

STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE

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Public Utilities Commission  
21 South Fruit Street Suite 10  
Concord, New Hampshire

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IN RE: SEC DOCKET NO. 2019-03  
SITE EVALUATION COMMITTEE:  
Antrim Level LLC - Petition  
for Declaratory Ruling or,  
in the Alternative, Motion  
for Expedited Approval of  
Change in Ownership or  
Ownership Structure.  
[Hearing on the merits]

PRESENT: SITE EVALUATION COMMITTEE:

Cmsr. Kathryn Bailey Public Utilities Commission  
(Presiding as Presiding Officer)

Michael Servetas Department of Transportation  
Robert Baines Public Member

Also Present for the SEC:

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

Pamela G. Monroe, SEC Administrator

COURT REPORTER: Steven E. Patnaude, LCR No. 52

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**APPEARANCES:**     **Reptg. Antrim Level LLC:**  
Barry Needleman, Esq. (*McLane...*)  
Thomas B. Getz, Esq. (*McLane...*)

**Reptg. Citigroup Global Markets, Inc.  
and Citicorp North America, Inc.:**  
Susan S. Geiger, Esq. (*Orr & Reno*)

**Reptg. the Town of Antrim:**  
John Robertson, Selectman

**Reptg. Counsel for the Public:**  
K. Allen Brooks, Esq.  
Senior Assistant Attorney General  
N.H. Attorney General's Office

**Reptg. the Antrim Residents Group:**  
Shelley Nelkens  
Richard Block

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ANU YADAV**

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\* \* \*

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**P R O C E E D I N G**

1  
2 PRESIDING OFCR. BAILEY: Good  
3 morning. We're here today in SEC Docket Number  
4 2019-03, to consider a Petition for Declaratory  
5 Ruling or, in the alternative, Motion for  
6 Expedited Approval of Change in Ownership or  
7 Ownership Structure. The Petition asks the  
8 Commission to determine that tax equity  
9 financing referenced in Docket 2018-03 does not  
10 constitute a change in the ownership structure  
11 of AWE. Alternatively, the Petition requests  
12 the Committee approve the proposed tax equity  
13 financing as a change in ownership structure.

14 We're here today to take evidence on  
15 the Petition, hear arguments, and we intend to  
16 deliberate at the end of the hearing.

17 Before we get started, let's  
18 introduce the Site Evaluation Committee  
19 Subcommittee. My name is Kathryn Bailey. I'm  
20 a Commissioner at the Public Utilities  
21 Commission.

22 MR. SERVETAS: Mike Servetas. I'm  
23 the Assistant Director of Operations at New  
24 Hampshire DOT.

1 MR. BAINES: I'm Bob Baines. I'm a  
2 public member.

3 PRESIDING OFCR. BAILEY: And to my  
4 right is?

5 MR. IACOPINO: Mike Iacopino, Counsel  
6 to the Committee.

7 PRESIDING OFCR. BAILEY: And our  
8 Executive Director?

9 ADMIN. MONROE: Pam Monroe.

10 PRESIDING OFCR. BAILEY: For the Site  
11 Evaluation Committee.

12 All right. I'll note for the record  
13 that we received an affidavit of publication on  
14 October 3rd.

15 Before we get started, let's take  
16 appearances.

17 MR. NEEDLEMAN: Good morning. Barry  
18 Needleman, from McLane Middleton, representing  
19 the Petitioner, Antrim Level.

20 MS. GEIGER: Good morning. I'm Susan  
21 Geiger, from the law firm of Orr & Reno, and I  
22 represent Citigroup Global Markets, Inc., and a  
23 Citicorp North America, Inc.

24 MR. GETZ: Good morning, Commissioner

1 Bailey, members of the Committee. I'm Tom  
2 Getz. I'm also an attorney with McLane  
3 Middleton, on behalf of TransAlta/Antrim Level.

4 MR. ROBERTSON: John Robertson,  
5 Selectman, Town of Antrim.

6 MR. BROOKS: Allen Brooks, Counsel  
7 for the Public.

8 MR. BLOCK: Richard Block,  
9 representing Antrim residents.

10 MS. NELKENS: Shelley Nelkens,  
11 representing Antrim residents.

12 PRESIDING OFCR. BAILEY: Oh. And  
13 there was one thing I knew I meant to mention.  
14 There are people listening, observing on the  
15 telephone. If we get to confidential  
16 information, we're going to turn the phone off.  
17 I think it was at the request of Citigroup, is  
18 that correct?

19 So, I remind everybody that we have  
20 some confidential information that we may be  
21 discussing on the record. And before you ask  
22 any questions that may contain confidential  
23 information, please signify that you're going  
24 to do that, so that we can deal with the people



1 on the phone.

2 All right. How are we going to  
3 proceed? Are there any preliminary matters?  
4 Are we going to mark exhibits? Or, are we just  
5 going to start with the witnesses?

6 MR. NEEDLEMAN: It's entirely up to  
7 you. We do have three exhibits, if it would be  
8 helpful just to mark them, we can do that.

9 PRESIDING OFCR. BAILEY: Sure. That  
10 would be great.

11 MS. NELKENS: Excuse me?

12 PRESIDING OFCR. BAILEY: Yes.

13 MS. NELKENS: Who is that gentleman  
14 in the back. Did he introduce himself? Did  
15 you introduce yourself and I just missed it?

16 PRESIDING OFCR. BAILEY: Do  
17 the Petitioners -- no, it could be a member of  
18 the public that is entitled to be here.

19 MS. NELKENS: Yes.

20 PRESIDING OFCR. BAILEY: But do the  
21 Petitioners want to introduce anybody else in  
22 the room?

23 MS. GEIGER: Sure.

24 MR. NEEDLEMAN: So, behind me here,

1 in the back row, is Rebecca Walkley, from  
2 McLane Middleton, working with us. And, then,  
3 in the back row, behind them -- well, why don't  
4 we have them just introduce themselves, it  
5 might be easier.

6 PRESIDING OFCR. BAILEY: All right.  
7 And the gentleman seated next to Ms. Walkley?

8 MR. MORIN: Good morning. I'm Bryan  
9 Morin, from TransAlta.

10 PRESIDING OFCR. BAILEY: From where?

11 MR. MORIN: TransAlta.

12 PRESIDING OFCR. BAILEY: TransAlta.  
13 Thank you.

14 Okay. Back of the room, why don't we  
15 start with this side of the table.

16 MR. WARD: Brent Ward, TransAlta.

17 PRESIDING OFCR. BAILEY: Oh, they're  
18 the witnesses. That makes sense.

19 MS. YADAV: I'm Anu Yadav, Citi.

20 *[Court reporter interruption.]*

21 PRESIDING OFCR. BAILEY: Did the  
22 reporter get those names?

23 MS. YADAV: It's Anu Yadav, Citi.

24 MR. STEENBLIK: Pierre Steenblik,

1 Citi.

2 PRESIDING OFCR. BAILEY: Okay. All  
3 right. Let's premark the exhibits then.

4 Mr. Needleman.

5 MR. GETZ: Commissioner Bailey, on  
6 behalf of Antrim Level, we have two exhibits to  
7 mark for identification. The first is marked  
8 for identification as "Exhibit 1" is the  
9 Pre-Filed Direct Testimony of Mr. Brent Ward  
10 that was filed with the Petition on  
11 September 17. And the second exhibit we'd mark  
12 for identification is the confidential material  
13 that was filed with the Committee as well, and  
14 that's the Equity Capital Contribution  
15 Agreement among Bobcat Equity Holdings,  
16 TransAlta Holdings, Bobcat Holdco, and Citicorp  
17 North America. And that's marked on behalf of  
18 TransAlta/Antrim Level.

19 (The documents, as described,  
20 were herewith marked as  
21 **Exhibit 1** and **Exhibit 2**,  
22 respectively, for  
23 identification.)

24 PRESIDING OFCR. BAILEY: Ms. Geiger.

1 MS. GEIGER: And, on behalf of Citi,  
2 I have the Pre-Filed Testimony of Anu Yadav.

3 MR. IACOPINO: So, do we want to mark  
4 that as "Exhibit 3" for ID?

5 MS. GEIGER: Thank you.

6 (The document, as described, was  
7 herewith marked as **Exhibit 3** for  
8 identification.)

