In the manner you just
9 suggested.

10 CHAIRWOMAN MARTIN: Okay. I actually
11 think that's fairly consistent with the
12 testimony. Hold one second, see if I can get it.
13 I believe it was Mr. Barefoot testified that,
14 regarding additional investors, "there may be a
15 change in ownership structure. However, we would
16 not have a change in operational control. The
17 Project company would remain in charge of
18 operational control. And, so, our request would
19 be to allow some flexibility to finance the
20 Project as necessary, with any resulting changes
21 that might be required to the ownership
22 structure, however, operating -- operational
23 control would remain consistent."

24 MS. DUPREY: So, --

1 CHAIRWOMAN MARTIN: Go ahead.

2 MS. DUPREY: -- they wanted operational
3 control reviewed by us, but not financial
4 control?

5 CHAIRWOMAN MARTIN: Well, I think that,
6 at the time, we didn't have a definition of
7 "operational control" before us. And, so, this
8 definition essentially says that a passive
9 investor could actually take what is normally
10 considered "control", and that would not have to
11 be approved.

12 So, we could just not accept the term
13 "operational" -- the definition of the term
14 "operational control", and just use what is
15 actually customarily used, which is "change in
16 control".

17 MS. DUPREY: Okay. All right. I can
18 live with that.

19 CHAIRWOMAN MARTIN: Anybody else?

20 DIR. ARVELO: I'm still -- Madam Chair,
21 I'm still trying to understand the difference
22 between the two terms. And, on the one hand, the
23 way I'm viewing "operational control" is on the
24 local level, meaning at the Chinook Solar site.

1 And that, if there is a change in ownership at
2 some level above Chinook, that operational
3 control will not change at the local level, at
4 least that's kind of how I'm reading it. And,
5 so, in some ways, if that's what they imply, then
6 it makes sense to me.

7 But, if they're talking about
8 "operational control" at the NextEra level or
9 somewhere in between, then that's a different
10 story. So that I'm trying to understand where
11 "operational control" lies.

12 CHAIRWOMAN MARTIN: So, I'll try to
13 help. I think you have an understanding of the
14 concept of what is commonly called a "change in
15 control". Where you may have a change in the
16 entities that have ownership, but that doesn't
17 actually affect who's making the decisions on the
18 ground. And, so, sometimes you'll see a
19 distinction between "change in ownership" and
20 "change in control", because it allows large
21 entities or entities with affiliates to transfer
22 that between those, but they're not actually
23 changing who's actually making the decisions on
24 the ground, to your point.

1 In this case, because they add that it
2 could be control of "incurring indebtedness,
3 selling or transferring assets, making capital
4 expenditures" could be "given to a passive
5 investor", that would normally fall within a
6 change in control. That is actually taking
7 control.

8 So, I just bring that up to highlight
9 it for the Committee, because I think that is
10 what is extremely important.

11 DIR. ARVELO: Okay.

12 CHAIRWOMAN MARTIN: Anybody else have
13 discussion or thoughts on that one?

14 *[No verbal response.]*

15 CHAIRWOMAN MARTIN: Ms. Duprey had
16 indicated she was comfortable with just going
17 with "change in control", instead of "operational
18 control" in this definition.

19 How are the other Committee members
20 feeling about that? Mr. Wilson, do you -- are
21 you comfortable with that?

22 DIR. WILSON: I'm good with that
23 amendment.

24 CHAIRWOMAN MARTIN: Mr. Oldenburg?

1 MR. OLDENBURG: I'm good with that as
2 well.

3 CHAIRWOMAN MARTIN: Mr. Arvelo?

4 DIR. ARVELO: I'm still really trying
5 to understand the differences. But what I'd like
6 to see is, so, you're proposing just taking out
7 "operational control", and leaving it as
8 "control"?

9 CHAIRWOMAN MARTIN: Yes.

10 DIR. ARVELO: Okay. I can live with
11 that.

12 CHAIRWOMAN MARTIN: Okay. And Mr.
13 Eaton?

14 MR. EATON: I can live with that also.

15 CHAIRWOMAN MARTIN: Okay. Attorney
16 Iacopino, do we need to do more on that at this
17 moment?

18 MR. IACOPINO: You don't need to do any
19 more at this moment on that. But it would be
20 helpful to me to just read what I think the
21 language is that you all are discussing adopting
22 here.

23 So, please correct me if I'm wrong, but
24 I'm going to use the Applicant's language, and

1 just change some of the words. So that it would
2 read -- so, the condition that you all wish to
3 approve would read: "The Applicant must
4 immediately notify the Site Evaluation Committee
5 of any financings that create a change in
6 ownership or ownership structure of the Applicant
7 or its affiliated entities, but that do not
8 result in a change in control of the Chinook
9 Solar facility. For all other changes in
10 ownership or ownership structure of the Applicant
11 or its affiliated entities, the Applicant must
12 immediately seek" -- "must immediately notify the
13 Site Evaluation Committee and shall seek approval
14 of the Subcommittee for such change."

15 CHAIRWOMAN MARTIN: You left out the --
16 what I think is the most important part, which is
17 including "a change in control". We would
18 eliminate "operational".

19 MR. IACOPINO: I'm sorry, I didn't --
20 you cut out on me, I didn't hear what you said
21 right at the end.

22 CHAIRWOMAN MARTIN: The line -- so, in
23 the second sentence, you have omitted including
24 "a change in the operational control" when you

1 read it. I don't know if you meant to do that or
2 if it was an oversight?

3 MR. IACOPINO: Okay. So that the
4 second sentence should read: "For all other
5 changes in ownership or ownership structure or
6 operational control"?

7 CHAIRWOMAN MARTIN: You can leave it
8 exactly as written, except take out the word
9 "operational", "in the operational".

10 MR. IACOPINO: Oh, okay. I see. You
11 read the sentence above me. Okay.

12 "The Applicant or its affiliated
13 entities but that do not result in a change in
14 the control of the Chinook Solar facility." And
15 remove the word "operational".

16 CHAIRWOMAN MARTIN: Yes. I think -- I
17 think we're reading the same section.

18 MR. IACOPINO: Yes. I think I
19 understand what you've done then.

20 CHAIRWOMAN MARTIN: Okay.

21 MR. IACOPINO: I'm sorry that I read
22 that when I shouldn't have. Sorry.

23 CHAIRWOMAN MARTIN: That's okay. Okay,
24 Mr. Arvelo.

1 DIR. ARVELO: Okay.

2 CHAIRWOMAN MARTIN: Oh, just a moment.

3 Mr. Patnaude?

4 *[Court reporter interruption.]*

5 CHAIRWOMAN MARTIN: Okay. Mr. Arvelo.

6 DIR. ARVELO: Okay. Counsel for the
7 Public would like a change in, let's see, in --
8 this is not good, because this is associated with
9 the same change that we just talked about. "A
10 requirement that the certificate holder promptly
11 notify the Committee of any proposed or actual
12 change in the ownership or ownership structure of
13 the holder or its affiliated entities and request
14 approval of the Committee of such change."

15 So, that is -- I'm trying to -- isn't
16 that kind of similar to what we just approved?

17 CHAIRWOMAN MARTIN: I think we just
18 resolved the issue related to that condition.

19 DIR. ARVELO: Okay.

20 CHAIRWOMAN MARTIN: And then, there was
21 the bond proposal from Counsel for the Public.

22 DIR. ARVELO: Yes. Counsel -- Yes.
23 Counsel requests a condition requiring financial
24 assurances for the state, let me see if I can go

1 back and find the exact language.

2 CHAIRWOMAN MARTIN: While you do that,
3 Mr. Arvelo, I want to ask a question.

4 Is anyone planning to address the bond
5 issue later in their presentations?

6 Okay. Mr. Oldenburg, are you?

7 MR. OLDENBURG: For the
8 decommissioning, yes.

9 CHAIRWOMAN MARTIN: You are planning
10 to, okay.

11 Mr. Arvelo, I know we need to break at
12 1:30. It's 1:27 now.

13 DIR. ARVELO: We probably should -- why
14 don't we just take a break now then.

15 CHAIRWOMAN MARTIN: Okay. All right.
16 Let's go off the record. And we will return at
17 2:00 p.m.

18 DIR. ARVELO: Thank you.

19 CHAIRWOMAN MARTIN: You're welcome.

20 *(Recess taken at 1:27 p.m. and the*
21 *deliberations resumed at 2:04 p.m.)*

22 CHAIRWOMAN MARTIN: Then, let's go back
23 on the record.

24 And, Mr. Arvelo, you were just starting

1 the conversation about the bond issue.

2 DIR. ARVELO: Thank you, Madam Chair,
3 for allowing us to break.

4 So, Counsel for the Public recommends
5 that the Subcommittee, as a condition of the
6 certificate, require the Applicant to post a bond
7 to financially assure the construction and proper
8 operation of the facility. It is unclear whether
9 the Counsel for the Public expects this bond to
10 be in addition to the decommissioning bond which
11 the Applicant has offered. In any event, the
12 Counsel for the Public opines that any bond
13 should name the State of New Hampshire as an
14 obligee and that the state should have the
15 ability to call the bond if warranted.

16 So, that kind of leaves a lot of space
17 for discussion. I mean, if we have a
18 decommissioning bond on the table already, why is
19 there another bond for assurance necessary? I
20 mean, is that something that's common practice in
21 these kinds of projects?

22 CHAIRWOMAN MARTIN: I think the issue
23 of whether there would also be a construction
24 bond had come up during testimony when Counsel

1 for the Public was doing her examination. I
2 wonder whether it might make sense to defer the
3 conversation about the bond entirely, until we
4 get to Mr. Oldenburg's section. Because I think,
5 really, the ultimate question is "Do we need a
6 bond? If so, what should it be for? What should
7 it cover? Who should be the obligee or obligees?
8 And for how much?"

9 And I think that we could do that
10 probably all in one discussion. Mr. Arvelo, do
11 you feel comfortable doing that or would you
12 prefer to do that now?

13 DIR. ARVELO: No, that's fine. I'm
14 very comfortable with that.

15 CHAIRWOMAN MARTIN: Okay. Anyone else
16 want to talk about the bond now?

17 *[No verbal response.]*

18 CHAIRWOMAN MARTIN: All right.
19 Mr. Arvelo, did you have more to do?

20 DIR. ARVELO: No. That's the end of
21 this section.

22 CHAIRWOMAN MARTIN: Okay. It looks
23 like Mr. Wilson was going to go next for
24 aesthetics.

1 DIR. WILSON: All right. Do we want to
2 start?

3 CHAIRWOMAN MARTIN: That would be
4 great.

5 DIR. WILSON: All right.

6 Before the Subcommittee can issue a
7 certificate, it must determine whether the
8 Project will have an unreasonable adverse effect
9 on aesthetics. RSA 162-H:16, IV(c).

10 Rules Requirement: Site 301.14(a)
11 requires the Subcommittee to consider the
12 following in its assessment of the aesthetics
13 impacts: Section (a) In determining whether a
14 proposed energy facility will have an
15 unreasonable adverse effect on aesthetics, the
16 Committee shall consider: (1) The existing
17 character of the area of potential visual impact;
18 (2) The significance of affected scenic
19 resources and their distance from the proposed
20 facility; (3) The extent, nature, and duration
21 of public uses of affected scenic resources; (4)
22 The scope and scale of the change in the
23 landscape visible from affected scenic resources;
24 (5) The evaluation of the overall daytime and

1 nighttime visual impacts of the facility as
2 described in the visual impact assessment
3 submitted by the Applicant and other relevant
4 evidence submitted pursuant to Site 202.24; (6)
5 The extent within a natural or cultural landscape
6 of high scenic quality or as viewed from scenic
7 resources of high value or sensitivity; and (7)
8 The effectiveness of the measures proposed by the
9 Applicant to avoid, minimize, or mitigate
10 unreasonable adverse effects on aesthetics, and
11 the extent to which such measures represent best
12 practical measures.

13 The Record: --

14 CHAIRWOMAN MARTIN: Mr. Wilson, can I
15 interrupt for one moment? Mr. Arvelo, I am not
16 sure you're on mute. If you could check that for
17 us? Thank you.

18 Mr. Wilson.

19 DIR. WILSON: The Record: The
20 Application addresses the effects on aesthetics
21 at Pages 51 and 52. Relevant Exhibits:
22 Application Exhibit 7, Prefiled Testimony of
23 Michael Buscher; Application Exhibit 28, Visual
24 Impact Assessment, Appendix 13; Application

1 Exhibit 72, Supplemental Prefiled Testimony of
2 Michael Buscher; Application Exhibit 79, Appendix
3 G to Visual Impact Analysis, Appendix 13, filed
4 on 11/07/19; Application Exhibit 81, Stipulated
5 Facts & Requested Findings of Applicant and CFP,
6 filed 09/04/20, Paragraph 5.

7 Position of the Parties: The Applicant
8 and Counsel for the Public agree the record
9 provides sufficient information for the
10 Subcommittee to find -- excuse me -- that the
11 proposed Project will not have an unreasonable
12 adverse effect on aesthetics. See Application
13 Exhibit 81.

