

In Re:

*SEC 2021-01 PETITION FOR JURISDICTION OVER
PROPOSED SOLAR ENERGY FACILITY IN MILFORD, NH*

*ADJUDICATIVE HEARING AND DELIBERATIONS
August 19, 2021*

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Min-U-Script® with Word Index

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1	STATE OF NEW HAMPSHIRE
2	SITE EVALUATION COMMITTEE
3	August 19, 2021 - 1:45 p.m. [Hybrid Hearing conducted via Webex]
4	
5	RE: SEC 2021-01
6	Petition for Jurisdiction Over
7	Proposed Solar Energy Facility in
8	Milford, NH
9	(Adjudicative Hearing and Deliberations)
10	
11	SITE EVALUATION COMMITTEE
12	PRESENT:
13	Dianne H. Martin, Chairwoman N.H. Public Utilities
14	(Presiding Officer)
15	Michael Fitzgerald, Asst. Dir DES-Air Resources Div.
16	Victoria Sheehan, Cmsr. Dept. of Pub. Trans.
17	Robert Baines Public Member
18	Michael York Dept. Natural and
19	Cultural Resources
20	Lisa Noe Public Member
21	Daniel C. Goldner, Cmsr. N.H. Public Utilities
22	
23	Doreen Borden, Clerk Corrine Lemay - Web Moderator
24	COUNSEL FOR THE COMMITTEE: J. D. Lavallee, Esquire
	(N.H. Attorney General
	Office)
	APPEARANCES:
	Reptg. Brox Environmental Citizens
	Eli Leino, Esq. (Primmer Piper...)
	Reptg. Milford Spartan Solar, LLC
	Barry Needleman, Esq. (McLane...)
	Rebecca S. Walkley, Esq. (McLane...)
	Reptg. Town of Milford
	John T. Ratigan, Esquire
	Court Reporter: Susan J. Robidas, NH LCR No. 44

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1 PROCEEDINGS
2 CHAIRWOMAN MARTIN: All right.
3 Good afternoon, everyone. We're here this
4 afternoon in Docket 2021-01, which is the
5 petition for jurisdiction over a proposed
6 solar facility in Milford, New Hampshire.
7 Let's start by taking attendance of the
8 Committee.
9 My name is Dianne Martin. I am the
10 Chairwoman of the Site Evaluation Committee.
11 Commissioner Goldner.
12 COMMISSIONER GOLDNER: Hi, Dan
13 Goldner, Public Utility Commissioner.
14 CHAIRWOMAN MARTIN: Commissioner
15 Sheehan.
16 COMMISSIONER SHEEHAN: Good
17 afternoon. Victoria Sheehan, Commissioner,
18 Department of Public Transportation.
19 CHAIRWOMAN MARTIN: Mr. Baines.
20 MR. BAINES: Robert Baines, public
21 member.
22 CHAIRWOMAN MARTIN: Mr. York.
23 MR. YORK: [connectivity issue] My
24 name is Michael York, representing the

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1 Department of Natural and Cultural Resources.
2 CHAIRWOMAN MARTIN: Okay. And
3 Ms. Noe.
4 MS. NOE: Lisa Noe, public member.
5 CHAIRWOMAN MARTIN: And Mr.
6 Fitzgerald.
7 MR. FITZGERALD: Good afternoon.
8 Michael Fitzgerald. I am representing the
9 Department of Environmental Services.
10 CHAIRWOMAN MARTIN: Okay. We also
11 have counsel today, if you'd like to
12 introduce yourself.
13 MR. LAVALLEE: Good afternoon. I'm
14 J.D. Lavallee from the Department of Justice.
15 CHAIRWOMAN MARTIN: All right. I'd
16 like to start by taking appearances. And I
17 do not know many of you, so I'm going to look
18 to you to point out to me who you are and who
19 you're here for. I'm going to start with
20 Brox, please.
21 MR. LEINO: Eli Leino from Primmer
22 Piper Eggleston & Cramer, here for Brox
23 Environmental.
24 CHAIRWOMAN MARTIN: Thank you, Mr.

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1 Leino.
2 And for Milford Spartan Solar.
3 MR. NEEDLEMAN: Barry Needleman,
4 from McLane Middleton. And with me is
5 Rebecca Walkley, also from McLane Middleton,
6 and Mike Kaplan from Milford Spartan Solar.
7 CHAIRWOMAN MARTIN: Okay. Thank
8 you.
9 And I have Attorney Ratigan for the
10 Town of Milford, I believe.
11 MR. RATIGAN: That's correct. John
12 Ratigan, from Donahue, Tucker & Ciandella,
13 representing the Town of Milford, accompanied
14 by Mike Daley, who's the development --
15 [connectivity issue]
16 CHAIRWOMAN MARTIN: Do I have
17 anyone else here who is counsel or appearing
18 in this matter? Would the other folks who
19 are here like to introduce themselves?
20 [connectivity issue]
21 [Court Reporter interrupts.]
22 CHAIRWOMAN MARTIN: No, I think you
23 shut it off.
24 MS. FOURNIER: Suzanne Fournier.

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1 CHAIRWOMAN MARTIN: Thank you.
2 Did you get that?
3 COURT REPORTER: I did, thank you.
4 [connectivity issue]
5 [Court Reporter interrupts.]
6 MR. LEINO: That's Tom Gardner,
7 Brox Environmental Citizens.
8 MR. LEBEL: Dominic LeBel, Milford
9 Spartan Solar.
10 CHAIRWOMAN MARTIN: Okay. Thank
11 you. And I believe we may have a couple of
12 members of the public online as well. I'll
13 give them an opportunity for public comment
14 during the proceeding.
15 Okay. So I would like to start
16 with counsel who had filed an Assented-to
17 Motion for Deliberations. It was not
18 entirely clear to me the process that you
19 envisioned and described in that motion. So
20 if you could share with us your proposal for
21 how we proceed today, I think that would be
22 helpful.
23 MR. NEEDLEMAN: Good afternoon,
24 Madam Chair. Thank you. So I think what we

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1 envisioned was that the Committee would hear
2 from each of the parties: First the
3 petitioner, followed by the Town, then
4 response by Milford Spartan Solar. You would
5 have the opportunity to ask any of us
6 questions, if you had any, and then proceed
7 to deliberate. Or if you feel like you have
8 what you need based on paper for
9 deliberations, I suppose that's your
10 prerogative.

11 CHAIRWOMAN MARTIN: Okay. I have a
12 question, then, on the evidence. So is there
13 an agreement? It wasn't entirely clear to me
14 as to the extent of the agreement to admit
15 evidence for our consideration.

16 MR. NEEDLEMAN: We haven't
17 specifically spoken to the admission of
18 evidence, but we would have no objection to
19 admitting what's already in the record.

20 CHAIRWOMAN MARTIN: Okay. So the
21 exhibits that were attached to the
22 supplemental petition. And all of those are
23 admitted by agreement?
24 [Court Reporter interrupts.]

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1 MR. NEEDLEMAN: I said from our
2 perspective, yes.

3 COURT REPORTER: Thank you.

4 CHAIRWOMAN MARTIN: And did you get
5 everyone else?

6 COURT REPORTER: I didn't hear
7 anyone else after that. People are really
8 going to have to speak up.

9 MR. LEINO: I have no objection to
10 what Mr. Needleman said. I agree with that.

11 COURT REPORTER: Thank you.

12 MR. RATIGAN: Town of Milford has
13 no objection.

14 CHAIRWOMAN MARTIN: Okay. Great.
15 Thank you. That helps to clarify the
16 process.

17 All right. Then we'll proceed in
18 that order. Mr. Leino.

19 MR. LEINO: Thank you, Madam Chair.
20 Again, my name is Eli Leino, and I'm --
21 [connectivity issue] -- as noted by Suzanne
22 Fournier and Tom Gardner of Brox
23 Environmental Citizens, the petitioner in
24 this matter. The group is a collaborative of

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1 Milford area residents focused on protecting
2 the Brox land and natural resources in
3 general. The group's been active since about
4 2012 and has 40 members on their e-mail
5 distribution list -- [connectivity issue] --
6 community organization without a formal
7 membership -- [connectivity issue] some
8 question about that previously --
9 [connectivity issue] --

10 Before I proceed, can you hear me
11 all right?

12 COURT REPORTER: I'm holding on.
13 But if I can have you quite literally eat the
14 mic, that would be great.

15 MR. LEINO: How's this?

16 COURT REPORTER: That's even
17 better. Thank you.

18 MR. LEINO: Okay. Thank you. And
19 certainly let me know if you need me to
20 repeat anything.

21 Brox is a petitioner under the SEC
22 rules via both a petition signed and endorsed
23 by a hundred or more registered voters in the
24 town of Milford, as well as a similar

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1 petition of a hundred registered voters from
2 abutting communities. So... [connectivity
3 issue]

4 In RSA 162-H:1, the SEC Declaration
5 of Purpose recognizes that energy facilities
6 have significant impacts on the environment,
7 air and water quality, and the use of natural
8 resources, among other impacts. Accordingly,
9 the Legislature finds that it's in the public
10 interest to maintain a balance among those
11 potential impacts and potential benefits and
12 decisions about the siting and construction
13 of energy facilities like the one we're
14 discussing today. Furthermore, there's a
15 full and timely consideration of
16 environmental consequences being provided, in
17 that the State ensure that the construction
18 and operation of the energy facility is
19 treated as a significant aspect of land use
20 planning in which all environmental, economic
21 and technical issues are resolved in an
22 integrated fashion.

23 I'd like to talk today a bit about
24 the importance environmentally of the Brox

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1 site, as well as -- [connectivity issue] the
 2 town thus far has or has not treated this as
 3 a significant aspect of land use planning.
 4 The site is an important environmental
 5 resource and habitat that should be
 6 protected. Since the signing of the 2018
 7 Letter of Intent, the Town of Milford,
 8 through its various boards, municipal
 9 planning boards, has treated Spartan Solar
 10 like a partner, which it basically is, rather
 11 than trying to seek the Legislature's
 12 required balance, adequately applying the
 13 Town's own land-use planning standards.
 14 So far on the record, and I'll go
 15 more into this, the planning board has issued
 16 a variance using dubious logic -- or excuse
 17 me, the ZBA. And the appointed planning
 18 board has a number of conflicts globally and
 19 -- [connectivity issue]. We are aware of the
 20 developer's contention that multiple
 21 state-level agencies be involved in the
 22 permitting of this, but the lead in these is
 23 often taken at the local level. And right
 24 now there are certain conflicts and questions

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1 that SEC jurisdiction could overcome to
 2 ensure the balance between environment and --
 3 [connectivity issue]
 4 [Court Reporter interrupts.]
 5 MR. LEINO: -- and economic impacts
 6 of this project.
 7 The SEC does have the option to
 8 assert jurisdiction on this matter based on
 9 the petitions, as mentioned previously, and
 10 the fact that under RSA 162-H:2, Subsection
 11 XII, the 16-megawatt name plate capacity of
 12 the proposed facility.
 13 So to speak briefly about the Brox
 14 site, the site is roughly 220 contiguous
 15 acres, and this proposal would affect 83 of
 16 them directly. The State's Wildlife Action
 17 Plan ranks the Brox site as the highest level
 18 wildlife habitat for a portion of it, the
 19 highest in the state, and is the highest in
 20 the region for the remainder of the property.
 21 The Brox land is home to, quote,
 22 significant wildlife species, end quote, as
 23 defined by the SEC, which are any species
 24 listed as threatened or endangered by United

