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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

October 18, 2019 - 1:10 p.m.
Concord, New Hampshire

RE: SEC DOCKET NO. 2019-03
ANTRIM LEVEL, LLC
PETITION FOR DECLARATORY RULING
OR, IN THE ALTERNATIVE, MOTION
FOR EXPEDITED APPROVAL OF
CHANGE IN OWNERSHIP STRUCTURE
(Prehearing Conference)

PRESIDING OFFICER: Michael Iacopino, Esq.
Pamela G. Monroe (SEC Admin.)

APPEARANCES:

COUNSEL FOR APPLICANTS:

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

Reptg. Citigroup Global Markets, Inc. and Citicorp
North America, Inc.:
Susan M. Geiger, Esq.

Reptg. Antrim Residents:
Shelley Nelkens
Richard Block

COUNSEL FOR THE PUBLIC:

K. Allen Brooks, Esq.
Assistant Attorney General
N.H. Dept. of Justice

COURT REPORTER: SUSAN J. ROBIDAS, N.H. LCR NO. 44

P R O C E E D I N G S

1
2 MR. IACOPINO: Okay. Welcome. We
3 are here for a prehearing conference in
4 Docket 2019-03, Antrim Level, LLC, Petition
5 for Declaratory Ruling or, in the
6 Alternative, Motion for Expedited Approval of
7 Change in Ownership Structure. My name is
8 Michael Iacopino. I am counsel to the
9 Committee on this docket, and I'm serving as
10 a co-hearings examiner with Pamela Monroe,
11 who is to my left.

12 First thing that we are going to do
13 here is take appearances of the folks who are
14 present, and then we will get into the agenda
15 of the prehearing conference. So if we can
16 start with Mr. Needleman and work our way
17 down the table there, please tell us who you
18 are and who you represent, if you're
19 representing somebody.

20 MR. NEEDLEMAN: Barry Needleman
21 from McLane Middleton, representing Antrim
22 Level.

23 MR. GETZ: Tom Getz, McLane
24 Middleton, Antrim Level.

1 MS. GEIGER: Susan Geiger from Orr
2 & Reno, representing Citigroup and Citibank.

3 MR. GENEST: Mike Genest, Town of
4 Antrim.

5 MR. ROBERTSON: John Robertson,
6 Town of Antrim.

7 MR. IACOPINO: Let's go up to the
8 front table. Mr. Block.

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

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

13 MR. IACOPINO: And Counsel for the
14 Public.

15 MR. BROOKS: Allen Brooks.

16 MR. IACOPINO: Okay. Thank you.

17 There is an agenda that was
18 published for this prehearing conference.
19 It's pretty much the standard agenda that we
20 use in all of these prehearing conferences.
21 The purpose of a prehearing conference is to
22 address those statutory criteria. They
23 include things like offers of settlement;
24 whether issues can be simplified;

1 stipulations or admissions to evidence, proof
2 of facts, or any consensus that may be
3 required; discussion of scheduling issues and
4 hearing issues, like limitation of the number
5 of witnesses; if anybody is seeking a change
6 in the standard procedures of the Committee;
7 and any other matters that may be -- that may
8 affect the ultimate hearing of this matter.
9 Neither Ms. Monroe nor I will decide this
10 matter. It will be decided by the
11 Subcommittee that was appointed by the
12 Chairman -- by the Vice-Chair of the
13 Committee, the acting Chairman of the
14 Committee.

15 So we will begin. And I think
16 probably it's best to start off just for me
17 to basically say what the scope of this
18 hearing is. The scope of the hearing is
19 actually twofold: The petitioners have asked
20 that, in the first instance, there be a
21 declaratory ruling that there's no approval
22 necessary for the tax equity financing that
23 they are proposing; and in the alternative,
24 if the Subcommittee believes that this is a

1 change in the Company structure, as defined
2 under the decision and certificate and order,
3 that in that circumstance, that the proposed
4 tax equity financing be approved by the
5 Committee -- or by the Subcommittee. So
6 that's the motion that is before the
7 Subcommittee. That is not a motion that
8 means that we are going to re-litigate all of
9 the issues that were previously litigated in
10 the original docket in this case. And the
11 issue that comes to the foreground in a
12 proceeding like this is really the issue that
13 was originally determined under RSA
14 162-H:16,IV, whether the -- IV(a) -- whether
15 or not the Applicant has adequate financial,
16 technical and managerial capability to assure
17 construction and operation of the facility
18 and continuing compliance with the terms and
19 conditions of the Certificate. That appears
20 to be the main legal issue that would be
21 resolved in this proceeding if the
22 Subcommittee got to the second part of the
23 motion. The first part of the motion asks
24 the Subcommittee to declare that no further

1 resolution needs to be done by the
2 Subcommittee in order for the tax equity
3 financing to occur. In other words, it's
4 already covered by the original -- or by the
5 transfer docket the last time that the
6 ownership changed for this particular
7 project.

8 So that's the issue that is out
9 there. Does anybody disagree that that's the
10 issue that is raised by the pleadings?

11 [No verbal response]

12 MR. IACOPINO: Mr. Getz.

13 MR. GETZ: Yes. Thank you, Mr.
14 Iacopino. I think that fairly represents the
15 status of this proceeding. And in our
16 belief, it's very limited. It's only the
17 issue of whether the way that the tax equity
18 financing as structured needs approval, that
19 in the first instance it was contemplated in
20 the transfer. To the extent that the
21 Subcommittee were to conclude that it could
22 not issue a declaratory ruling to that
23 effect, they would look at the issue of
24 whether they should approve the arguable

1 change in the ownership structure, which
2 really is just the insertion of other layers
3 within the existing TransAlta corporate
4 structure.

5 MR. IACOPINO: It's an alternative
6 request.

7 MR. GETZ: Yes.

8 MR. IACOPINO: Ms. Nelkens. Please
9 use microphone.

10 MS. NELKENS: I'm representing
11 Antrim residents. I just want to make sure
12 that we don't speed through this so quickly
13 that we ignore the part of the sentence,
14 "whether the transferees have adequate
15 financial," which I think we'll see. I don't
16 know how much Citigroup is aware of their
17 managerial and technical capabilities to
18 insure that the conditions of the Certificate
19 are met. So I want to make sure that we
20 don't rush through this, so that we look at
21 this in a very thorough way.

22 MR. IACOPINO: I'm sure the
23 Subcommittee will look at this in a very
24 thorough way. What I quoted from was from

1 the statute, not from the -- I think you have
2 the order on intervention.

3 MS. NELKENS: Right.

4 MR. IACOPINO: All right. But as
5 I've just explained, it's RSA 162 H:16,IV(a)
6 that the Subcommittee will be focusing on.
7 The language that you've read in that
8 decision may be a little bit different than
9 that portion of the statute.

10 MS. NELKENS: I think it just uses
11 "continuing" instead of "continuously."

12 MR. IACOPINO: It may be. And I
13 just want to make sure we're talking about the
14 same thing. And it does include financial,
15 technical and managerial capability --

16 MS. NELKENS: Right.

17 MR. IACOPINO: -- assuming that the
18 Subcommittee gets to the second, the
19 alternative request.

20 MS. NELKENS: Which is why I don't
21 want to rush through this, to make
22 sure that --

23 MR. IACOPINO: Well, nothing will
24 be decided today.

1 Mr. Block.

2 MR. BLOCK: Could you just repeat
3 that section number?

4 MR. IACOPINO: Sure. I'm sorry.
5 It's RSA 162-H, Section 16 -- so that's colon
6 16, the way we write it -- Roman Numeral IV,
7 and then small A in parentheses is the way
8 it's written in the statute.