9 PRESIDING OFCR. BAILEY: All right.  
10 And does Mr. Block and Ms. Nelson?

11 MS. NELKENS: It's "Nelkens".

12 PRESIDING OFCR. BAILEY: Oh, I'm  
13 sorry. Ms. Nelkens.

14 MS. NELKENS: Close enough.

15 PRESIDING OFCR. BAILEY: I'm sorry.

16 MS. NELKENS: Do we have anything to  
17 mark?

18 PRESIDING OFCR. BAILEY: Well, did  
19 you have some pre-filed testimony?

20 MS. NELKENS: Yes.

21 PRESIDING OFCR. BAILEY: Okay. So,  
22 we're going to make that "Exhibit 4".

23 MS. NELKENS: Okay. Thank you. We  
24 had two.

[WITNESS PANEL: Ward|Yadav]

1                   PRESIDING OFCR. BAILEY: Two. So,  
2                   Ms. Nelkens, your testimony will be "4", and  
3                   Mr. Block's testimony will be "5".

4                   MS. NELKENS: Thank you.

5                   (The documents, as described,  
6                   were herewith marked as  
7                   **Exhibit 4** and **Exhibit 5**,  
8                   respectively, for  
9                   identification.)

10                  PRESIDING OFCR. BAILEY: All right.  
11                  Do you want to proceed with your witnesses?

12                  MR. NEEDLEMAN: Yes. Thank you. So,  
13                  we'd ask Mr. Ward and Ms. Yadav to come up  
14                  together please.

15                  PRESIDING OFCR. BAILEY: Okay.

16                  (Whereupon **Brent Ward** and  
17                  **Anu Yadav** were duly sworn by the  
18                  Court Reporter.)

19                  **BRENT WARD, SWORN**

20                  **ANU YADAV, SWORN**

21                  **DIRECT EXAMINATION**

22                  BY MR. NEEDLEMAN:

23                  Q     Mr. Ward, we'll start with you. So, could you  
24                  just state your name and where you work please

[WITNESS PANEL: Ward|Yadav]

1 for the record.

2 A (Mr. Ward) Brent Ward. I'm the Managing  
3 Director and Treasurer of TransAlta Corp.

4 Q And, briefly, what is your role at TransAlta?

5 A (Mr. Ward) I'm accountable to effectively  
6 manage the right side of the balance sheet,  
7 which is everything from capital markets  
8 transactions or liquidity, you know, working on  
9 project level financings, like this one.

10 Q And you've submitted pre-filed testimony in  
11 this docket, which we've marked as "Exhibit  
12 Number 1", is that correct?

13 A (Mr. Ward) Yes.

14 Q And do you have any corrections or changes to  
15 that pre-filed testimony?

16 A (Mr. Ward) No.

17 Q And, so, do you adopt that testimony and swear  
18 to it today?

19 A (Mr. Ward) Yes.

20 MR. NEEDLEMAN: Okay.

21 BY MS. GEIGER:

22 Q Ms. Yadav, please state your name and spell it  
23 for the record.

24 A (Ms. Yadav) My name is Anu Yadav. And that's

[WITNESS PANEL: Ward|Yadav]

1 spelled A-n-u, and the last name is Y as in  
2 "yellow", A as in "apple", D as in "David", A  
3 as in "apple", V as in "Victor".

4 Q By whom are you employed and what position do  
5 you hold?

6 A (Ms. Yadav) I work for Citigroup. I'm a  
7 Director in Alternative Energy Finance.

8 Q Did you submit pre-filed testimony in this  
9 docket?

10 A (Ms. Yadav) Yes, I did.

11 Q And do you have your pre-filed testimony that's  
12 been marked for identification as "Exhibit 3"  
13 before you?

14 A (Ms. Yadav) I do.

15 Q And do you have any updates, changes, or  
16 corrections to that pre-filed testimony?

17 A (Ms. Yadav) I don't.

18 Q Do you adopt under oath the questions and  
19 answers in your pre-filed testimony?

20 A (Ms. Yadav) I do.

21 MS. GEIGER: Thank you.

22 MR. NEEDLEMAN: So, nothing further,  
23 Madam Chair. They're available for  
24 cross-examination.

[WITNESS PANEL: Ward|Yadav]

1 PRESIDING OFCR. BAILEY: All right.

2 Thank you.

3 Mr. Brooks, do you have any questions  
4 for the panel?

5 MR. BROOKS: Thank you. Very  
6 briefly.

7 **CROSS-EXAMINATION**

8 BY MR. BROOKS:

9 Q Why is it necessary to create another entity in  
10 order to take advantage of the tax credits that  
11 we're talking about?

12 A (Mr. Ward) Thank you. So, when we acquired the  
13 Antrim Project, we acquired it at the same time  
14 that with acquired another project in  
15 Pennsylvania, called "Big Level". And, in my  
16 testimony last December, here in front of the  
17 SEC, I indicated that one of the possibilities  
18 was to bundle the two projects together to  
19 finance them with tax equity in one project and  
20 in one financing. Because, in large part, that  
21 is the most efficient way to do it. You can  
22 get much better terms on a financing that has  
23 some scale to it.

24 As an example, the Antrim Project by



[WITNESS PANEL: Ward|Yadav]

1           itself would only be able to support about 30  
2           to \$35 million of tax equity investment, and  
3           that would not be large enough to attract a tax  
4           equity player like Citi. They just need to --  
5           they would allocate the resources where they  
6           can get a much bigger bang from their buck.

7           So, by combining the two projects, we were  
8           able to attract Citi, and they are a Tier 1 tax  
9           equity investor in the market. And, so, you  
10          know, it's very advantageous to both projects  
11          to have them in the deal.

12          So, when you look at the structure that we  
13          went through last December, at that time we  
14          were expecting that the Antrim Project would be  
15          operating first, and the Big Level Project  
16          would be operating second. And, if we knew  
17          that was actually going to be the case, there  
18          would have been absolutely no changes to the  
19          structure that we went through last December  
20          with the Committee.

21          But, fast-forward a year, and there was a  
22          risk or there was the possibility that the Big  
23          Level Project would fund first. And, so, our  
24          structure didn't account for that. So, you

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[WITNESS PANEL: Ward|Yadav]

1 know, when Citi looks at putting -- funding a  
2 project, they need to fund a project in an  
3 entity where it's just that project. They  
4 don't want to have the risk of other projects  
5 associated with that.

6 So, in the event that Big Level funded  
7 first, we had to create these two other  
8 entities, so that we could move the Big Level  
9 projects out, they would get funded if they  
10 were operating first. And, then, when Antrim  
11 was operating second, we would just move that  
12 entity in there.

13 The fact of the matter is that the  
14 Certificate is still with AWE. It's parent is  
15 still Antrim Level, no change at all to any of  
16 that. And the parent company, who is  
17 ultimately making all the decisions, is still  
18 TransAlta Corp.

19 Q Thank you. So, you mentioned --

20 MR. BROOKS: And may I continue or  
21 should I ask?

22 PRESIDING OFCR. BAILEY: No. You  
23 just go until you're done.

24 MR. BROOKS: Okay. Thank you.

1 BY MR. BROOKS:

2 Q You mentioned that the structure of this  
3 particular Project, the efficiency involved,  
4 making sure that Citigroup, as a Tier 1  
5 investor, can be involved, I'm going to ask you  
6 a broader level question just about tax equity  
7 investments in this type of project overall.

8 Can you describe why a tax equity  
9 investment generally is advantageous for a  
10 project like this? In other words, why can't  
11 the project just take advantage of the tax  
12 credits itself?

13 A (Mr. Ward) Sure. So, when you think about tax  
14 equity, you know, the developer, the sponsor of  
15 a project, in this case it's TransAlta Corp.,  
16 typically cannot use the tax attributes  
17 associated with the project. Those tax  
18 attributes are production tax credits and then  
19 tax depreciation.

20 So, TransAlta, in this instance, and in  
21 most instances, cannot use those tax  
22 attributes; most sponsors can't. So, what you  
23 do in those situations is you effectively  
24 monetize the tax attributes to a partner, like

[WITNESS PANEL: Ward|Yadav]

1 Citi, that can actually use them, they are a  
2 taxable financial institution. And, in return,  
3 they make an equity investment into the  
4 Project. So, you're effectively monetizing  
5 these tax attributes you can't use.

6 So, TransAlta Corp. still has all of the  
7 day-to-day operating decisions and management  
8 of the asset. Citi would come in as,  
9 effectively, a passive investor, with certain  
10 protective rights to protect their investment,  
11 but they don't have any day-to-day sort of  
12 responsibilities in the asset.

13 After about ten years, after the majority  
14 of the tax attributes have been monetized,  
15 typically, a sponsor could then buy out the tax  
16 equity partner. And that that's sort of --  
17 that's sort of the model.

18 This is the most common structure for  
19 financing renewable assets in the United States  
20 today. It's very, very common and typical for  
21 wind projects and for solar projects. In fact,  
22 I believe approximately 10 to \$12 billion of  
23 tax equity investments are being made in 2019.