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1 States Fish and Wildlife Service, or any
 2 species listed as threatened, endangered or
 3 of special concern by the New Hampshire
 4 Department of Fish and Game. Three important
 5 species exist on Brox land: The Blanding's
 6 Turtle, the Hognose Snake, and the Spotted
 7 Turtle. As part of the evidence that we had
 8 presented previously, Exhibits 3A, B and C
 9 are cards about these species, but I will
 10 speak briefly about them.
 11 The Blanding's Turtle is listed in
 12 the New Hampshire Natural Heritage Bureau's
 13 Rare Animal List, as published in July 2020,
 14 for New Hampshire as an S1 endangered
 15 species. The Eastern Hognose Snake is listed
 16 as an S1 endangered species. "S1" means that
 17 at the state level, it is critically in peril
 18 because of extreme rarity or some factor of
 19 its biology makes it particularly vulnerable
 20 to extinction. That is the highest threat
 21 level for those two animals. And
 22 furthermore, the Spotted Turtle exists on the
 23 property, which is listed as S2 threatened,
 24 "S2" being imperiled because rarity or other

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1 factors demonstrably make it vulnerable to
 2 extinction.
 3 The threats to these animals, as
 4 listed on those exhibits, are that loss of
 5 habitat from rapidly developing Southern New
 6 Hampshire and terrestrial and wetland habitat
 7 loss and fragmentation. This Committee
 8 defines "fragmentation" as the loss of
 9 habitat that results from the division of
 10 relatively large, continuous habitats into
 11 smaller, more isolated remnants, which is
 12 exactly what is proposed here for the Spartan
 13 Solar project. So while in its filings the
 14 developer clearly downplays turtle mortality,
 15 these are endangered species. Every single
 16 one of them matters. And this is a
 17 critically important piece of property for
 18 these species.
 19 With jurisdiction, the SEC could
 20 dispassionately waive the environmental
 21 impact of this proposal, something that the
 22 Town thus far has had a hard time doing,
 23 based on the public record of its hearings.
 24 So if I could talk briefly about

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1 the local process thus far. This Committee
 2 noted in the Timbertop Wind decision that
 3 past exercises of discretionary jurisdiction
 4 have been at the request of the host
 5 community. And we understand that. And
 6 generally the host community will take the
 7 lead in these matters, as they are the group
 8 and people most in contact with their own
 9 communities. But because this petitioner has
 10 essentially partnered up and will serve as
 11 the landlord and receive payments through
 12 this PILOT program, it's basically allowing
 13 the Town, through its various municipal
 14 boards, to serve as the arbiter to its own
 15 petition. And in the filings by the
 16 developer, there's notes that take the absurd
 17 position that we believe that towns shouldn't
 18 be able to permit things that are beneficial
 19 for the town, which we obviously know is not
 20 true. But this is a situation where, if the
 21 town permits a grocery store or a public park
 22 that the citizens enjoy, that's great for the
 23 town. The Town isn't directly making money
 24 off of those things, where they will have --

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1 serve as the landlord and be able to take
 2 money in this payment in lieu of taxes
 3 agreement. So this is different. And it's a
 4 situation where, if the SEC asserts
 5 jurisdiction, they can overcome these
 6 conflicts of interest.

7 The first piece to go into the
 8 record of what has happened so far in the
 9 town of Milford is that the permitting is
 10 portioned in the Industrial District, as well
 11 as part in the Residential District, and
 12 under the town's by-laws or zoning ordinance,
 13 "utility solar," which is solar above 50
 14 acres, which this project qualifies for, and
 15 I believe it's regardless of name plating
 16 capabilities, is not permitted in
 17 Residential; Residential A, B; Commercial
 18 Limited, or the ICI District. It is allowed
 19 in the ICI2 Industrial District with a
 20 conditional use permit. Half of this zone is
 21 ICI2, and half of the land is zoned
 22 Residential.

23 So in granting the Applicant's
 24 variance request on this, the board, you'll

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1 see in their July 2 minutes, allowed the
 2 variance based on the farcical reasoning that
 3 the hardship is the zone the property is in.
 4 That's an opportunity where maybe it makes
 5 sense to re-draw the zoning map in the town
 6 of Milford so that it could be right size for
 7 uses. But to grant a variance based on the
 8 hardship being the zone that it's in is
 9 basically the opposite of having a zoning
 10 ordinance and zoning map under Euclidian
 11 zoning. We all understand that because you
 12 can't have something in the zone, the reason
 13 you can't permit a convenience store in your
 14 residential zone, the hardship certainly is
 15 because of the zone you are in. And the Town
 16 has made the decision as to how they zone
 17 these things. So to basically spot-zone half
 18 of this to allow their partner, the
 19 Applicant, to get this project going is a
 20 clear breach of the duties of this appointed,
 21 non-elected board. And I think that's
 22 something that should be considered. And it
 23 is something that, if the SEC were to take
 24 jurisdiction, they can overcome these

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1 conflicts.

2 Furthermore, the Town of Milford
 3 now has to, through its planning board, grant
 4 a conditional use permit which is -- from the
 5 filings will be based on the zoning ordinance
 6 and the different regulations the Town has at
 7 a local level for solar facilities. However,
 8 if there's a question of how faithfully
 9 they're willing to apply their standards, and
 10 if this application has already been
 11 pre-judged, the capability of both the
 12 Applicant and the capability of the board to
 13 apply its own rules is already brought into
 14 question. So that's a situation where, if
 15 the SEC were to take jurisdiction, it
 16 overcomes all of those questions whereby the
 17 developer and the Town stand as their own
 18 planning and zoning and discretionary boards
 19 for granting the necessary permits while they
 20 sit on both sides of the aisle as both
 21 partners with the developer through their
 22 role as landlord and receiving -- \$9 million
 23 is the number that's been bandied around
 24 repeatedly and is in the record of both the

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1 joint planning and zoning board hearing, as
 2 well as in various other filings and notes
 3 that currently -- [connectivity issue] in
 4 current use. So it's a very low tax
 5 producer. Part of the reason that the
 6 Applicant has pushed it is that it would be a
 7 good economic benefit to the town.
 8 So as noted in our supplemental
 9 filing, our state constitution demands that
 10 all judges be as impartial as the law of
 11 humanity will admit. And the Supreme Court
 12 opined that this applies similarly to members
 13 of boards acting in their quasi-judicial
 14 capacity. Right now we don't have this
 15 impartiality that is required by both our
 16 constitution and ruled upon by our state
 17 courts.
 18 So I don't certainly want to impugn
 19 the honor of the members of these boards. I
 20 understand how difficult it is. I have
 21 served as a planning board member in my town
 22 and realize that it's hard work. But we have
 23 an opportunity to overcome certain
 24 credibility issues with this application in

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1 determining that it's not already been
 2 prejudged, because the Town does have such a
 3 strong input and strong rationale
 4 economically to be involved with this
 5 project.
 6 So we respectfully ask that you
 7 take jurisdiction because the SEC has an
 8 unbiased perspective and the expertise to
 9 evaluate the project. Counsel for the Public
 10 and the Attorney General's Office will act as
 11 an advocate for the public's interest if
 12 jurisdiction is taken rather than just our
 13 poorly funded citizens group. The financial
 14 benefits to the town and the region depend on
 15 understanding energy markets, which the Town
 16 is not qualified to evaluate. The large
 17 project could have significant impact on the
 18 electric grid, which the Town is not
 19 qualified to evaluate. And the SEC process
 20 allows for recommendations and participation
 21 from the utilities. The SEC is in a better
 22 position to evaluate whether a developer has
 23 the financial, technical and managerial
 24 capability to pull off such a large project.

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1 As of now, this has been prejudged. It's
 2 unclear that the Town is willing to make
 3 those evaluations clearly and unbiasedly.
 4 And rather than relying on the local zoning
 5 and natural resources permits, the SEC
 6 process allows for that necessary holistic
 7 look, where all aspects of this can be taken
 8 as one.
 9 So in conclusion, this is a
 10 situation where the process clearly will
 11 affect, if it goes forward as planned, the
 12 environmental aspects of the Brox land which
 13 contains, as noted, two endangered species
 14 and a threatened species. And right now it's
 15 unclear that without SEC jurisdiction, that
 16 anyone will take a cold, hard look at the
 17 project and require that setbacks be
 18 followed, that certain things might be able
 19 to be better sited. Right now, if they're
 20 willing to essentially ad hoc rezone property
 21 for this Applicant, it's unclear that the
 22 needs and the balance as described in 162-H
 23 will be met. Thank you.
 24 CHAIRWOMAN MARTIN: Thank you, Mr.

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1 Leino. Questions from the Committee of Mr.
 2 Leino? Go ahead.
 3 QUESTIONS BY SEC COMMITTEE MEMBERS:
 4 MR. BAINES: My question is that
 5 this partnership acquisition just kind of
 6 intrigues me, because you were a member of a
 7 planning board, so -- [connectivity issue]
 8 MR. LEINO: Not in this town.
 9 [Court Reporter interrupts.]
 10 COURT REPORTER: I'm having a very
 11 hard time understanding the SEC member. I'm
 12 really sorry.
 13 MR. BAINES: Okay. I'm going to go
 14 back again. I'm a little confused about this
 15 partnership argument. You know, planning
 16 boards and zoning boards are separate from
 17 selectmen or aldermen or mayors, whatever it
 18 be. So what is the basis of that argument?
 19 MR. LEINO: If I understand your
 20 question, it's what is the basis of me
 21 alleging that there's basically a de facto
 22 partnership --
 23 MR. BAINES: Yes.
 24 MR. LEINO: -- in the town?

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1 Right now, the Town physically owns
2 37 acres of the 83 acres that are going to be
3 permitted here. They have re-zoned the other
4 half of this, acting through their board.
5 And now the board, the planning board -- the
6 zoning board did the re-zoning through the
7 variance, and the planning board has the
8 ability to grant the permit necessary for the
9 solar. If this solar is granted, it changes
10 the property from a low tax-income-generating
11 farmland under current use to a PILOT program
12 that's already been negotiated on a
13 high-earning property on land that the Town
14 stands to serve as landlord and owner of the
15 parcel.
16 And furthermore, and as noted in
17 our supplementary filing, on the
18 privately-owned piece of land, one of the
19 planning board members is the former owner
20 that still has significant contacts with the
21 owner of it. It at least creates the
22 suspicion that there's been prejudgment under
23 the legal framework and case law in the state
24 of New Hampshire.

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1 CHAIRWOMAN MARTIN: Just one
2 follow-up question and then I'll get to you,
3 Mr. Fitzgerald.
4 Is that member still involved
5 directly?
6 MR. LEINO: He has not recused
7 himself at this point as a member. But Mr.
8 Amato is the former owner of that, and on the
9 record at various of the hearings has
10 mentioned that he does have those
11 involvements that I mentioned.
12 CHAIRWOMAN MARTIN: Okay. Thank
13 you.
14 Mr. Fitzgerald.
15 MR. FITZGERALD: Thank you. Would
16 you expand a little bit upon the -- why the
17 remedy for the problems -- I mean --
18 [connectivity issue] I would say 75 percent
19 of your discussion is on these conflicts as
20 opposed to environmental and other concerns.
21 So why the remedy for that would not be to do
22 things such as seek a requirement to recuse
23 or to go to court and appeal decisions, why
24 the remedy should be to go to the SEC?