9 MR. GETZ: And excuse me, Mr.
10 Iacopino. We will want to respond to this
11 argument, as I believe Ms. Geiger will.

12 MR. IACOPINO: I didn't actually
13 hear an argument. But how would you like
14 to -- to Ms. Nelkens' comments?

15 MR. GETZ: Yeah.

16 MR. IACOPINO: How would you like
17 to respond to Ms. Nelkens' comments?

18 MR. GETZ: I think it suggests a
19 wider scope to this proceeding, and I think
20 there may need some clarification.

21 MS. AMIDON: Yeah, I think Ms.
22 Nelkens -- and I won't speak for her -- but I
23 thought she was reading from the prehearing
24 conference order, and so -- excuse me, the

1 order on the Petition to Intervene. And
2 there is a sentence in there that talks about
3 the purpose of the hearing is to determine
4 whether -- the second purpose being to
5 determine whether the transferees have
6 adequate financial, managerial and technical
7 capabilities. I'm not aware of what
8 "transferees" means in that sentence. I
9 agree with you that the proper inquiry is the
10 one under 162-H:16,IV(a), insofar as the
11 Applicant is concerned. But I'm not sure
12 what "transferees" means. And I would argue
13 that it does not mean my clients.

14 MR. IACOPINO: I didn't sign the
15 order, so I can't speak to that. But I think
16 that what we're talking about is more not
17 even a dispute, but a discussion about terms
18 as opposed to anything else. I think that
19 you have laid out -- or the Applicants have
20 laid out what it is they're asking to do.
21 They're asking that, in the first instance,
22 it be declared to be okay under the current
23 certificate and decision, and then, if that
24 is not, that the Subcommittee finds -- that

1 the Subcommittee nonetheless approves that --
2 I like to refer to it as a "change in the
3 corporate structure" more than a transfer of
4 ownership. But we all know what it is that
5 the Applicant wishes to do and how they have
6 presented it in their pleadings.

7 Did anybody else want to address
8 this No. 2 on our agenda and identify any
9 additional issues that may be in dispute?

10 I'm sorry. Mr. Brooks, did you
11 have anything to add with respect to the
12 statement of the issues before the
13 Subcommittee?

14 MR. BROOKS: No, I agree with your
15 statement of the issues in your description.
16 I'm just concerned that, specifically for Mr.
17 Block and Ms. Nelkens, that they're able to
18 explain to you -- have a chance to explain
19 what they expect to do at whatever hearing
20 occurs, so that they don't get as far as the
21 hearing with us believing that all understood
22 what it was about and then are told, well,
23 you actually can't talk about those things.
24 So I just want to make sure they have the

1 chance to explain what they expect will
2 happen and make sure that that comports with
3 what you've described.

4 MR. IACOPINO: Okay. Before I get
5 to them, how about from the Town? Did you
6 guys have anything you wanted to say?

7 [No verbal response]

8 MR. IACOPINO: Okay. Mr. Brooks
9 has suggested that I should offer you the
10 opportunity to explain your position in more
11 detail. So go ahead if you think it's
12 appropriate to do so.

13 MS. NELKENS: Well, my position is
14 that, going by the language here, which I
15 thought was lovely, to have financial
16 capabilities, to get financing in the first
17 place, I would presume that their managerial
18 and technical capabilities were looked into.
19 And they may have been looked into prior to
20 the three and a half months when they had no
21 lighting and were not in compliance with
22 their Certificate. I don't know. But I want
23 to make sure that that is allowed in, that it
24 is definitely part of the financial structure

1 and --

2 MR. IACOPINO: I'm sorry. I don't
3 want to step --

4 MS. NELKENS: No, step. Go ahead.

5 MR. IACOPINO: If I understand what
6 I think you're saying, it's that you believe
7 it will be appropriate under RSA 162:16,IV to
8 put in evidence of the lighting issue as
9 evidence that the Applicant is not
10 financially, technically -- does not have the
11 financial, technical or managerial capability
12 to ensure compliance with the Certificate.
13 So you seek to put evidence about that into
14 the record in this hearing.

15 MS. NELKENS: I thought some of it
16 was already put into the record.

17 MR. BLOCK: This hearing hasn't
18 started yet, so...

19 MR. IACOPINO: We haven't had a
20 hearing yet in this docket.

21 MS. NELKENS: Okay. I'm sorry. So
22 Pam has all the information. So, yes.

23 MR. IACOPINO: Understand that this
24 docket, Ms. Nelkens, is separate from any

1 other docket and is separate from any
2 informal proceedings or any informal things
3 that have taken place, even letters that have
4 been written by the administrator and the
5 other staff member. They are not part of
6 this docket unless they are admitted into the
7 docket through the hearing process by the
8 presiding officer.

9 MS. NELKENS: Okay.

10 MR. IACOPINO: So it's important
11 for you to understand that.

12 So was there anything else about
13 your position that you wanted to explain?

14 MR. BLOCK: I think that covers it.

15 MR. IACOPINO: Mr. Brooks.

16 MR. BROOKS: Just to further
17 clarify our perspective on it, because you
18 mentioned this before and I think it's a good
19 point about re-litigating issues, Counsel for
20 the Public took several stances, both in
21 Antrim I and II, about whether or not the
22 Applicant met the criteria, whether the
23 project should be approved overall. We
24 generally were opposed to many of those

1 issues. I view this, my role in this
2 hearing, as not to re-litigate those issues,
3 including financial capacity, but to examine
4 the "delta," I'll call it here, which is the
5 change that they're proposing, to see if that
6 causes a change in financial, managerial
7 capacity, and anything else that we're
8 looking at. So, not to go back and do the
9 same thing we did again, even if I don't like
10 it. We're not going to do it again.

11 MR. IACOPINO: So whether -- try to
12 encapsulate it -- whether the new -- assuming
13 that the tax financing -- well, assuming
14 that, on the second part of the question,
15 second part of the motion, assuming that the
16 Committee says, yes, this does need approval
17 by us, what you're going to focus on is does
18 this make the Applicant a better or a worse
19 Certificate holder.

20 MR. BROOKS: Yes.

21 MR. IACOPINO: Does the Applicant
22 have any -- I'm sorry. Let me -- wait. I'm
23 going to ask them to give their response, so
24 I want them to know everything before they do

1 it.

2 Did you have other issues you
3 wanted to raise?

4 MS. NELKENS: Well, I had not
5 really spoken with Allen before, so I did not
6 know where the Counsel for the Public stood.
7 And I can understand what he's saying, that
8 you've already litigated the managerial and
9 the technical capabilities. However, in the
10 meantime, much time has passed, much has
11 happened. And if we were to litigate this
12 today as opposed to not litigating it, it
13 would show -- I cannot imagine that this
14 Subcommittee could find that they had the
15 managerial and technical capabilities,
16 because they have proven -- they have been in
17 constant violation of their Certificate.