24 In the end, because you are able to

[WITNESS PANEL: Ward|Yadav]

1 monetize tax attributes that you cannot use,  
2 you are able to bid much more, you know, you're  
3 able to bid much more aggressively on these  
4 projects. And, ultimately, what happens is the  
5 end consumer benefits, because the contract  
6 price that is ultimately tied to that asset is  
7 lower, than if you were not able to monetize  
8 these tax attributes, the price would be  
9 significantly higher.

10 So, I'd stop there and see if you have any  
11 other questions.

12 Q The actual structure, it's somewhat complicated  
13 in the language that you described about  
14 monetizing the tax credits. I want to dumb  
15 that down a little bit to maybe my level of  
16 what my understanding, the pedestrian way.

17 A (Mr. Ward) Yes.

18 Q Which is, notwithstanding the various levels in  
19 the things that we have to go through that  
20 we'll talk about, essentially, you're having  
21 someone buy the tax credits, right?

22 A (Mr. Ward) Correct.

23 Q They're giving you cash, you're giving them  
24 something of value in return?

[WITNESS PANEL: Ward|Yadav]

1 A (Mr. Ward) Correct.

2 Q And then you have different steps to go  
3 through. Okay. So, you actually anticipated  
4 one of my future questions, which is, is this  
5 an unusual transaction? You testified just now  
6 that it is not unusual. In fact, what was the  
7 number you said, "\$20 billion" or somewhere  
8 thereabouts?

9 A (Mr. Ward) Ten (10) to \$12 billion --

10 Q Twelve (12) billion.

11 A (Mr. Ward) -- in tax equity investments this  
12 year. It is the most common form of financing  
13 renewable projects in the U.S. today.

14 Q And is the structure that is being proposed, is  
15 that unusual?

16 A (Mr. Ward) No. It is exactly in line with any  
17 other tax equity structure that you would see.

18 Q You mentioned that Citi will not have any  
19 day-to-day managerial capabilities over the  
20 Project. They will, however, have some control  
21 overall, is that correct?

22 A (Mr. Ward) They will have protective rights  
23 associated with their investment, fairly  
24 standard things. So, we are -- we've got a

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[WITNESS PANEL: Ward|Yadav]

1 number of different financing sort of  
2 methodologies that we employ at TransAlta.  
3 You've got project finance is another example  
4 of a type of financing you can put at the  
5 project level. The type of protective rights  
6 are very similar across, you know, tax equity  
7 or project finance, that sort of thing.

8 Just to give you a very simple example, if  
9 TransAlta Corp. wanted to go and renegotiate  
10 something on one of the contracts with one of  
11 the PPA holders, that would be a material  
12 contract to the arrangement, and Citi would  
13 need to consent to that. Because, obviously,  
14 any changes to the contract would have a  
15 material -- potentially a material impact to  
16 their investment. So, that's the type of  
17 protections that are in there for them.

18 Q So, the type of control that Citi would have is  
19 focused on investments and finance, not  
20 operations?

21 A (Mr. Ward) Correct. It's almost like an extra  
22 layer of governance, to ensure that we're  
23 meeting all of our obligations under the  
24 respective debt documents.

[WITNESS PANEL: Ward|Yadav]

1 Q Okay. And that actually anticipates my next  
2 question, which is an additional layer of  
3 governance. So, Citi, one of the roles it will  
4 perform and exercise and control, either one of  
5 you can answer this, will be to evaluate  
6 whether financial transactions are actually  
7 beneficial?

8 A (Mr. Ward) Correct.

9 Q Is it your intention to take advantage of the  
10 IRS safe harbor provision that applies here?

11 A (Mr. Ward) Maybe I'll turn that one over to  
12 Anu.

13 A (Ms. Yadav) I mean, the transaction --

14 *[Court reporter interruption.]*

15 **BY THE WITNESS:**

16 A (Ms. Yadav) The transaction is structured in  
17 accordance with the IRS safe harbor.

18 BY MR. BROOKS:

19 Q Okay.

20 A (Ms. Yadav) So, nothing that we're doing over  
21 here is outside that safe harbor box.

22 Q And that safe harbor does require an entity  
23 like Citi to have some level of control in the  
24 manner that we talked about, is that right?



[WITNESS PANEL: Ward|Yadav]

1 A (Ms. Yadav) Yes. I mean, it's just the -- the  
2 safe harbor doesn't get into, you know, that  
3 level of detail, in terms of specifying, you  
4 know, what Citi's control rights should be.  
5 It's more, you know, around how to structure  
6 the deal to be, you know, in compliance with  
7 the Tax Code.

8 Q Okay.

9 A (Ms. Yadav) I mean, the consent rights are more  
10 sort of commercial, right, protections that  
11 Citi has, that, you know, have become  
12 standard-type protections in the financing  
13 market for investments --

14 *[Court reporter interruption.]*

15 **CONTINUED BY THE WITNESS:**

16 A (Ms. Yadav) -- to protect Citi's interests for  
17 our investment and our return on our  
18 investments.

19 BY MR. BROOKS:

20 Q Okay. Thank you. This question is to either  
21 of you. How will this transaction, if it's  
22 allowed to go through, affect the overall  
23 financial health of the Project, if at all?

24 A (Mr. Ward) Well, so, the idea of the financing,

[WITNESS PANEL: Ward|Yadav]

1 the tax equity investment, is, really, that  
2 underpins the economics. So, when TransAlta  
3 bids projects, we bid them with how we expect  
4 to operate the facility going forward. We bid  
5 costs in through to the end of the Project.  
6 And we also bid a financing structure.

7 And, in this case, as I mentioned to you,  
8 because we are able to monetize tax attributes,  
9 we're able to bid a much more competitive  
10 price. And, so, if we were not able to  
11 monetize those tax attributes, there would be  
12 an economic impact to TransAlta's investment.

13 A (Ms. Yadav) Yes. I mean, just to give you an  
14 idea, right, 50 to 60 percent of the value,  
15 right, of the project is derived from tax  
16 benefits. Right? I mean, that's just how  
17 these, you know, these projects get built,  
18 right? The government provides these  
19 incentives to incentivize developers, such as  
20 TransAlta, to build renewable energy  
21 facilities, to reduce, you know, the U.S.  
22 carbon footprint, right?

23 So, that's just the form in which the U.S.  
24 government incentivizes development. So, if 50

[WITNESS PANEL: Ward|Yadav]

1 to 60 percent of the value of the Project comes  
2 from the tax benefits, right, and TransAlta can  
3 monetize those tax benefits, it obviously would  
4 impact their economics, right, so -- if they're  
5 not able to utilize the benefits themselves.

6 Q So, I suppose that's the flip-side of the  
7 question, which is, would precluding a  
8 transaction like this from going forward,  
9 either with respect to this Project or for  
10 renewable energy projects, have a negative  
11 impact on the way that they are able to be  
12 financed?

13 A (Mr. Ward) So, it would have an impact on the  
14 project, if we were not able to monetize the  
15 tax attributes, for sure. But, to be clear,  
16 the asset is constructed, it is built, and it's  
17 been funded. So, TransAlta Renewables -- or,  
18 sorry, TransAlta Corp., as the parent, has  
19 access to many different sources of capital.  
20 And those sources of capital have been utilized  
21 over the past number of years. We've got  
22 access to credit facilities. So, there isn't  
23 any impact or risk of the project being funded;  
24 it's been done. But we need to be able to

{SEC 2019-03} [REDACTED-For PUBLIC Use] {11-12-19}

[WITNESS PANEL: Ward|Yadav]

1 monetize those tax attributes to be able to  
2 meet sort of the return thresholds that we've  
3 laid out for all of our stakeholders in the  
4 Company.

5 Q Yes. So, TransAlta is big enough, it can foot  
6 the bill.

7 A (Mr. Ward) Correct.

8 Q But, in a more broad sense, if transactions  
9 like this were not allowed to go forward, would  
10 it have an effect on the attractiveness of  
11 renewable energy projects?

12 A (Mr. Ward) Well, if tax equity was to go away,  
13 which it could down the road, what would happen  
14 is projects would be financed with more  
15 conventional-type financing. So, project  
16 finance would be probably the next best option  
17 to fund these projects. Where, instead of a  
18 tax equity partner, you would have a lender to  
19 the project. The documents would look  
20 substantially the same. And, so, the impact of  
21 that, of course, is that prices would be  
22 increased. Because sponsors, like ourselves,  
23 wouldn't be able to monetize things like tax  
24 attributes, we would need a higher price.