14 Number 3. History Sites, RSA
15 162-H:16 --

16 CHAIRWOMAN MARTIN: Mr. Wilson?

17 DIR. WILSON: Oh. Sorry.

18 CHAIRWOMAN MARTIN: Can we pause just
19 for a moment to see if the Committee has any
20 discussion on aesthetics?

21 DIR. WILSON: Absolutely.

22 CHAIRWOMAN MARTIN: I'll let you lead
23 that, if you'd like.

24 DIR. WILSON: Do the Committee members

1 have any questions or discussion items for
2 aesthetics?

3 *[Multiple Committee members indicating*
4 *in the negative.]*

5 CHAIRWOMAN MARTIN: Okay. So, we are
6 required to consider all of the items that
7 Mr. Wilson outlined as part of our determination
8 related to aesthetics.

9 Does anyone have any discussion on "the
10 existing character of the area of potential
11 visual impact"?

12 *[Multiple Committee members indicating*
13 *in the negative.]*

14 CHAIRWOMAN MARTIN: Is there any
15 concern related to that?

16 *[Multiple Committee members indicating*
17 *in the negative.]*

18 CHAIRWOMAN MARTIN: Okay. Seeing none
19 from any Committee members.

20 The second item that we're required to
21 consider is "the significance of affected scenic
22 resources and their distance from the proposed
23 facility." Any concerns related to that or is
24 the Committee satisfied?

1 *[Multiple Committee members indicating*
2 *in the negative.]*

3 CHAIRWOMAN MARTIN: Okay. Seeing no
4 concerns from the Committee related to that.

5 We need to consider "the extent,
6 nature, and duration of public uses of affected
7 scenic resources." Are there any issues related
8 to uses of affected scenic resources that the
9 Committee is concerned about?

10 *[Multiple Committee members indicating*
11 *in the negative.]*

12 CHAIRWOMAN MARTIN: Okay. I see a lot
13 of noes. All right. All the Committee members
14 indicate "no".

15 "The scope and scale of the change in
16 the landscape visible from affected scenic
17 resources." Any evidence or concerns related to
18 impacts from affected -- to affected scenic
19 resources, Committee members?

20 *[Multiple Committee members indicating*
21 *in the negative.]*

22 CHAIRWOMAN MARTIN: No? Okay.

23 "The evaluation of the overall daytime
24 and nighttime visual impacts of the facility."

1 Any concerns from the Committee related to the
2 visual impacts of this facility?

3 *[Multiple Committee members indicating*
4 *in the negative.]*

5 CHAIRWOMAN MARTIN: All right. No
6 concerns.

7 "The extent to which the proposed
8 facility would be a dominant and prominent
9 feature within a natural or cultural landscape of
10 high scenic quality or as viewed from scenic
11 resources of high value or sensitivity." Are
12 there any concerns about whether it will be a
13 dominant or prominent feature within the natural
14 or cultural landscape?

15 *[Multiple Committee members indicating*
16 *in the negative.]*

17 CHAIRWOMAN MARTIN: Okay. The
18 Committee has no concerns there.

19 And "the effectiveness of the measures
20 proposed by the Applicant to avoid, minimize, or
21 mitigate unreasonable adverse effects on
22 aesthetics, and the extent to which such measures
23 represent best practical measures." Does the
24 Committee have any concerns? You want to discuss

1 anything about the measures proposed by the
2 Applicant?

3 *[Multiple Committee members indicating*
4 *in the negative.]*

5 CHAIRWOMAN MARTIN: Okay. Seeing no
6 concerns.

7 All right. Seeing no concerns from the
8 Committee, I think that we have covered all of
9 the required considerations under the rules.

10 Attorney Iacopino, do we need a straw
11 poll related to that section?

12 MR. IACOPINO: I would recommend that
13 you do that, because it will be easier to keep
14 the record that way, and to make reference in the
15 record to where these matters were addressed,
16 once it's transcribed.

17 CHAIRWOMAN MARTIN: Okay. So, the
18 statutory requirement is that the Subcommittee
19 determine whether the Project will have an
20 unreasonable adverse effect on aesthetics. Let's
21 do a poll.

22 Mr. Wilson, do you agree that the
23 Project will not have an unreasonable adverse
24 effect on aesthetics?

1 DIR. WILSON: I do agree, yes.

2 CHAIRWOMAN MARTIN: Okay.

3 Mr. Oldenburg?

4 MR. OLDENBURG: I also agree.

5 CHAIRWOMAN MARTIN: Ms. Duprey?

6 MS. DUPREY: I agree.

7 CHAIRWOMAN MARTIN: Thank you.

8 Mr. Arvelo?

9 DIR. ARVELO: Agree.

10 CHAIRWOMAN MARTIN: Okay.

11 Mr. Pelletier?

12 MR. PELLETIER: I agree.

13 CHAIRWOMAN MARTIN: Mr. Eaton?

14 MR. EATON: I agree.

15 CHAIRWOMAN MARTIN: And I also agree.

16 Okay. Mr. Wilson, you can move on to --

17 MR. IACOPINO: Ms. Martin?

18 CHAIRWOMAN MARTIN: Yes.

19 MR. IACOPINO: Chairwoman Martin,

20 before we go on to the next, to historic

21 resources, just for my edification in writing

22 this, I understand that the Committee is in

23 unanimous agreement that, based upon the portions

24 of the record cited by Mr. Wilson, that there is

1 no concerns about the criteria set forth in our
2 regulation 301.14(a). Am I correct in that?

3 CHAIRWOMAN MARTIN: Yes.

4 MR. IACOPINO: So that would be, if I
5 were to put that in our written order, that would
6 be accurate?

7 CHAIRWOMAN MARTIN: Yes. I would agree
8 with that.

9 MR. IACOPINO: Thank you.

10 CHAIRWOMAN MARTIN: Do you want a poll?

11 MR. IACOPINO: No, I don't need a
12 further poll. I just wanted to make sure that
13 that was the reasoning. That's all.

14 Thank you.

15 CHAIRWOMAN MARTIN: Yes. Okay,
16 Mr. Wilson.

17 DIR. WILSON: Number 3. History Sites:
18 RSA 162-H:16, IV(c); 301.14(b). Statutory
19 Requirement: Before the Subcommittee can issue a
20 certificate, it must determine whether the
21 Project will have an unreasonable adverse effect
22 on historic resources; RSA 162-H:16, IV(c).

23 Rules Requirement: Site 301.14(b)
24 requires the Subcommittee to consider the

1 following in its assessment of the impact on
2 historic resources: In determining whether a
3 proposed energy facility will have an
4 unreasonable adverse effect on historic sites,
5 the Committee shall consider: (1) All of the
6 historic sites and archeological resources
7 potentially affected by the proposed facility and
8 any anticipated potential adverse effects on such
9 sites and resources; (2) The number and
10 significance of any adversely affected historic
11 sites and archeological resources, taking into
12 consideration the size, scale, and nature of the
13 proposed facility; (3) The extent, nature, and
14 duration of the potential adverse effects on
15 historic sites and archeological resources; (4)
16 Findings and determinations by the New Hampshire
17 Division of Historical Resources of the
18 Department of Cultural and Natural -- "of Natural
19 and Cultural Resources" that should read, and, if
20 applicable, the lead federal agency, of the
21 proposed facility's effects on historic sites as
22 determined under Section 106 of the National
23 Historic Preservation Act, 54 U.S.C 306108, or
24 RSA 227-C:9; and (5) The effectiveness of

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

6 The Record: The Application addresses
7 impacts on historic sites at Page 52 and 53.

8 Chairwoman, would you like me to read
9 through this entire list?

10 CHAIRWOMAN MARTIN: No, you don't have
11 to read through this, you don't need to read
12 every description. You can reference to the
13 relevant exhibits, if you'd like, but you don't
14 need to. Everyone should be aware of what those
15 exhibits are.

16 DIR. WILSON: Okay. I might just move
17 on then to "Position of the Parties", because --

18 CHAIRWOMAN MARTIN: Attorney Iacopino,
19 do you want him to reference to the applicable
20 exhibits by number?

21 MR. IACOPINO: I don't believe that he
22 has to, Madam Chair. You already went through
23 the rulings and the findings of the Division of
24 Historic Resources when you reviewed that

1 consultative process. So, I assume that the
2 Committee members are familiar with that.

3 If they're not, perhaps then we should.
4 But my guess is they're familiar with what
5 exhibits were -- are in the record with respect
6 to historic resources.

7 CHAIRWOMAN MARTIN: Do any Committee
8 members want to hear each of the exhibits to
9 refresh their memory?

10 *[Multiple Committee members indicating*
11 *in the negative.]*

12 CHAIRWOMAN MARTIN: Okay. I'm seeing
13 "no".

14 Mr. Wilson, you can go ahead.

15 DIR. WILSON: Thank you. Position of
16 the Parties: The Applicant and Counsel for the
17 Public agree that the record provides sufficient
18 information for the Subcommittee to find that the
19 proposed Project will not have an unreasonable
20 adverse effect on historic resources. See
21 Application Exhibit 81.

22 Proposed conditions --

23 CHAIRWOMAN MARTIN: Mr. Wilson?

24 DIR. WILSON: Yes.

1 CHAIRWOMAN MARTIN: I'm sorry. I'm
2 sorry for interrupting you repeatedly. Do you
3 want to walk through the considerations the
4 Committee is required to consider in the rule,
5 and just make sure that --

6 DIR. WILSON: Sure.

7 CHAIRWOMAN MARTIN: -- if any Committee
8 member wants to discuss anything there?

9 DIR. WILSON: Sure. So, number (1),
10 "all of the historic sites and archeological
11 resources potentially affected by the proposed
12 facility and anticipated potential adverse
13 effects on such sites and resources." Does
14 anybody have any discussion or issues with that?

15 *[Multiple Committee members indicating*
16 *in the negative.]*

17 DIR. WILSON: Seeing none. Number (2),
18 "the number and significance of any adversely
19 affected historic sites and archeological
20 resources, taking into consideration the size,
21 scale, and nature of the proposed facility." Do
22 any Committee members have issue or discussion?

23 *[Multiple Committee members indicating*
24 *in the negative.]*

1 CHAIRWOMAN MARTIN: No.

2 DIR. WILSON: Seeing none. Number (3),
3 "the extent, nature, and duration of the
4 potential adverse effects on historic sites and
5 archeological resources." Do any Committee
6 members have issues with number (3)?

7 *[Multiple Committee members indicating*
8 *in the negative.]*

9 CHAIRWOMAN MARTIN: No.

10 DIR. WILSON: Seeing none. Number (4),
11 "Findings and determinations by the New Hampshire
12 Division of Historical Resources of the
13 Department of Natural and Cultural Resources and,
14 if applicable, the lead federal agency, of the
15 proposed facility's effects on historic sites as
16 determined under Section 106 of the National
17 Historic Preservation Act." Any issues with
18 that?

19 *[Multiple Committee members indicating*
20 *in the negative.]*

21 CHAIRWOMAN MARTIN: No, I think we
22 considered that provision.

23 DIR. WILSON: Number (5), "the
24 effectiveness of the measures proposed by the

1 Applicant to avoid, minimize, or mitigate
2 unreasonable adverse effects on historic sites
3 and archeological resources, and the extent to
4 which such measures represent best practical
5 measures." Does anybody have an issue with
6 number (5)?

7 *[Multiple Committee members indicating*
8 *in the negative.]*

9 CHAIRWOMAN MARTIN: No.

10 DIR. WILSON: Great. Shall I move on
11 to the conditions?

12 CHAIRWOMAN MARTIN: I think we need to
13 take a straw poll, is that right, Attorney
14 Iacopino, just on that one criteria?

15 MR. IACOPINO: You can. You could do a
16 straw poll on whether the Committee is of the
17 opinion that these criteria have been met. Or,
18 you could consider the conditions that DHR has
19 requested, and then have a straw poll on whether
20 or not, given those conditions, the Applicant has
21 met its burden.

22 CHAIRWOMAN MARTIN: Does the Committee
23 have a preference? Should we do the conditions
24 first, might be the most efficient way?

1 *[Multiple Committee members indicating*
2 *in the affirmative.]*

3 CHAIRWOMAN MARTIN: Okay. Go ahead,
4 Mr. Wilson.

5 DIR. WILSON: Proposed Conditions
6 Regarding Historic Resources: The Division of
7 Historical Resources proposes the following
8 conditions pertaining to historic resources:
9 Number (1): "The Applicant changes plans for the
10 proposed Project and such changes lead to newly
11 discovered effects on historic properties, the
12 Applicant shall consult with the New Hampshire
13 Division of Historical Resources to resolve any
14 adverse effects to such properties."

15 Any discussion on the first
16 condition?

17 CHAIRWOMAN MARTIN: No.

18 DIR. WILSON: Seeing none. The second
19 condition: "If any unanticipated archeological
20 resources, historic properties, or other cultural
21 resources are discovered as a result of Project
22 planning or construction, the Applicant shall
23 consult with the New Hampshire Division of
24 Historical Resources to determine the need for

1 appropriate evaluative studies, determinations of
2 National Register eligibility, and/or mitigative
3 measures, if needed, to resolve adverse effects."

4 Any discussion on number (2), or "(b)",
5 as it's written?

6 *[Multiple Committee members indicating*
7 *in the negative.]*

8 CHAIRWOMAN MARTIN: No.

9 DIR. WILSON: Seeing none. The third
10 condition, (c): "Authorizing the New Hampshire
11 Division of Historical Resources to specify the
12 use of any appropriate technique, methodology,
13 practice or procedure associated with
14 archeological, historical, or cultural resources
15 affected by the Project, however, any action to
16 enforce the conditions must be brought before the
17 Committee." And I'm assuming "Committee" means
18 the "SEC".