18 MR. IACOPINO: Those are things
19 that, if you are going to argue them, you're
20 going to have to present evidence. I mean,
21 obviously, that's your conclusion. I know
22 there's at least half of the room that
23 probably disagrees with you. But that's
24 aside from the point. That's not what today

1 is about. We're not here to argue about
2 whose position is right. We're here just to
3 identify the issues.

4 MS. NELKENS: They made my point
5 for me. They had to get --

6 MR. IACOPINO: This is not the time
7 for argument, though.

8 Okay. So are there any other
9 issues that you identify as being in dispute
10 here?

11 [No verbal response]

12 MR. IACOPINO: No? Okay.

13 Does the Applicant want to respond
14 to anything presented by Counsel for the
15 Public or Ms. Nelkens and Mr. Block?

16 MR. NEEDLEMAN: Yes. Thank you.
17 So having heard what Counsel for the Public
18 said regarding giving the Intervenors the
19 opportunity to make clear what it was they
20 were hoping to cover, now hearing that, we
21 would certainly object to that, to the extent
22 that those issues become part of the
23 proceeding, either the substance of the
24 proceeding or the discovery process going

1 forward, because everything that Ms. Nelkens
2 has described are things that are clearly
3 outside the scope of this proceeding,
4 assuming that the Motion for Declaratory
5 Ruling is denied and we actually move into
6 the substance. All of those pertain to
7 issues that would have related to the
8 transfer of the Certificate. That issue has
9 been decided. And if there are any issues
10 that Ms. Nelkens or anyone believes pertain
11 to enforcement of an existing Certificate,
12 that is entirely subject to a separate
13 proceeding. It has no place here. So, to
14 the extent that those things are being
15 suggested as appropriate for creeping into
16 this docket in any way, we would object to
17 that.

18 MR. IACOPINO: Any other response
19 from the Applicant or the Town?

20 [No verbal response]

21 MR. IACOPINO: Okay. Did you want
22 to respond to what Mr. Brooks indicated his
23 role would be, or his sort of approach, I
24 should say, about the delta issue that he

1 raised?

2 MR. GETZ: That's exactly what we
3 think should be the appropriate role here:
4 To the extent there's a change that needs
5 approval, is that change in corporate
6 structure a reasonable one. And that should
7 be the sole focus.

8 MR. IACOPINO: Okay. You're
9 raising your hand over there, Mr. Block.

10 MR. BLOCK: Okay. Just to clarify,
11 our intent, or our understanding, is if we
12 were to take what's said on this order and
13 Petition to Intervene literally -- this was
14 signed by Kathryn Bailey, Presiding Officer,
15 and it says the limited purpose of this
16 hearing I understand is to determine whether
17 the proposed transaction requires approval of
18 the Subcommittee; and if so, whether the
19 transferees have adequate financial,
20 managerial and technical capabilities to
21 assure that the conditions of the Certificate
22 are continuously met. If this is to be taken
23 as it's stated here, then my understanding is
24 that there would be discussion, after

1 discussing the first part about the financial
2 transaction, they would be discussing --
3 there would be further discussion on whether
4 the transferees have adequate financial,
5 managerial and technical capabilities. We
6 understand that that was decided in previous
7 dockets. What we're interested in addressing
8 here is just specifically things that have
9 happened recently and since any previous
10 dockets. In our mind, it's part of this
11 because it's specifically -- if that's not to
12 be discussed, then it seems to me we're --
13 that's a change to be made in -- you know a
14 potential change in what this docket is. But
15 I read that as part of the discussion of this
16 specific docket, so that's why we are here.

17 MR. IACOPINO: So we have a
18 disagreement about what may be relevant
19 evidence, what may be admissible evidence,
20 what may be part of the arguments made by
21 each party. And that's not a decision that I
22 can make sitting here. But I can tell you
23 that in prior hearings of this sort, there
24 have been limitations placed on the things

1 that are addressed. For instance, let's go
2 with the easy ones. I don't anticipate, and
3 unless the Chairperson on the Subcommittee
4 says otherwise, I don't anticipate that we
5 are going to be talking about natural
6 environment. I don't anticipate we're going
7 to be talking about public health and safety,
8 to the extent that it dealt with issues such
9 as the noise or the shadow flicker and things
10 like that. I don't anticipate that we will
11 be addressing aesthetics and things like
12 that. It sounds to me like there is a narrow
13 area where one side says, well, we think that
14 managerial and technical capabilities has to
15 be determined based upon some things that
16 have happened, and the Applicant says that we
17 don't believe that that's the case, that all
18 that has to be determined here is whether or
19 not this particular tax financing, or tax
20 equity financing will do anything to change
21 what's already been determined to be adequate
22 financial, managerial and technical abilities
23 of the Applicant. That's the way I see the
24 issues as presented here. Does anybody --

1 the difference in the issues presented here,
2 the difference in opinion here.

3 [No verbal response]

4 MR. IACOPINO: Okay. So at least
5 we know what our differences are.

6 Okay. And as I said, I can't
7 decide that for you. That's going to be
8 decided by the person who determines what is
9 admissible and not admissible, which I
10 suppose should lead us down to skip a couple
11 items on the agenda, skip over No. 3 and 4
12 regarding scheduling, and go right to
13 scheduling of discovery, because that seems
14 like where we'll have the issues here.

15 Normally there are two types of
16 discovery that are undertaken in Site
17 Evaluation Committee cases: There are data
18 requests and responses, and then sometimes
19 there are technical sessions. I will first
20 turn to the Applicant and ask the Applicant
21 for what it proposes to be a reasonable
22 discovery schedule and reasonable methods of
23 discovery in this particular case.

24 MR. GETZ: Thank you, Mr. Iacopino.

1 The Antrim Level proposes a very expedited
2 procedural schedule, consistent with the
3 nature of this proceeding. We would propose
4 to make the Equity Capital Contribution
5 Agreement available for review immediately by
6 Mr. Block and Ms. Nelkens. We can do that at
7 our offices, the McLane offices in Concord,
8 or make it available here through the SEC, to
9 have it viewed here. It's a 637-page
10 document that is highly confidential and that
11 is subject to a Motion for Confidentiality.
12 We would propose that they have a chance to
13 look at that between now and next Wednesday.
14 And then at the end of next week, Thursday,
15 Friday, we would make available -- and that
16 means TransAlta and Citicorp -- the witnesses
17 that have already filed prefiled testimony
18 available for questions for them through a
19 conference call. And then our goal would be
20 to go straight to a combination hearing after
21 that, ideally no later than November 1st, at
22 which the Subcommittee would address, in the
23 first instance, the Petition for Declaratory
24 Ruling. Of course, at that point Ms. Nelkens

1 and Mr. Block would be able to make any
2 arguments they might wish to make about
3 Petition for Declaratory Ruling. If the
4 declaratory ruling is not granted on that
5 same day, we would have the two witnesses
6 available for direct and cross-examination by
7 the parties to this proceeding. And then our
8 hope would be that the Committee would also
9 do its examination and be in a position that
10 same day to deliberate all the issues on this
11 proceeding.

