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**STATE OF NEW HAMPSHIRE**

**SITE EVALUATION COMMITTEE**

**March 9, 2022** - 2:03 p.m.  
Public Utilities Commission  
21 South Fruit Street Suite 10  
Concord, New Hampshire

**IN RE: SEC DOCKET NO. 2021-02**  
**SITE EVALUATION COMMITTEE:**  
Investigation of Complaints  
Regarding Antrim Wind Energy  
Facility.  
**[Hearing to receive public  
comment and SEC Deliberations]**

<b>PRESENT:</b>	<b>SITE EVALUATION COMMITTEE:</b>
Chairman Daniel Goldner <i>(Presiding as Presiding Officer)</i>	Public Utilities Commission
Cmsr. Robert Scott <i>(Vice Chair of SEC)</i>	Dept. of Environ. Services
Cmsr. Pradip Chattopadhyay	Public Utilities Commission
Cmsr. Carleton Simpson	Public Utilities Commission
Cmsr. Victoria Sheehan	Dept. of Transportation
Michael York, Designee	Dept. of Natural & Cultural Resources
George Kassas	Full Comm. Public Member
Robert Baines	Public Member

*Also Present for the SEC:*

Michael R. Grandy, Asst. Atty. General  
*(N.H. Department of Justice)*

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

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

CHAIRMAN GOLDNER: Welcome, everyone.  
And I'll begin by introducing the Committee members present. If the Committee members could state their name and title, that would be great, beginning with Ms. Sheehan.

CMSR. SHEEHAN: Good afternoon, Victoria Sheehan, Commissioner for the Department of Transportation.

MR. KASSAS: Good morning. George Kassas, Full Member of the SEC.

MR. YORK: I'm Michael York, with the Department of Natural --

*[Court reporter interruption.]*

MR. YORK: I'm Michael York, from the Department of Natural & Cultural Resources.

CMSR. CHATTOPADHYAY: I'm Pradip Chattopadhyay. I'm a Commissioner with the Public Utilities Commission.

CMSR. SIMPSON: Carleton Simpson, Commissioner of the Public Utilities Commission.

VICE CHAIR SCOTT: Bob Scott, Commissioner with the Department of Environmental Services, and Vice Chair of the Site Evaluation

1 Committee.

2 CHAIRMAN GOLDNER: And I'm Dan Goldner,  
3 Chair of the Site Evaluation Committee, and also  
4 the Chair of the Public Utility Commission.

5 So, good afternoon, everyone. We're  
6 here for a meeting of the Site Evaluation  
7 Committee. We have our agenda.

8 As a first order of business, have the  
9 members had the opportunity to review the minutes  
10 from the July 21st, 2021 Committee meeting? And,  
11 if so, are there any changes or corrections to  
12 those minutes?

13 *[No verbal response.]*

14 CHAIRMAN GOLDNER: Hearing none, do I  
15 have a motion to approve those minutes?

16 VICE CHAIR SCOTT: So moved.

17 CHAIRMAN GOLDNER: Do I have a second?

18 CMSR. SHEEHAN: Second.

19 CHAIRMAN GOLDNER: Okay. Let's take a  
20 voice vote. All in favor, say "aye"?

21 *[Multiple Committee members*  
22 *indicating "aye".]*

23 CHAIRMAN GOLDNER: Any opposed?

24 *[No indication given.]*

1 CHAIRMAN GOLDNER: Okay. The minutes  
2 are approved.

3 And, now, I'll introduce Mr. Grandy,  
4 from the Department of justice. And the next  
5 item is to hear from him on the subject of the  
6 Subcommittee's recommendation on its first task  
7 in SEC Docket Number 2021-02.

8 Mr. Grandy, please go ahead.

9 MR. GRANDY: Thank you. Good  
10 afternoon.

11 *[Court reporter interruption to provide*  
12 *a microphone to Mr. Grandy.]*

13 MR. GRANDY: On April 2nd, 2021, the  
14 Site Evaluation Committee issued an order, Docket  
15 Entry Number 1 in Docket 2021-02, appointing a  
16 Subcommittee to review the law, administrative  
17 rules, the Antrim Facility's Certificate, and  
18 other related filings regarding the sound  
19 measurement methodology, for the purpose of  
20 providing the Committee a written recommendation,  
21 this is called the "First Charge". In Docket  
22 Entry Number 44, in 2021-02, the Subcommittee  
23 submitted its final quarterly report for 2021.