19 Does anybody have any discussion
20 regarding that condition?

21 *[Multiple Committee members indicating*
22 *in the negative.]*

23 CHAIRWOMAN MARTIN: No.

24 DIR. WILSON: Okay. A straw poll then.

1 CHAIRWOMAN MARTIN: Okay. Why don't we
2 poll the Committee, and ask that, in light of the
3 proposed conditions that we just heard, does the
4 Committee agree that the Project will not have an
5 unreasonable adverse effect on historic
6 resources?

7 Mr. Wilson.

8 DIR. WILSON: I think that reads
9 "historic sites". I could be wrong.

10 CHAIRWOMAN MARTIN: Hang on. Let me go
11 back.

12 MR. IACOPINO: Yes. The statute does
13 reference "sites".

14 CHAIRWOMAN MARTIN: Okay. So,
15 historic -- to amend the prior question, to find
16 that the Project will not have an unreasonable
17 adverse effect on historic sites?

18 Mr. Wilson?

19 DIR. WILSON: I would agree with that.

20 CHAIRWOMAN MARTIN: Mr. Oldenburg?

21 MR. OLDENBURG: I agree.

22 CHAIRWOMAN MARTIN: Mr. Pelletier?

23 MR. PELLETIER: I agree.

24 CHAIRWOMAN MARTIN: Ms. Duprey?

1 MS. DUPREY: I agree.

2 CHAIRWOMAN MARTIN: Mr. Eaton?

3 MR. EATON: I agree.

4 CHAIRWOMAN MARTIN: Mr. Arvelo?

5 DIR. ARVELO: I agree.

6 CHAIRWOMAN MARTIN: And I also agree.

7 So, it is unanimous, Attorney Iacopino.

8 MR. IACOPINO: Thank you, Madam Chair.
9 Was that -- I may have missed the beginning of
10 the statement, but did that include adopting the
11 conditions requested by the Division of Historic
12 Resources?

13 CHAIRWOMAN MARTIN: Yes, the proposed
14 conditions.

15 MR. IACOPINO: Thank you.

16 CHAIRWOMAN MARTIN: Okay. Thank you,
17 Mr. Wilson.

18 Now, we have air quality, which I
19 believe is Mr. Arvelo again. Is that right? And
20 you're on mute.

21 DIR. ARVELO: Yes, it is, Madam Chair.

22 Okay. So, the Applicant must meet the
23 air quality standard under RSA 162-H:16, IV(c);
24 Site 103.14(c) [301.14(c)?]. Statutory

1 Requirement: Before the Subcommittee can issue a
2 certificate, it must determine whether the
3 Project will have an unreasonable adverse effect
4 on air quality under RSA 162-H:16, IV(c).

5 Rules Requirement: Site 301.14(c)
6 requires the Subcommittee to consider the
7 following in its assessment of the impact on air
8 quality: (c) In determining whether a proposed
9 facility will have an unreasonable adverse effect
10 on air quality, the Committee shall consider the
11 determinations of the New Hampshire Department of
12 Environmental Services with respect to
13 Applications or permits identified in Site
14 301.03(d) and other relevant evidence submitted
15 pursuant to Site 202.24. Site 301.03(d) requires
16 that an Applicant identify all state and federal
17 agencies with permitting or other regulatory
18 authority and that the Applicant includes the
19 Applications made to each state and federal
20 agency. Site 202.24 simply governs the
21 admissibility of evidence.

22 The Record: Air quality issues are set
23 forth in the Application at Pages 53 and 54.

24 Relevant Exhibits: Application Exhibit 12,

1 Prefiled Testimony of Lise Laurin; Application
2 Exhibit 38, Appendix 15A, Greenhouse Gas Analysis
3 Report; and Application Exhibit 81, Stipulated
4 Facts & Requested Findings of Applicant and CFP,
5 filed 09/04/20, Paragraph 9.

6 Positions of the Parties: The
7 Applicant and Counsel for the Public agree that
8 the record provides sufficient information for
9 the Subcommittee to find that the proposed
10 Project will not have an unreasonable adverse
11 effect on air quality. See Application Exhibit
12 81.

13 Madam Chair, that is my testimony. I'd
14 like to open it up to discussion or questions.

15 CHAIRWOMAN MARTIN: Okay. Does any
16 Committee member have any concerns about the air
17 quality impact related to this Project or the
18 determinations of the New Hampshire Department of
19 Environmental Services related to air quality?

20 *[Multiple Committee members indicating*
21 *in the negative.]*

22 CHAIRWOMAN MARTIN: Okay. Seeing none.
23 I think we can take our poll on this one.

24 Did the Committee determine whether --

1 The Committee will determine that the Project
2 will not have an unreasonable adverse effect on
3 air quality.

4 Mr. Wilson, do you agree with that?

5 DIR. WILSON: I do agree.

6 CHAIRWOMAN MARTIN: Mr. Oldenburg?

7 MR. OLDENBURG: I agree.

8 CHAIRWOMAN MARTIN: Mr. Pelletier?

9 MR. PELLETIER: I agree.

10 CHAIRWOMAN MARTIN: Ms. Duprey?

11 MS. DUPREY: I agree.

12 CHAIRWOMAN MARTIN: Mr. Eaton?

13 MR. EATON: I agree.

14 CHAIRWOMAN MARTIN: And Mr. Arvelo?

15 DIR. ARVELO: I agree.

16 CHAIRWOMAN MARTIN: And I also agree.

17 Attorney Iacopino, that is unanimous as well.

18 MR. IACOPINO: Thank you.

19 CHAIRWOMAN MARTIN: Anything else you
20 need on that?

21 MR. IACOPINO: No thank you.

22 CHAIRWOMAN MARTIN: All right. Let's
23 see. Moving on to water quality, Mr. Pelletier.

24 MR. PELLETIER: Yes. Water quality.

1 Statutory Requirement: Before the
2 Subcommittee can issue a certificate, it must
3 determine whether the Project will have an
4 unreasonable adverse effect on water quality, per
5 RSA 162-H:16, IV(c) and 301.14(d).

6 The rule requirement is the 301.14(d)
7 requires the Subcommittee to consider the
8 following in its assessment of the impact on
9 water quality: In determining whether a proposed
10 energy facility will have an unreasonable adverse
11 effect on water utility, the Committee shall
12 consider the determinations of the New Hampshire
13 Department of Environmental Services, the United
14 States Army Corps of Engineers, and other state
15 and federal agencies having permitting or other
16 regulatory authority, under state or federal law,
17 to regulate any aspect of the construction or
18 operation of the proposed facility, with respect
19 to Applications and permits identified in Site
20 301.03(d), and other relevant evidence submitted
21 pursuant to the site.

22 For the Record: The impacts of the
23 Project on water quality are contained in the
24 Application at Pages 54 through 56. The relevant

1 exhibits are Appendix [Applicant?] 6,
2 Appendix [Applicant?] 15, Appendix [Applicant?]
3 16, Appendix [Applicant?] 20, Appendix
4 [Applicant?] 22, Appendix [Applicant?] 23, 39,
5 45, 59, 65, 71, and 82, 84, 86, 87, and 92, --

6 CHAIRWOMAN MARTIN: Mr. Pelletier?

7 MR. PELLETIER: -- and last, but not
8 least --

9 CHAIRWOMAN MARTIN: Mr. Pelletier?

10 MR. PELLETIER: Yes.

11 CHAIRWOMAN MARTIN: Can I interject
12 just for a moment to clarify the record, that you
13 were referring to "Applicant's Exhibits", as
14 opposed to the "appendices"?

15 MR. PELLETIER: Yes. Yes.

16 CHAIRWOMAN MARTIN: Okay. Thank you.

17 MR. PELLETIER: That is correct. And
18 last, but not least, would be Appendix
19 [Application?] 96.

20 CHAIRWOMAN MARTIN: One more
21 clarification.

22 MR. PELLETIER: Position of the
23 Parties:

24 CHAIRWOMAN MARTIN: Mr. Pelletier?

1 MR. PELLETIER: Pardon?

2 CHAIRWOMAN MARTIN: I apologize. I
3 have to clarify one more time, that it is the
4 "Applicant's Exhibit 96"?

5 MR. PELLETIER: Yes.

6 CHAIRWOMAN MARTIN: All right. Great.
7 Thank you.

8 MR. PELLETIER: Okay.

9 Okay. The Position of the Parties:
10 The Applicant argues that the Project plans as
11 amended meet the requirements of DES and the
12 Alteration of Terrain Bureau. The Applicant
13 relies on the recommendation that the AoT permit
14 be granted and incorporated into the certificate.
15 The Applicant relies on the AoT permit, as well
16 as its Spill Prevention and Control Plan to claim
17 that the Project will not have an unreasonable
18 impact on water quality.

19 Counsel for the Public: Counsel for
20 the Public did not address the issue of water
21 quality.

22 Proposed conditions that the Department
23 had set: The proposed water quality conditions
24 are contained in the AoT permit, located in

1 Appendix [Applicant?] 92. The following are
2 typical conditions that the Committee imposes in
3 addition to those contained in an AoT permit:
4 "The New Hampshire Department of Environmental
5 Services Alteration of Terrain permit shall issue
6 and the certificate is conditioned upon
7 compliance with all conditions inside the permit.
8 DES is authorized to monitor the construction and
9 operation of the Project to ensure that the terms
10 and conditions of the Alteration of Terrain
11 permit are met. The Department of Environmental
12 Services retains the authority to enforce the
13 conditions of the Alteration of Terrain permit,
14 see RSA 162-H:12, IV; however, any action to
15 enforce the provisions of the Certificate of Site
16 and Facility must be brought before the
17 Committee. DES is authorized to specify the use
18 of any appropriate technique, methodology,
19 practice or procedure approved by the
20 Subcommittee within the certificate, as may be
21 necessary to effectuate conditions of the
22 certificate and the conditions of the Alteration
23 of Terrain permit."

24 So, Madam Chair, do I now go through

1 all 18 conditions?

2 CHAIRWOMAN MARTIN: I don't think that
3 you necessarily need to. I would ask the
4 Committee if they have reviewed the conditions
5 contained in the AoT permit? If you can just all
6 confirm that?

7 *[Multiple Committee members indicating*
8 *in the affirmative.]*

9 CHAIRWOMAN MARTIN: Yes. It looks like
10 everyone has reviewed them.

11 And, certainly, if any Committee member
12 has conditions they would like to talk about, now
13 would be a really good time to bring that up.
14 And, so, I'll leave that to you, Mr. Pelletier.

15 But I don't think you need to go
16 through each and every one, unless Attorney
17 Iacopino disagrees with me.

18 MR. PELLETIER: Okay. And I think --
19 and I think, Madam Chair, you highlighted the
20 main ones of concern. Although, we did have an
21 additional condition that we requested, that "the
22 conservation easements addressed in the MOU
23 between the Applicant and the Town of Fitzwilliam
24 shall specify" -- "shall" -- it's easy for me to

1 say -- "specifically provide that the purpose of
2 the conservation easement is to conserve and
3 protect habitat for the public."

4 So, with that being said, that would be
5 the end of my testimony.

6 CHAIRWOMAN MARTIN: Okay.

7 MR. IACOPINO: Madam Chair, just one,
8 one clarification. I believe that DES has
9 requested that "the conservation easement be to
10 conserve and protect habitat for wildlife."

11 MR. PELLETIER: Yes. You're correct.

12 CHAIRWOMAN MARTIN: Okay. Thank you
13 for that clarification.

14 Do any Committee members want to talk
15 about either the conditions in the AoT permit or
16 either of these additional conditions that
17 Mr. Pelletier just walked through for us?

18 *[Multiple Committee members indicating*
19 *in the negative.]*

20 CHAIRWOMAN MARTIN: Okay. Any
21 discussion on water quality in general, concerns
22 there?

23 *[Multiple Committee members indicating*
24 *in the negative.]*

1 CHAIRWOMAN MARTIN: All right. I don't
2 see any concerns from the Committee related to
3 this.

4 And, so, why don't we take a poll, on
5 the question of the Committee determining that
6 the Project will not have an unreasonable adverse
7 effect on water quality?

8 Mr. Wilson?

9 DIR. WILSON: I agree.

10 CHAIRWOMAN MARTIN: Mr. Oldenburg?

11 MR. OLDENBURG: I agree.

12 CHAIRWOMAN MARTIN: Mr. Pelletier?

13 MR. PELLETIER: I agree.

14 CHAIRWOMAN MARTIN: Ms. Duprey?

15 MS. DUPREY: I agree.

16 CHAIRWOMAN MARTIN: Mr. Eaton?

17 MR. EATON: I agree.

18 CHAIRWOMAN MARTIN: Mr. Arvelo?

19 DIR. ARVELO: I agree.

20 CHAIRWOMAN MARTIN: And I also agree.

21 Anything more on that, Mr. Iacopino, before we
22 move on?

23 MR. IACOPINO: Did you want to take a
24 poll on whether the conditions should be applied?

1 CHAIRWOMAN MARTIN: We can definitely
2 do that.

3 Let's poll the Committee as to
4 including the conditions contained in the permit,
5 as well as the two additional conditions that
6 Mr. Pelletier read for us. So, including those.