12 MR. IACOPINO: So if I understand
13 you correctly, you want to -- you will make
14 the agreement available immediately. I
15 assume you want some kind of protective order
16 signed by the people who are going to look at
17 it --

18 MR. GETZ: Yes.

19 MR. IACOPINO: -- and that would be
20 Ms. Nelkens and Mr. Block.

21 MR. GETZ: Yeah, along with the
22 Motion for Protective Order, we included a
23 Non-disclosure Disagreement that's already
24 been signed by the members of the Select

1 Board from the Town of Antrim. And we would
2 ask the same thing, that Mr. Block and Ms.
3 Nelkens sign that NDA.

4 MR. IACOPINO: Do you guys agree to
5 sign the NDA?

6 And my only concern is that the
7 order -- there may not be an order on your
8 motion before they need to see the document.
9 So you may have the agreement, and I assume
10 that if they're going to sign it, there's no
11 objection to the order. But just in terms of
12 timing, that order is going to come out after
13 they're going to want to look at your
14 agreement, I'm sure.

15 MR. GETZ: And we're prepared to
16 provide it, subject to their signatures.

17 MR. IACOPINO: Okay. So that part
18 is -- so what you're recommending is that
19 that agreement be reviewed by next Wednesday.

20 Does anybody have the date handy
21 for next Wednesday?

22 MS. GEIGER: 23rd.

23 MR. IACOPINO: Thank you. And that
24 there be a conference call in lieu of a

1 technical session. And that would be
2 conducted when?

3 MR. NEEDLEMAN: Thursday or Friday.

4 MR. IACOPINO: So the 24th or 25th?

5 MS. NELKENS: Would that be
6 recorded?

7 MR. IACOPINO: Are you proposing
8 that that be recorded or not?

9 MR. NEEDLEMAN: No.

10 MR. GETZ: No, because technical
11 sessions typically are not transcribed.

12 MR. IACOPINO: They technically are
13 not. That is correct.

14 MR. GETZ: One thing, Mr. Iacopino.
15 We do need to have some phone calls to the
16 witnesses to confirm, depending on these
17 dates, their actual availability. I believe
18 the TransAlta witness is available anytime
19 both those days. And I'm thinking for
20 Citicorp, it looks like anytime Thursday and
21 maybe Friday morning. But if the general
22 parameters of this approach is acceptable, we
23 can nail down the times.

24 MR. IACOPINO: Okay.

1 Does the Town have anything to add
2 with respect to the discovery schedule? Does
3 the Town anticipate having counsel during --

4 MR. ROBERTSON: No. No.

5 MR. IACOPINO: Do you anticipate
6 doing any discovery, making any kind of
7 requests for any information from either of
8 the -- from either the Applicants or the
9 residents?

10 MR. GENEST: I think they already
11 provided it with the confidentiality.

12 MR. ROBERTSON: No.

13 MR. IACOPINO: Okay. Mr. Block.

14 MR. BLOCK: Is that a copy of the
15 agreement that you're talking about?

16 MR. IACOPINO: I have no idea.

17 MR. BLOCK: My question would be:
18 Is it possible for us to view it in Antrim
19 rather than coming to Concord?

20 MR. IACOPINO: Do you mind if they
21 do it at the Town Hall?

22 MR. GETZ: I would have to verify
23 with both sets of clients, with TransAlta and
24 with Citicorp. I mean, we can get that done

1 today.

2 MR. IACOPINO: Okay.

3 Any other questions about the
4 proposed schedule?

5 MS. NELKENS: Yeah. I'm not clear
6 on where it stands with my concerns, as far
7 as getting my questions answered, my
8 discovery questions. I don't know, since
9 nobody's ruled so far.

10 MR. IACOPINO: Under what they've
11 proposed, you would have the ability to
12 review the 600-some-odd-page agreement with
13 the tax equity finance company, Citibank or
14 Citicorp or whatever, Susan's clients over
15 there.

16 MS. GEIGER: For the record, I
17 should clarify that the two clients that are
18 at issue are Citigroup Global Markets, Inc.
19 and Citicorp North America, Inc.

20 MR. IACOPINO: Okay. I'm going to
21 refer to them as "Citi," okay.

22 MS. GEIGER: That's good.

23 MR. IACOPINO: But you would get to
24 review that contract between the Applicant,

1 Citi --

2 MS. NELKENS: What was the first
3 group? Citigroup what?

4 MS. GEIGER: Citigroup Global
5 Markets, Inc.

6 MS. NELKENS: Thank you.

7 MR. IACOPINO: You'll get to review
8 that between now and the 23rd. And then on
9 the 24th and 25th, they would make their
10 witnesses available for questioning by phone
11 by you and by Mr. Brooks and any other
12 parties.

13 MS. NELKENS: Well, the concerns I
14 have may not be mentioned, addressed at all
15 in that docket -- no, that's not the
16 docket -- that paperwork.

17 MR. IACOPINO: Well, they did file,
18 I believe, testimony of the witnesses as
19 well, which you get to ask them questions
20 about as well. So, just so you know, I mean,
21 it's not just the contract that's the only
22 thing that's available to you. They have the
23 burden of proof. They have presented direct
24 testimony already. They are making the

1 contract available. You'll have the ability
2 at the technical session or telephone
3 technical session to ask the witnesses that
4 they plan to call about whatever you want to
5 ask them about. And that's what they're
6 proposing as the schedule. They haven't
7 proposed anything for you. They haven't
8 proposed anything for your witnesses or
9 anything like that. So that would be the
10 next step.

11 But I do want to just go around the
12 room first, though, and ask, as far as their
13 proposal to provide information they have
14 provided, is that an acceptable time line for
15 you?

16 MS. NELKENS: As far as their end
17 of it?

18 MR. IACOPINO: Yes.

19 MS. NELKENS: Yes. As far as our
20 end --

21 MR. IACOPINO: Okay. We'll get to
22 that in a minute.

23 Let me ask Mr. Brooks. In terms of
24 what they have proposed for their discovery,

1 do you have any objection or any comments,
2 any changes?

3 MR. BROOKS: I have no objection,
4 other than the hope that if we need to work
5 together to provide a little bit more
6 flexibility, that they're willing to talk to
7 me. I assume that they are.

8 MR. GETZ: That's correct.

9 MR. IACOPINO: I assume you're
10 willing to speak with the Antrim residents
11 and the Town as well.

12 MR. GETZ: Yes, of course. And if
13 need be, we could arrange to have someone
14 bring the confidential document to Antrim
15 Town Hall next week and make an arrangement,
16 assuming they would provide a room. And we
17 can take care of that to accommodate that
18 travel issue.

19 MS. NELKENS: My understanding is
20 Mike Genest has a copy of it already?

21 MR. GENEST: No.

22 MS. NELKENS: That's not it?

23 MR. ROBERTSON: This is our copy.
24 And we've signed what we're responsible for.

1 So I would not feel comfortable handing it in
2 the other direction.

3 MR. IACOPINO: I assume they would
4 have somebody from one of the companies or
5 one of the law firms bring it there and
6 probably stick around while you guys reviewed
7 it to make sure it's not -- that it does not
8 go beyond.

9 MR. BLOCK: I have some medical
10 appointments Monday and Tuesday. But as long
11 as we can work around that, that's fine. I'm
12 sure we can find some time.

13 MR. IACOPINO: They've indicated a
14 willingness to do that.

15 MR. BLOCK: That would be
16 satisfactory.

17 MR. IACOPINO: Now, Mr. Brooks,
18 does Counsel for the Public anticipate
19 calling any witnesses or presenting anything
20 that should be disclosed during the course of
21 discovery?