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[WITNESS PANEL: Ward|Yadav]

1 Q And the tax incentive would be either nullified  
2 or reduced?

3 A (Mr. Ward) Correct.

4 Q Okay. You mentioned that this transaction is  
5 not going to affect the Certificate, Antrim  
6 Level/TransAlta's impact in this is the  
7 Applicant, and I'll leave that either to you or  
8 counsel can answer, to the extent that this  
9 Subcommittee decides to issue in a substantive  
10 would be willing to memorialize that fact in  
11 the order and agree to that?

12 A (Mr. Ward) Yes, I think.

13 MR. NEEDLEMAN: I'm not quite sure I  
14 understand what you're asking, Allen.

15 BY MR. BROOKS:

16 Q So, the question essentially is, and the  
17 representation I understand, is that, with  
18 respect to operations and responsibilities,  
19 there really won't be a change from the status  
20 quo. Those folks who are on the line right now  
21 under the Certificate will continue to be  
22 responsible. Is that something that you would  
23 agree to be part of any order that gets issued?

24 A (Mr. Ward) I think so, yes.

[WITNESS PANEL: Ward|Yadav]

1 MR. BROOKS: Okay. I have no further  
2 questions.

3 *[Court reporter interruption.]*

4 MR. BROOKS: I have no further  
5 questions.

6 PRESIDING OFCR. BAILEY: All right.

7 WITNESS WARD: Thank you.

8 PRESIDING OFCR. BAILEY: Which of the  
9 Antrim residents is representing the group?

10 MS. NELKENS: I am.

11 PRESIDING OFCR. BAILEY: All right.  
12 Ms. Nelkens.

13 MS. NELKENS: Yes. Is it on? Yes.  
14 Okay.

15 BY MS. NELKENS:

16 Q I just wanted to get something clear. The  
17 protective rights, are they -- can you give two  
18 more examples of what the protective rights  
19 are? You're talking about just protect your  
20 investment, I take it, is what the protective  
21 rights are for?

22 A (Mr. Ward) Sure. So, another example, you  
23 wanted some examples, we have to, when we enter  
24 into these transactions, we have to get a third

[WITNESS PANEL: Ward|Yadav]

1 party report on our insurance coverage, to  
2 ensure that Citi is comfortable that we have  
3 all the required coverage to meet, you know,  
4 all the thresholds that are required. So, we  
5 couldn't change our insurance without a consent  
6 from them.

7 Another really obvious example is we can't  
8 change -- we can't repurpose the business. So,  
9 we couldn't start chopping down trees and  
10 building lumber, when the purpose of the  
11 facility is to produce power.

12 Q Can you go into a little bit more detail as far  
13 as what the insurance companies require?

14 A (Mr. Ward) It would be general sort of  
15 thresholds that are negotiated case-by-case,  
16 for property, liability, casualty, that sort of  
17 thing. You know, we have, at TransAlta, we  
18 have sort of a global, very detailed insurance  
19 program. And, so, we sort of have all of our  
20 assets under that corporate umbrella. And,  
21 then, as we develop these projects, we would  
22 have a third party insurance consultant come in  
23 and review our program, and provide commentary  
24 to whoever we're dealing with around, you know,

{SEC 2019-03} [REDACTED-For PUBLIC Use] {11-12-19}

[WITNESS PANEL: Ward|Yadav]

1 what types of insurance we have and what would  
2 need to be required. Citi, in this case, would  
3 come back and say "On this and this and this,  
4 we need more. You know, we can accept that."  
5 And, then, we would nail that down and we'd put  
6 that in place.

7 Q I'm not sure what "this, this, and that" is.  
8 Could you be a little more specific please?

9 A (Mr. Ward) Well, --

10 A (Ms. Yadav) It's what Brent said.

11 *[Court reporter interruption.]*

12 WITNESS YADAV: I'm sorry.

13 PRESIDING OFCR. BAILEY: Off the  
14 record.

15 *[Brief off-the-record discussion*  
16 *ensued.]*

17 **CONTINUED BY THE WITNESS:**

18 A (Mr. Ward) Yes. It's what Brent just said,  
19 right? I mean, we have a third party  
20 consultant, right, that's engaged by TransAlta,  
21 as the sponsor owner, that will produce -- that  
22 will evaluate, you know, the insurance that  
23 TransAlta has procured for the Project. They  
24 will review all of the transaction documents,



[WITNESS PANEL: Ward|Yadav]

1 the Project Documents, make sure that the  
2 insurance is procured, conforms with the  
3 requirements under all of the Project  
4 Documents. They will, you know, they will  
5 procure property insurance for the full value  
6 of the Project, liability insurance. They will  
7 procure casualty insurance.

8 You know, if there's a weather event, for  
9 instance, you know, ice, ice storm, or some  
10 other, you know, weather event, they will  
11 procure, you know, coverage to cover all of  
12 those events that the insurance company deems,  
13 you know, necessary with the operation of the  
14 Project.

15 BY MS. NELKENS:

16 Q So, the insurance company, or whoever this  
17 third party is, looks at the Certificate to  
18 see? Who's going to take that one?

19 A (Mr. Ward) I can't recall specifically if the  
20 insurance consultant would review the actual  
21 Certificate that you're referring to.

22 Typically, they would refer -- they would  
23 review the PPAs, because there's going to be  
24 insurance requirements set out under the PPAs.

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1 So, they would want to make sure that the  
2 program is sort of meeting all of those  
3 obligations.

4 But are they reviewing the Certificate?  
5 Possibly, but I can't recall specifically.

6 Q I'm trying to figure out how to say this so it  
7 stays in compliance with your order.

8 PRESIDING OFCR. BAILEY: Wait a  
9 minute. You think you have a confidential  
10 question?

11 MS. NELKENS: No. No, no, no.

12 PRESIDING OFCR. BAILEY: Oh, I  
13 know --

14 MS. NELKENS: I'm sorry.

15 PRESIDING OFCR. BAILEY: I know what  
16 order you're talking about. Go ahead.

17 MS. NELKENS: Thank you. I'm sorry.  
18 Are you ready to object, Mr. Getz?

19 BY MS. NELKENS:

20 Q Are you -- does the insurance look at such  
21 things as lighting? Is that insured?

22 A (Mr. Ward) Well, lighting would be part of the  
23 overall Project.

24 Q Uh-huh.

[WITNESS PANEL: Ward|Yadav]

1 A (Mr. Ward) I don't know that lighting is  
2 specifically something that they would be  
3 referencing in their report. But, you know,  
4 they're looking at the overall site.

5 Q Are they at all interested in their track  
6 record, as far as looking at the way they have  
7 conducted things, versus the way they will be  
8 conducting things?

9 A (Mr. Ward) Yes. I think the insurance  
10 consultant would really be looking at  
11 TransAlta, in terms of our overall program.  
12 And, given that the Company has been around for  
13 over 100 years, generally speaking, there's  
14 quite a bit of comfort that TransAlta has good  
15 policies and procedures in place, from an  
16 insurance perspective.

17 Q And, if the insurance company found out that  
18 their procedures were not being adhered to and  
19 they were not following the requirements of the  
20 Certificate, would that change the way the  
21 insurance company looks at this?

22 A (Mr. Ward) I could not say. I don't think so.

23 Q So, the insurance company, if they were in  
24 total violation of the Certificate, it wouldn't

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[WITNESS PANEL: Ward|Yadav]

1 make a difference to the insurance company?

2 A (Mr. Ward) I don't know the answer to that  
3 question.

4 Q Okay.

5 A (Ms. Yadav) I'm sorry, can I just add to that?

6 Q Sure.

7 A (Ms. Yadav) This insurance company will be  
8 provided, right, with all of the relevant  
9 information about the Project, right? They  
10 will be provided with all of the relevant  
11 information that they need in order to provide  
12 insurance, right?

13 Q So, you don't have the insurance yet. This is  
14 still something that's --

15 A (Ms. Yadav) There is construction insurance  
16 procured to cover the construction period.  
17 There is construction insurance in place. Once  
18 the Project is completed and goes operational,  
19 then it switches to the operational insurance.

20 Q Okay. So, at the moment, it's still under the  
21 construction phase of the insurance?

22 A (Ms. Yadav) I believe so, yes.

23 A (Mr. Ward) Correct.

24 Q Okay. I know the FAA has no problem with this,

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[WITNESS PANEL: Ward|Yadav]

1 and just my understanding was, when it was  
2 under the construction phase, it's supposed to  
3 have temporary lights on it. And, once they're  
4 no longer under the construction phase, that  
5 they need the permanent lights, which is what  
6 they have now, not the radar-controlled lights  
7 yet.