24 That report clarifies that the

1 Subcommittee had concluded the first charge with  
2 its submission of Recommendations for  
3 consideration by the full Committee, docketed as  
4 Entry Number 36 in 2021-02. The Recommendations  
5 are dated "August 23rd, 2021". And those  
6 Recommendations will be deliberated by the Site  
7 Evaluation Committee.

8 CHAIRMAN GOLDNER: Thank you.

9 Before we move forward, Mr. Baines has  
10 arrived. So, Mr. Baines, would you like to  
11 briefly introduce yourself?

12 MR. BAINES: Yes. Bob Baines. I'm a  
13 Public Member, from Manchester, New Hampshire.

14 CHAIRMAN GOLDNER: Thank you.

15 The next order of business, we'll be  
16 taking public comment. Has everyone had the  
17 opportunity to sign in on the sign-up sheet if  
18 they wish to comment?

19 *[No indication given.]*

20 CHAIRMAN GOLDNER: I'll take that as a  
21 "yes".

22 I'll recognize those who have signed up  
23 to comment in the order they appear on the sheet.  
24 Each person will be allowed five minutes to

1 address the Committee on the topic introduced by  
2 Mr. Grandy.

3 I have received a request from  
4 Ms. Lerner and Ms. Linowes, I hope I pronounced  
5 your name right, to present for ten minutes  
6 together, which I'll allow. And I'll begin by  
7 recognizing any commenters.

8 Mr. Patnaude, do you have the sign-up  
9 sheet?

10 MR. PATNAUDE: Yes, I do.

11 *(Mr. Patnaude handing document to*  
12 *Chairman Goldner.)*

13 CHAIRMAN GOLDNER: Okay. Very good.  
14 First, on the sheet is Ms. Morrison. And just as  
15 a heads-up, Mr. Ward will come next. So, we'll  
16 begin with Ms. Morrison.

17 And, Ms. Morrison, if you'll come up,  
18 we have a seat for the speaker where the pink  
19 sign.

20 MS. MORRISON: Oh. I'll do that.

21 CHAIRMAN GOLDNER: If that's all right?

22 MS. MORRISON: Good afternoon. My name  
23 is Charlene Morrison. I'm an abutter. I live at  
24 92 Reed Carr Road. My daughter lives at 88 Reed



1 Carr Road. She couldn't be here, because she's  
2 working.

3 I wanted to give you a little brief  
4 history of how we ended up on Reed Carr Road. My  
5 family -- I'm 70 years-old. So, I've been  
6 walking that land my entire life. First, as a  
7 summer resident, now I'm a full-time resident.  
8 My daughter is also a full-time resident. We own  
9 29 acres; she owns nine.

10 They conducted a test on Erin's land,  
11 because it was more open, the cut of the land, it  
12 was more open to three of the windmills. They  
13 turned them off, it was a summer evening, they  
14 turned them off, and then they turned them on.  
15 They sat there, supposedly, for ten hours, on --  
16 literally, on her leach field, and took readings.

17 And the results were that it wasn't a  
18 problem. That they couldn't discern the  
19 difference between ambient noise and the  
20 windmills.

21 I beg to differ. I have been -- I was  
22 a teacher in my past life, so, I know scientific  
23 method. And that one little test did nothing to  
24 prove anything.

1           The noise in our house, at times, is  
2           unbearable, whether the windows are open or  
3           closed. I, at times, I got a decibel reader on  
4           my phone, it's not scientific, but at least it  
5           gave me some information. I've taken our  
6           readings at various times, in the evening, when  
7           there's wind, when there's no wind, when the  
8           turbines are off.

9           And, most times, it's 11 to 13  
10          decibels. That's why I retired there. I retired  
11          for the quiet. I retired that I could actually  
12          hear, in a summer night, when it's quiet, the  
13          brook, North Branch Brook, on Liberty Farm Road,  
14          and enjoyed it. I can't hear it anymore, even  
15          when the water is roaring. You might say  
16          "there's so much noise from Route 9", not really,  
17          because, usually, between 11:00 at night and 4:00  
18          in the morning, there's hardly any traffic on  
19          Route 9, never mind trucks.

20          But, anyway, on the last reading I  
21          took, actually, was today. As I walked out my  
22          door, I stood on my steps, and took three  
23          readings, and it was about 33 to 37 decibels;  
24          they're barely turning. They're moving about

1           this speed *[indicating]*. And they're turned  
2           towards the east.

3                       On February 17th, in the middle of the  
4           night, about 1:55, actually, I have it on my  
5           reading, I woke up to an incredible noise. It  
6           was the turbines. I reached for my phone, stayed  
7           in bed, my husband was not snoring, and it was  
8           absolutely -- the house was quiet, we live alone,  
9           it was 50 decibels. I did it three times. It  
10          was 57 decibels. It was 58 decibels.