7 Mr. Wilson, do you agree?

8 DIR. WILSON: I agree.

9 CHAIRWOMAN MARTIN: Mr. Oldenburg?

10 MR. OLDENBURG: I agree.

11 CHAIRWOMAN MARTIN: Mr. Pelletier?

12 MR. PELLETIER: I agree.

13 CHAIRWOMAN MARTIN: Ms. Duprey?

14 MS. DUPREY: I agree.

15 CHAIRWOMAN MARTIN: Mr. Eaton?

16 MR. EATON: I agree.

17 CHAIRWOMAN MARTIN: Mr. Arvelo?

18 DIR. ARVELO: I agree.

19 CHAIRWOMAN MARTIN: And I also agree.

20 So, that's unanimous as well.

21 And let's see what we have next.

22 Natural environment, by Mr. Oldenburg.

23 MR. OLDENBURG: Thank you, Madam

24 Chairman.

1 Per RSA 162-H:16, IV, Section (c),
2 before the Subcommittee can issue a certificate,
3 we must determine whether the Project will have
4 an unreasonable adverse effect on the natural
5 environment. Per our rules, Site 301.14(e)
6 requires the Subcommittee to consider the
7 following in our assessment of the impact on the
8 natural environment: In determining whether the
9 construction and operation of a project will have
10 an unreasonable adverse effect on the natural
11 environment, including wildlife species, rare
12 plants, rare natural communities, and other
13 exemplary natural communities, the Committee
14 shall consider: (1) The significance of the
15 affected resident and migratory fish and wildlife
16 species, rare plants, rare natural communities,
17 and other exemplary natural communities,
18 including the size, prevalence, dispersal,
19 migration, and viability of the populations in or
20 using the area; (2) The nature, extent, and
21 duration of the potential effects on the affected
22 resident and migratory fish and wildlife species,
23 rare plants, rare natural communities, and other
24 exemplary natural communities; (3) The nature,

1 extent, and duration of the potential
2 fragmentation or other alteration of terrestrial
3 or aquatic significant habitat resources or
4 mitigation corridors; (4) The analyses and
5 recommendations, if any, of the Department of
6 Fish & Game, the Natural Heritage Bureau, the
7 United States Fish & Wildlife Service, and other
8 agencies authorized to identify and manage
9 significant wildlife species, rare plants, rare
10 natural communities, and other exemplary natural
11 communities; (5) The effectiveness of measures
12 undertaken or planned to avoid, minimize, or
13 mitigate potential adverse effects on the
14 affected wildlife species, rare plants, rare
15 natural communities, and other exemplary natural
16 communities, and the extent to which such
17 measures represent best practical measures; (6)
18 The effectiveness of measures undertaken or
19 planned to avoid, minimized, or mitigate
20 potential adverse effects on terrestrial or
21 aquatic significant habitat resources, and the
22 extent to which such measures represent best
23 practical measures; and number (7) Whether
24 conditions should be included in the certificate

1 for post-construction monitoring and reporting
2 for adaptive management to address potential
3 adverse effects that cannot reliably be predicted
4 at the time of Application.

5 For the record: The impacts on the
6 Project on the natural environment are explained
7 in the Application at Pages 56 through 64. The
8 Relevant Exhibits: Almost all of the exhibits
9 pertaining to water quality and the AoT permit in
10 the table above that Mr. Pelletier just went
11 through also apply to the consideration of
12 whether the Project will have an unreasonable
13 adverse effect on the natural environment,
14 including wildlife species, rare plants, rare
15 natural communities, and other exemplary natural
16 communities.

17 The following contains only those
18 exhibits not already referenced: So, Applicant's
19 Exhibit Number 5, Number 40, Number 41, 42, 43,
20 44, 45, 53, 70, 95, Counsel for the Public's
21 Exhibit Number 1 and Counsel for the Public's
22 Exhibit Number 2. And I've also added
23 Applicant's Exhibit 67, the MOU with the Town of
24 Fitzwilliam, as it pertains to Section X,

1 Paragraph A and B, concerning the conservation
2 easement on the non-Project and Project-related
3 lands.

4 So, Positions of the Parties: The
5 Applicant argues that the Project as presented
6 proposed along with the AoT permit conditions
7 will not unreasonably and adversely affect the
8 natural environment. The Applicant relies on its
9 own and Counsel for the Public's expert witnesses
10 for the proposition that the Project will not
11 adversely impact moose wintering areas, wildlife
12 corridors, streams, vernal pools, wetlands, five
13 species of bats, and the endangered and
14 threatened Blanding's and wood turtle. The
15 Applicant also argues that it has agreed to
16 change the access road to the southern array to
17 preserve more wetland buffer and that it has
18 agreed to a condition that prohibits logging
19 activities between November and March, in order
20 to avoid impacts to the little brown bat species.

21 The Applicant claims that neither the
22 Natural Heritage Bureau nor its own field studies
23 demonstrate the existence of rare plant species
24 and that the Project would not have an impact on

1 exemplary natural communities. The Applicant
2 states that the heavily logged condition of the
3 site will over time become habitat for various
4 species of plants and animals, as most of the
5 site will be subject to conservation easement
6 that will permit forest growth and provide
7 additional deer wintering areas, and other
8 habitat for wildlife.

9 Overall, the Applicant claims that
10 there is net benefit for wildlife and plant life
11 as a result of the Project and its adjacent
12 conservation areas.

13 Counsel for the Public acknowledges
14 that the testimony and evidence largely support
15 claims of minimal impact to the environment.
16 However, she recommends a number of conditions,
17 which are set out as follows: Turtles and other
18 wildlife and plants: This is, basically, the
19 same condition that the Chairwoman had read in
20 concerning the Fish & Game's conditions in their
21 report. The Fish & Game -- or, New Hampshire
22 Fish & Game is authorized to monitor the
23 Applicant's methods and actions relating to the
24 protection of rare, threatened, and endangered

1 species and species of special concern, rare and
2 endangered exemplary communities during the
3 construction and operation of the Project,
4 including all laydown and staging areas. New
5 Hampshire Fish & Game is authorized to specify
6 the use of any appropriate technique,
7 methodology, practice or procedure approved by
8 the Subcommittee within the certificate, as may
9 be necessary to effectuate conditions of the
10 certificate addressing the protection of wildlife
11 and rare and exemplary communities. The
12 Applicant shall show representatives of the New
13 Hampshire Fish & Game on the premises for the
14 purposes -- I'm sorry -- the Applicant shall
15 allow representatives of New Hampshire Fish &
16 Game on the premises for the purpose of
17 inspection and consultation as the New Hampshire
18 Fish & Game deems necessary. New Hampshire Fish
19 & Game may modify the plans to protect Blanding's
20 turtle and wood turtles, including, but not
21 limited to, any modifications to fencing, turtle
22 ramps, and inspections deemed appropriate. And
23 any action to enforce these conditions must be
24 brought before the Committee.

1 And I think, as Attorney Iacopino had
2 pointed out, this is a similar condition that was
3 used in the Antrim Wind proceeding where the wood
4 turtle protection was an issue.

5 Another proposed condition was Bat
6 Protection: The tree removal should be limited
7 to non-active bat season of November through
8 March. And I believe that the Applicant has
9 agreed to that and was part of their -- the
10 record.

11 Bat protection: The Applicant should
12 be required to prepare a rock feature monitoring
13 plan, as testified to by Dr. Reynolds, to be
14 included in any construction or blasting plan.
15 Such a plan, which would ensure inspections occur
16 of any rock features before modification, during
17 the active bat season of May 15th through August
18 15th. That was proposed by the Counsel for the
19 Public, and I believe the Applicant objects to
20 that condition.

21 Deer Wintering: Requiring a qualified
22 environmental monitor to inspect for deer
23 wintering areas before the construction in an
24 attempt to minimize the impact on deer wintering

1 yards. Alternatively, construction activities
2 would be prohibited between December 15th and
3 March 15th. It is worth noting that Mr. Parsons
4 testified that timber harvesting would not need
5 to be limited to protect the deer wintering
6 yards.

7 So, that's a summary and a recap of the
8 natural environment impacts. And, if we grant a
9 certificate, these are the various conditions
10 that the Committee may want to consider.

11 I feel as though it's -- I think we're
12 in a position, with regards to the record, of
13 recognizing that the Project does not appear to
14 have an adverse impact on the various plant
15 communities and any exemplary communities. And I
16 think we're in a position, with regard to the
17 record, of recognizing that the Project would not
18 have an adverse impact to the wildlife species,
19 as long as the above stated conditions were
20 imposed.

21 I would also point out that, as was
22 just stated by Mr. Pelletier, the DES AoT permit
23 additional condition request that was just
24 approved created a conservation easement as part

1 of the MOU between the Applicant and the Town of
2 Fitzwilliam that specifies that the purpose of
3 the conservation easement is to conserve and
4 protect habitat for wildlife. And that's the
5 Applicant's Exhibit 92, which I would think would
6 be a good thing for the natural environment.

7 So, I'll open it up to any comments or
8 questions.

9 Madam Chairwoman, do you want me to go
10 through each of the seven conditions?

11 CHAIRWOMAN MARTIN: Let's see what the
12 Committee members' questions are. If you'd like
13 to recognize them, that's fine with me. Go
14 ahead.

15 MR. OLDENBURG: Mr. Arvelo, I see your
16 hand up.

17 DIR. ARVELO: Yes. Thank you,
18 Mr. Oldenburg. I just had a question on the deer
19 wintering proposed condition, because it seems to
20 offer two things. To have a monitor inspect deer
21 wintering areas before construction, and then the
22 alternative would be to not have construction
23 happen between December 15 and March 15. So, I
24 think, as a Committee, we have to decide on one

1 or the other. That's the way I'm understanding
2 it.

3 MR. OLDENBURG: I agree. I believe
4 you're correct.

5 Yes. Ms. Duprey.

6 MS. DUPREY: I was unpersuaded by
7 Counsel for the Public's expert on the deer
8 wintering. And I'm opposed to any conditions
9 regarding it.

10 Thank you.

11 MR. OLDENBURG: I think the first part,
12 "Require a qualified environmental monitor to
13 inspect for deer wintering areas before
14 construction", if my memory serves me right,
15 someone was supposed to go in prior to
16 construction or tree clearing and check for deer
17 wintering areas. I was unsure what you would do
18 if you found some.

19 MS. DUPREY: Exactly.

20 MR. OLDENBURG: And, so -- and
21 prohibiting the construction activities between
22 December 15th and March 15th, that didn't include
23 timber harvesting, which, to me, would be the
24 most disruptive of the deer wintering yard is

1 cutting all the trees down.

2 So, I sort of agree with Ms. Duprey. I
3 was unpersuaded by the argument myself.

4 CHAIRWOMAN MARTIN: Mr. Oldenburg?

5 MR. OLDENBURG: Yes.

6 CHAIRWOMAN MARTIN: I just wanted to
7 weigh in that I agree with both you and
8 Ms. Duprey. That the way the first option is
9 written, it's not clear to me what would be
10 required if that were discovered.

11 So, to the extent the Committee is
12 concerned about deer wintering yards, I think it
13 would have to modify that language to address the
14 concern. I don't think, as written, it would
15 provide for any actual action to occur with
16 regard to it.

17 MR. OLDENBURG: And, by the sound of
18 it, at least my understanding was, once they
19 start clearing the trees --

20 *[Court reporter interruption.]*

21 MR. OLDENBURG: Sorry, Steve. And my
22 memory was that, once they started tree
23 harvesting, the deer would go somewhere else.
24 So, I'm not sure what condition you would impose

1 on the Applicant to, you know, to minimize the
2 impact on the deer population, if they're just
3 going to go away and go somewhere else.

4 CHAIRWOMAN MARTIN: Shall we poll
5 the -- oh, Mr. Wilson, I'm sorry, I don't want to
6 cut anyone off. So, go ahead. Or, Mr. Arvelo,
7 you had your hand up.

8 DIR. ARVELO: Who's going?

9 CHAIRWOMAN MARTIN: Mr. Wilson, are you
10 satisfied? Do you want to add anything?

11 DIR. WILSON: No. I'm all set.

12 CHAIRWOMAN MARTIN: Okay. Mr. Arvelo,
13 then it's you.

14 DIR. ARVELO: Yes. I just recall from
15 the testimony that the forested areas were in the
16 northern part of the parcel, which there was a
17 question as to whether that was going to be
18 impacted by the Project.

19 But, given that large portions of the
20 parcel are -- have been harvested -- have been
21 harvested for timber, that there are no laydown
22 areas for deer in those specific areas. So,
23 there's a question in my mind as to really where
24 there are laydown areas or yards for deer

1 wintering. And, so, that's not been really
2 clarified in the record by the experts, except to
3 say there may be in the northern part of the
4 Project area, there may be because of significant
5 forest cover.

6 So, I kind of would agree with
7 Ms. Duprey and the others that there's not enough
8 there to move that condition forward.

9 CHAIRWOMAN MARTIN: Okay. Well, then I
10 think we've heard from Mr. Oldenburg, Ms. Duprey,
11 myself, and Mr. Arvelo. Mr. Wilson, did you take
12 a position one way or the other?

13 DIR. WILSON: I'm in agreement with the
14 Committee members. I certainly second
15 Ms. Duprey's first original statement.

16 CHAIRWOMAN MARTIN: Okay.
17 Mr. Pelletier, we're talking about whether or not
18 a condition should be included related to deer
19 wintering?