22 MR. BROOKS: No.

23 MR. IACOPINO: Okay. So let's go
24 back to the Antrim residents then. You've

1 mentioned that there's evidence that you want
2 to submit during the course of this
3 proceeding. Can you give us an idea of what
4 that evidence is, and that way we can see
5 what amount of time the -- and whether it's
6 admitted or not, I'm not making a
7 determination. That's up to somebody else to
8 make. But this way, at least the Applicant
9 can tell us if it needs to do discovery on
10 it, and, you know, we can anticipate how much
11 time that might take.

12 MS. NELKENS: All right. Based
13 on -- is this on?

14 MR. IACOPINO: Is the red light on?

15 MS. NELKENS: Yeah.

16 Based on the facts that were
17 presented to the Antrim Selectmen and their
18 notes -- not calling them notes -- the
19 minutes, thank you. Based on their minutes
20 and based on the information filed with the
21 FAA concerning these incidents, that would be
22 put in to show that, yes, what I'm talking
23 about is actual fact. And then after that,
24 what I need, I will need to get some more

1 information. For instance -- you want the
2 for-instance?

3 MR. IACOPINO: Hmm-hmm.

4 MS. NELKENS: Okay. When -- and I
5 know Donna Hanson, our town administrator,
6 has asked Pamela for this information because
7 I couldn't get it, as to when the wind
8 project was considered no longer under
9 construction, because that has a lot to do
10 with whether they were in compliance, as far
11 as the lighting went. There was the other
12 question I wanted --

13 MR. IACOPINO: Okay. But that's --

14 MS. NELKENS: But that would be
15 discovery.

16 MR. IACOPINO: Right.

17 MS. NELKENS: I need responses to
18 some of these questions.

19 MR. IACOPINO: Okay. But you
20 suggested that you were asking Pam Monroe --

21 MS. NELKENS: Yeah, yeah. We were
22 first -- when this first happened, I notified
23 Pam, and she --

24 MR. IACOPINO: No. I understand

1 that part. But I'm just trying to find out
2 who you need to ask the questions of, okay.

3 (Court Reporter interrupts.)

4 MR. IACOPINO: That's what I'm
5 trying to get at is who is it that you need
6 to ask the questions of. So I'm not sure
7 that Pamela Monroe would be the right person
8 to ask that question, just from my common
9 experience with the Site Evaluation
10 Committee.

11 MS. NELKENS: Well, at the point
12 when I asked her, she was the appropriate
13 person to ask, now she's not. I would be
14 asking that of TransAlta.

15 MR. IACOPINO: Okay.

16 MS. NELKENS: And Level what? What
17 do you call it now?

18 MR. IACOPINO: Antrim Level.

19 MS. NELKENS: Antrim Level.

20 MR. IACOPINO: So you have
21 questions that you want to ask them about
22 when construction was concluded?

23 MS. NELKENS: Yeah. What's the
24 date at which the construction was -- they

1 were considered no longer under construction,
2 because that's had an impact on the type of
3 lighting that was supported to be there.

4 MR. IACOPINO: What other questions
5 do you have that you want to pose to the
6 Applicant or the -- well, to the Petitioners?

7 MS. NELKENS: I would like them to,
8 in their own words, explain why the lights
9 weren't on and the times that they weren't
10 on, and explain why they filed the number of
11 NOTAMs that they filed.

12 (Court Reporter interrupts.)

13 MS. NELKENS: N-O-T-A-M, notice to
14 airmen. Basically having them --

15 MR. IACOPINO: I know what a NOTAM
16 is. I thought you were explaining NOTAM. Go
17 ahead.

18 MS. NELKENS: No. So, basically it
19 would be having them verify everything that
20 we've been saying, showing themselves having
21 to explain, give the information which very
22 clearly shows that they are -- they were not
23 in compliance with their Certificate.

24 MR. IACOPINO: Okay. Are you aware

1 that there were a number of filings by the
2 Applicant companies regarding that that
3 have --

4 MS. NELKENS: Yes.

5 MR. IACOPINO: And did you receive
6 copies of those?

7 MS. NELKENS: Yes, and they were
8 total --

9 MR. IACOPINO: Wait a minute.
10 We're not talking about what your opinion is
11 of them. We're talking about an evidentiary
12 process here maybe. So you do have those.

13 MS. NELKENS: Hmm-hmm.

14 MR. IACOPINO: How beyond the
15 explanations given in those letters -- what
16 is it beyond those letters that you want to
17 ask them?

18 MS. NELKENS: Why there were no
19 lights starting at 200 feet all the way up to
20 497 for 3-1/2 months; and why, when the
21 lights went on, they were not in compliance
22 with -- even when they had the lights on,
23 they were not in compliance with their
24 Certificate.

1 MR. IACOPINO: And so you're
2 not just -- you want to ask them questions
3 about that.

4 MS. NELKENS: Hmm-hmm.

5 MR. IACOPINO: And if the Chairman
6 allows you to ask them those questions, they
7 may give answers that are more responsive
8 than what you saw in their letters. Is that
9 what you're trying to say?

10 MS. NELKENS: Or may be more
11 accurate, less -- I mean, I would have to go
12 through the letters again and have them
13 explain the verbiage that they used
14 because -- well --

15 MR. IACOPINO: Okay. But you're
16 looking for something more than is in the
17 letters is my point.

18 MS. NELKENS: Yes, I am.
19 Specifically the --

20 MR. IACOPINO: And you're sure you
21 want to do that?

22 MS. NELKENS: Yes.

23 MR. IACOPINO: Okay. All right.
24 And were there any other issues

1 that you wanted to bring up in your case?

2 MR. BLOCK: I don't know if you
3 were specifically asking what we might be
4 providing or submitting --

5 MR. IACOPINO: Yeah, I was. But
6 then we got off on she wanted to ask
7 questions, so --

8 MR. BLOCK: Probably a relatively
9 small number of documents is about all --

10 MR. IACOPINO: And do you know --

11 MR. BLOCK: They'd be things like
12 letters, minutes of a board of selectmen's
13 meeting and a couple of newspaper articles
14 that are all relevant. So it's...

15 MR. IACOPINO: When do you think
16 you could have those prepared to provide
17 to --

18 MR. BLOCK: Within days.

19 MR. IACOPINO: Okay. All right.

20 MR. GETZ: Mr. Iacopino, can I just
21 ask? Are those questions relevant to the tax
22 equity financing or this lighting issue?

23 MS. NELKENS: The lighting issue is
24 relevant to the tax equity. If somebody is

1 shown to be non-compliant for three and a
2 half months, then -- are you going to cut me
3 off?

4 MR. IACOPINO: I'm going to let you
5 finish.

6 MS. NELKENS: All rightie. If
7 somebody is shown to be non-compliant for
8 three and a half months, it affects the tax
9 equity. If I can get to the right people at
10 Citigroup Global and make them aware of the
11 lack of continuously being in compliance with
12 the Certificate --

13 MR. IACOPINO: Well, that's a
14 little bit different than presenting evidence
15 to this Committee, okay.

16 MS. NELKENS: Well, if
17 the evidence --

18 (Court Reporter interrupts.)