11                      One time I took a decibel reading from  
12          our porch one evening, sitting on my porch,  
13          because the loud was so loud -- the noise was so  
14          loud, and it was 78 decibels about 9:00 at night.

15                      Other times, it's in the 30s. More  
16          often than not, it's in the high 40s and low 50s,  
17          which is lot different than the 11 decibels I was  
18          hoping to retire to.

19                      Now, this is to talk about how to do a  
20          true study. Well, when you do have the  
21          scientific method, you ask a question: "What's  
22          the problem with the turbines? Does it impact  
23          the quality of life of the people around it?"  
24          And, then, you build in the variables you to have

1 to think about. You have to think about wind  
2 direction. We had the direct -- the meter up on  
3 the hill for years before they put up the  
4 turbines. It's still up there -- well, they put  
5 it back. They took it down, and we thought it  
6 was gone, but it's back. So, wind direction.  
7 But what about the temperature? What about the  
8 time of year? Are the sounds different in the  
9 summer than they are in the winter?

10 They should be taken -- they should  
11 have taken now a year to test, and the year to  
12 test, yes, turn off the turbines once every  
13 season, and take a reading to get a baseline at  
14 that night, or two or three times each season,  
15 depending on the weather. You can get the  
16 reading for the wind, you can get the -- you know  
17 what the meteorological information is just by  
18 the date, and the time. But none of that seems  
19 to have been done.

20 My daughter's land is more open. She  
21 has three right behind her. If I have 50  
22 decibels in my house, because I have a treeline  
23 between us, then I guarantee hers is 60 to 70,  
24 because it's diagonal and it's like a tunnel,

1           that the sound just comes and enters into their  
2           little home.

3                       CHAIRMAN GOLDNER:  Ms. Morrison, I'm  
4           sorry, there's -- we're past five minutes.  Could  
5           you maybe wrap up in the next minute or so?

6                       MS. MORRISON:  Okay.  Well, I  
7           appreciate you listening.

8                       CHAIRMAN GOLDNER:  Yes.  We can also  
9           take written comments afterwards.  So, --

10                      MS. MORRISON:  Okay.  She's written  
11           copious notes and sent them in.  They have gotten  
12           in to you otherwise.  But I appreciate --

13                      CHAIRMAN GOLDNER:  Well, they should be  
14           on the webpage.  If they're on the webpage, then  
15           that would be --

16                      MS. MORRISON:  She looked them up and  
17           she said they seem to be gone, that she wrote  
18           over the years.  But, anyway.  But thank you.

19                      But it was not a thorough test that was  
20           done before.  And it needs to be a different kind  
21           of test, and more thorough, for over a year.

22                      Thank you.

23                      CHAIRMAN GOLDNER:  Thank you.  Next,  
24           it's Mr. Ward, and then he will be followed by

1 Ms. Lerner and Ms. Linowes, and I again apologize  
2 if I'm mispronouncing your name.

3 So, Mr. Ward.

4 MR. WARD: I have to start off by  
5 saying that I was a bureaucrat for many years  
6 working for the federal government. But this  
7 25-page report from your Subcommittee, I can't  
8 believe that so much can be said and be so  
9 irrelevant, without the group ever looking at the  
10 only relevant meteorological data that could be  
11 used. It discusses everything, but there isn't  
12 one word in here, as demonstrated by the previous  
13 witness, that discusses what's really important.

14 Okay. Now, what's important? Any  
15 meteorologist with a little understanding of  
16 sound, okay, knows that the only nights on which  
17 we're going to have problems -- I'm sorry -- the  
18 nights on which we are going to have problems  
19 will always be nights where the strongest winds  
20 are on the turbine, and we have an inverted  
21 temperature structure. Usually, it's warmest at  
22 the ground, and cools as it goes up.

23 Some nights, we have, when you've heard  
24 the TV meteorologist say "Clear, calm, and cold",

1 well, you can get a situation where the ground  
2 cools, so the air close to the ground is cold and  
3 the air above is warm.

4 The velocity of sound changes with  
5 temperature. So, if you have warm air above cold  
6 air, it's hard to get the sound to go off into  
7 the air. It will tend to go like this  
8 *[indicating]*. So, everybody agrees. And I don't  
9 think anybody from Antrim Wind will disagree,  
10 that the times when you are going to have  
11 problems, now you may problems at other times,  
12 I'm not arguing that, but the times when you're  
13 going to have problems are when the winds are the  
14 strongest, so that the strongest sound, the  
15 loudest sounds get made by the turbines, and then  
16 you have the sound track in an inverted area.  
17 Those will always give you the strongest sounds.