20 MR. PELLETIER: Yes. And I would agree
21 with Mr. Oldenburg and Ms. Duprey that I'm not
22 sure of that condition. I kind of felt the same
23 way. I wasn't convinced of the argument. So, I
24 would say there's -- I didn't see the need.

1 CHAIRWOMAN MARTIN: Okay. That leaves
2 Mr. Eaton?

3 MR. EATON: I agree with the other
4 Committee members.

5 CHAIRWOMAN MARTIN: Okay. Excellent.
6 So, Attorney Iacopino, we would exclude that
7 condition entirely.

8 All right. Back to Mr. Oldenburg.

9 MR. OLDENBURG: So, the next one that
10 was sort of addressing is the bat protection
11 concerning the rock feature monitoring plan.
12 That was sort of something that Dr. Reynolds
13 brought up mid testimony, concerning certain, I
14 mean, call them "piles of rocks" that could be
15 considered bat habitat, bat roosting areas, and
16 the concern whether or not the construction or
17 the movement of those rocks could, you know,
18 destroy the bats that live in the crevices. So,
19 the question was whether or not there should be a
20 protection plan, which I understood to be sort of
21 a prohibition of disturbing those rock piles that
22 were found to contain bats, and that would
23 preclude blasting in the area. I'm not sure how
24 much of an area, that was never specified.

1 But, if it was just disturbance of
2 those piles of rocks, I didn't think that the
3 Applicant would lose very many racks of solar
4 panels, if it was just avoiding a few piles of
5 those rocks, because the piles weren't that
6 large, at least in the pictures that they showed,
7 and I think that Mr. Parsons testified to, you
8 know, in and around twenty feet in diameter pile
9 of rocks.

10 So, I guess I wouldn't be opposed to
11 having that as a condition. I'm just not sure,
12 because I don't think it would be an undue
13 hardship on the Applicant, but I think we'd have
14 to figure out exactly what this monitoring plan
15 would entail.

16 Ms. Duprey.

17 MS. DUPREY: I oppose this condition.
18 Again, I wasn't persuaded that it was necessary.
19 I don't think that the condition specifies the
20 action that we're supposed to take and what the
21 parameters are, leaving a lot to still be
22 determined by nonexperts. Nobody in this state
23 seemed to be sufficiently concerned about it that
24 they required some action. And, so, I'm opposed

1 to it.

2 Thank you.

3 MR. OLDENBURG: Yes. Mr. Arvelo.

4 You're muted?

5 DIR. ARVELO: Yes. I mean, I heard and
6 read enough testimony that convinces me that
7 there are potentially threatened species of bats
8 living in the area. That I don't think, in terms
9 of the rock piles/rock walls, I don't recall any
10 discussion about those being in the immediate
11 Project area or that would interfere with the
12 Project. And, so, I don't see it as a
13 significant burden on the Project owners to find
14 some way of doing some monitoring of these rock
15 piles or rock surfaces.

16 And, you know, it's a little bit
17 different from the deer wintering yards, as we
18 know, we have an abundance of deer in the state.
19 But we know that bats are threatened for a
20 variety of reasons.

21 And, so, I differ on this one. I think
22 that I would support this particular condition.
23 I do agree that it has to be figured out what it
24 is that they would be required to do beyond

1 monitoring. But just not disturbing those areas,
2 if there are bats there, is certainly one would
3 be beneficial to bats.

4 CHAIRWOMAN MARTIN: You're on mute.
5 So, I'll recognize myself.

6 I actually was more in line with
7 Mr. Arvelo on this one. I heard testimony about
8 threatened species of bats that, in this area,
9 which seemed to be unusual, existed in the area.
10 And, so, I thought it warranted some protection.

11 And, as Mr. Oldenburg said, this didn't
12 sound all that cumbersome to monitor for rock
13 features that could potentially have those bats
14 in them. And, so, I would be in favor of
15 including a condition that requires a rock
16 feature monitoring plan that has inspections
17 prior to constructing and blasting is allowed to
18 go forward.

19 MR. OLDENBURG: So, I guess, if we did
20 impose this condition, and I don't know if this
21 is like more of a question to Mr. Iacopino, is
22 could we put the onus on the Applicant to come up
23 with a rock feature monitoring plan that's then
24 approved by the Committee?

1 MR. IACOPINO: In the past, not
2 necessarily with respect to this precise issue,
3 the Committee has issued conditions that an
4 applicant create a plan, in consultation with a
5 relevant state agency, to be submitted to the
6 Committee. And, in doing that, has -- and I
7 would have to check to see if it's actually
8 required, a subsequent approval meeting of an
9 individual plan like that, or if it was just
10 satisfactory to the state agency.

11 But, in this case, it seems to me, and
12 you all are the deciders though, that it would be
13 Fish & Game who have the bat experts. And, so
14 that, if you were inclined to do that, you would
15 issue a condition that went along the lines of
16 that "the Applicant shall consult with New
17 Hampshire Fish & Game to create a rock feature
18 monitoring program to be incorporated into its
19 blasting protocol. And shall submit a copy of
20 that plan to the Committee when it's completed."

21 If you were going to do that, that's
22 what I would recommend that you do, do it in that
23 fashion, and with that agency.

24 MR. OLDENBURG: All right. Mr. Wilson.

1 DIR. WILSON: I would agree with
2 Counsel Iacopino. I would expect that Fish &
3 Game probably has boilerplate, like most agencies
4 do, with certain issues like this. Bats are a
5 hot topic. So, I'm assuming it wouldn't be real
6 heavy lifting for either the Applicant or Fish &
7 Game to come up with that.

8 So, I would also go along with that
9 condition.

10 MR. OLDENBURG: Mr. Arvelo.

11 DIR. ARVELO: I would only add that,
12 and I'm just wondering, really does that need to
13 come back to the Committee or whether we leave it
14 with, in this case, Fish & Game, and let them
15 monitor and work? And does it really need to
16 come back to the Committee, is the question I
17 have?

18 MR. OLDENBURG: Chairwoman.

19 CHAIRWOMAN MARTIN: I would --

20 MR. IACOPINO: I believe it's up to you
21 all as a Committee.

22 CHAIRWOMAN MARTIN: I would favor
23 having it filed with the Committee. But I think
24 Attorney Iacopino's suggestion was not that it

1 require additional approval. I think it would be
2 good to have on file what ultimately is the plan.

3 MR. OLDENBURG: And I guess my two
4 cents would be is, as long as Fish & Game is okay
5 with it, who are we to question what's in the
6 plan, and whether it's appropriate or not? So,
7 I'd say I would agree, as long as Fish & Game is
8 okay with it.

9 So, do we want to move on? The big one
10 is the "Turtles and other wildlife and plants".
11 The New Hampshire Fish & Game --

12 CHAIRWOMAN MARTIN: Mr. Oldenburg,
13 before you do that, let's just get clarity on
14 this condition, because we did have some debate
15 over it, and poll the Committee members as to
16 whether they would include the condition as
17 modified and stated by Attorney Iacopino.

18 Mr. Wilson?

19 DIR. WILSON: I would agree to the
20 condition as wordsmithed by Counsel Iacopino.

21 CHAIRWOMAN MARTIN: Mr. Oldenburg?

22 MR. OLDENBURG: I would agree with
23 that.

24 CHAIRWOMAN MARTIN: Mr. Pelletier?

1 MR. PELLETIER: Yes, I would agree with
2 that. It doesn't appear that that kind of
3 structure of a plan would be a heavy lift. So, I
4 would feel comfortable with that condition.

5 CHAIRWOMAN MARTIN: Ms. Duprey?

6 MS. DUPREY: I'm opposed to the
7 condition.

8 CHAIRWOMAN MARTIN: Mr. Eaton?

9 MR. EATON: I'm opposed to the
10 condition.

11 CHAIRWOMAN MARTIN: Mr. Arvelo?

12 DIR. ARVELO: I support the condition,
13 with your stipulation that it would be filed with
14 the SEC, with the Committee.

15 CHAIRWOMAN MARTIN: Okay. And I would
16 agree to this condition as well.

17 So, it's not unanimous, but the
18 condition would be included.

19 Do we need anything else on that,
20 Attorney Iacopino?

21 MR. IACOPINO: No. I think I
22 understand what the Committee has done. Thank
23 you.

24 CHAIRWOMAN MARTIN: Okay. And, so,

1 it's back to you, Mr. Oldenburg.

2 MR. OLDENBURG: Before we go on to the
3 turtles and the Fish & Game, I just wanted to, to
4 the other bat protection, concerning the "tree
5 removal should be limited to the non-active bat
6 season of November through March." And I think
7 everyone is in agreement, that was actually part
8 of the Applicant's record and recommendations.

9 So, while it's a condition, I think
10 they were willing to meet that condition. So, I
11 don't know if there's any discussion on that?

12 *[Multiple Committee members indicating*
13 *in the negative.]*

14 MR. OLDENBURG: Okay. A lot of heads
15 shaking "no".

16 So, back up to the "Turtles and the
17 wildlife and plants", the Fish & Game being the
18 monitor of the Applicant's methods and actions.
19 And I know this was brought up as part of their
20 letter.

21 I know Mr. Arvelo had a question about
22 "how they do that as a non-permitting agency?"
23 So, I don't know if you want to restate your
24 question or open that up for discussion?

1 DIR. ARVELO: Yes. You know, my
2 concern was, if New Hampshire Fish & Game does
3 not have permitting authority and is acting in a
4 consultative manner, whether they can just come
5 on and, you know, walk onto a property whenever
6 they want to or need to and do monitoring?

7 But I believe that there was some prior
8 discussion on that already. So, I'm perfectly
9 satisfied.

10 MR. OLDENBURG: I think it was Mr.
11 Iacopino who mentioned that we can give the Fish
12 & Game that authority.

13 DIR. ARVELO: Right. And that makes
14 sense to me.

15 MR. OLDENBURG: So, this, I mean, the
16 crux of this dealt with the requirements, the
17 environmental requirements for the turtles, the
18 fencing, the turtle ramps, and the environmental
19 monitors that would be required prior to
20 construction each morning checking for turtles in
21 the work zone. And Fish & Game having, you know,
22 being the referee or the monitor of the monitors.

23 So, anybody have any questions or
24 comments concerning this condition?

1 Ms. Duprey.

2 MS. DUPREY: I just wondered where this
3 condition came from?

4 MR. OLDENBURG: It was right out of the
5 letter from Fish & Game.

6 MS. DUPREY: Okay. It came from Fish &
7 Game?

8 MR. OLDENBURG: To us. That's correct.

9 MS. DUPREY: Okay. Sorry. Okay.
10 Thank you.

11 MR. IACOPINO: No, no. Just to
12 clarify, I do not believe that the condition came
13 from Fish & Game itself. Those items mentioned
14 in there, the ramps and those things, are from
15 what the Applicant has agreed to do.

16 The condition itself was one that had
17 been used previously in the Antrim Wind
18 proceeding. And what it does is it just simply
19 gives the Fish & Game the ability to monitor, to
20 make sure that they do what they say they are
21 going to do.

22 And I suggested this to -- only because
23 we don't have an administrator right now who can
24 go out and do that. So, it made sense that Fish

1 & Game would be the person who would -- or, the
2 agency that would have the authority to make sure
3 they're doing what they're supposed to do with
4 respect to these conditions.

5 MS. DUPREY: And the Applicant --

6 MR. IACOPINO: And the statute permits
7 the Committee to delegate this type of authority
8 either to the administrator or a state agency.

9 MS. DUPREY: Okay. And the Applicant
10 and Counsel for the Public are in agreement with
11 this?

12 MR. IACOPINO: I'm sorry. I don't
13 think it's ever been presented to them as a
14 condition, so to speak. I mean, they are -- the
15 Applicant has a plan for dealing with these
16 things. But whether or not Fish & Game would
17 monitor it, I don't believe was ever addressed by
18 either one of them.

19 MS. DUPREY: Okay.

20 MR. IACOPINO: By either the Applicant
21 or Counsel for the Public.

22 MR. OLDENBURG: And where I said "this
23 came from Fish & Game", my understanding was,
24 through testimony of the Applicant's expert

1 witness that the silt fence and the ramps and all
2 of the monitoring of the turtles in the work zone
3 was included in their plan, based upon
4 conversations and discussions with Fish & Game.
5 So, I didn't mean to preclude that this was part
6 of that, but -- yes, Madam Chairwoman.

7 CHAIRWOMAN MARTIN: I think inclusion
8 of this condition makes a lot of sense, for
9 exactly the reasons Attorney Iacopino mentioned.
10 Because there are agreements to do certain
11 things, but this will enable us to make sure
12 those happen under the current circumstances.

13 MR. OLDENBURG: And Mr. Arvelo.

14 DIR. ARVELO: This is probably more a
15 question for Attorney Iacopino.

16 Because this has already been done at
17 Antrim Wind, do we have any sense of success,
18 burden, you know, kind of success overall or
19 burden that it's placed on owners?

20 MR. IACOPINO: Antrim Wind was a very
21 difficult docket for the developer, and still is.
22 There are still issues that are outstanding in
23 Antrim Wind.

24 But this particular issue, at least in

1 my recollection, was never -- the issue of
2 wildlife and this particular condition has not
3 been -- has not been part of those troubles.

4 And the Antrim Wind Project
5 construction is complete. The troubles that they
6 are having there deal with noise and shadow
7 flicker from -- because it's a windmill project,
8 from the turbines.