8 What I am curious about is how the  
9 insurance company dealt with no temporary  
10 lights at any time during this entire  
11 construction phase?

12 A (Mr. Ward) Was that a question?

13 Q Yes. It was. It was how -- what has been the  
14 insurance company -- I mean, okay, let me --  
15 you had said they would be provided with all  
16 the "relevant information". Would it be  
17 relevant to the insurance company that, we  
18 don't even know if the temporary lights were  
19 purchased, they obviously were not put up at  
20 any point during the construction?

21 A (Ms. Yadav) Sorry. But I am not sure --

22 MR. NEEDLEMAN: Objection. Wait one  
23 minute.

24 A (Mr. Ward) So, the insurance --

[WITNESS PANEL: Ward|Yadav]

1 MR. NEEDLEMAN: Wait one minute. I'm  
2 going to object to the question. I can't see  
3 how it's relevant at all to the proceeding  
4 before the Committee.

5 PRESIDING OFCR. BAILEY: Okay. And  
6 are there facts in evidence that she's talking  
7 about?

8 MR. NEEDLEMAN: There's nothing in  
9 the Petition that I'm aware of that relates to  
10 the insurance. There's no facts in the  
11 testimony related to the insurance. I'm not  
12 even sure how construction insurance would bear  
13 at all on the inquiry before the Committee.

14 PRESIDING OFCR. BAILEY: Okay. Ms.  
15 Nelkens?

16 MS. NELKENS: The evidence that we  
17 have is that there were no temporary lights on  
18 the Project at any point during the  
19 construction. And I think it's extremely  
20 relevant how the insurance company would deal  
21 with this, as it is still under their -- that  
22 insurance. And, by the way, I --

23 PRESIDING OFCR. BAILEY: Well, excuse  
24 me.

[WITNESS PANEL: Ward|Yadav]

1 MS. NELKENS: I'm sorry.

2 PRESIDING OFCR. BAILEY: But you're  
3 talking about the construction insurance  
4 company?

5 MS. NELKENS: Yes. It's still  
6 considered under construction.

7 PRESIDING OFCR. BAILEY: Right. And  
8 that's not before us right now. We're looking  
9 for the future. So, --

10 MS. NELKENS: If the construction --  
11 I'm sorry.

12 PRESIDING OFCR. BAILEY: Go ahead.

13 MS. NELKENS: If the construction  
14 company finds that they cannot keep insuring  
15 this, because of the problems that we have  
16 uncovered, I do not believe that any other  
17 company will want to insure them in the future,  
18 as they have a track record of being in  
19 noncompliance with the Certificate.

20 PRESIDING OFCR. BAILEY: I'm not --

21 WITNESS YADAV: I'm sorry, I object  
22 to --

23 PRESIDING OFCR. BAILEY: Wait. Wait  
24 wait, wait. You don't get to object, your

[WITNESS PANEL: Ward|Yadav]

1 lawyer will. But I'm not sure -- I'm not sure  
2 that that fact is a fact.

3 Mr. Needleman.

4 MR. NEEDLEMAN: I have three points,  
5 Madam Chair.

6 First of all, that's argument.

7 Second of all, it's purely hypothetical. I  
8 don't believe Ms. Nelkens has any experience in  
9 commercial insurance for large projects like  
10 this to be able to say something like that.

11 And, third, the premise underlying her argument  
12 is incorrect. That the facts associated with  
13 the issue of the lights were laid out in the  
14 October 4th letter from Ms. Monroe. And what's  
15 said in that letter doesn't conform with what  
16 Ms. Nelkens just said.

17 PRESIDING OFCR. BAILEY: That's what  
18 I thought. Just a minute please.

19 *[Presiding Officer Bailey*  
20 *conferring with Atty. Iacopino.]*

21 PRESIDING OFCR. BAILEY: All right.  
22 I think that the question assumes facts that  
23 are not in evidence. Therefore, the objection  
24 is sustained.



[WITNESS PANEL: Ward|Yadav]

1 MS. NELKENS: I believe that we could  
2 produce the evidence, if I was not denied the  
3 ability to get it.

4 PRESIDING OFCR. BAILEY: All right.  
5 You've made your record. Let's move on.

6 BY MS. NELKENS:

7 Q Under your protective rights, I understand that  
8 it's going to be totally up to TransAlta to  
9 make sure things are running correctly. Will  
10 you have somebody on-site to protect your  
11 investment?

12 A (Ms. Yadav) Is that a question to me?

13 Q Yes.

14 A (Ms. Yadav) No. We're purely a financing  
15 party. We're a passive equity investor. We  
16 rely on TransAlta, as the managing member, as  
17 the owner, as the operator, to operate and  
18 manage the day-to-day operations of the  
19 Project.

20 We are not in the business of operating  
21 assets. That's the business that TransAlta is  
22 in. We're doing this deal with TransAlta,  
23 because we have -- we know the company very  
24 well. We've got very good access all the way

1 up to the --

2 [Court reporter interruption.]

3 **CONTINUED BY THE WITNESS:**

4 A (Ms. Yadav) -- all the way up to the C-suite.

5 BY MS. NELKENS:

6 Q What's the "C-suite"?

7 A (Ms. Yadav) It's the CEO level.

8 Q Oh.

9 A (Ms. Yadav) I'm sorry.

10 Q Okay.

11 A (Ms. Yadav) The CFO, CEO.

12 Q Okay. CFA. Thank you.

13 A (Ms. Yadav) Yes. I mean, and that's why we're  
14 doing this deal with TransAlta, right? We know  
15 the Company very well. We've known them for  
16 over 20 years. We've provided financing to  
17 them. We know that, if there's an issue, they  
18 will fix it, and they have the balance sheet to  
19 do so.

20 Q Okay. I think I just have one more question.  
21 If TransAlta does not run this appropriately,  
22 do your -- are your rights protected? Is that  
23 what -- that's what the insurance is for? So  
24 that if they, to use a vernacular, screw up,

[WITNESS PANEL: Ward|Yadav]

1 your investment is protected?

2 A (Ms. Yadav) Well, insurance covers things that,  
3 you know, are covered by insurance.

4 Q Yes.

5 A (Ms. Yadav) Casualty or any things of that  
6 nature.

7 MS. NELKENS: Thank you. Thank you.

8 PRESIDING OFCR. BAILEY: All right.

9 Are there questions from the Committee?

10 MR. SERVETAS: No.

11 MS. NELKENS: I guess --

12 PRESIDING OFCR. BAILEY: I have  
13 questions. What?

14 MS. NELKENS: Is it possible, since I  
15 obviously could not get proof of what I was  
16 saying, is there any way that the Subcommittee  
17 can ask for proof that the temporary lights  
18 were purchased in the first place?

19 PRESIDING OFCR. BAILEY: Well, I  
20 think that our Administrator looked into that.

21 MS. NELKENS: No.

22 PRESIDING OFCR. BAILEY: Okay. Hang  
23 on.

24 That issue really isn't part of this

[WITNESS PANEL: Ward|Yadav]

1 proceeding. I think it may be -- it would be  
2 more appropriate to address it in another  
3 proceeding, if the Committee felt that that  
4 were the case that it was necessary.

5 MS. NELKENS: Okay. I hope the  
6 Committee will consider that.

7 PRESIDING OFCR. BAILEY: Okay. I do  
8 have some questions.

9 BY PRESIDING OFCR. BAILEY:

10 Q So, I drew myself a little map of this  
11 complicated transaction. And I am not a  
12 finance expert, so bear with me, please. But,  
13 as I understand it, Antrim Level is going to  
14 transfer -- or, TransAlta is going to transfer  
15 the ownership interest in AWE from Antrim Level  
16 to Bobcat Equity?

17 A (Mr. Ward) No. It will stay underneath Antrim  
18 Level. So, Antrim Level and AWE would move  
19 over under Bobcat Holdco.

20 Q Oh. Okay. So, I'm pretty sure I read in the  
21 testimony that, let me see if I can find it,  
22 that 100 percent membership interest was going  
23 to be transferred to Bobcat Equity, and then  
24 Bobcat Equity was going to create Bobcat

[WITNESS PANEL: Ward|Yadav]

1 Holdco, and transfer the membership to Bobcat  
2 Holdco, which then gets converted to Class B  
3 stocks?

4 A (Mr. Ward) Yes. So, correct. So that, if you  
5 think about sort of the final resting place, we  
6 had to create Bobcat Equity Holdings, which is  
7 effectively TransAlta's, like that's our  
8 TransAlta Corp. entity. And then, there would  
9 be Bobcat Holdco, which is where both Citi and  
10 TransAlta will have their Class A and Class B  
11 memberships.