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1 MR. LEINO: I think that's a very
2 fair question. And I don't think that we are
3 limited to only -- [connectivity issue]
4 COURT REPORTER: I'm sorry.
5 "Limited to only what," please?
6 MR. LEINO: -- only one remedy in
7 this situation, where the SEC has the
8 option -- [connectivity issue] -- capability
9 and expertise to basically remove those
10 conflicts. But we will also look into what
11 other remedies exist.
12 [connectivity issue]
13 MR. LEINO: Any development of this
14 property beyond its current use in terms of
15 the tax base there will have a significant
16 benefit to the town. There's still --
17 [connectivity issue].
18 But what I think the concern is,
19 and about 25 percent of my presentation, is
20 how important, fairly and inarguably
21 important the natural resources are here with
22 the threatened species, that if the figure of
23 \$9 million is on the scale of them weighing
24 what's looked for under 162-H:1, if no one is

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1 going to consider the environmental aspects
2 of this with as much due care as is required
3 in this situation, because that \$9 million is
4 a shiny object off in the horizon, that PILOT
5 program, having already been negotiated, is
6 the board being -- is the town -- is the goal
7 of getting to the finish line here through
8 those variances and through permits that's
9 required by the zoning ordinance. So it's
10 not that any of these are inherently --
11 [connectivity issue] -- it's that there's
12 this indication that it's already been
13 prejudged and we are just hurdling toward the
14 finish line for --
15 [Court Reporter interrupts.]
16 COURT REPORTER: I'm sorry.
17 "Hurdling towards the finish line for..."
18 MR. LEINO: Permitting this 83-acre
19 project without respect to habitats, wetland
20 crossings, the 15 vernal pools, the setbacks
21 that should be required between these two
22 parcels, any of these things, that if the
23 goal and the gravity is the \$9 million as
24 opposed to a very minimal current use tax

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1 treatment, it's something that clearly
 2 indicates that the Town has an alternate --
 3 [connectivity issue] -- other than striking
 4 the balance required by the Legislature.
 5 MR. FITZGERALD: So, again, it
 6 seems to me we're not talking about the
 7 difference between current use and \$9
 8 million. We're talking the difference
 9 between the increased tax value that would be
 10 achieved as a result of this versus PILOT --
 11 again, a use -- [connectivity issue] -- the
 12 magnitude of that would be -- [connectivity
 13 issue] seems to me we're not discussing what
 14 it is today, but we're discussing what it
 15 would be tomorrow with this PILOT agreement.
 16 So I'm trying to understand why the nature of
 17 that agreement is different than increase in
 18 value under the normal tax structure.
 19 MR. LEINO: I'm not sure that it
 20 would, other than that these agreements have
 21 already been negotiated and indicate that the
 22 Town, if it leaves it the way it is, receives
 23 a very low amount of money -- [connectivity
 24 issue] -- on current use land tax received

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1 versus knowing or having a general sense of
 2 how much money will be received, where the \$9
 3 million is certainly a higher value than is
 4 currently being achieved. So with the
 5 understanding that \$9 million is out there
 6 and will not be achieved or realized without
 7 these permits, starting with the ZBA granting
 8 that variance based on the hardship being
 9 what zone the property is in, and the
 10 planning board having the requirement of a
 11 conditional use permit, again, if the gravity
 12 here is where the \$9 million is the finish
 13 line, and all it takes is trampling these
 14 endangered species to permit it, it seems
 15 like there's an indication so far, based on
 16 that zoning board variance, that this town is
 17 willing to walk over whatever it takes to get
 18 to that finish line of \$9 million.
 19 CHAIRWOMAN MARTIN: Go ahead.
 20 MR. FITZGERALD: This question may
 21 border on deliberations, so feel free,
 22 Counsel, to stop me if you feel necessary, or
 23 Chairwoman. But it seems to me that we're
 24 being asked to prejudge the Town's good

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1 intent in honoring the statutes and various
 2 ordinances and so on and their planning board
 3 process. It seems to me that we're being
 4 asked to say that they're not capable of
 5 making a good decision on this, despite the
 6 situations that you have outlined. And so,
 7 again, I think it's sort of the same
 8 question.
 9 But why are you asking us to take
 10 jurisdiction in advance of that happening,
 11 because of the potential for some conflict,
 12 as opposed to seeking the other relief you
 13 might have because the conflict is
 14 actually -- may have or may not have actually
 15 occurred?
 16 MR. LEINO: Again, I don't think
 17 Brox Environmental Citizens' presence in this
 18 forum -- [connectivity issue] -- there are
 19 other remedies, not a lot. But I do think
 20 that this, under the laws of this state, is a
 21 committee that has the ability and the
 22 authority and the capacity to judge this type
 23 of application in light of the rules
 24 prescribed by RSA 162-H. And at this time,

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1 the Town has already indicated its conflicts
 2 through these public hearings and public
 3 records. And we have the opportunity to
 4 supersede those conflicts and that give a
 5 fair and balanced -- [connectivity issue] --
 6 where this Committee certainly has no basis,
 7 has no piece of that \$9 million on land it
 8 owns and can be permitted through its own
 9 boards. So we have a remedy here in this
 10 state where we, through the jurisdiction that
 11 you have the opportunity to take, and the
 12 legislation that enables this Committee, we
 13 have the two different conditions -- the
 14 hundred signatures from inside Milford and
 15 abutting towns, and the name plate capacity
 16 of 16 megawatts -- gives this board the
 17 opportunity to take jurisdiction. So just
 18 because another opportunity to right size or
 19 push back on what seems to be a runaway train
 20 of permitting in Milford exists, this is the
 21 right forum to look into this. Because this
 22 very well may be a good project, but the
 23 conflicts are so staggering at this point,
 24 that we have the opportunity to set those

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1 aside before it really reduces the public
2 trust in what is being permitted in this town
3 on 83 acres with endangered species present.
4 MR. FITZGERALD: So a couple of
5 decisions have already been made, variances
6 and so on. Have you chosen to challenge
7 those?
8 MR. LEINO: The variance was the
9 only decision that's actually been granted so
10 far, and we did not appeal that. I came
11 later to this proceeding. So I've known
12 about that. So I was able to advise my
13 client that the grounds for that were
14 specious at best. So that is just a fault of
15 timing, if nothing else.
16 MR. BAINES: Can I follow up to
17 that line of questioning?
18 CHAIRWOMAN MARTIN: Go right ahead.
19 MR. BAINES: Yeah. What evidence
20 do you have that the Town is not capable of
21 dealing with mitigation around these issues
22 that you've cited in your testimony?
23 MR. LEINO: The evidence right now
24 is that the only thing permitted of record is

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1 that ZBA variance, which was the first
2 indication that they were going to give this
3 a [connectivity issue] look at how we grant
4 variances under the statute. And then the
5 next piece is just the indication -- and
6 there is significant case law, and I didn't
7 brief that in my supplement -- about what
8 [connectivity issue] -- decisions by a board
9 member with a conflict, or in this case,
10 where that conflict is potentially the whole
11 board acting to try to get this money, and
12 those conflicts with Mr. Amato having been a
13 former owner and still being friendly with
14 the owner [connectivity issue] -- stands to
15 make a substantial amount of money on this,
16 may be impugned to an entire board.
17 So it's -- we are here now. And I
18 realize that some of this is forward-looking,
19 and some pieces of this has already happened.
20 But we come before this board and raise these
21 now -- [connectivity issue] -- before species
22 go extinct in New Hampshire. It certainly
23 would feel like a missed opportunity if we
24 weren't to try to get this -- [connectivity

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1 issue] -- jurisdiction under the laws as
2 allowed.
3 MR. BAINES: But you don't have any
4 evidence that the Town is not dealing with
5 these endangered species or they're unwilling
6 to deal with that, that they're just going to
7 run over them?
8 MR. LEINO: We are still in the
9 preliminary aspects of all that, sir.
10 MR. BAINES: But you don't have any
11 evidence that that's the case, that the Town
12 is not willing to deal with the law related
13 to endangered species?
14 MR. LEINO: At this time, no, we do
15 not.
16 MR. BAINES: Thank you.
17 CHAIRWOMAN MARTIN: I'd like to
18 follow up on the discussion with Mr.
19 Fitzgerald around the PILOT program and the
20 pre-negotiated, as you said, agreement there.
21 How is that any different from any
22 other project that would be under the 30
23 megawatts as it related to a town or a
24 municipality? How does that serve as a basis

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1 here? I would like you to highlight more
2 what's different about Milford and this
3 project that we should be looking at.
4 MR. LEINO: Again, I think the
5 biggest difference here, it's all right that
6 if a town has the opportunity to expand green
7 energy and one of those things or other type
8 of energy, figures out what the tax
9 realization will be, is certainly a part of
10 permitting these facilities. But again, this
11 is land that doesn't perform and is in part
12 owned by the Town. The Town has the
13 opportunity both to permit something, have
14 the PILOT program, have a lease on this. It
15 has the opportunity to dip in multiple times
16 to different economic streams here. It
17 shouldn't be able to be its own arbiter --
18 [connectivity issue]
19 [Court Reporter interrupts.]
20 COURT REPORTER: I'm sorry. I
21 didn't hear. "It shouldn't be able to be..."
22 MR. LEINO: Be its own arbiter on
23 these agreements. It's fine that the Town
24 can realize these higher-performing and

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1 better revenue-created uses for its property.
 2 But it's an obvious conflict prima facie that
 3 the Town will serve as the landlord, the
 4 landowner, and the permitting authority on
 5 this, while we have a committee in the state
 6 that has the opportunity to assert
 7 jurisdiction.
 8 CHAIRWOMAN MARTIN: So the
 9 distinction is really more about the Town
 10 being the landlord than the PILOT.
 11 MR. LEINO: The Town --
 12 [connectivity issue] -- we wouldn't let a
 13 general landowner grant its own permits to
 14 itself. And that's what the Town has the
 15 opportunity to do through owning this land.
 16 CHAIRWOMAN MARTIN: Okay.
 17 Do you have another question on
 18 this topic?
 19 MR. FITZGERALD: Yeah, I just
 20 wanted to follow up on your response to
 21 Mr. Baines. It seems to me that you implied
 22 that Mr. Amato stands to profit somehow, even
 23 though he's not a -- no longer an owner. He
 24 stands to profit from future development of

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1 this. Is there some --
 2 MR. LEINO: No, I'm not making that
 3 implication. And if that's what it sounded
 4 like -- [connectivity issue]
 5 [Court Reporter interrupts.]
 6 COURT REPORTER: I didn't hear what
 7 you just said. "If that's what it sounded
 8 like..."
 9 MR. LEINO: Then I misspoke.
 10 CHAIRWOMAN MARTIN: Anything else
 11 on that?
 12 [No verbal response]
 13 CHAIRWOMAN MARTIN: Any other
 14 questions on that topic?
 15 [No verbal response]
 16 CHAIRWOMAN MARTIN: All right. Mr.
 17 Fitzgerald, would you like to go ahead, or
 18 Commissioner Sheehan?
 19 COMMISSIONER SHEEHAN: And so
 20 shifting gears to the other entities here
 21 involved in review of this project in your
 22 petition and supplemental information. Is it
 23 correct that not all environmental impacts
 24 would affect adequate -- [connectivity issue]