9 DIR. ARVELO: Okay. Thank you.

10 MR. OLDENBURG: Any other questions?

11 *[No verbal response.]*

12 MR. OLDENBURG: Do we want to take a
13 poll on "yes" or "no" to the Fish & Game
14 monitoring?

15 CHAIRWOMAN MARTIN: I think that's a
16 great idea.

17 MR. OLDENBURG: You want me to do that?

18 CHAIRWOMAN MARTIN: Go right ahead.

19 MR. OLDENBURG: Okay. Mr. Wilson?

20 DIR. WILSON: I agree to the condition.

21 MR. OLDENBURG: Let's see.

22 Mr. Pelletier?

23 MR. PELLETIER: I agree with the
24 condition.

1 MR. OLDENBURG: Ms. Duprey?

2 MS. DUPREY: I agree.

3 MR. OLDENBURG: Mr. Eaton?

4 MR. EATON: I agree.

5 MR. OLDENBURG: And Mr. Arvelo?

6 DIR. ARVELO: I agree.

7 MR. OLDENBURG: And Chairwoman Martin?

8 CHAIRWOMAN MARTIN: I agree.

9 MR. OLDENBURG: Thank you. I feel like
10 I'm --

11 CHAIRWOMAN MARTIN: I assume you agree,
12 Mr. Oldenburg?

13 MR. OLDENBURG: Oh. Yes, I do agree.

14 CHAIRWOMAN MARTIN: Okay. Good.

15 MR. OLDENBURG: Feels like playing
16 Hollywood Squares trying to find people.

17 CHAIRWOMAN MARTIN: Very good.

18 MR. OLDENBURG: So, with that, do we
19 want to go through each of the conditions to see
20 if we satisfied that? Each one of the seven
21 conditions?

22 CHAIRWOMAN MARTIN: I think we're
23 required to consider those. So, only to the
24 extent we haven't considered them, I think we

1 would need to spend more time on them.

2 MR. OLDENBURG: Okay. So, is that a
3 "yes", I should go through each one, and at least
4 ask the question, or "no"?

5 CHAIRWOMAN MARTIN: Let me just look
6 and see what we covered.

7 I guess it looks like some of them we
8 haven't necessarily considered. So, if you want
9 to quickly walk through.

10 MR. OLDENBURG: Okay. So, determining
11 whether or not the Project "will have an
12 unreasonable adverse effect on the natural
13 environment: (1) The significance of the
14 affected resident and migratory fish and wildlife
15 species, rare plants, rare natural communities,
16 and other exemplary natural communities,
17 including the size, prevalence, dispersal,
18 migration, and viability of the populations in or
19 using the area."

20 CHAIRWOMAN MARTIN: I think, with the
21 conditions we have discussed, I am comfortable.

22 MR. OLDENBURG: Okay. Do we need a
23 straw poll on each one or are nodding heads
24 okay?

1 CHAIRWOMAN MARTIN: I think it would be
2 fair to say that the Committee is comfortable
3 that we have considered all of these. And, with
4 the conditions that we've agreed to, we are
5 comfortable that the Project will not have an
6 unreasonable adverse effect on the natural
7 environment.

8 Does any committee members think we
9 need to go through any of the specific
10 considerations in any greater detail?

11 *[Multiple Committee members indicating*
12 *in the negative.]*

13 CHAIRWOMAN MARTIN: Okay. Then, let's
14 take a poll on what I just said, which is that
15 the Committee can find, with the adoption of the
16 two bat protection conditions, the turtle and
17 other wildlife and plant condition, as well as
18 the conditions contained in the AoT permit, that
19 the Project will not have an unreasonable adverse
20 effect on the natural environment.

21 Mr. Wilson?

22 DIR. WILSON: I would agree.

23 CHAIRWOMAN MARTIN: Mr. Oldenburg?

24 MR. OLDENBURG: I agree.

1 CHAIRWOMAN MARTIN: Mr. Pelletier?

2 MR. PELLETIER: I agree.

3 CHAIRWOMAN MARTIN: Ms. Duprey?

4 MS. DUPREY: I agree.

5 CHAIRWOMAN MARTIN: And Mr. Eaton?

6 MR. EATON: I would agree.

7 CHAIRWOMAN MARTIN: Okay. Mr. Arvelo?

8 DIR. ARVELO: I agree.

9 CHAIRWOMAN MARTIN: Thank you. And I
10 also agree.

11 Attorney Iacopino, anything further on
12 that section?

13 MR. IACOPINO: No, Madam Chair. I
14 believe you've covered everything that needs to
15 be covered, and have given me sufficient
16 information for which to write your decision.

17 CHAIRWOMAN MARTIN: Okay. Excellent.

18 So, it looks like, Mr. Oldenburg, you
19 will continue under "Public Health and Safety".

20 MR. OLDENBURG: So, this is concerning
21 the decommissioning requirements: Before the
22 Subcommittee can issue a certificate, it must
23 determine whether the Project will have an
24 unreasonable adverse effect on public health and

1 safety. It's RSA 162-H:16, IV, Section (c). Per
2 Site 301.14(f), it requires the Subcommittee to
3 consider the following in its assessment of the
4 impact on the public health and safety concerning
5 the decommissioning plan. Site 301.08 requires
6 solar energy Applicants to submit the following:
7 In Section (2), or Paragraph (2), "A facility
8 decommissioning plan prepared by an independent,
9 qualified person with demonstrated knowledge and
10 experience in similar energy facility projects
11 and cost estimates; the decommissioning plan
12 shall include each of the following: (a) A
13 description of sufficient and secure funding to
14 implement the plan, which shall not account for
15 any anticipated salvage value of facility
16 components or materials; (b) The provision of
17 financial assurance in the form of an irrevocable
18 standby letter of credit, performance bond" --

19 CHAIRWOMAN MARTIN: Mr. Arvelo, sorry
20 for interrupting, Mr. Oldenburg, could you please
21 mute? Thank you.

22 MR. OLDENBURG: I'll start over at (b).

23 "The provision of a financial assurance
24 in the form of an irrevocable standby letter of

1 credit, performance bond, surety bond, or
2 unconditional payment guaranty executed by a
3 parent company of the facility owner maintaining
4 at all times an investment grade credit rating.

5 (c) All transformers shall be transported
6 off-site; and (d) All underground infrastructure
7 at depths less than four feet below grade shall
8 be removed from the site and all underground
9 infrastructure at depths greater than four feet
10 below finished grade shall be abandoned in
11 place."

12 For the record, Pages 64 through 68 of
13 the Application address public health and
14 safety. The relevant exhibits concerning
15 decommissioning were Applicant's Exhibit 3, 48,
16 69, 93, 94, 97, and I also added in Applicant's
17 Exhibit 67, which is the Town -- the MOU with the
18 Town of Fitzwilliam, specifically Page 7, Section
19 C [VI?], Paragraph B and C, concerning the
20 decommissioning.

21 The Applicant did appear to satisfy the
22 requirements of Site 301.08(2)(a), (b), and (c).
23 And the Applicant has -- is seeking a waiver of
24 Site 301.08(2)(d), requiring "all underground

1 infrastructure at depths less than four feet
2 below grade [to] be removed from the site" during
3 decommissioning. The Applicant claims the
4 National Electric Code requires conductors to be
5 installed at a minimum of 36 inches below grade,
6 to be compliant with the rule would cause
7 significant ground disturbance upon
8 decommissioning. Chinook requests that only
9 cables installed at three foot in depth or less
10 and any equipment that is located underground at
11 depths of three feet or less be removed during
12 decommissioning.

13 The second part of the waiver requests
14 or seeks permission to allow the solar racking
15 piles concreted into the rock to be cut off at
16 the interface to the concrete in lieu of removing
17 the pile to a depth of three feet. The Applicant
18 argues and points out that the remaining
19 infrastructure is in inert and consists of
20 standard building materials. And removal would
21 cause significant disturbance.

22 Counsel for the Public did not take a
23 position on the request.

24 So, I'll open this up to discussion.

1 In my initial concern of the waiver, when I asked
2 questions of the Applicant, it dealt with my
3 feeling that the Applicant was trying to lessen
4 their financial responsibility by not removing
5 the conduit. I also had a concern about the
6 environmental impacts, if any, leaving the
7 material in the ground and what that might have.

8 The Applicant has satisfied by concern
9 regarding leaving the materials in the ground,
10 because they were basically stated as being
11 "inert". So, I don't they will have an
12 environmental effect.

13 The Applicant did, in their initial
14 bonding, which was a little over \$900,000
15 decommissioning, that included having this waiver
16 granted. We asked the Applicant to basically let
17 us know, determine what the bond requirement
18 would be, if they had to meet the requirement and
19 the waiver was not granted. That was 1.25 or
20 .235 (1.235) million dollars. So, the bond
21 difference would be about \$300,000.

22 One of my concerns was leaving that
23 responsibility of removal to a future landowner.
24 Upon reading the MOU between the Applicant and

1 the Town of Fitzwilliam, it's my understanding
2 that the land, if this Project ceased to be a
3 solar project and didn't continue and was
4 decommissioned, that the land would be placed in
5 conservation. And, so, the conduits would not
6 have to be removed in the future by a future
7 landowner. That would be in conservation. And
8 the Town, also in the MOU, had no concern with
9 the waiver requests, or sort of moot on the
10 subject.

11 So, given that, I'll begin the
12 discussion. I would recommend granting the
13 waiver as requested by the Applicant.

14 If the waiver is not granted, I would
15 recommend increasing the bond amount for the
16 decommissioning to be 1. -- or, \$1,234,892, as
17 outlined in Applicant's Exhibit 97, to cover the
18 additional amount of infrastructure that would
19 have to be removed. I would also recommend the
20 MOU with the Town of Fitzwilliam be amended to
21 incorporate that same amount. And I believe
22 that's Page 7, Section VI, Paragraph C states the
23 bond amount. So, that should be amended if the
24 waiver is not granted.

1 Also included, I would note we had a
2 discussion I think early on with Mr. Arvelo,
3 Counsel for the Public's bond proposal. And the
4 question of -- it requests that the conditions
5 requiring the financial assurance for the state,
6 and the state be the obligee of any such
7 assurances. We don't want to forget that as
8 well.

9 So, anybody have any questions?

10 Chairwoman.

11 CHAIRWOMAN MARTIN: Mr. Oldenburg, what
12 did you have for the underlying or initial
13 requested amount of 900,000? I have it, but I
14 can't find it in my notes. Assuming the waiver
15 is in place.

16 MR. OLDENBURG: It was --

17 DIR. ARVELO: I believe it was
18 "900,432".

19 CHAIRWOMAN MARTIN: Okay. I thought
20 that's what it was. But, Mr. Oldenburg, I
21 thought I understood you to say the difference
22 was "300,000"? Did I understand that wrong?

23 MR. OLDENBURG: Yes. So, "900,432" was
24 the original. And then, the other number, if

1 it's not, is "\$1,234,892". So, that is
2 "334,892" [sic].

3 CHAIRWOMAN MARTIN: Got it. Thank you.

4 MR. OLDENBURG: Mr. Arvelo.

5 DIR. ARVELO: So, I have a question on
6 the waiver. If we grant the waiver, and this is
7 probably a question for Attorney Iacopino, is
8 this setting a precedent?

9 So, if the standard is four feet, and
10 we grant the waiver for three feet, are we
11 setting a precedent for future proceedings? And
12 is that a good thing or a bad thing or it doesn't
13 mean nothing?

14 MR. IACOPINO: There is actually a
15 multifaceted legal answer to that question.

16 The first thing is, will you be setting
17 a precedent? This is a solar facility, and it's
18 the first one that the Committee has ever
19 considered. So, in that regard, sure, it would
20 be a precedent.

21 But have we waived the decommissioning
22 depths in the past? Yes, we have, in other types
23 of applications. But, again, we haven't had a
24 solar application.

1 So, to answer your question is "it
2 would be a precedent."

3 Is it good or bad? It's entirely up to
4 the Committee to decide. I cannot decide that
5 for you and I can't deliberate with you.

6 I can tell you, though, that as far as
7 precedents go, merely because you do something in
8 one case, does not mean that you have to do it in
9 every other case. You have to consider each case
10 on its own merits. And our statute specifically
11 says that our decisions in certificates do not
12 have to be precedent for each other.

13 Now, sometimes applicants come before
14 us and do cite them as precedent, but you're not
15 bound by them as precedent.

16 And, like I said, that's a legal answer
17 to your question.

18 MR. OLDENBURG: Madam Chairwoman, you
19 had a question?

20 CHAIRWOMAN MARTIN: I was just going to
21 say essentially what Attorney Iacopino just said,
22 which is it would not be binding precedents. So,
23 certainly, in other circumstances, the Committee
24 would be free to consider those circumstances and

1 make a decision.

2 I have another question for Attorney
3 Iacopino, though. Could you remind the Committee
4 what the standard for granting a waiver approval
5 is?

6 MR. IACOPINO: If you can bear with me
7 one moment, I will quote it for you.

8 So, the standard to grant a waiver is
9 number (1) you must determine that the waiver
10 serves the public interest; and number (2) that
11 the waiver will not disrupt the orderly and
12 efficient resolution of matters before the
13 Committee or Subcommittee. You may waive a rule
14 if -- I'm sorry -- you shall waive a rule if
15 compliance with the rule would be onerous or
16 inapplicable given the circumstances of the
17 affected person, or the purpose of the rule would
18 be satisfied by an alternative method proposed.
19 And request for waivers have to be made in
20 writing, and in this case they have made such a
21 request.