12 So, the final sort of structure will be,  
13 underneath the Bobcat Holdco, will be both the  
14 Big Level, the Pennsylvania asset that I  
15 mentioned earlier, and Antrim Level, with the  
16 sub, AWE, the Certificate holder. So,  
17 basically, both assets will be sitting  
18 underneath Bobcat Holdco, and Citi and  
19 TransAlta will have both of their investments  
20 in that Holdco.

21 Q Okay. That's helpful. Thank you. And, so,  
22 the -- I had another question, and just so that  
23 I make sure I understand it. If Holdco is --  
24 contains Antrim Level and Bobcat -- I mean, not

[WITNESS PANEL: Ward|Yadav]

1 "Bobcat", Big Wind, right?

2 A (No verbal response).

3 Q Bobcat Equity is how TransAlta controls all  
4 that?

5 A (Mr. Ward) Correct.

6 Q And is there anybody else associated with  
7 Bobcat Equity or is that just TransAlta?

8 A (Mr. Ward) That is just TransAlta.

9 Q Okay. I want you to point me in the Agreement  
10 to where the limited consent rights of Class A  
11 shares is defined. Can you do that? And maybe  
12 you can do it on a break or take your time.

13 A (Mr. Ward) Sure.

14 Q I do have some questions for Ms. Yadav while  
15 you're looking for it, if you want to.

16 A (Ms. Yadav) And I can help you with that.

17 Q Okay.

18 A (Ms. Yadav) It's in the Limited Liability  
19 Company Agreement, which is an exhibit to the  
20 Equity Capital Contribution Agreement.

21 Q Can you give me a page number?

22 A (Ms. Yadav) Sure.

23 MR. NEEDLEMAN: I believe it's

24 Page 224.

[WITNESS PANEL: Ward|Yadav]

1 MR. IACOPINO: And, counsel, is this  
2 a confidential document? This is a  
3 confidential document, correct?

4 **BY THE WITNESS:**

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10 ***[REDACTED - Intentionally left blank]***

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[WITNESS PANEL: Ward|Yadav]

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***[REDACTED - Intentionally left blank]***

PRESIDING OFCR. BAILEY: Excuse me.  
Do we need to close the room for this?

WITNESS YADAV: Yes. This is getting  
into the weeds, and this would be confidential.  
So, yes.

PRESIDING OFCR. BAILEY: Okay.

MR. NEEDLEMAN: I think so.

WITNESS YADAV: Yes.

PRESIDING OFCR. BAILEY: All right.  
Who in the room is not entitled to confidential  
information, Mr. Gets, do you know?

MR. GETZ: Everyone in room is  
entitled.

PRESIDING OFCR. BAILEY: Okay. So,  
should we turn the phone off or -- off the  
record.

(Off-the-record discussion  
ensued.)

[WITNESS PANEL: Ward|Yadav]

1                   PRESIDING OFCR. BAILEY: Back on.  
2           All right. The people on the phone have  
3           identified themselves, and the witness has  
4           agreed that they're all people that she knows.  
5           And there are no objections from the Petitioner  
6           to disconnecting the phones. So, we are not  
7           going to disconnect the phone.

8                               *(End of public session as*  
9                               *Pages 51 through 62 contain*  
10                              *information that is deemed to be*  
11                              **CONFIDENTIAL & PROPRIETARY** *and*  
12                              *are therefore provided under*  
13                              *separate cover so designated.)*

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[WITNESS PANEL: Ward|Yadav]

1                                   ***(Hearing resumes within the***  
2                                   ***PUBLIC session.)***

3                                   PRESIDING OFCR. BAILEY:   Okay.   Thank  
4                                   you.

5                                   All right.   I think that's all the  
6                                   questions I have.   Thank you very much.

7                                   Mr. Needleman or Ms. Geiger, do you  
8                                   have any redirect?

9                                   MR. NEEDLEMAN:   I have none for Mr.  
10                                  Ward.

11                                  MS. GEIGER:   And I have none for Ms.  
12                                  Yadav.

13                                  PRESIDING OFCR. BAILEY:   Okay.   I  
14                                  thank you for your testimony, and you can be  
15                                  excused.

16                                  All right.   Let's take a ten-minute  
17                                  break.   And, when we come back, we will have  
18                                  the Antrim residents, and Mr. Iacopino will  
19                                  walk you through introducing your testimony,  
20                                  okay?

21   *[No verbal response.]*

22                                  PRESIDING OFCR. BAILEY:   All right.  
23                                  Thank you.

24   *(Recess taken at 10:12 a.m.)*

[WITNESS PANEL: Ward|Yadav]

1                                    *and the hearing resumed at*  
2                                    *10:23 a.m.)*

3                                    PRESIDING OFCR. BAILEY: All right.  
4                                    We're back on the record.

5                                    And, during the break, I looked at  
6                                    Page 8 in the *pdf* document with the  
7                                    definitions, and I got a little bit more  
8                                    confused. And, so, I appreciate you coming  
9                                    back to walk me through this. I think I've  
10                                    figured it out, but I want you to tell me, so  
11                                    that I know I have it right.

12                                    **BRENT WARD, Previously Sworn (Resumed)**

13                                    **ANU YADAV, Previously Sworn (Resumed)**

14                                    (End of public session as  
15                                    Pages 65 through 67 contain  
16                                    information that is deemed to be  
17                                    **CONFIDENTIAL & PROPRIETARY** and  
18                                    *are therefore provided under*  
19                                    *separate cover so designated.)*

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1                                   **(Hearing resumes within the**  
2                                   **PUBLIC session.)**

3                                   PRESIDING OFCR. BAILEY: Okay. Thank  
4                                   you very much. I appreciate your coming back  
5                                   up. You can be excused now.

6                                   Or, well, do you have any redirect?

7                                   MR. NEEDLEMAN: I'm tempted on the  
8                                   "lawyer" comment, but I won't.

9                                   PRESIDING OFCR. BAILEY: Okay. Thank  
10                                  you.

11                                  All right. Let's have the Antrim  
12                                  residents, after they leave the stand, come up  
13                                  and get sworn in please.

14                                  (Whereupon **Shelley Nelkens** and  
15                                  **Richard Block** were duly sworn by  
16                                  the Court Reporter.)

17                                  **SHELLEY NELKENS, SWORN**

18                                  **RICHARD BLOCK, SWORN**

19                                  **DIRECT EXAMINATION**

20 BY MR. IACOPINO:

21 Q       Okay. I'm going to start with you, Ms.  
22       Nelkens. Could you tell us your full name and  
23       spell your name for the record please?

24 A       (Ms. Nelkens) It's actually Doris Helen

[WITNESS PANEL: Nelkens|Block]

1 Nelkens, is my legal name. Shelley is a  
2 nickname.

3 Q Okay. And could you spell "Nelkens" for us  
4 please?

5 A (Ms. Nelkens) N-e-l-k-e-n-s.

6 Q And where do you reside?

7 A (Ms. Nelkens) At 11 North Main Street, in  
8 Antrim, New Hampshire.

9 Q And did you file pre-filed testimony in this  
10 docket?

11 A (Ms. Nelkens) Yes.

12 Q And has it been marked as "Exhibit 4" for  
13 identification?

14 A (Ms. Nelkens) Yes.

15 Q And is that testimony true and correct to the  
16 best of your knowledge and belief?

17 A (Ms. Nelkens) Yes.

18 Q Okay. And do you wish for that testimony to be  
19 entered into the docket here today as your  
20 testimony?

21 A (Ms. Nelkens) Yes.

22 Q Do you have any changes or additions to it?

23 A (Ms. Nelkens) No.

24 Q Thank you. Mr. Block, could you please state

{SEC 2019-03} [REDACTED-For PUBLIC Use] {11-12-19}

[WITNESS PANEL: Nelkens|Block]

1 your name, spelling your last name for the  
2 record?