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1 -- regulated by -- [connectivity issue]
 2 [Court Reporter interrupts.]
 3 COURT REPORTER: Commissioner
 4 Sheehan, I'm sorry. You're breaking up. Can
 5 I have you speak up loudly, please?
 6 COMMISSIONER SHEEHAN: So you had
 7 indicated that not all environmental impacts
 8 are adequately -- [connectivity issue] -- by
 9 New Hampshire Fish and Game and by New
 10 Hampshire DES. So could you articulate where
 11 those gaps might be in terms of regulation
 12 and why we need for the SEC to be involved as
 13 opposed to allowing those state agencies to
 14 conduct their review.
 15 MR. LEINO: I'm not sure that that
 16 was the position we took in this. We
 17 understand that there will be some
 18 state-level review. But again --
 19 [connectivity issue] -- by the town level --
 20 [connectivity issue] process.
 21 COMMISSIONER SHEEHAN: Are you
 22 satisfied that the other state agencies in
 23 their roles would identify the best
 24 mitigation for -- [connectivity issue] -- as

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1 this project moves forward?
 2 MR. LEINO: It would certainly --
 3 [Court Reporter interrupts.]
 4 COURT REPORTER: I'm sorry. I
 5 didn't hear. "In their roles would identify
 6 mitigation for..." that's what I heard.
 7 [connectivity issue]
 8 MR. LEINO: Excuse me. Sorry --
 9 COURT REPORTER: I'm sorry. That
 10 was Commissioner Sheehan. I'm so sorry. I
 11 didn't hear the question.
 12 COMMISSIONER SHEEHAN: Are you
 13 satisfied that the review by New Hampshire
 14 Fish and Game and DES would identify adequate
 15 mitigation and permit stipulations that would
 16 address any of the impacts?
 17 MR. LEINO: We certainly respect
 18 the value and capability of those two
 19 entities. And there's a requirement of a
 20 holistic approach generally with the
 21 permitting authority along with those
 22 state-level agencies. But I'm not sure that
 23 the Town of Milford, as it's currently
 24 seated, that there's that opportunity for the

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1 holistic approach. And it does create gaps
2 here where the Town is so focused on
3 permitting, that I think at the risk that the
4 state agencies will fall short on these
5 things, although I don't have specific pieces
6 about this preliminarily.
7 CHAIRWOMAN MARTIN: Do you have a
8 follow-up? I have a follow-up on that one.
9 So am I understanding that you
10 would expect that the review and potential
11 mitigation decisions made by the state
12 agencies would be different if it were to be
13 done in collaboration with the Town as
14 opposed to with the Site Evaluation
15 Committee?
16 MR. LEINO: There's certainly more
17 of an opportunity for that delta to appear if
18 the Town is pushing this in one direction as
19 opposed to a neutral -- [connectivity issue]
20 CHAIRWOMAN MARTIN: Okay. Other
21 questions?
22 Mr. Fitzgerald.
23 MR. FITZGERALD: In your
24 submittal -- [connectivity issue] -- that

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1 this project would have potential negative --
2 [connectivity issue] -- electric grid. Could
3 you -- [connectivity issue] so a 16-megawatt
4 project -- [connectivity issue] -- has the
5 utility indicated that this project would --
6 [connectivity issue] -- ability to accept the
7 power or -- any basis for that statement?
8 MR. LEINO: I stated that if we
9 had -- [connectivity issue] -- the Site
10 Evaluation Committee, those utilities would
11 have the opportunity here. It's another
12 advantage to a holistic permitting process
13 through the SEC. Not that I'm certainly an
14 expert capable of making that statement.
15 But its review -- [connectivity issue] --
16 conflicts there currently on remedy at the
17 town level. It's unclear to me that these
18 will be questions like that -- [connectivity
19 issue] -- will approach to making sure that
20 this is the best project possible if it moves
21 forward.
22 CHAIRWOMAN MARTIN: Go ahead.
23 MR. FITZGERALD: Wouldn't there
24 necessarily have to be an interconnection

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1 request made to a utility, and a utility
2 would evaluate those impacts, no matter
3 whether it's through the SEC process, and
4 they would be guided in that, the PUC's
5 requirements for utility connections? Would
6 it be any different under the SEC?
7 MR. LEINO: Not sure.
8 CHAIRWOMAN MARTIN: Other questions
9 from the Committee?
10 [No verbal response]
11 CHAIRWOMAN MARTIN: I think I want
12 to follow up one more time on the question
13 related to the turtles and the other species
14 to be protected there.
15 What layer of protection does the
16 Site Evaluation Committee add related to that
17 specifically if the state agency that has
18 jurisdiction would participate in either
19 forum?
20 MR. LEINO: You've seen the math as
21 provided in the supplement showing how much
22 and how fully the Applicant is proposing to
23 cover all its territory. Right now, it's
24 moving toward -- [connectivity issue]

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1 [Court Reporter interrupts.]
2 COURT REPORTER: I'm sorry. I just
3 lost you. "It's moving..."
4 MR. LEINO: Toward providing this
5 conditional use permit. Obviously the state
6 agencies with their jurisdiction would have
7 the opportunity to push back on some level of
8 this. But we have the opportunity with this
9 Committee to have that approach, where one
10 portion of the -- a large portion being that
11 it provides the opportunity to permit this
12 [connectivity issue] -- guided by the \$9
13 million.
14 CHAIRWOMAN MARTIN: Okay. Thank
15 you.
16 One last request. Any questions?
17 [No verbal response]
18 CHAIRWOMAN MARTIN: All right.
19 Then why don't we move on. I believe that
20 the Town was going to go next.
21 MR. RATIGAN: Yes. John Ratigan.
22 For the record, we would be happy to go next.
23 I have a few comments, and then I'd like to
24 ask a few questions of Mr. Daley, with the

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1 opportunity to answer any questions you may
2 have.

3 CHAIRWOMAN MARTIN: So you're going
4 to put him on as a witness?

5 MR. RATIGAN: Yes. Although I
6 think he can sit here if that's acceptable to
7 you or --

8 CHAIRWOMAN MARTIN: Okay. I'll
9 just need to have him sworn before you start
10 asking questions.

11 MR. RATIGAN: Sure, sure.

12 CHAIRWOMAN MARTIN: Go ahead.

13 MR. RATIGAN: For those of you who
14 don't know, we're one of the largest
15 municipal law firms in the state of New
16 Hampshire. We've worked on scores of solar
17 projects. The largest project was in
18 Peterborough, which we did about six or seven
19 years ago. And as Mr. Fitzgerald correctly
20 pointed out, these projects start with
21 interaction with local utilities explaining
22 what types of improvements can be made to
23 connect the solar facility location to the
24 grid. So this is entirely, you know,

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1 supervised and interacted with the local
2 utility governing. A large number of these
3 large projects are on municipal property.
4 They're on other types of property that were
5 maybe gifted to the municipality for long
6 periods of time, and they haven't had the
7 opportunity to develop. So, you know,
8 there's a lot of these projects. This is not
9 a nuclear plant. This is not a gas station
10 power plant. This is a project that is
11 reviewed by local planning boards routinely
12 across New Hampshire, whether it's being done
13 by Revision Energy, you know, for a
14 private -- you know, they're an example.
15 They're not the only one. Whether it's done
16 by Revision Energy for private property
17 owners or whether it's done by other
18 companies -- [connectivity issue] --
19 including Revision. So we're --

20 COURT REPORTER: I'm sorry. You
21 cut out at the very end.

22 MR. RATIGAN: Oh, I said that this
23 type of project is routinely reviewed by
24 local planning boards, which are presented

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1 either on private property, and many times on
2 public property. The observations made by
3 the board about the negotiations regarding
4 lease payments and the agreement on what the
5 taxes are going to be on a moving-forward
6 basis go forward all the time. And they're,
7 you know, very routine. And most of these
8 projects are, you know, actually advanced by
9 people in the municipalities because they
10 understand it's solar and having local power
11 is, you know, a very good thing.

12 Also, board members, the accusation
13 that there's something wrong with the
14 variance that's been granted, that was never
15 appealed, is unsubstantiated. Applicant's
16 attorney may have an opinion about it that's
17 not shared by me, obviously not shared by the
18 zoning board. And there's no request for
19 rehearing, and no appeal was ever taken on
20 the decision that's been made.

21 There has been no application for a
22 conditional use permit or for -- or an
23 application made to the planning board yet.
24 So these accusations that a former owner of

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1 the property has been acting -- you know,
2 there's a conflict, there's no basis for that
3 allegation because that person has never --
4 nor has that board had an application before
5 it. And these issues of conflict do not --
6 cannot be raised until such time as an
7 application comes before the board. When it
8 does, the board members will be responsible
9 and address that individually and as a board,
10 as they do with all land-use applications
11 that come before it.

12 The Town agrees entirely that, as
13 some of the observations and accounts made by
14 the board, that it will be working, the
15 planning board, with its own consultants and
16 with the State to ensure that environmental
17 issues and wildlife issues are properly
18 addressed.

19 At this point, those are the only
20 comments I have. I would like to now ask
21 that the Chair swear in Mr. Lincoln Daley so
22 I could ask him a few questions.

23 CHAIRWOMAN MARTIN: Actually, the
24 stenographer will swear him in. But I want

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1 to just check with the parties and make sure
2 that this is consistent with what
3 was --[connectivity issue]
4 MR. LEINO: I would object --
5 [connectivity issue]
6 [Court Reporter interrupts.]
7 COURT REPORTER: I can't hear you,
8 Mr. Leino.
9 MR. LEINO: We stipulated in the
10 agreed-to motion that we'd not be
11 cross-examining witnesses and that the
12 testimony -- [connectivity issue] -- from our
13 oral argument and from the briefs already
14 filed. This is the first I'm hearing about
15 them having witnesses.
16 CHAIRWOMAN MARTIN: Mr. Needleman,
17 anything?
18 MR. NEEDLEMAN: No, we don't
19 have any -- [connectivity issue]
20 [Court Reporter interrupts.]
21 COURT REPORTER: I'm sorry. "We
22 don't have any" what?
23 MR. NEEDLEMAN: We don't have a
24 position on this issue.

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1 CHAIRWOMAN MARTIN: I will say
2 that, as I said at the outset, the
3 description of the agreement was not entirely
4 clear. I do note, though, that it said that
5 cross-examination would be waived. But it
6 did not say that there would be no testimony.
7 That is something that I see on a regular
8 basis where we do have witnesses. And so at
9 this point I think it may be for the parties
10 to decide whether there is actually an
11 agreement as to how to proceed here.
12 MR. RATIGAN: I'd certainly -- did
13 we reach an agreement that said --
14 [connectivity issue]
15 [Court Reporter interrupts.]
16 COURT REPORTER: Sir, I can't hear
17 you. I'm so sorry. Speak up into the
18 microphone.
19 MR. RATIGAN: I'm asking the
20 question of Attorney Needleman.
21 Did we reach an agreement that
22 there would be no presentation of witness
23 testimony before the -- [connectivity issue]
24 MR. NEEDLEMAN: I wonder if it

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1 would make sense for us to take a quick break
2 and let's talk among ourselves rather than
3 trying to do this in real time.
4 CHAIRWOMAN MARTIN: I think that
5 would be wise. I will add, also, it did
6 appear that there was a suggestion that there
7 would be no testimony. But it was not a
8 hundred percent clear. It did also mention
9 waiver of cross-examination. And so that's
10 why I started at the beginning to say, I
11 would say that at least as written, it was
12 not entirely clear. So let's go off the
13 record and take a ten-minute recess until
14 2:45.
15 (Brief recess was taken at 2:35 p.m.,
16 and the hearing resumed at 2:47 p.m.)
17 CHAIRWOMAN MARTIN: Let's go back
18 on the record. What did we arrive at?
19 MR. NEEDLEMAN: My understanding is
20 that Mr. Ratigan is going to just make his
21 argument rather than put a witness on.
22 CHAIRWOMAN MARTIN: Okay. Thank
23 you.
24 Mr. Ratigan, go ahead.