19 MR. IACOPINO: Stop. I think the
20 answer to your question is really no, at
21 least not in your definition of what is
22 relevant to the tax equity.

23 They believe that the lighting
24 issue is relevant to the financial,

1 managerial and technical capabilities in the
2 context of this docket, okay. So I think
3 that's where they're coming from. So our
4 purpose here is to make sure all the issues
5 are out on the table. So I think they
6 anticipate that they're going to present
7 evidence about the lighting situation and
8 presumably argue to the Site Evaluation
9 Committee that this motion should not be
10 granted because the Applicant, according to
11 them, has not been in compliance. I don't
12 know what how much evidence the presiding
13 officer will hear on that issue, but that's
14 not a decision we're going to make today.
15 What we're going to try to do is get a
16 discovery schedule together so that, at the
17 very least, all the information has been
18 traded so that we can have this hearing in a
19 reasonable -- within a reasonable amount of
20 time, and hopefully in an expedited fashion,
21 because it is one of the requests that has
22 been made, and it is the type of -- it's the
23 type of request through any administrative
24 body that you would generally get some

1 expedited treatment.

2 Hold on one second. I'm about to
3 lose my computer. It's not plugged in.

4 (Pause)

5 MR. IACOPINO: Sorry about that.
6 Thank you.

7 So are there any other things that
8 you intend to present by way of evidence so
9 that I can then turn to the Applicants and
10 ask them what they think they'll need to do
11 with respect to discovery, with respect to
12 what you present? Do you anticipate
13 presenting prefiled testimony from each of
14 you or from one of you or from anybody in
15 support of your position?

16 MS. NELKENS: Probably --

17 MR. BLOCK: I would say it's a
18 possibility, if that would be helpful.

19 MR. IACOPINO: Okay.

20 MS. NELKENS: Yes, we'll get
21 letters from people to support.

22 MR. IACOPINO: If you're going to,
23 when do you think you could have prefiled
24 testimony prepared?

1 MR. BLOCK: One question I have is
2 based on the -- I'm not sure on my
3 interpretation of the order on intervention.
4 Would we be permitted to each one of us
5 submit a brief prefiled testimony, or must we
6 combine it into one testimony? That's the
7 question I have.

8 MR. IACOPINO: No, I think that
9 nothing stops you from calling witnesses. So
10 you could have two separate prefiled
11 testimonies.

12 MR. BLOCK: I think that would
13 expedite things because we could just
14 individually write and not have to confer.

15 MR. IACOPINO: Well, that's my
16 question. Obviously, you two are here as
17 intervenors. But do you anticipate any
18 witnesses besides you two?

19 MR. BLOCK: Probably not. Probably
20 not, I would say at this point.

21 MS. NELKENS: Well, we have
22 letters.

23 MR. BLOCK: But a letter is --
24 (Court Reporter interrupts.)

1 (Discussion between Mr. Block and Ms.
2 Nelkens.)

3 MR. IACOPINO: A witness who files
4 prefiled testimony must come to the hearing
5 and be subject to cross-examination. So if
6 you or somebody intends to simply submit a
7 letter and is not offered as a witness at the
8 hearing by a party, that's generally put into
9 the category of "public comment." Sometimes
10 it is attached to prefiled testimony because
11 the person who does testify, say it was
12 Mr. Block, is relying upon something he saw
13 in a letter or something like that. But it's
14 more of an exhibit to the testimony. But if
15 what you're talking about is just people who
16 agree with you, who want to write letters to
17 that extent, that's more properly public
18 comment. And we do take public comment right
19 through the end of the proceedings.

20 Okay. Was there anything else,
21 Mr. Block or Ms. Nelkens, that you think you
22 would be submitting?

23 [No verbal response]

24 MR. IACOPINO: Okay. Can you give

1 me some idea of when you think you could have
2 prefiled testimony? Understanding that at
3 least on the discovery of what the Applicants
4 are presenting, you're going to have an
5 opportunity as early as Thursday and Friday
6 next week to question their witnesses.

7 MS. GEIGER: Mr. Iacopino, just to
8 weigh in on that a little bit, I had a chance
9 to chat with my client who has prefiled
10 testimony and that would be the subject of a
11 technical session, and she's not available on
12 Friday, but is available on Thursday.

13 MR. IACOPINO: Okay. I don't know
14 if you heard that, Mr. Block.

15 MR. BLOCK: I think so, yes.

16 MR. IACOPINO: I know you have some
17 appointments. Are you available on Thursday?

18 MR. BLOCK: Thursday, the 24th,
19 right now, yes.

20 MR. IACOPINO: Okay. So hopefully
21 you all can work that out. All right. So it
22 looks like the Citi witness would have to be
23 spoken to on Thursday.

24 MR. BLOCK: Okay. Are you asking

1 for -- if we do prefiled testimonies, would
2 they need to be before that, let's say the
3 24th, or could it be shortly after that?

4 MR. IACOPINO: I would think it
5 would be shortly after that because you
6 wouldn't file your prefiled testimony until
7 you've had the opportunity to do your
8 discovery, but not too far after that.
9 Because I'll tell you, we're looking at a
10 November 12th date. I think that appears to
11 be the first date that we can get our
12 Committee together for a hearing, so --

13 MR. BLOCK: Well, then, would the
14 1st of November be too late as a deadline for
15 us?

16 MR. NEEDLEMAN: We would ask that
17 it be sooner because we are hopeful that the
18 Committee will be able to take a second look
19 and move this more quickly. As Mr. Getz
20 indicated earlier, we're hoping for a hearing
21 on or before November 1st. And I would also
22 say that I think with respect to whatever
23 prefiled testimony the Intervenors do file,
24 we wouldn't be seeking discovery.

1 MR. IACOPINO: You would or would
2 not?

3 MR. NEEDLEMAN: Would not.

4 MR. IACOPINO: Well, that makes it
5 easy.

6 MR. NEEDLEMAN: I do have one other
7 suggestion, though.

8 MR. IACOPINO: What is that?

9 MR. NEEDLEMAN: I think it's clear
10 to everybody in the room what the differences
11 are between our view and the Intervenors'
12 view. It seems to me that if it was possible
13 for the presiding officer to consider that
14 issue and issue some sort of ruling by the
15 middle of next week regarding her views on
16 that, it could be very helpful in terms of
17 shaping not only their testimony, but also
18 the scope of the discovery that we'd be doing
19 next Thursday. Doesn't seem like a difficult
20 issue.

21 MR. IACOPINO: I don't know if the
22 presiding officer can do that.

23 MR. NEEDLEMAN: Well, I would just
24 ask it be considered, given it seems to be

1 the critical point here.

2 MR. IACOPINO: So you want an order
3 on the scope of the proceeding?

4 MR. GETZ: And Mr. Iacopino, in
5 that regard, all these issues related to the
6 lighting we believe were resolved in the
7 October 4th letter from Ms. Monroe with
8 respect to the response to the request for
9 enforcement and penalties. I think that's
10 already been handled in Docket 2015-02 and
11 should already be resolved.