3 A (Mr. Block) My name is Richard Block,  
4 B-l-o-c-k.

5 Q And can you tell us where you reside please?

6 A (Mr. Block) I reside at 63 Loveren Mill Road,  
7 in Antrim.

8 Q Okay. Now, Mr. Block, did you file Exhibit 5  
9 for identification as your pre-filed testimony?

10 A (Mr. Block) Yes, I did.

11 Q And is that testimony true and correct to the  
12 best of your knowledge and belief?

13 A (Mr. Block) Yes, it is.

14 Q And do you wish for that testimony to be  
15 entered into the docket here today?

16 A (Mr. Block) I do.

17 Q Do you have any changes or additions to that?

18 A (Mr. Block) None.

19 MR. IACOPINO: They're available for  
20 cross.

21 PRESIDING OFCR. BAILEY: Mr.  
22 Needleman?

23 MR. NEEDLEMAN: I assumed Counsel for  
24 the Public was going to go first.

[WITNESS PANEL: Nelkens|Block]

1 PRESIDING OFCR. BAILEY: Oh, I'm  
2 sorry. Yes, you're right. Mr. Brooks?

3 MR. BROOKS: I have no questions.

4 PRESIDING OFCR. BAILEY: Mr.  
5 Needleman?

6 MR. NEEDLEMAN: Then, I have none.  
7 Thank you.

8 PRESIDING OFCR. BAILEY: All right.  
9 Any questions from the Committee? No?

10 *[No verbal response.]*

11 PRESIDING OFCR. BAILEY: All right.  
12 I thank you for your testimony.

13 WITNESS NELKENS: You're more than  
14 welcome.

15 PRESIDING OFCR. BAILEY: All right.  
16 Are there any other witnesses that we need to  
17 hear from?

18 MR. NEEDLEMAN: I don't believe so.

19 PRESIDING OFCR. BAILEY: All right.  
20 Seeing none. Let's take closing statements, if  
21 that's okay.

22 So, Ms. Nelkens, would you like to  
23 start with your argument?

24 MS. NELKENS: Sure. Is this on?



1 Okay.

2 First of all, I would like to say  
3 that, had I not been denied the right to  
4 discovery, which I think I should have had a  
5 right to, I would have been able to prove my  
6 point. That the lights were never purchased.  
7 And, apparently, nobody was ever hired to put  
8 them on, these are the temporary lights. And,  
9 certainly, that does not fall under prudent  
10 operator standards, which I think, by right,  
11 should negate the entire process for Citigroup,  
12 if they are going to be adhering to their  
13 Agreement.

14 Not having lights on from the time  
15 that that Project hit 200 feet, all the way to  
16 the final height, is the height of -- I'm not  
17 sure what. I don't know whether they didn't  
18 buy the lights to save money. I have no idea  
19 what happened.

20 I do know that that should be taken  
21 into consideration. And I'm hoping that the  
22 Subcommittee will look into that further, and  
23 find that the lights were not purchased, and,  
24 therefore, they were violating the Certificate,

1 and, therefore, it was not prudent operating  
2 standards. And Citigroup should not be  
3 involved in such a shysterly operation.

4 That's all.

5 PRESIDING OFCR. BAILEY: Thank you.  
6 Mr. Brooks.

7 MR. BROOKS: Thank you.

8 First, I just want to reiterate what  
9 I believe my role was today, and what our role  
10 is. It was not, as far as I understood, to  
11 reevaluate the entire Project, to determine  
12 whether or not we would approve the project if  
13 it came in here fresh today. I simply  
14 examined, essentially, the delta, the  
15 difference between what was proposed in this  
16 Application and what was existing in the  
17 Project.

18 That transaction seems relatively  
19 common. It's, in its essence, is relatively  
20 simple, although the mechanism is complicated.

21 As we talked about, and as the  
22 witnesses discussed, essentially, Citicorp --  
23 Citigroup is buying the tax credits, and there  
24 are a significant structure that goes along

1 with that. But, in its fundamental respect,  
2 that's what we're talking about.

3 I did, for my own purposes, not only  
4 review it internally, I did hire Brattle Group  
5 to review the ECCA. And they confirmed that  
6 this is a normal transaction within the  
7 renewable energy world. But that was for my  
8 purposes.

9 But, having looked at it and having  
10 examined it, I have no objection to the  
11 proposal. I do believe that, to the extent  
12 that the Subcommittee issues an order, it  
13 should reflect the assertions made by the  
14 Applicant. In other words, that nothing will  
15 change with respect to the ultimate control and  
16 operation of the Project.

17 PRESIDING OFCR. BAILEY: Thank you.  
18 Mr. Needleman.

19 MR. NEEDLEMAN: I was just wondering  
20 if the Town had anything.

21 PRESIDING OFCR. BAILEY: Oh, I'm  
22 sorry. Does the Town, would you like to make  
23 any --

24 MR. ROBERTSON: No statement. No.

1                   PRESIDING OFCR. BAILEY: Okay. All  
2 right.

3                   MR. NEEDLEMAN: Thank you, Madam  
4 Chair. Just quickly.

5                   The representations that Ms. Nelkens  
6 made about having "the right to discovery" in  
7 this case are ones that we don't agree with. I  
8 think the record clearly reflects that the  
9 Committee admitted these petitioners as full  
10 parties, gave them the opportunity to conduct  
11 discovery. In fact, a technical session did  
12 occur. They had the opportunity to review the  
13 information and request information, if they  
14 wanted it. And, so, the notion that they were  
15 somehow denied access to that information I  
16 don't believe is accurate.

17                   With respect to what happened with  
18 the lights, I think we've addressed that issue.  
19 And I think that the October 4th, 2019 letter  
20 from Ms. Monroe says everything that needs to  
21 be said about this issue as it might in any way  
22 pertain to this docket.

23                   When you look back over the course of  
24 the record in this proceeding, you will see,

1 and I think, Madam Chair, you acknowledged at  
2 the beginning in your opening remarks that this  
3 tax equity investment was contemplated earlier  
4 on in the transfer proceeding. It is, as we've  
5 heard numerous times, a very common mechanism  
6 for financing these types of projects. And I  
7 think it's also very important to recognize the  
8 fact that using this type of finance mechanism  
9 is a way to implement important national and  
10 state policy with respect to the encouraging --  
11 encouragement of the development of renewable  
12 energy projects.

13 We believe that the Petitioners have  
14 provided all the information that is necessary  
15 in their materials and their testimony and  
16 exhibits, which I would ask be moved into the  
17 record as full exhibits, to support the request  
18 that this equity infusion, as described in the  
19 Petition, be allowed. And we ask that you  
20 approve it.

21 PRESIDING OFCR. BAILEY: Ms. Geiger,  
22 are you --

23 MS. GEIGER: I just would basically  
24 support everything that Mr. Needleman said.

1 MR. BAINES: Microphone.

2 MS. GEIGER: I don't have one.

3 MR. BAINES: Oh.

4 PRESIDING OFCR. BAILEY: Support  
5 everything that Mr. Needleman said?

6 MS. GEIGER: Correct.

7 PRESIDING OFCR. BAILEY: Okay. All  
8 right. Are there any objections to any of the  
9 exhibits?

10 MR. NEEDLEMAN: None by the  
11 Petitioners.

12 MR. BROOKS: None by Counsel for the  
13 Public.

14 PRESIDING OFCR. BAILEY: Okay.  
15 Without objection, we will strike ID on  
16 Exhibits 1 through 5.

17 And, with that, we will close the  
18 record. And take a brief break with counsel,  
19 and then we will come back and deliberate.

20 MR. IACOPINO: And just so the record  
21 is clear, Exhibit 2 will remain confidential.

22 PRESIDING OFCR. BAILEY: All right.  
23 Also, if the court reporter could provide a  
24 copy of the transcript in advance to the

## [DELIBERATIONS]

1 Applicant to screen, to make sure that we got  
2 all the confidential information appropriately  
3 flagged and redacted, I would appreciate that.  
4 Thank you.

5 All right. We're going to take a  
6 ten-minute break.

7 *(Recess taken at 10:38 a.m. and*  
8 *deliberations commenced at*  
9 *10:49 a.m.)*

**D E L I B E R A T I O N S**

10  
11 PRESIDING OFCR. BAILEY: All right.  
12 We are going to have the Subcommittee  
13 deliberate the merits of the proposal.

14 The first thing I'd like to do is  
15 discuss the Motion for Declaratory Ruling. And  
16 here we need to determine -- or, the Applicant  
17 has asked us to determine that it does not need  
18 approval for -- excuse me a second.

19 *[Presiding Officer Bailey*  
20 *conferring with Atty. Iacopino.]*

21 MS. NELKENS: Can I --

22 PRESIDING OFCR. BAILEY: Ms. Nelkens,  
23 this is deliberations. So, this is us talking.

24 MS. NELKENS: Yes.

## [DELIBERATIONS]

1                   PRESIDING OFCR. BAILEY: What do you  
2                   need?

3                   MS. NELKENS: I would just like to  
4                   open up the record for a minute, --

5                   PRESIDING OFCR. BAILEY: No.

6                   MS. NELKENS: -- so that I can  
7                   address something that was said about --

8                   PRESIDING OFCR. BAILEY: The record  
9                   is closed.

10                  MS. NELKENS: All righty. Sorry.

11                  PRESIDING OFCR. BAILEY: Okay. All  
12                  right.

13                  So, the Applicant has asked us to  
14                  determine by declaratory ruling that they don't  
15                  need approval to change this corporate  
16                  structure or ownership. They have the burden  
17                  to demonstrate that the request is not a  
18                  transfer of ownership or a change in ownership  
19                  structure.