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1 MR. RATIGAN: Yes. The Town's
2 position is -- and Lincoln Daley is here to
3 answer any questions you may have about
4 this -- is that the conditional use permit
5 process is a very detailed permitting
6 process, a permitting process that requires,
7 for instance, the Applicant to go before the
8 Conservation Commission to address
9 environmental and wetlands issues. It
10 requires the Applicant to submit plans,
11 wetlands plans, you know, plans showing --
12 [connectivity issue] -- management. The
13 process also involves permitting issues where
14 the planner -- [connectivity issue] -- works
15 closely with the State -- [connectivity
16 issue] -- AOT permit.
17 So there will be a wildlife study
18 done. There will be an analysis of, you
19 know, how best to protect wetlands, wildlife
20 species -- [connectivity issue] through that
21 process.
22 So the other thing --
23 [Court Reporter interrupts.]
24 COURT REPORTER: Excuse me. May I

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1 just have you speak up just a little bit
 2 louder, please, into the mic.
 3 MR. RATIGAN: Yes. Yup.
 4 The other thing is, is that the
 5 Town and its planning board have done many
 6 projects that are much more complicated and
 7 have many more issues, including all these
 8 issues over the period of time. They have a
 9 lot of experience dealing with things,
 10 working with their consultants, you know, to
 11 analyze their issues. And, of course, as the
 12 board has already recognized, there is an
 13 appeal process where if anyone believes --
 14 [connectivity issue] -- the public or Brox
 15 Citizens Group present information into the
 16 record before the board. But if there's any
 17 feeling that the board may not have followed
 18 some type of regulation, done something
 19 improperly, there are appeal rights that are
 20 provided by statute.
 21 So it is the Town's position that
 22 it has plenty of experience to review an
 23 application such like this. And there is
 24 independent, outside information that would

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1 be generated by professionals and state
 2 agencies that will be reviewed and relied
 3 upon by the planning board in reaching
 4 whatever conclusion it decides to reach in
 5 reviewing such a matter.
 6 CHAIRWOMAN MARTIN: Thank you,
 7 Mr. Ratigan.
 8 Questions from the Committee?
 9 QUESTIONS BY SEC COMMITTEE MEMBERS:
 10 CHAIRWOMAN MARTIN: I have one
 11 question. What is your response to the
 12 assertion that the Town being a landlord
 13 creates a conflict? Why is that not a
 14 concern?
 15 MR. RATIGAN: It's not a concern
 16 because there's actually a statute that talks
 17 about, you know, if municipalities are
 18 developing land that would require plan
 19 review, it allows for it. And so municipal
 20 land is leased often for all types of
 21 purposes in New Hampshire, you know, for
 22 private use. So the selectmen have the
 23 responsibility under the state statutes to
 24 deal with the lease and sale or purchase of

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1 property; whereas, the planning board, a
 2 separate body, they have different
 3 responsibilities. And their responsibilities
 4 are to properly review, approve or disapprove
 5 of conditions. So there is no --
 6 [connectivity issue]
 7 CHAIRWOMAN MARTIN: Okay. Thank
 8 you.
 9 Mr. Fitzgerald.
 10 MR. FITZGERALD: Just a quick
 11 follow-up. Can you provide a reference to
 12 the statute -- [connectivity issue]
 13 [Court Reporter interrupts.]
 14 COURT REPORTER: Mr. Fitzgerald,
 15 you cut out completely. You said, "Could you
 16 provide a reference" --
 17 MR. RATIGAN: I'm pretty sure he
 18 said --
 19 CHAIRWOMAN MARTIN: Just a minute,
 20 Mr. Ratigan.
 21 Go ahead, Ms. Robidas.
 22 COURT REPORTER: Thank you.
 23 Mr. Fitzgerald, I heard, "Can you
 24 provide a reference to the statute," and then

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1 I didn't hear what you said.
 2 MR. FITZGERALD: Or follow up at
 3 some point with information as to what that
 4 statute is?
 5 MR. RATIGAN: Yes. Yeah. I'm
 6 pretty sure it's 674:54. But it is a statute
 7 which talks about developing municipal
 8 property for public purposes.
 9 So it was just a response to the
 10 question that had been posed about is there a
 11 conflict, and I was pointing out the
 12 Legislature recognizes that, you know,
 13 property, municipal property still has to go
 14 through the planning board process when it's
 15 being put to building a school or for a
 16 public works station.
 17 CHAIRWOMAN MARTIN: Mr. Baines.
 18 MR. BAINES: Yeah, could you just
 19 comment on, isn't it very common practice
 20 that municipalities deal with public land
 21 frequently with developers and would reap a
 22 benefit, whether it's through taxes or
 23 payments in lieu of taxes?
 24 MR. RATIGAN: Yes. I mean, when

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1 public land is developed, putting in a
 2 Walgreens or a Wal*Mart type of facility,
 3 yes, all the time when such projects are
 4 developed, that will take land as dated
 5 --[connectivity issue] -- taxable assessment
 6 of the property and -- [connectivity issue]
 7 -- create additional income for the Town.
 8 MR. BAINES: Thank you.
 9 CHAIRWOMAN MARTIN: Other
 10 questions?
 11 [No verbal response]
 12 CHAIRWOMAN MARTIN: How does the
 13 Town interact with the state agencies that --
 14 those that were referenced, Fish & Game, DES,
 15 as part of its permitting process?
 16 MR. RATIGAN: It depends on the
 17 application. For instance, if you're
 18 disturbing more than -- [connectivity issue]
 19 -- you have to get an alteration of terrain
 20 permit from the State. So the Applicant has
 21 to get an alteration of terrain permit. That
 22 is a process that's opened with the Town. So
 23 the Town gets copied on the permit
 24 application, and the board -- the Town has

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1 the ability to provide comments. Oftentimes,
 2 you know, the Town's engineer -- AOT permit
 3 is consistent with the plan information
 4 that's submitted -- provide comments --
 5 [connectivity issue].
 6 Same thing, you know, with DES on,
 7 you know, wetland permits, shoreland
 8 permits -- [connectivity issue], wildlife
 9 issues. During the planning process, there's
 10 consistent interaction between the planner,
 11 usually the town planner, representing the
 12 boards, the state officials -- [connectivity
 13 issue]
 14 CHAIRWOMAN MARTIN: Thank you.
 15 Anything else?
 16 [No verbal response]
 17 CHAIRWOMAN MARTIN: All right.
 18 Seeing none, Mr. Needleman.
 19 MR. NEEDLEMAN: Thank you, Madam
 20 Chair. So this project, which we understand
 21 is a 16-megawatt solar project, has been
 22 under development now for approximately three
 23 years. It's been an iterative process with
 24 the Town, and a productive one thus far. The

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1 project has evolved -- [connectivity issue]
 2 -- based on feedback, which is --
 3 [connectivity issue] -- projects like this.
 4 And importantly, a permit application still
 5 hasn't been submitted. Now, before I turn to
 6 some things I was planning to talk about
 7 today, I wanted to speak about a few things
 8 you heard earlier from the Petitioner.
 9 Essentially what we have here from
 10 the Petitioner is a lot of supposition and
 11 unsubstantiated allegations. What we don't
 12 have is much in the way of actual evidence to
 13 support those allegations. And what the
 14 Petitioner is asking for here really is two
 15 things: One, they want you to adopt a
 16 presumption of impropriety. They want you to
 17 find, with really no evidence, that the Town
 18 has done something wrong, or even more
 19 remarkably, is going to do something wrong,
 20 and so therefore you have to step in and act.
 21 No. 2, they want a presumption
 22 that the state agencies will, quote, fall
 23 short in whatever their roles are, again,
 24 with really no basis whatsoever. And I think

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1 there's a leap of logic here that frankly
 2 makes no sense, because how is it that you
 3 stepping in will change the way the state
 4 agencies act? And more importantly, there's
 5 an implication there that if you don't step
 6 in, somehow, because of this \$9 million, the
 7 state agencies will be co-opted and do things
 8 they otherwise wouldn't do. It's just -- the
 9 argument makes no sense. We full well know
 10 that the Department of Environmental
 11 Services, the Natural Heritage Bureau, New
 12 Hampshire Fish and Game are going to do their
 13 jobs here. And they're going to do them
 14 whether the permitting happens through the
 15 Town or it happens at the SEC. It will
 16 unfold the same way. And so to suggest that
 17 somehow you have to take over because of that
 18 simply isn't right.
 19 And most importantly, you didn't
 20 hear anything from the Petitioner about how
 21 this body is authorized to focus as an
 22 appellate body because of real or imagined
 23 conflicts in the town. And in fact, you're
 24 not. That's not your job. Your job is to

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1 review energy projects that rise to a
2 particular level under various sets of
3 circumstances. So what I would like to do is
4 spend some time looking at the law that deals
5 with those issues and talk to you about
6 exactly when this Committee in prior
7 circumstances has exerted that kind of
8 jurisdiction.

9 So let me start with the purpose of
10 the Site Evaluation Committee. I want to
11 look at 162-H. When you look at 162-H:1, it
12 says the Legislature recognizes that the
13 selection of sites for energy facilities may
14 have significant impacts on the overall
15 economic growth of the state and the
16 environment of the state.

17 Throughout the statute and
18 throughout the rules, there's a focus on the
19 state and the region. And that's for a
20 specific purpose because the statute is
21 designed, and your jurisdiction is designed,
22 to focus on large regional projects, not
23 small, local projects like this one.

24 162-H:16, III says, "The Committee

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1 may consult with interested regional
2 agencies."

3 162-H:16, IV(b) says the project
4 shall not unduly interfere with the orderly
5 development of the region and so on. I could
6 keep quoting. But again, you can look at the
7 statute, and everywhere you will see the same
8 focus.

9 That also happens throughout your
10 rules as well. In Site 301.09, it talks
11 about orderly regional development, with a
12 focus on land use in the region, the economy
13 of the region, and employment in the region.
14 Same is true for the public interest
15 findings. You're supposed to consider the,
16 quote, welfare of the population, end quote,
17 the overall economic growth of the state and,
18 quote, the environment of the state.

19 So I think you get the point here.
20 The Legislature and the Committee itself have
21 always contemplated that projects which don't
22 rise to the level of regional importance will
23 be reviewed locally. This concept I think
24 was best summarized in the case that Mr.

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1 Leino cited earlier, the Timbertop docket
2 that was before this Committee several years
3 ago. And the vice-chair of the Committee at
4 that time, Amy Ignatius, said, quote, I've
5 been quite strong in believing that the
6 Legislature intended that a number of
7 projects remain on the municipality level.
8 If they didn't want that, they would have
9 written it very differently. The default for
10 under 30 megawatts is it stays local, and
11 there's got to be an extremely good reason to
12 move it outside of the municipality, end
13 quote.