12 MS. NELKENS: May I respond to
13 that?

14 MR. IACOPINO: Yes.

15 MS. NELKENS: Okay. That is the
16 major part of this entire issue.
17 Unfortunately, I don't know how much I'm
18 allowed to say. But Ms. Monroe had told me
19 she was coming out the night that I told her
20 the lights were out. She said she'd be out
21 that night. And then she called me the next
22 day -- I did not hear from her the next day,
23 so I called her. And she said she didn't
24 come out. She wouldn't be able to come out

1 until the following week. And then, after
2 all this, we get a letter. She never came
3 out. It would have been very easy for her to
4 see that there was a light on one tower, and
5 that was it. So everything that has come
6 afterwards -- and also, I mean, we may have
7 to get Mike to come and testify as to how he
8 was also not given the total truth.

9 MR. IACOPINO: Well, Ms. Monroe's
10 actions are not at all relevant to either of
11 these issues. And I will leave that at that.
12 I think that if what you're trying to say is
13 that the lights were off and that that is
14 what your focus is --

15 MS. NELKENS: For three and a half
16 months, yes.

17 MR. IACOPINO: -- that's
18 understood, okay. We understand that
19 position. Whether or not Ms. Monroe was able
20 to view that or not is not really an issue.
21 She responded to correspondence from the
22 Applicant is what I believe Mr. Getz was
23 referencing.

24 MS. NELKENS: Right, and ignored

1 what I had told her, and ignored what
2 Mr. Block had told her. So it was a very
3 one-sided response. And I do not think that
4 it should be relevant [sic].

5 MR. IACOPINO: Okay. So you object
6 to Ms. Monroe's letter responding to -- I
7 forgot who wrote it, but somebody from
8 TransAlta.

9 MS. NELKENS: Yeah. TransAlta's
10 letter was ridiculous, and the response was
11 also ridiculous.

12 MR. IACOPINO: So if it's admitted
13 as evidence -- if it's attempted to be
14 admitted as evidence, you can certainly
15 object to it. And that's well within your
16 prerogative.

17 But in terms of the discovery,
18 though -- let's get back to that. When is it
19 you think you can have everything to the
20 Applicants so that we can -- because after
21 that there's going to be a hearing scheduled.

22 MR. BLOCK: I would like to suggest
23 that I think we can have everything together
24 by Tuesday, the 29th of October, if that's

1 enough lead time for you.

2 MR. IACOPINO: That's fine by me.

3 Is that --

4 MR. GETZ: Well, I just want to
5 clarify. "Everything together" meaning your
6 testimony?

7 MR. BLOCK: Prefiled testimony,
8 yes, and attachments, if there are any.

9 MR. GETZ: That's fine.

10 MR. IACOPINO: And I assume that
11 will include all of the letters and
12 selectmen's minutes and all those things that
13 you mentioned?

14 MS. NELKENS: Hmm-hmm.

15 MR. IACOPINO: And that's
16 acceptable.

17 How about Counsel for the Public?

18 MR. BROOKS: That's an acceptable
19 time frame.

20 MR. IACOPINO: Okay. So as I see
21 it here then, we will have the contract made
22 available between now and next Wednesday. It
23 will be made available out at the Antrim Town
24 Hall, if that is what you prefer. The actual

1 times when it will be there will be worked
2 out between you and the representatives for
3 the Applicant and the Town. Obviously,
4 you're not going to be able to go to the town
5 hall when the town hall's closed.

6 MR. ROBERTSON: Exactly.

7 MR. IACOPINO: Did you get that?
8 You're not going to be able to go to the town
9 hall when the town hall's closed.

10 MR. ROBERTSON: Right.

11 MR. IACOPINO: Okay.

12 MR. BLOCK: I assume --

13 MR. IACOPINO: They're not going to
14 open it for --

15 MR. BLOCK: During town hall hours,
16 yes.

17 MR. IACOPINO: All right.

18 MS. NELKENS: Unless one of the
19 selectmen wanted to be gracious enough to
20 open it up.

21 MR. IACOPINO: Well, that's up to
22 them.

23 MS. NELKENS: Would you be?

24 MR. IACOPINO: The point is, for

1 our purposes here, it's going to be during --
2 'cause I don't want to hear complaining down
3 the road that they didn't open for us or
4 something. So it's going to be during town
5 hall hours, whatever they happen to be. I
6 don't know what they are in Antrim.

7 Okay. And then on the 24th, the
8 witness from Citi will be available. And
9 sometime on the 24th and 25th, the other
10 witnesses will be available.

11 MR. GETZ: We'll make them
12 available at the same time, one call.

13 MR. IACOPINO: Okay. And who is
14 going to provide the call information?

15 MR. GETZ: We will.

16 MR. IACOPINO: Mr. Getz will
17 provide that information to the rest of the
18 parties.

19 Okay. And then by October 29th we
20 will have the Antrim residents' prefiled
21 testimony and any exhibits that they intend
22 to present at the hearings.

23 And by the way, I mean, you guys
24 mentioned the contract. Are there exhibits

1 beyond the contract that you anticipate?
2 Because I would hope they would be provided
3 during this time frame as well.

4 MR. GETZ: The only exhibits are
5 what are attached to the testimony and the
6 diagrams of the corporate structure.

7 MR. IACOPINO: And that's already
8 been made public. Okay.

9 And so then discovery should be
10 done by the 29th of this month.

11 I understand there's a request to
12 move up the date from the date that we've
13 sort of been able to determine. That's not
14 up to Ms. Monroe or myself. We will speak
15 with the presiding officer to see if that can
16 be accomplished or not. And then on whatever
17 date it is, whether it's the 12th or some
18 date before that, we will have the hearing.

19 Do any of the parties have any
20 questions or any requests regarding the
21 conduct of the hearing? Is anybody asking
22 for any procedures to be taken that aren't
23 part of the normal hearing process? And in
24 this room, everybody's been to a Site

1 Evaluation Committee hearing.

2 I believe, Ms. Nelkens, at least
3 since I've been involved, this is your first
4 time as a participant, as a party.

5 MS. NELKENS: No, I was an
6 intervenor.

7 MR. IACOPINO: Okay. So is anybody
8 asking for any changes in the process at all?
9 I mean, generally the party with the burden
10 of proof will go first and then go last. And
11 there will be opportunity for
12 cross-examination based upon the prefiled
13 testimonies and vice versa when the residents
14 put on their case, or when Counsel for the
15 Public puts on their case. There will then
16 be closing arguments. And depending upon the
17 pleasure of the Subcommittee, there may be a
18 request for written arguments. I don't know
19 whether they will request that or not. But
20 that's something in a hearing like this that
21 that determination generally will be made by
22 the Subcommittee at the time of the hearing.

23 When we notice this hearing, if we
24 we're going --

1 Have we already noticed it?

2 MS. MONROE: No.

3 MR. IACOPINO: Okay. We're going
4 to notice it that we're going to hold the
5 adjudicative hearing, and we may go right
6 into deliberations. So that will all be part
7 of the notice. Ultimately, there will be a
8 written decision made based upon -- the
9 written decision will be issued based upon
10 the deliberations that are done in public by
11 the Subcommittee.