22 MR. OLDENBURG: Mr. Wilson.

23 DIR. WILSON: I would agree with
24 waiving the requirement. In my line of work, the

1 less disturbance, ground disturbance, is always
2 better than more. So, that is what I would base
3 my decision on.

4 MR. OLDENBURG: I'll be honest with
5 you, one of the -- when I considered it, the
6 removing the piling, so, the idea is that they
7 take a pile that the racks are supported on, and
8 they have to drill it into rock, and then they
9 grout it. So, they're asking for a waiver to,
10 one, is they don't have to remove that pile from
11 the rock. They just have to remove it to meet
12 the standard four feet below ground. So, if the
13 waiver is not granted, they have to dig four feet
14 down and cut the pile off. If the waiver is
15 granted, they still have to dig down, but only
16 three feet and cut it off. So, that didn't
17 thrill me too much, because, you know, you're
18 still digging a hole, you're still disturbing
19 everything, but you don't have to dig a foot
20 deep, you know.

21 So, the one that concerns me is the
22 conduit. Thousands and thousands of feet of
23 each -- each of the panels is interconnected with
24 a conduit. So, each row has, you know, hundreds

1 and hundreds feet of conduit that all go to the
2 inverters and to the substation. So, I think
3 that's the majority of really granting the
4 waiver, that's the benefit. That's the
5 disturbance, the conduit itself, not having to
6 remove that.

7 Mr. Wilson.

8 DIR. WILSON: Just a quick follow-up.
9 I think the idea is that they would be removing
10 the piles where they're simply drilled down. If
11 they are drilling into rock, that's where the
12 waiver I believe really comes into play, is
13 they're having to just cut it off at the ledge or
14 rock level, and not disturb -- not have to go
15 down and bust up that rock to then remove more of
16 the pile.

17 MR. OLDENBURG: Exactly. The pile --

18 DIR. WILSON: Does that make sense?
19 So, I mean, because, for salvage sake, they want
20 to remove those piles to get every bit of the
21 salvage they can.

22 MR. OLDENBURG: Exactly. So, if the
23 pile comes out of the ground and it's not
24 embedded in rock, they'll just pull the whole

1 thing out. But, if it's embedded in rock,
2 they're going to go down three feet and cut it
3 off, instead of four feet.

4 Mr. Arvelo.

5 DIR. ARVELO: So, given what you just
6 said, that we're talking about inert material,
7 we're talking about inert material. And, so, for
8 me, it's -- and then the lands will go into
9 conservation eventually, if the Project goes away
10 and so forth. So, those two things in themselves
11 I think are on the plus side. And not having to
12 disturb any of this, particularly, as you said,
13 the conduit is the big thing, I support -- I
14 support giving the waiver.

15 MR. OLDENBURG: Mr. Pelletier, you had
16 a question? Yes. Go ahead, Rene.

17 MR. PELLETIER: Yes. That was me
18 waving.

19 Yes. I think, when I look at this,
20 there were some things that tilted the scale for
21 me, and I think two were the two MOUs with the
22 Town of Fitzwilliam, which makes a lot of sense.
23 I had a little apprehension early on in the
24 process, when you thought about, if someone is

1 going to develop a piece of property, whatever
2 the -- it could be box stores, it could be
3 elderly housing, pick a topic, any topic. But,
4 if it's three feet or four feet, they're going to
5 excavate deeper than that anyway.

6 So, when I look at overall land
7 disturbance, which is what we do as an agency, as
8 you well know, I think it would be prudent to
9 approve the waiver. And also, Ben I think --
10 Mr. Wilson made a note that, you know, if they
11 can pull a pile, they're going to pull it.

12 But I'm not sure they're going to
13 grout, as opposed to concrete, those pilings in
14 for long-term stability. So, if, in fact, they
15 go the crete [sic] route, then you're probably
16 going to have to pop the rock to get it all the
17 way out of the bedrock to begin with. So, I
18 would -- it makes a lot of sense to me to cut
19 them off at the elevation of the ledge, which is,
20 if they hit rock, it's going to be ledge. It's
21 probably not going to be a big boulder.

22 So, I think it makes a lot of sense,
23 with the conservation easement in the background,
24 and the environmental impact would be greater

1 than if we granted the waiver, I would support
2 granting the waiver.

3 MR. OLDENBURG: And I don't know what
4 everybody else thinks, but, if it's a
5 conservation easement, more than likely the
6 future use of this would be a park or hiking
7 trails or something like that, where you wouldn't
8 have to remove, if you hit conduit for some
9 reason, you wouldn't be removing a great quantity
10 of it. So, the Town, or whoever holds the
11 conservation easement, it wouldn't be a huge
12 burden for them to have to remove a small
13 quantity of the conduit in the future, to put in,
14 I don't know, bathrooms or something like that on
15 a hiking trail or something. But, I mean, and I
16 could be off base with that.

17 Madam Chair.

18 CHAIRWOMAN MARTIN: I think we're at
19 Mr. Pelletier.

20 MR. PELLETIER: Yes. I just want to
21 mention, too, something that I keep in mind is,
22 they are already setting aside a large portion of
23 this parcel in conservation to begin with, and
24 then you take another 100 and something acres

1 that's adjacent to the previous conservation
2 easement, that sets a lot, a great parcel for
3 long-term conservation, whether it be used for
4 public use, whether wildlife preservation,
5 whether it be cross-country trails, or anything
6 else.

7 So, I think it makes a lot of sense.

8 CHAIRWOMAN MARTIN: I was just going to
9 say that I support the waiver, as I think that it
10 thoroughly serves the public interest, based upon
11 all the testimony that we heard to waive that
12 requirement.

13 As for the other findings that we have
14 to make, I don't have the discussions from the
15 Committee as to whether it's because it's onerous
16 or inapplicable, or because, from my perspective,
17 it's some combination there, because the
18 conservation easement is one alternative method
19 of meeting the intent of the rule. And perhaps
20 this discussion we've had about "not disrupting
21 the ground unnecessarily" is another.

22 So, I don't know if everyone agrees
23 with those findings. But I think we need to make
24 the findings, so that Attorney Iacopino can

1 document those.

2 MR. OLDENBURG: So, do we -- any more
3 discussion?

4 *[No verbal response.]*

5 MR. OLDENBURG: Or, do we take up the
6 decommissioning plan as a whole, granting the
7 waiver, or do we grant the waiver, and then vote
8 on the decommissioning plan?

9 MR. IACOPINO: Madam Chair, I would
10 just recommend to you that you vote on the
11 decommissioning plan first, since the bulk of the
12 discussion so far has been about that, and then
13 address the decommissioning plan with the waiver.

14 CHAIRWOMAN MARTIN: Are you -- I'm
15 sorry, I want to make sure I understand you
16 correctly. Are you suggesting we vote on the
17 waiver first?

18 MR. IACOPINO: Yes.

19 CHAIRWOMAN MARTIN: Okay. I would
20 agree with that.

21 So, why don't we take up that poll
22 first. And, Mr. Oldenburg, do you want to take a
23 stab at the question or do you want me to do it?

24 MR. OLDENBURG: Sure. Let me -- I

1 would sort of make a motion that we grant the
2 waiver for Site 301.08, Section (2)(d), requiring
3 the underground infrastructure removal depth
4 "four feet" requirement be changed to "three
5 feet". And that the solar racking piles that are
6 concreted into rock can be cut off at the
7 interface to the concrete in lieu of removing the
8 pile to a depth of three feet.

9 CHAIRWOMAN MARTIN: I would just add
10 that we find that the waiver serves the public
11 interest, and that the rule, and, Attorney
12 Iacopino, correct me if I get this wrong, is
13 complied with -- the intent of the rule is
14 complied with by an alternative method.

15 MR. IACOPINO: That being the
16 conservation plan?

17 CHAIRWOMAN MARTIN: Yes.

18 MR. OLDENBURG: All right. Do we need
19 Robert's Rules? Do we need a second on that or
20 are we just to vote on it?

21 CHAIRWOMAN MARTIN: I will second it.

22 MR. OLDENBURG: Okay.

23 CHAIRWOMAN MARTIN: Any discussion?
24 I'll take it back from you, Mr. Oldenburg. No

1 worries. Any discussion?

2 *[No verbal response.]*

3 CHAIRWOMAN MARTIN: Okay. Seeing none.

4 Let's take a roll call vote.

5 Mr. Wilson?

6 DIR. WILSON: I agree.

7 CHAIRWOMAN MARTIN: Mr. Oldenburg?

8 MR. OLDENBURG: I agree.

9 CHAIRWOMAN MARTIN: Mr. Pelletier?

10 MR. PELLETIER: I agree.

11 CHAIRWOMAN MARTIN: Ms. Duprey?

12 MS. DUPREY: I agree.

13 CHAIRWOMAN MARTIN: Mr. Eaton?

14 MR. EATON: I agree.

15 CHAIRWOMAN MARTIN: Mr. Arvelo?

16 DIR. ARVELO: I agree.

17 CHAIRWOMAN MARTIN: And I also agree.

18 The motion passes unanimously. So, the waiver

19 will be granted.

20 Back to decommissioning, Mr. Oldenburg.

21 MR. OLDENBURG: All right. So, the
22 decommissioning plan itself, we have to find that
23 they provided three additional things, besides
24 the infrastructure depth. One is the

1 "description of sufficient and secure funding to
2 implement the plan. It shall not account for any
3 anticipated salvage value of facility components
4 or materials." I think they have done that in
5 their decommissioning plan that was part of the
6 record.

7 The provision of the (b) part of that
8 was "the provision of financial assurance in the
9 form of an irrevocable standby letter of credit,
10 performance bond, surety bond, or unconditional
11 payment guaranty executed by a parent company of
12 the facility owner maintaining at all times an
13 investment grade credit rating."

14 I believe what they're doing -- Madam
15 Chairwoman, yes?

16 CHAIRWOMAN MARTIN: No, I don't want to
17 cut you off. Finish your thought.

18 MR. OLDENBURG: If I understand it --
19 if I understand the finances correctly, they're
20 putting a surety bond up, is that my
21 understanding?

22 CHAIRWOMAN MARTIN: Yes. Yes. That
23 was where I was going to raise my hand and raise
24 for discussion the issue of the bond, and

1 specifically what will be required related to the
2 bond. And I don't know if -- I think it makes
3 sense to talk about that here.

4 MR. OLDENBURG: Okay.

5 CHAIRWOMAN MARTIN: We had talked
6 earlier about Counsel for the Public's request
7 for a bond, a surety bond. And it wasn't clear
8 whether that was just the performance bond
9 related to decommissioning, or whether there was
10 a construction component related to that. I
11 think there was some back-and-forth with the
12 witness on that.

13 So, I think the Committee needs to
14 discuss what we expect the bond to include, and
15 specifically require that.

16 MR. OLDENBURG: In the past, have we
17 ever required like a restoration bond? If they
18 get through half of the project, and they walk
19 away, and the ground is all ripped up and needs
20 to be restabilized, is that something we've ever
21 done? Because I think, besides the
22 decommissioning, or maybe that's part of the
23 decommissioning bond?

24 CHAIRWOMAN MARTIN: Well, I pulled the

1 testimony, some of the testimony related to this.
2 And the witness, I believe it was Mr. Barefoot,
3 said "it would be for the purpose of
4 decommissioning and restoration of the Project
5 area." And I know there are some references to
6 it being just for decommissioning, and some for
7 restoration, and then that testimony. So, I
8 think we just need to be clear, if it's for
9 decommissioning and restoration of the Project
10 area, we should say that.

11 MR. OLDENBURG: And Mr. Wilson.

12 DIR. WILSON: I just wanted to point
13 out that, during the hearings, it was said that
14 it is definitely not a construction bond. That's
15 a completely different thing. So, I would agree
16 with Chairwoman Martin, as she put it. That it
17 was a restoration and a decommissioning.

18 And I would say assume that, if they
19 were to get halfway through the Project, it's
20 still a decommissioning in a sense, because
21 they're having to restore the site.

22 CHAIRWOMAN MARTIN: Well, I think
23 addition of the language "for restoration of the
24 Project area", as the witness testified, would

1 certainly clarify that.

2 MR. OLDENBURG: So, if we had one bond
3 that was a decommissioning and restoration bond,
4 would they have to be separate? I'm making an
5 assumption that, if we restore it, the \$900,000
6 would cover restoration. So, you're either going
7 to restore it with this bond or you're going to
8 have a bond for decommissioning. You wouldn't
9 need both, I don't think.

10 Chairwoman.

11 CHAIRWOMAN MARTIN: I would propose
12 that it say that it be "A surety bond for the
13 purpose of decommissioning and restoration of the
14 Project area, and that it will cover both, in the
15 amount that, since we granted the waiver, in the
16 amount of \$900,432." And they had proposed for
17 the benefit of the Town. Based upon Counsel for
18 the Public's request, I would have it be for the
19 benefit of the Town and of the State. That way
20 both or either the Town or the State would be an
21 obligee.

22 MR. OLDENBURG: That sounds good.

23 Mr. Arvelo.

24 DIR. ARVELO: Just being a devil's

1 advocate here to Madam Chair's points about
2 making the Town and the State an obligee. Does
3 that then have potential for pitting the Town
4 against the State, as to who gets the money and
5 uses it for what purpose?