14 She also noted in that same docket,
15 quote, The SEC should never do that lightly,
16 should never take it from a municipality
17 unless there is a very, very clear reason
18 that we need to step in and that some real
19 danger will be done to the purpose of the
20 statute or the welfare of the state, end
21 quote. That came from the Timbertop Wind
22 deliberations at Page 180, June 3rd, 2013.

23 It's against this backdrop that you
24 need to evaluate this petition. When you do

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1 so, you need to focus on the standard of
2 review that you adopted in your rules. And
3 that standard of review is found in
4 202.19(a). And it says, quote, A party
5 asserting a proposition shall bear the burden
6 of proving the proposition by a preponderance
7 of the evidence.

8 I would submit to you that the
9 moving party here, Brox, not only bears the
10 burden, but hasn't even come close to meeting
11 that burden in this context.

12 The next thing I'd like to do is
13 point you to SEC precedent. I want to look
14 for a minute at the four prior cases that the
15 SEC has considered in circumstances exactly
16 like this, where they were being asked to
17 consider the kind of discretionary
18 jurisdiction that you're being asked to
19 consider here and, as Vice-Chair Ignatius
20 said, to look for very, very clear reasons to
21 reach down and assert that discretionary
22 jurisdiction.

23 This Committee has only actually
24 granted that jurisdiction twice, once in the

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1 Lempster Wind case and once in the Antrim
2 Wind case. I would say it's very telling
3 that in both those circumstances where they
4 chose to assert jurisdiction, those were
5 projects that were physically very high
6 profile and they could be seen from far away,
7 so they implicated regional resources, like
8 scenic resources, recreational resources,
9 tourist resources, historic resources, things
10 like that.

11 The Lempster docket was the
12 smallest project that the SEC ever asserted
13 jurisdiction over. It was a 24-megawatt
14 project. It was in two towns, both Lempster
15 and Washington. And significantly, both
16 towns wanted the SEC to assert jurisdiction.

17 The other one was Antrim Wind,
18 which was just under 29 megawatts. And
19 again, the Town of Antrim wanted the SEC to
20 assert jurisdiction.

21 Conversely, there were two projects
22 where parties sought SEC jurisdiction, and
23 the SEC declined that jurisdiction. One was
24 Clean Power Development, which was a

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1 29-megawatt biomass plant in Berlin. And the
2 Town of Berlin opposed the SEC taking the
3 project. They wanted to handle it locally,
4 and the SEC didn't take jurisdiction.

5 And then of course Timbertop Wind,
6 that was a 15-megawatt wind project in the
7 towns of New Ipswich and Temple. There was a
8 petition filed by the Applicant for
9 jurisdiction, and the SEC declined. And
10 there again, the Town opposed it.

11 So if we look for some common
12 threads here across those four cases that you
13 might use to guide your decision-making here,
14 one of the key ones, which I think is a
15 strong indicator of how this Committee has
16 viewed its job under 162-H, is that in all
17 four cases the Committee acted in a way
18 consistent with the wishes of the host
19 community: Where the community wanted the
20 Committee to take the project, it took it;
21 where the community did not want the SEC to
22 take the project, it didn't. Now, I don't
23 think that that by itself is dispositive. I
24 think you need to look deeper. But I think

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1 that's a pretty powerful indicator of how
2 prior SECs have viewed the scope of their
3 authority, and also the importance that they
4 placed on the views of the host community,
5 especially when those communities have
6 demonstrated, like Milford has, that they
7 have the capability to handle the kind of
8 project in question.

9 So against that landscape, how do
10 you now look at the facts here and apply it
11 to those cases to make a determination?
12 Well, I think there are three key points you
13 should have in mind.

14 First and foremost, you have a host
15 community here that opposes SEC jurisdiction,
16 and you have a host community here that has a
17 well-developed ordinance that's specifically
18 designed to deal with solar projects. And we
19 cited that ordinance in our papers. Again,
20 those are the only two cases where the SEC
21 took jurisdiction, Antrim and Lempster.
22 Neither of those towns had that kind of
23 well-developed ordinance, which is one of the
24 reasons they were asking the Committee to

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1 take the project.

2 Second, and I think equally
3 important, this project is inherently local.
4 When you look at it, there's nothing regional
5 about it. The size and the profile is the
6 starting point. We're talking about a
7 16-megawatt solar project that, if
8 constructed, would be about 13 to 15 feet off
9 the ground. Compare that with Lempster and
10 Antrim and the size of the turbines we're
11 talking about there, which were hundreds and
12 hundreds feet off the ground on hilltops.

13 The case here is the most analogous
14 to Timbertop Wind, where the SEC denied
15 jurisdiction. Let me quote what the SEC said
16 in Timbertop from a different portion of
17 that. "There is nothing about the size of
18 the facility or its impacts that suggest that
19 [the] Committee discretionary jurisdiction is
20 needed to protect the public interests
21 [expressed] in the statute." "...the real
22 intent of the Legislature was to allow for
23 smaller projects to be dealt with on the
24 local level."

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1 The first quote comes from the
2 order denying jurisdiction at Page 4, and
3 second one is from the deliberations at Page
4 94.
5 So what indicators do you have here
6 about the regional significance of the
7 project? Well, for starters, you have the
8 very information that the Petitioner herself
9 generated. The Petitioner went to the Wilton
10 Select Board, and we cited this in our
11 papers, and asked the Wilton Select Board, as
12 an adjoining town, to get involved in this
13 project, and Wilton Select Board said that
14 it, quote, is not in the best interest to
15 interfere with what goes on in the town of
16 Milford.
17 You also have the public record of
18 both the towns of Mount Vernon and Hollis not
19 showing any interest in this project, despite
20 Ms. Fournier's efforts to try to get them
21 involved. So plainly, the communities
22 surrounding this area don't think it has any
23 sort of regional impact to it.
24 I'll also note that the Town, in

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1 its subdivision and site plan regulations,
2 specifically asked its boards to contemplate
3 the regional significance with respect to
4 projects that are coming before them.
5 So, in essence, the second point
6 here is that there simply is no regional
7 significance to this project.
8 And then the third point is that,
9 as with Timbertop, the project is still going
10 to be subject to State review. And that's
11 the point we mentioned earlier about the
12 Department of Environmental Services and
13 other state agencies. The interactions with
14 those state agencies will be the same in
15 either case. Spartan Solar has already
16 started engaging with DES and Natural
17 Heritage Bureau on wetlands, alteration of
18 terrain and other environmental issues, and
19 it will certainly continue to do so. They
20 started engaging with the Division of
21 Historic Resources regarding archeological
22 sites and other kinds of historic resources.
23 And they've engaged with New Hampshire Fish
24 and Game.

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1 So ask yourself a question: If
2 this Committee were to reach down and assert
3 jurisdiction, is there anything about the
4 nature of that state agency review that would
5 change in any manner from how it's already
6 unfolded and will unfold going forward if
7 it's permitted at the town level?
8 You heard Mr. Leino talk about the,
9 quote, figure of \$9 million on the scale will
10 adversely affect the review. Again, how?
11 How is the fact that there's going to be a
12 PILOT agreement which is going to pay some
13 amount money to this town going to in any way
14 interfere with the job the state agencies do
15 on their environmental assessment?
16 The last point I want to focus on
17 is going back to the Timbertop docket. In
18 Timbertop, the SEC looked at the issue of,
19 quote, the extent that the proposed facility
20 would have local impacts on the public
21 interests recognized by the statute. And
22 when they looked at that issue, the Timbertop
23 SEC Committee identified four factors
24 relative to the interests in 162-H:1 that

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1 they thought they should consider, and I
2 suggest that you should consider as well.
3 The first factor is: Is
4 jurisdiction necessary to maintain a balance
5 between the environment and the --
6 [connectivity issue] facilities?
7 In this case, I think the answer is
8 a resounding no. Spartan Solar has already
9 established relationships with DES and Fish
10 and Game going back to 2019. There's a town
11 ordinance that requires a balance between
12 solar development and protection of the
13 environment, among other things. And the
14 town ordinance includes extensive provisions
15 that require a potential project developer to
16 assess and address environmental concerns
17 related to a host of issues. So I don't
18 think there's anything more that this
19 Committee could do on that point.
20 The second point, and I think this
21 is actually a quite important one, is will
22 SEC jurisdiction avoid undue delay in
23 construction of a project?
24 Spartan Solar has been engaged with

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1 the Town for the last two and a half years.
2 During that time, they worked to break down
3 the comments in advance of any anticipated
4 permit filed. If the SEC takes review of
5 this project at this point, that's not going
6 to speed things up; it's unquestionably going
7 to slow things down. The statutory timelines
8 for preparing -- for an SEC application
9 working through the process, as you all know,
10 stretch out to roughly 15 months. In other
11 words, 30 days prior to filing, there needs
12 to be a public hearing; then the Applicant
13 files; there's a 60-day review where the
14 Committee determines if the application is
15 complete; if you deem it complete, there's
16 then a 12-month review period. That's going
17 to go much faster at the local level than at
18 the town level -- or at the local level than
19 it would at the SEC.
20 And then the other part, which I'm
21 not sure the Committee spends much time
22 thinking about, but I spend a lot of time as
23 someone who has done these applications, it
24 takes a long time to prepare an SEC

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1 application. There's a lot that goes into
2 that. And that application process would
3 take a lot longer to prepare for the SEC than
4 it's going to take for the Town. So you add
5 all of that up, and in fact, going to the SEC
6 would cause a significant delay here.
7 And then the other factor which I
8 think is important for the Committee to at
9 least have in mind here is projects of this
10 size are very different from the much larger
11 projects that have come before the Committee
12 in terms of financial scale. This is a
13 smaller solar project, and its ability to
14 bear any increased costs of a lengthy SEC
15 process I think would be questionable. It
16 wasn't one that was designed to accommodate
17 those costs, and it's one that has to be bid
18 into the competitive marketplace. So I think
19 that would create real challenges as well.
20 And then I guess the one other
21 point I would mention about delay is, again,
22 going back to Ms. Fournier's own statements,
23 if you look at our motion to dismiss the
24 petition for jurisdiction, in our third

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1 footnote we quote Ms. Fournier. And she says
2 at one point, "There will be stumbling
3 blocks. I'm just going to name one. But
4 there will be, as many as possible will be
5 put into the path of the project. One of
6 them will be, if it comes to it, a petition
7 to the State's Site Evaluation Committee."
8 Seems to me, Ms. Fournier is
9 contemplating that actually coming to the
10 Committee is intended to be a stumbling block
11 to impede progress. I'll let the Committee
12 draw its own conclusions about that. But I
13 will again note that for the Timbertop
14 docket, that was a place where Vice-Chair
15 Ignatius said that unquestionably the local
16 process is faster.
17 And then the final point that
18 Timbertop looked at was the question of
19 disclosure to the public. And there was a
20 question in Timbertop of whether a project
21 going to the SEC would help to enhance public
22 disclosure above the local proceeding.
23 The process here I think has
24 unfolded in a very transparent way. I think

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1 if you go back and look at the record, you
2 will see an extensive back and forth between
3 the host community and the Project. Spartan
4 Solar has appeared in nine public meetings or
5 hearings describing the project and the
6 details associated with it. And of course,
7 all those town meetings are subject to RSA
8 91-A. So people have access to all of those
9 materials. When the plaintiff says that the
10 process has been a long development process,
11 I think what they're doing is conflating the
12 preparation of the permit with an actual
13 permit review, which of course hasn't even
14 started yet.
15 So let me conclude by saying that,
16 based on all the SEC precedent I talked about
17 here, we think that unquestionably
18 jurisdiction should be denied. There are no
19 regional implications to this project; it's
20 purely local. The Town wants to take the
21 lead on reviewing it and unquestionably has
22 the capability to do so. And there is the
23 myriad of factors that we've gone through
24 here that make it clear that this is just a

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1 project that should not be the job of the
2 SEC. It should be job of the local planning
3 board to do.
4 And so I appreciate the opportunity
5 to speak to you, and I'm happy to answer any
6 questions.
7 QUESTIONS BY SEC COMMITTEE MEMBERS:
8 CHAIRWOMAN MARTIN: Questions from
9 the Committee? Go ahead, Mr. Fitzgerald.
10 MR. FITZGERALD: You referenced the
11 Town of Milford zoning ordinance a couple of
12 times. I received a copy of it. And I note
13 that it's dated 1969, "2020 Edition," and at
14 the bottom it's marked "Revised 3/2020."
15 Perhaps it may be better for the Town to
16 address how it was updated and is applicable
17 for this type of project now.
18 MR. NEEDLEMAN: Well, I think there
19 are two pieces, one is the question of
20 applicability. And in our papers, we walked
21 through in detail how the various pieces of
22 the zoning ordinance would apply to this
23 project. You know, so I would recommend you
24 to that piece.