12 Any anticipated changes or
13 amendments to the petition?

14 MR. GETZ: No.

15 MR. IACOPINO: Okay. Any other
16 motions that anybody expects to file?

17 [No verbal response]

18 MR. IACOPINO: Okay. Anything else
19 that anybody wants to address at this
20 prehearing conference?

21 Mr. Brooks? Oh, I'm sorry. I
22 thought you were going for the mic.

23 MR. GETZ: If I could say one other
24 thing. I just want to make clear on the

1 Applicant's, on Antrim Level's behalf, we're
2 prepared to go to hearing as early as
3 October 30th, the day following the deadline
4 for the testimony.

5 MR. IACOPINO: Okay. Thank you. I
6 think that, as you are all aware, at least
7 two of the three that have been members of
8 this Committee in the past, so you know that
9 sometimes it's difficult to get the
10 scheduling that's necessary.

11 MR. BLOCK: I think as a technical
12 question, if some of the documents we want to
13 submit are newspaper articles, will they
14 stand as evidence by themselves? We could
15 also have the reporter testify in person,
16 probably.

17 MR. IACOPINO: I would suggest that
18 you discuss that with the other side, okay.
19 This is an administrative proceeding. The
20 technical rules of evidence don't apply. But
21 they may have an objection, so you should
22 discuss that with them first. They may not
23 have an objection. Obviously, if they don't,
24 then you don't have a problem putting the

1 newspaper articles in. But if they intend to
2 object to any of your exhibits, you want to
3 know that as soon as possible. So don't be
4 afraid to request that of them. And if you
5 need some assistance in doing that, you can
6 always give me a call.

7 MR. BLOCK: Okay.

8 MR. IACOPINO: Yes, sir.

9 MR. ROBERTSON: We would object to
10 the use of newspaper articles as evidence.

11 MR. IACOPINO: Thank you.

12 So you know there's at least one
13 objection. So you might want to -- one thing
14 that you could do is file a motion in advance
15 asking for a ruling in advance on whether
16 they'll be admitted, the newspapers articles.
17 Generally, I mean, there's relaxed rules of
18 evidence in an administrative proceeding.

19 MR. BLOCK: Can we call, in this
20 case it's a reporter that publishes the
21 paper. Can we call somebody as a witness to
22 come in and testify?

23 MR. IACOPINO: He's going to need
24 to file prefiled testimony.

1 MR. BLOCK: But it's --

2 MR. IACOPINO: So you have to do it
3 by the 29th.

4 MR. BLOCK: Okay. But even if that
5 person is not an intervenor, if they're
6 included, if they have a prefiled testimony,
7 they can then come in whenever the date is
8 set.

9 MR. IACOPINO: Yes, understanding
10 that you may -- you know, the Applicant may
11 object to that prefiled testimony and ask the
12 presiding officer not to have the Committee
13 consider it or to strike it, whatever
14 language they want to use. And there will be
15 a legal determination made at that point
16 about that.

17 MR. BLOCK: I may be premature
18 because the person may not be available, but
19 I'll look into it.

20 MR. IACOPINO: There's been a lot
21 of discussion about newspaper articles. I
22 don't know what the Applicants' position on
23 them is. I know the Town objects.

24 MR. NEEDLEMAN: Well, first of all,

1 I can't imagine a circumstance where it would
2 be necessary to bring the reporter in. So we
3 certainly wouldn't insist on that. I would
4 just say that with respect to newspaper
5 articles, to me what's important is the
6 content. And I'm pretty sure it's going to
7 speak about stuff that we don't consider
8 relevant to the docket. And so if you happen
9 to have newspaper papers about tax equity
10 financing, I'm happy to take a look at them.
11 If it's about the issues we disagree on, we
12 would object on relevance. And hopefully
13 we'll have an order on that before then and
14 we won't have to argue about it.

15 MS. NELKENS: That's what I was
16 going to say. It may be admissible,
17 depending on what the order says. And if so,
18 then --

19 MR. IACOPINO: But I'm going to
20 recommend both parties proceed as though
21 you're not going to get an order in the
22 interim. You may. But I don't want to have
23 another prehearing conference because, well,
24 we weren't ready because we didn't think this

1 would be an issue, or we thought this would
2 be an issue and now it's not, okay. That
3 issue is, as they say, "up in the air."

4 MS. NELKENS: I'm sorry. Just to
5 clarify, are you saying that we should just
6 go ahead and send the newspaper articles in
7 in meantime?

8 MR. IACOPINO: To the other side.

9 MS. NELKENS: To them.

10 MR. IACOPINO: Right, in the
11 discovery process, yes. Don't hold back and
12 then say, well, we were waiting for an order,
13 because an order may not come. The presiding
14 officer may say we'll deal with this at the
15 hearing.

16 MS. NELKENS: Okay.

17 MR. IACOPINO: And if she does do
18 that and you haven't provided the materials,
19 well, that's going to be on you, and you'll
20 probably suffer the consequences of that. So
21 proceed at this point as though what you want
22 to argue is going to be argued. They're
23 proceeding in the same way in their vein.
24 And the other participants will as well. And

1 if the presiding officer makes an order
2 regarding the scope of the proceeding that
3 says this evidence will be admitted or not
4 admitted, so be it. But if not, it's
5 obviously an issue that will be resolved at
6 the hearing because people will be objecting
7 and motions will be made at that hearing.
8 And the presiding officer will decide at that
9 point, okay. And I don't know if she will or
10 will not issue an order. I don't know what's
11 on her calendar or what her schedule is right
12 now.

13 So I believe I've exhausted my list
14 of things to discuss at this particular
15 prehearing conference.

16 Ms. Monroe?

17 MS. MONROE: I would just say that
18 we do have -- I've confirmed the Committee is
19 available on November 12th, so people should
20 mark their calendars. And if we can do
21 something sooner, we may.

22 MR. IACOPINO: Any questions?

23 [No verbal response]

24 MR. IACOPINO: Hearing none, any

1 other --

2 MS. GEIGER: If it's possible,
3 could you tell us when we might be expected
4 to hear about a written order memorializing
5 the November 12th date or setting a different
6 date? I just want to be able to confer with
7 my client sooner rather than later and make
8 sure they're available on whatever date is
9 selected.

10 And I would also echo Attorney
11 Needleman's request that the hearing be held,
12 if at all possible, before the 12th, as both
13 sides of the transaction are anxious to move
14 forward with it.

15 MS. MONROE: I would hope early
16 next week we can nail that down and issue an
17 order.

18 MS. GEIGER: Thank you.

19 MR. IACOPINO: We're literally
20 talking about eight days, eight business days
21 of difference.

22 MS. MONROE: The 11th is a state
23 holiday.

24 MR. IACOPINO: Right. So we've

1 got -- I mean, if discovery ends on the
2 29th -- I'm sorry. Yeah, eight days.

3 MS. MONROE: I know that the week
4 of the 4th through the 8th of November is not
5 available. So I guess the earliest would be
6 the 30th, if possible.

7 MR. IACOPINO: So we have three
8 days we can look at: The 30th, 31st and 1st,
9 really, because I guess there are certain
10 members of the Committee who will not be
11 available during the week of the 4th. But we
12 will look into that.

13 Any other questions?

14 [No verbal response]

15 MR. IACOPINO: No? Hearing no
16 other questions, is everybody happy with
17 adjourning? We're adjourned.

18 (Hearing adjourned at 2:18 p.m.)

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C E R T I F I C A T E

I, Susan J. Robidas, a Licensed
Shorthand Court Reporter and Notary Public
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I further certify that I am neither
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