20                  So, anybody want to start the  
21                  discussion?

22                  MR. BAINES: Yes. In view of the  
23                  chart, it's clear to me that this is definitely  
24                  a change in structure. And I would so move to



## [DELIBERATIONS]

1 deny the Motion for Declaratory Ruling.

2 MR. SERVETAS: I would agree, and  
3 second.

4 PRESIDING OFCR. BAILEY: Okay. All  
5 those -- well, is there any discussion on the  
6 motion?

7 I agree with you. I think that it's  
8 clearly a change in ownership structure. So, I  
9 think that we need to move forward with the  
10 next step of the phase.

11 So, any -- if there's no further  
12 discussion?

13 *[No verbal response.]*

14 PRESIDING OFCR. BAILEY: Okay. All  
15 those in favor of the motion denying the  
16 ruling -- denying the Motion for Declaratory  
17 Judgment say "aye"?

18 *[Multiple members indicating*  
19 *"aye".]*

20 PRESIDING OFCR. BAILEY: All right.  
21 That's unanimous.

22 And we will move onto whether the  
23 change in ownership will effect the financial,  
24 technical, and managerial ability of Antrim

## [DELIBERATIONS]

1 Level to comply with its ability to meet the  
2 terms of the Certificate.

3 So, under our rules, we look at -- we  
4 look at three things: Financial, managerial  
5 and technical. And the rule is Site 301.13.  
6 When "determining whether an applicant for a  
7 Certificate of Site and Facility has the  
8 financial capability to construct and operate  
9 the facility, the Commission" -- or, sorry,  
10 "the committee must consider: The applicant's  
11 experience in securing funding to construct and  
12 operate energy facilities similar to this  
13 proposed facility; the experience and expertise  
14 of the applicant and its advisors, to the  
15 extent the applicant is relying on advisors;  
16 the applicant's statements of current and *pro*  
17 *forma* assets and liabilities; and financial  
18 commitments the applicant has obtained or made  
19 in support of the construction and operation of  
20 the proposed facility."

21 So, here, I think what we need to do  
22 is consider whether the proposed change in  
23 ownership structure changes any of the findings  
24 that the Committee made with respect to those

## [DELIBERATIONS]

1 in financial.

2 MR. BAINES: It's my observation that  
3 it does enhance the financial capability. So,  
4 I feel we've met that criterion -- the proposal  
5 has met that criterion.

6 MR. SERVETAS: I would agree. I  
7 don't see a change to the financial  
8 capabilities that are brought up by going with  
9 the equity tax with this new structure.

10 PRESIDING OFCR. BAILEY: Yes. And I  
11 was on the Subcommittee that approved the  
12 change in ownership, whereby Antrim Level LLC  
13 became the owner. And it was expected that  
14 they would finance part of it through tax  
15 equity financing. So, I think that this is  
16 consistent with what they said they were going  
17 to do. And I do also think that it's a common  
18 practice for renewable projects like this.

19 So, I don't think that the financial  
20 capability has -- that the financial capability  
21 of Antrim Level has changed, and, in fact, it  
22 may even be better for Antrim Level to be able  
23 to meet the terms of the Certificate.

24 All right. For technical capability,

## [DELIBERATIONS]

1 the rule requires that we consider "the  
2 applicant's experience in designing,  
3 constructing, and operating energy facilities  
4 similar to the proposed facility; and the  
5 experience and expertise of any contractors or  
6 consultants engaged or to be engaged by the  
7 applicant to provide technical support for the  
8 construction and operation of the proposed  
9 facility."

10 And here, we are going to consider  
11 whether the change in ownership structure has  
12 in any way affected Antrim Level's ability  
13 to -- whether it's changed Antrim Level's  
14 ability to meet those requirements.

15 MR. SERVETAS: Here I would say that,  
16 just because the structure is really financial,  
17 there's no impact on the technical  
18 capabilities. So, I would say it's no change.

19 MR. BAINES: And, also, the entity  
20 having about 100 years experience in this was  
21 pretty compelling to me as well.

22 PRESIDING OFCR. BAILEY: And the  
23 testimony that Citi gave that I felt was  
24 compelling was that they really don't want to

## [DELIBERATIONS]

1 have any --

2 MR. BAINES: Right.

3 PRESIDING OFCR. BAILEY: -- business  
4 in the technical or the managerial side. And  
5 the Agreement, as we dove into, corroborates  
6 the testimony that Antrim Level and TransAlta  
7 ultimately will still have full responsibility  
8 for managerial -- well, for the technical  
9 capability. I don't think that this ownership  
10 structure has changed that.

11 MR. BAINES: So, there's no change  
12 from the original decision supporting --

13 *[Court reporter interruption.]*

14 MR. BAINES: I think there's no  
15 change from the original approval that the  
16 experience was definitely engaged in this  
17 Project for the successful operation,  
18 completion and operation of it.

19 PRESIDING OFCR. BAILEY: All right.  
20 And the same format for managerial capability,  
21 we need to consider "the applicant's experience  
22 in managing the construction and operation of  
23 energy facilities similar to the proposed  
24 facility; and the experience and expertise of

## [DELIBERATIONS]

1 any contractors or consultants engaged or to be  
2 engaged by the applicant to provide managerial  
3 support for the construction and operation of  
4 the proposed facility."

5 And the conversation is, has that  
6 changed -- is that changed by the new ownership  
7 structure?

8 MR. SERVETAS: I would say, similar  
9 to the discussion above with technical  
10 capabilities, you know, it's staying the same  
11 with TransAlta. There's no change to that from  
12 what was previously done.

13 MR. BAINES: And I concur with that.

14 PRESIDING OFCR. BAILEY: And I do as  
15 well.

16 All right. So, I think that I could  
17 entertain a motion for a finding that there is  
18 no -- that the ownership structure -- the  
19 change in ownership structure does not have an  
20 impact on the financial, managerial, or  
21 technical ability of the Applicant to finish  
22 the construction and operate the Project in  
23 terms with the Certificate.

24 But I would like to add Counsel for

## [DELIBERATIONS]

1 the Public's caveat that we reflect in the  
2 Order the Applicant's willingness to agree --  
3 let me find my notes here. Hang on.

4 Oh. To reflect the Applicant's  
5 assertion that nothing will change with respect  
6 to operation of the Project, just to add that  
7 as a --

8 MR. BAINES: And, also, from the  
9 public testimony indicated it's a normal  
10 transaction that's being asked here, in terms  
11 of their opinion.

12 PRESIDING OFCR. BAILEY: Yes. And  
13 Counsel for the Public's consultant, who  
14 reviewed the Agreement, --

15 MR. BAINES: Correct.

16 PRESIDING OFCR. BAILEY: -- said that  
17 it was a standard --

18 MR. BAINES: So, I would --

19 PRESIDING OFCR. BAILEY: -- a fairly  
20 standard agreement, even though it's confusing  
21 to us.

22 MR. BAINES: So, Madam Chair, I would  
23 so move.

24 PRESIDING OFCR. BAILEY: All right.

## [DELIBERATIONS]

1 MR. SERVETAS: I would second.

2 PRESIDING OFCR. BAILEY: Okay. Any  
3 discussion?

4 *[No verbal response.]*

5 PRESIDING OFCR. BAILEY: All those in  
6 favor say "aye"?

7 *[Members indicating "aye"*  
8 *unanimously.]*

9 PRESIDING OFCR. BAILEY: Okay. All  
10 right.

11 Now, we need to -- I need to ask for  
12 a motion to approve the change in ownership  
13 structure?

14 MR. SERVETAS: I so move.

15 MR. BAINES: Second.

16 PRESIDING OFCR. BAILEY: All right.  
17 Any discussion?

18 *[No verbal response.]*

19 PRESIDING OFCR. BAILEY: All those in  
20 favor?

21 *[Members indicating "aye"*  
22 *unanimously.]*

23 PRESIDING OFCR. BAILEY: Okay. Is  
24 there any other business that anybody -- that



1 the Committee -- the Subcommittee needs to take  
2 up in this docket?

3 *[No verbal response.]*

4 PRESIDING OFCR. BAILEY: Seeing none.  
5 All right. Thank you. We're adjourned.

6 ***(Whereupon the hearing and***  
7 ***deliberations were adjourned at***  
8 ***10:59 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)