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1 In terms of the update, if it's
2 okay with Mr. Ratigan, I would defer to him
3 to answer that question.
4 MR. RATIGAN: The regulations that
5 apply -- [connectivity issue].
6 John Ratigan. The regulations that
7 apply to an application are those that are in
8 effect as of the date of the public notice of
9 the first public hearing. So since there's
10 not yet been an application, when the
11 application comes in, it will be measured
12 against those regulations that are in effect
13 on the date that the public notice goes out.
14 CHAIRWOMAN MARTIN: Any follow-up?
15 [No verbal response]
16 CHAIRWOMAN MARTIN: Okay. I have a
17 couple questions.
18 You mentioned the amount of time
19 that it would take at the Site Evaluation
20 Committee as compared to the Town. Can you
21 give us an idea of the amount of time that's
22 expected that it would take at the Town?
23 MR. NEEDLEMAN: Yeah, again, I
24 think I'm going defer on specifics to Mr.

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1 Ratigan. But based on our conversations with
2 him, I understood that once an application is
3 filed, a reasonable expectation for a party
4 in our position is something like two to six
5 months.
6 CHAIRWOMAN MARTIN: Okay. Thank
7 you.
8 Mr. Ratigan.
9 MR. RATIGAN: It's a process that
10 could be as quick as two months after the
11 application has been reviewed and it is
12 complete. And it could take four months. It
13 all depends on, you know, how long the
14 internal review takes. But it's not
15 --[connectivity issue]
16 [Court Reporter interrupts.]
17 COURT REPORTER: I'm sorry. "It
18 all depends on..."
19 MR. RATIGAN: On the, you know,
20 review of internal and external information.
21 But it's not a tremendously lengthy process.
22 CHAIRWOMAN MARTIN: Okay. Thank
23 you.
24 Mr. Needleman, you referred to the

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1 four areas to address, or that have been
2 addressed in the past. And I noted that you
3 refer to what I think is a prior version of
4 162-H:1 and that it's now been revised to be
5 somewhat broader, and whether you could
6 respond to the analysis under the current
7 version.
8 MR. NEEDLEMAN: Yeah, I don't have
9 it in front of me, but my recollection is
10 162-H:1 -- [connectivity issue]
11 [Court Reporter interrupts.]
12 COURT REPORTER: I'm sorry. Mr.
13 Needleman, can you speak into and say that
14 again?
15 MR. NEEDLEMAN: Sorry. I was
16 saying that I don't have it in front of me.
17 But my recollection of the Legislature's
18 change is in 2014. 162-H focused on I think
19 some additional considerations, such as the
20 effect on property values was one, and then
21 also adding a fourth prong to the overall
22 consideration, risk considerations. There
23 may have been others that I don't
24 necessarily -- [connectivity issues]. I

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1 don't think that that materially changes the
2 kind of analysis that the Timbertop Committee
3 went through. I think what it may do is
4 potentially require the Committee to think
5 slightly more broadly with respect --
6 [connectivity issue]
7 CHAIRWOMAN MARTIN: Well, you would
8 agree, though, with regard to the first prong
9 that you mentioned, that to the extent the
10 statutory language changed, we would apply
11 the current statutory language?
12 MR. NEEDLEMAN: Yes, of course.
13 CHAIRWOMAN MARTIN: Okay. Thank
14 you. I think that was all my questions, Mr.
15 Needleman.
16 Anybody else?
17 [No verbal response]
18 CHAIRWOMAN MARTIN: Okay. Seeing
19 none, any follow-up from anyone else that
20 we've heard from?
21 [No verbal response]
22 CHAIRWOMAN MARTIN: All right. I'd
23 like to make sure that there is not anyone
24 who wants to make public comment at this

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1 point in time.
2 Ms. Lemay, if you can hear me, I
3 know we have a couple of people on.
4 WEB MODERATOR: Let me double-check
5 with them.
6 CHAIRWOMAN MARTIN: Okay. Thank
7 you.
8 (Pause in proceedings)
9 WEB MODERATOR: It appears that
10 everybody that's an attendee is only
11 observing.
12 CHAIRWOMAN MARTIN: Okay. Thank
13 you. And I believe that everyone present is
14 a party or with a party.
15 Is there any member of the public
16 who wants to make comment?
17 [No verbal response]
18 CHAIRWOMAN MARTIN: Okay. Seeing
19 none, then we will conclude the public
20 comment section of this proceeding.
21 Is there anything else we need to
22 cover before we conclude the actual hearing
23 on this from the parties' perspective?
24 MR. NEEDLEMAN: Not that I can

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1 think of.
2 MR. LEINO: I don't think so.
3 CHAIRWOMAN MARTIN: Okay. Anything
4 from the Committee?
5 [No verbal response]
6 CHAIRWOMAN MARTIN: All right.
7 With that, we will close the record then and
8 adjourn this hearing. We will take about a
9 ten-minute break and return at 3:30, and we
10 will have a brief non-meeting in that interim
11 period. So the Committee will leave the
12 hearing room for a few minutes. Off the
13 record.
14 (Whereupon the public hearing was
15 adjourned at 3:22 p.m.)
16 * * * * *
17 SEC COMMITTEE DELIBERATIONS
18 [Proceedings started at 3:33 p.m.]
19 CHAIRWOMAN MARTIN: We are going to
20 open the deliberations on this proceeding
21 related to Docket 2021-01. And at the
22 outset, I would like to hear from the
23 Committee members as to your preliminary
24 thoughts regarding what we heard at the

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1 hearing.
2 Mr. Baines.
3 PRELIMINARY STATEMENTS BY SEC COMMITTEE MEMBERS:
4 MR. BAINES: Madam Chair, I just
5 don't feel we heard any evidence that would
6 support that the Town did not have the
7 capability to handle this project. But we
8 did hear testimony that there will be a
9 thorough review just because the process
10 involves all the different state agencies
11 that are going to review all of the concerns
12 presented by the Petitioner. And again, in
13 the absence of any evidence, to say that the
14 Town is not capable, it just was not put
15 before us. What was put before us is the
16 Town is capable of hearing it, and there's a
17 process to be followed that would address all
18 of these concerns. Thank you.
19 CHAIRWOMAN MARTIN: Okay. Thank
20 you. Anyone else?
21 Mr. Fitzgerald.
22 MR. FITZGERALD: I concur with his
23 comments. But I think that -- [connectivity
24 issue]

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1 [Court Reporter interrupts.]
 2 COURT REPORTER: Mr. Fitzgerald,
 3 you keep cutting out.
 4 MR. FITZGERALD: I'm sorry.
 5 COURT REPORTER: Can I ask you to
 6 sit closer to the microphone? Thank you.
 7 MR. FITZGERALD: It seems to me
 8 that we are being asked to prejudge a
 9 conflict of interest when, as it was pointed
 10 out, there isn't even an application at this
 11 point in time. And that seems to be the
 12 focus of this, is that there's a conflict of
 13 interest for the Town inherently and a
 14 financial gain that the Town might make,
 15 which is there for almost any project like
 16 this, and that there's a conflict of interest
 17 for one particular board member, who I
 18 believe we heard is not -- no longer an owner
 19 of the property and because he's friends with
 20 the property owner. But I think that we're
 21 being asked to take jurisdiction, as Mr.
 22 Baines points out, that there is a process
 23 that would address this, both not only at the
 24 local planning process, but the state

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1 process, that would not be -- as Mr.
 2 Needleman pointed out, the state process
 3 would not be any different under the SEC.
 4 And then, second, the interest
 5 seems to be focused on these perceived
 6 conflicts of interest, that we should
 7 prejudge them and step in and take
 8 jurisdiction. And I'm opposed. Sorry.
 9 CHAIRWOMAN MARTIN: Okay. Anyone
 10 else?
 11 [No verbal response]
 12 CHAIRWOMAN MARTIN: I think that I
 13 would add that, while I find the concerns
 14 raised by the petition to be important ones,
 15 I was not convinced that bringing this to the
 16 Site Evaluation Committee would change the
 17 evaluation that would occur as it relates to
 18 those because the state agencies that are
 19 involved would conduct the same evaluation
 20 and could take the same action related to the
 21 project. And there did not seem to be
 22 anything that we heard today that suggested
 23 that this was different than other projects
 24 that are handled at the local level. And

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1 given that this was also, as I understood it,
 2 would be the smallest project that was
 3 ever -- that the jurisdiction of this body
 4 was exercised over, I just didn't find there
 5 to be a compelling reason to undertake that
 6 in this case.
 7 Any further discussion?
 8 [No verbal response]
 9 STATUTORY REQUIREMENTS:
 10 CHAIRWOMAN MARTIN: Okay. Hearing
 11 none, let's walk through the statutory
 12 requirements related to this decision. And I
 13 will read them so that you have an idea of
 14 what we're talking about. And then I would
 15 like to take a poll of the Committee for each
 16 and see what the outcome is as it relates to
 17 each.
 18 So first we'll start with the
 19 assertion of discretionary jurisdiction by
 20 the Committee is or is not necessary to
 21 maintain a balance among those potential
 22 significant impacts and benefits and
 23 decisions about the siting, construction and
 24 operation of energy facilities in New

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1 Hampshire. And this is the area where the
 2 standard had changed a little bit to be
 3 broader, as I just described it here.
 4 So I certainly welcome discussion
 5 on that specific item, if there is any. If
 6 not, I will take a poll of the Committee as
 7 to whether each member believes it is or is
 8 not necessary. And I'll just go around this
 9 way. Mr. Fitzgerald.
 10 MR. FITZGERALD: Excuse me, but I'm
 11 not sure I understand.
 12 CHAIRWOMAN MARTIN: Yup.
 13 MR. FITZGERALD: The statute reads
 14 the Legislature finds that it is in the
 15 public interest -- [connectivity issue] --
 16 are you asking us --
 17 [Court Reporter interrupts.]
 18 COURT REPORTER: Mr. Fitzgerald,
 19 I'm not -- I'm losing most of your words.
 20 You've got to stick next to the mic.
 21 MR. FITZGERALD: I'm sorry.
 22 What is the question we're being
 23 asked?
 24 CHAIRWOMAN MARTIN: The question

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1 is: Is it necessary -- so I'd like to hear
2 from you, is it necessary or not necessary
3 under that first one. So I'll go first.
4 The assertion of discretionary
5 jurisdiction by the Committee is not
6 necessary to maintain a balance among those
7 potential significant impacts and benefits in
8 decisions about the siting, construction and
9 operation of energy facilities in New
10 Hampshire in this case. That would be my
11 response.
12 MR. FITZGERALD: Thank you.
13 CHAIRWOMAN MARTIN: Okay.
14 Commissioner Sheehan.
15 COMMISSIONER SHEEHAN: I concur as
16 well.
17 CHAIRWOMAN MARTIN: Mr. Baines.
18 MR. BAINES: Not necessary.
19 CHAIRWOMAN MARTIN: Mr. York.
20 [connectivity issue]
21 CHAIRWOMAN MARTIN: Ms. Noe.
22 [Court Reporter interrupts.]
23 COURT REPORTER: I didn't hear Mr.
24 York's response.