6 In my mind, the argument that attorney
7 for the public was making was that it didn't seem
8 to go very far. And, so, there's a lot to be
9 desired there. So, I'm trying to understand why
10 she was trying to require a second surety bond,
11 on top of the decommissioning bond. And if we
12 have -- so, that's one question.

13 But, leaving that aside for now, if we
14 have just the decommissioning/restoration bond,
15 and we make the State and Town both obligees,
16 then, so, if it comes to restoring or
17 decommissioning, who kind of, you know, manages
18 that?

19 And, so, I think there's a potential
20 for pitting one against the other. Just --

21 CHAIRWOMAN MARTIN: Well, it looks like
22 we lost -- Mr. Arvelo, we lost you for a moment
23 there. Would you restate whatever you said last?

24 DIR. ARVELO: Yes. I was just -- can

1 you hear me?

2 MR. OLDENBURG: Yes.

3 DIR. ARVELO: You can hear me? Good.
4 Yes. I was just saying that there's potential
5 for pitting the State against the Town, if you
6 have one bond, and both are named as obligees.
7 And, you know, so, in my mind, I'm kind of seeing
8 a conflict there. As opposed, in my mind, I see
9 that the Town should be the benefactor of this.
10 And they, you know, it's in the Town's interest,
11 the Town will decide to look after the
12 decommissioning, the restoration, yada, yada,
13 yada, with these funds, as opposed to -- I think
14 it just complicates things, if you throw the
15 State in with the Town.

16 MR. OLDENBURG: Madam Chairwoman.

17 CHAIRWOMAN MARTIN: I am not concerned
18 about that, because of my understanding relating
19 to surety bonds, and the purpose of them, which
20 is ensure that the work actually gets done. And,
21 so, addition of the State would not -- I wouldn't
22 say would pit the State against the Town in any
23 way. It just gives an additional authority that
24 could act on the bond, in order to get the work

1 done if it didn't happen.

2 And, so, I think, given the State's
3 resources and knowledge in those areas, I think
4 that would actually be a good thing to ensuring
5 that it actually happens, and that the surety
6 company performed itself under the bond.

7 MR. OLDENBURG: Okay. So, do we want
8 to make that as a condition, that the surety bond
9 for the decommissioning be changed to read
10 "decommissioning and restoration bond", and that
11 "the Town and the State" both be listed as an
12 obligee.

13 CHAIRWOMAN MARTIN: Attorney Iacopino.

14 MR. IACOPINO: Madam Chair, if I could
15 just point out to the Committee that, in
16 Exhibit -- in the decommissioning plan itself,
17 which is Exhibit -- I've lost the number, I'll
18 get it for you in a minute though, it actually
19 defines "decommissioning" as follows: "Is
20 generally described as the removal of system
21 components and the rehabilitation of the site to
22 pre-construction conditions. The typical goal of
23 project decommissioning and reclamation is to
24 remove the installed power generation equipment

1 and return the site to a condition as close to a
2 pre-construction state as feasible." That's
3 actually in the decommissioning plan, Appendix
4 16C to the Application, and it is Applicant's
5 Exhibit --

6 MR. OLDENBURG: Forty-eight?

7 MR. IACOPINO: -- 48, it may be. Yes,
8 48. Thank you.

9 So, I don't -- with respect to the
10 restoration or reclamation, I believe that's in
11 the Application as it is. And, if you issue a
12 Certificate of Site and Facility based on the
13 Application, that restoration is included in
14 there.

15 MR. OLDENBURG: So, maybe I
16 misinterpreted that. But that restoration is for
17 restoring the site after, once the Project is
18 decommissioned. So, I always understood a
19 "restoration bond", at least what I thought we
20 were talking about, was prior to the Project
21 actually being built and operational. You know,
22 the trees get cleared, the ground gets ripped
23 open, and the Applicant walks away. Someone has
24 to go in and restore -- restore the site so it

1 doesn't erode, you know, clean up and everything
2 else, that, you know, some of the activities, and
3 maybe it's piles of trees or whatever.

4 But, to me, I always thought that was a
5 "restoration bond". Where the ground is stripped
6 clean and somebody has to go in and fix that,
7 because the Applicant has walked away. So, I
8 always understood that as a "restoration".

9 To me, once the Project is operational,
10 and, you know, and you start decommissioning, the
11 restoration as part of decommissioning is the
12 decommissioning bond. Maybe I misunderstood.
13 But I would have thought the restoration bond was
14 before it's operational, and the decommissioning
15 is after it's operational and it goes away.

16 Chairwoman.

17 CHAIRWOMAN MARTIN: Well, I think the
18 Committee can require whatever components in a
19 bond that it wants. And, so, I think what
20 Attorney Iacopino is pointing out is that their
21 decommissioning bond proposal in the Application
22 includes site restoration following
23 decommissioning.

24 To your point, to the extent the

1 Committee wants restoration of the Project area
2 at any point in time, should they depart, I think
3 that just needs to be clear.

4 MR. OLDENBURG: And I guess, is that
5 what the Counsel for the Public was talking about
6 in the restoration bond, was pre-construction
7 restoration, versus restoration as part of
8 decommissioning?

9 CHAIRWOMAN MARTIN: My recollection of
10 the testimony when Counsel for the Public was
11 doing her examination was that she was also
12 inquiring as to whether there would be a
13 construction-related bond, so, performance, that
14 kind of thing. That's only my recollection,
15 but -- so, I think there were multiple levels of
16 potential bonds to be included here.

17 My sense of the Committee is that they
18 don't feel that a construction bond is necessary
19 or a performance bond related to construction.
20 Anyone who disagrees should correct me if I'm
21 wrong.

22 But that there is some interest in
23 having decommissioning and restoration, which, to
24 your -- I think to your point, could be prior to

1 completion, which would actually require
2 decommissioning as well.

3 So, if that's the will of the
4 Committee, then I think the Committee should be
5 clear in the language related to the surety bond
6 requirement that it should cover decommissioning
7 and restoration, as described by Attorney
8 Iacopino. And, in addition, restoration of the
9 Project area, if it -- if the Project is
10 abandoned before completion.

11 MR. OLDENBURG: Any more discussion on
12 that?

13 CHAIRWOMAN MARTIN: It might make sense
14 to poll the Committee and see how they feel about
15 whether they just want a decommissioning bond
16 that includes that restoration aspect, or whether
17 they want a bond that actually provides for the
18 restoration prior to the need for
19 decommissioning.

20 Does that make sense?

21 MR. OLDENBURG: Sure. We can do that.
22 Thoughts on that, Mr. Wilson?

23 DIR. WILSON: I think it's cumbersome
24 to ask them for two different things. I would

1 include both in one bond.

2 MR. OLDENBURG: All right.

3 Mr. Pelletier?

4 MR. PELLETIER: Yes. I think, keep in
5 mind that the conditions that come with the best
6 management practices for the AoT permit are going
7 to retire, when I think about "restoration", I
8 think about going into a site and leaving before
9 the project's completed. The permit by itself
10 requires some sort of stabilization and site
11 controls.

12 But, if the apprehension here is, if
13 they got *[indecipherable audio]* --

14 *[Court reporter interruption due to*
15 *indecipherable audio and brief*
16 *off-the-record discussion ensued.]*

17 MR. PELLETIER: Yes. I think, if the
18 apprehension is is that they got 50 percent of
19 the site done and walked away, then I think a
20 restoration bond would certainly be applicable.
21 But, if the Project comes to fruition and is
22 completed, just by the nature of the AoT permit,
23 they're going to be required to have some sort of
24 long-term site stabilization and consistency.

1 So, depends on what the "restoration"
2 we're talking about means. If it's concern about
3 not finishing the Project, then that would be
4 appropriate in my mind.

5 CHAIRWOMAN MARTIN: Can we pause for a
6 moment? Mr. Arvelo is not on my screen at the
7 moment. Let's go off the record.

8 *(Brief off-the-record ensued and a*
9 *recess was taken at 4:07 p.m., and the*
10 *hearing resumed at 4:12 p.m.)*

11 CHAIRWOMAN MARTIN: Back on the record.

12 Okay. Mr. Arvelo, you dropped off for
13 a minute there due to your internet.

14 Mr. Oldenburg and I were just talking about the
15 bond requirements. And Mr. Pelletier was
16 explaining his understanding related to the
17 distinction between a "restoration bond" and the
18 "decommissioning bond" itself.

19 Did I miss anything, Mr. Oldenburg or
20 Mr. Pelletier?

21 MR. OLDENBURG: No. I was under the
22 same impression as Mr. Pelletier. That a
23 restoration bond would be, you know,
24 pre-completion of the Project. So that the

1 Project is under construction, and for some
2 reason the Applicant walks away, and somehow --
3 someone has to go in and stabilize the site, you
4 know, reduce erosion, get rid of, you know, piles
5 of trees or something like that that are laying
6 around, just to restore the site.

7 And so, that would be different than a
8 decommissioning bond, which would include
9 restoration at the end. So, after you -- after
10 you remove all the solar panels and the
11 substation, you restore the site, you know,
12 pre-development or, you know, pre-construction.

13 So, I think the discussion went along
14 of "do we have two bonds, one for
15 pre-construction restoration and one for
16 decommissioning or one bond that does both?" And
17 I think we heard from -- I think Mr. Wilson had
18 said "throw it all into one", or I could be
19 wrong. But I'll let everybody go back and speak.

20 So, Chairman Martin, you had your hand
21 up.

22 CHAIRWOMAN MARTIN: I was just going to
23 ask, I know you, at DOT, you have a lot of
24 *[indecipherable audio]* with bonds in general.

1 *[Court reporter interruption due to*
2 *indecipherable audio.]*

3 CHAIRWOMAN MARTIN: Okay. I was just
4 saying, I know Mr. Oldenburg has a lot of
5 experience at DOT with bonds. And I'm wondering
6 whether this is just a performance bond in an
7 amount that covers both of those functions.
8 That's the way I would have looked at it. And,
9 so, the restoration of the Project area piece, to
10 the extent it's pre-decommissioning, is still
11 performance. And, ultimately, decommissioning is
12 a performance issue, as long as you're clear as
13 to what the performance the bond covers is.

14 That was the way I was looking at it.
15 But I know you may have some more experience on
16 that than I do.

17 MR. OLDENBURG: I would think more of a
18 performance bond is you built something, and it
19 wasn't correct or didn't perform like we
20 purchased it to do. And we had to go in, someone
21 else, the State, the town, had to go in and fix
22 it.

23 I don't think that's the case here.
24 Because, to me, if you don't perform, and you're

1 unwilling to fix your mistake, and we pull a
2 performance bond and fix the mistake for you.

3 CHAIRWOMAN MARTIN: We may be saying
4 the same thing, because my experience, and a lot
5 of it actually comes from DOT, is that's exactly
6 what we're talking about. So, they are required
7 to perform by decommissioning, the bond, the
8 surety company, if they don't actually do it,
9 we'll come in and have to perform that for them.
10 So, it may just be a terminology thing.

11 Mr. Wilson, I saw you had your hand up.
12 I don't know if you have anything to add to that?

13 DIR. WILSON: I was just thinking that,
14 as part of the construction bond that I would
15 assume Chinook would have for the contractor that
16 they're hiring to come in and do this work, that
17 some of that would be worked into that. Is
18 that -- maybe that's not the case. I mean, if
19 they're doing it in-house, so they wouldn't have
20 a construction bond on their own?

21 CHAIRWOMAN MARTIN: I don't recall, I
22 don't know if anyone else does, any particulars
23 on a construction bond or a performance bond
24 related to construction? I almost think that the

1 testimony was that there wouldn't be one.

2 DIR. WILSON: Okay.

3 CHAIRWOMAN MARTIN: Okay. Well, I
4 think this may be a good place to stop. It is
5 4:17, on Friday afternoon. And I think we have
6 certainly covered a lot of ground. We've gotten
7 much farther, I think, than I was even expecting.

8 Are there any issues that we need to
9 cover before we wrap up for the day?

10 *[No verbal response.]*

11 CHAIRWOMAN MARTIN: Okay.

12 MR. PELLETIER: Yes. Madam Chair, are
13 we still -- are we still on Monday, at nine
14 o'clock?

15 CHAIRWOMAN MARTIN: Yes. That's what I
16 was going to conclude with, was that we will
17 reconvene --

18 MR. PELLETIER: Okay.

19 CHAIRWOMAN MARTIN: -- reconvene the
20 deliberations on Monday, at nine o'clock.

21 Anything else?

22 *[No verbal response.]*

23 CHAIRWOMAN MARTIN: All right. Then,
24 we are adjourned for the day. Thank you,

1 everyone. Really appreciate it.

2 ***(Whereupon the Deliberations were***
3 ***adjourned at 4:18 p.m., and the***
4 ***Deliberations are to resume on***
5 ***Monday, October 19, 2020, commencing***
6 ***at 9:00 a.m.)***

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C E R T I F I C A T E

I, **Steven. E. Patnaude**, a Licensed Shorthand Court Reporter, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes of these proceedings taken at the place and on the date hereinbefore set forth, to the best of my skill and ability under the conditions present at the time.

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

Steven E. Patnaude, LCR
Licensed Court Reporter
N.H. LCR No. 52
(RSA 310-A:173)