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1 MR. YORK: It's not necessary.
2 COURT REPORTER: Thank you.
3 COMMISSIONER GOLDNER: I concur.
4 [Court Reporter interrupts.]
5 COURT REPORTER: I did not hear the
6 other member's response.
7 CHAIRWOMAN MARTIN: Ms. Noe, go
8 ahead.
9 MS. NOE: It is not necessary.
10 CHAIRWOMAN MARTIN: And
11 Commissioner Goldner.
12 COMMISSIONER GOLDNER: Not
13 necessary.
14 CHAIRWOMAN MARTIN: Okay. Thank
15 you. That's unanimous.
16 Let's go to the second finding.
17 The assertion of discretionary jurisdiction
18 by the Committee, and from my perspective, is
19 not necessary to ensure that undue delay in
20 the construction of new energy facilities is
21 avoided. In fact, I think today we heard
22 some support for the conclusion that this
23 actually might cause further delay.
24 Mr. Fitzgerald.

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1 MR. FITZGERALD: I would concur
2 with that opinion.
3 CHAIRWOMAN MARTIN: Thank you.
4 Commissioner Sheehan.
5 COMMISSIONER SHEEHAN: I concur
6 also.
7 CHAIRWOMAN MARTIN: Mr. Baines.
8 MR. BAINES: I concur.
9 CHAIRWOMAN MARTIN: Mr. York.
10 MR. YORK: I concur.
11 CHAIRWOMAN MARTIN: Ms. Noe.
12 MS. NOE: I concur.
13 CHAIRWOMAN MARTIN: Commissioner
14 Goldner.
15 COMMISSIONER GOLDNER: I concur.
16 CHAIRWOMAN MARTIN: The third item:
17 The assertion of discretionary jurisdiction
18 by the Committee, from my perspective, is not
19 necessary for the full and timely
20 consideration of environmental consequences.
21 Mr. Fitzgerald.
22 MR. FITZGERALD: I would again
23 concur.
24 CHAIRWOMAN MARTIN: Commissioner

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1 Sheehan.
2 COMMISSIONER SHEEHAN: I concur.
3 CHAIRWOMAN MARTIN: Mr. Baines.
4 MR. BAINES: I concur.
5 CHAIRWOMAN MARTIN: Mr. York.
6 MR. YORK: I concur.
7 CHAIRWOMAN MARTIN: Ms. Noe.
8 [connectivity issue]
9 CHAIRWOMAN MARTIN: Commissioner
10 Goldner.
11 [Court Reporter interrupts.]
12 COURT REPORTER: I'm not hearing
13 Ms. Noe say anything at all. I don't know if
14 her mic is even on.
15 MS. NOE: I concur.
16 CHAIRWOMAN MARTIN: Did you get
17 Commissioner Goldner?
18 COURT REPORTER: I did not. Go
19 ahead.
20 COMMISSIONER GOLDNER: I concur.
21 CHAIRWOMAN MARTIN: Okay. And the
22 fourth finding: The assertion of
23 discretionary jurisdiction by the Committee,
24 from my perspective, is not necessary to

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1 ensure all entities planning to construct
2 facilities in the state be required to
3 provide full and complete disclosure to the
4 public of such plans in this case.
5 [connectivity issue]
6 MR. FITZGERALD: I concur.
7 CHAIRWOMAN MARTIN: That was Mr.
8 Fitzgerald.
9 Commissioner Sheehan.
10 COMMISSIONER SHEEHAN: I concur.
11 CHAIRWOMAN MARTIN: Mr. Baines.
12 MR. BAINES: I concur.
13 CHAIRWOMAN MARTIN: Mr. York.
14 MR. YORK: I concur.
15 CHAIRWOMAN MARTIN: Ms. Noe.
16 MS. NOE: I concur.
17 CHAIRWOMAN MARTIN: Commissioner
18 Goldner.
19 COMMISSIONER GOLDNER: I concur.
20 CHAIRWOMAN MARTIN: And finally,
21 the assertion of discretionary jurisdiction
22 by the Committee, from my perspective again,
23 is not necessary in this case for the State
24 to ensure that the construction and operation

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1 of energy facilities is treated as a
2 significant aspect of land-use planning in
3 which all environmental, economic and
4 technical issues are resolved in an
5 integrated fashion.
6 Mr. Fitzgerald.
7 MR. FITZGERALD: I concur.
8 CHAIRWOMAN MARTIN: Commissioner
9 Sheehan.
10 COMMISSIONER SHEEHAN: I concur.
11 CHAIRWOMAN MARTIN: Mr. Baines.
12 MR. BAINES: I concur.
13 CHAIRWOMAN MARTIN: Mr. York.
14 MR. YORK: I concur.
15 CHAIRWOMAN MARTIN: Ms. Noe.
16 MS. NOE: I concur.
17 CHAIRWOMAN MARTIN: And
18 Commissioner Goldner.
19 COMMISSIONER GOLDNER: And I
20 concur.
21 CHAIRWOMAN MARTIN: Okay. So that
22 is the considerations that we need to
23 undertake pursuant to the statute. But we
24 also need to consider generally whether or

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1 not, as a result of that, we will assert
2 jurisdiction in this case or not. Is there
3 discussion related to that general motion?
4 [No verbal response]
5 CHAIRWOMAN MARTIN: Okay. Then do
6 I have a motion?
7 [connectivity issue]
8 COURT REPORTER: Mr. Fitzgerald,
9 I'm not - I didn't hear you at all.
10 MR. FITZGERALD: I would move that
11 we deny the petition and not take
12 jurisdiction.
13 MR. BAINES: I second it.
14 CHAIRWOMAN MARTIN: Okay. We have
15 a motion and a second. Is there any
16 discussion?
17 [No verbal response]
18 CHAIRWOMAN MARTIN: We'll take a
19 roll call vote.
20 Mr. Fitzgerald.
21 MR. FITZGERALD: Yes.
22 CHAIRWOMAN MARTIN: Commissioner
23 Sheehan.
24 COMMISSIONER SHEEHAN: Yes.

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1 CHAIRWOMAN MARTIN: Mr. Baines.
2 MR. BAINES: Yes.
3 CHAIRWOMAN MARTIN: The Chair votes
4 yes.
5 Mr. York.
6 MR. YORK: Yes.
7 CHAIRWOMAN MARTIN: Ms. Noe.
8 MS. NOE: Yes.
9 CHAIRWOMAN MARTIN: Commissioner
10 Goldner.
11 COMMISSIONER GOLDNER: Yes.
12 CHAIRWOMAN MARTIN: The vote is
13 unanimous. The motion carries.
14 I also have a motion to have
15 counsel prepare the order.
16 MR. BAINES: So moved.
17 CHAIRWOMAN MARTIN: Thank you.
18 Seconded? Commissioner Sheehan.
19 Did you get that, Ms. Robidas?
20 COURT REPORTER: I just -- I didn't
21 catch who made the motion, please.
22 MR. BAINES: Mr. Baines.
23 COURT REPORTER: Thank you.
24 CHAIRWOMAN MARTIN: And did you get

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1 the second?
 2 COURT REPORTER: And I did not get
 3 a second. And that was?
 4 CHAIRWOMAN MARTIN: Commissioner
 5 Sheehan made the second.
 6 COURT REPORTER: Thank you.
 7 CHAIRWOMAN MARTIN: Any discussion
 8 on that motion?
 9 [No verbal response]
 10 CHAIRWOMAN MARTIN: All right.
 11 We'll take quick a roll call on that.
 12 Mr. Fitzgerald.
 13 MR. FITZGERALD: Yes.
 14 CHAIRWOMAN MARTIN: Commissioner
 15 Sheehan.
 16 COMMISSIONER SHEEHAN: Yes.
 17 CHAIRWOMAN MARTIN: Mr. Baines.
 18 MR. BAINES: Yes.
 19 CHAIRWOMAN MARTIN: The Chair votes
 20 yes.
 21 Mr. York.
 22 MR. YORK: Yes.
 23 CHAIRWOMAN MARTIN: Ms. Noe.
 24 MS. NOE: Yes.

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1 CHAIRWOMAN MARTIN: Commissioner
 2 Goldner.
 3 COMMISSIONER GOLDNER: Yes.
 4 CHAIRWOMAN MARTIN: Okay. That's
 5 also unanimous. So we'll prepare the draft
 6 order for consideration by the Committee.
 7 Anything else that we need to cover
 8 before we conclude deliberations?
 9 MR. BAINES: Madam Chair, I move we
 10 adjourn.
 11 CHAIRWOMAN MARTIN: Thank you. And
 12 I missed -- was that you, Mr. Baines?
 13 MR. BAINES: Yes, it was.
 14 CHAIRWOMAN MARTIN: Couldn't tell
 15 behind the mask. Thank you for the motion.
 16 Is there a second?
 17 COMMISSIONER GOLDNER: Second.
 18 CHAIRWOMAN MARTIN: Thank you,
 19 Commissioner Goldner.
 20 Any discussion on that?
 21 [No verbal response]
 22 CHAIRWOMAN MARTIN: All right.
 23 Seeing none, I will take a quick roll call on
 24 that one as well. Mr. Fitzgerald.

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1 MR. FITZGERALD: Yes.
 2 CHAIRWOMAN MARTIN: Commissioner
 3 Sheehan.
 4 COMMISSIONER SHEEHAN: Yes.
 5 CHAIRWOMAN MARTIN: Mr. Baines.
 6 MR. BAINES: Yes.
 7 CHAIRWOMAN MARTIN: The Chair votes
 8 yes.
 9 Mr. York.
 10 MR. YORK: Yes.
 11 CHAIRWOMAN MARTIN: Ms. Noe.
 12 MS. NOE: Yes.
 13 CHAIRWOMAN MARTIN: And
 14 Commissioner Goldner.
 15 COMMISSIONER GOLDNER: Yes.
 16 CHAIRWOMAN MARTIN: All right. We
 17 are adjourned. Thank you, everyone.
 18 (Whereupon deliberations were adjourned
 19 at 3:46 p.m.)
 20
 21
 22
 23
 24

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C E R T I F I C A T E

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 N.H. LCR No. 44 (RSA 310-A:173)

{SEC 2021-01}[Adjudicative Hearing/Deliberations]{08-19-21}

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