18 There isn't a thing in here that  
19 mentions what goes on when you might have  
20 problems. It's pointless.

21 Now, moving on. The question asked is  
22 "If I were running Antrim Wind, wouldn't I try to  
23 determine the sounds on the nights when you're  
24 most likely to have the problems?" They have

1 never done that that we know of. I don't know  
2 whether it's true that they haven't done it, but  
3 I have never been able to get anything.

4 They had Mr. Tocci come in, and the  
5 others. There has never been, to my knowledge, a  
6 sound measurement made around the neighborhood of  
7 Antrim Wind on nights when you would expect to  
8 get the loudest sound. If you don't do that,  
9 then you have nothing to base any comment on.  
10 You can't -- as Antrim Wind says, they know that  
11 they're never above 40 dB at night, they have  
12 also said "We're giving you a guarantee: If it's  
13 above that, we will shut down the turbine." They  
14 cannot do that, unless they know what the  
15 relationship is with the temperature and the  
16 wind, and they have never said that.

17 Now, I find it hard to believe that  
18 they spent \$65 million and never made a proper  
19 measurement. Antrim Wind knows, everything I'm  
20 saying they know, and they agree with it. Why  
21 haven't they made the measurements? Or, more  
22 importantly, have they made them? Where are  
23 they? I want to know. But, more importantly,  
24 you should want to know.



1           I suggest a very simple question, to  
2           Antrim Wind, and when they get up and talk: Have  
3           you made measurements on the nights when you  
4           would most expect to have loud sounds? Have you  
5           made measurements on the nights on which you  
6           expect to have loud sounds?

7           If they have not, then they need to  
8           have their Certificate taken away immediately,  
9           because they cannot know whether they exceed the  
10          40 dB. Whether they do or not is relevant; they  
11          cannot know without having taken those  
12          measurements.

13          Now, if, on the other hand, they have  
14          taken the measurements, why haven't we seen them?  
15          You would think, they're all below 40 dB  
16          according to Antrim Wind, well, show them to us.  
17          If they show me the data and get the dates and  
18          times, I can find out whether those are the right  
19          times or not, but they haven't provided them.  
20          Why not?

21          More important, why have you not  
22          required them to produce them? I have asked for  
23          the data on many occasions, and I've been told  
24          every time "That's proprietary data", I can't get

1 the data on top of the hill. I can get the data  
2 down below. But I can't get the data on the  
3 hill, it's their data. And I need both. They  
4 need both, to be able to say that they're "never  
5 above 40 dB".

6 Do they have the data? There is only  
7 one way you're going to find out, and that's to  
8 ask.

9 Thank you very much.

10 CHAIRMAN GOLDNER: Thank you, Mr. Ward.  
11 Ms. Lerner and Ms. Linowes.

12 MS. LINOWES: Excuse me, Mr. Chairman.  
13 We both have slides. Would it be okay if we  
14 distributed them to you now?

15 CHAIRMAN GOLDNER: Yes, please.

16 MS. LINOWES: They're paper slides.

17 CHAIRMAN GOLDNER: Yes. Thank you.

18 *(Ms. Lerner and Ms. Linowes*  
19 *distributing documents to the Committee*  
20 *members and others.)*

21 MS. LINOWES: Thank you, Mr. Chair.

22 REP. VOSE: Do you have more copies?

23 MS. LERNER: No, I'm sorry. I'm not  
24 sure if the Committee has additional copies? I

1 made enough copies for the SEC.

2 CHAIRMAN GOLDNER: Two more. Thank  
3 you.

4 MR. NEEDLEMAN: Thank you.

5 MS. LINOWES: Can we get a copy for  
6 Representative Vose as well?

7 MS. LERNER: Okay. Good afternoon.  
8 Thank you for allowing us the opportunity to  
9 speak today.

10 What I'd like to discuss is the Antrim  
11 Wind Project timeline, from the beginning of  
12 Antrim Wind 1 through to where we are today.

13 In the diagram that you can see, this  
14 all began back in February of 2013 with the  
15 Antrim 1 deliberation. It has continued on. And  
16 it hasn't been until more recently, back this  
17 past June 2021, where we finally heard about the  
18 one-hour averaging. Prior to that, we had no  
19 reference to that through any of the Antrim Wind  
20 documents, written or oral statements.

21 As you look through this document, the  
22 key statements in red reflect the regulatory and  
23 the administrative intent of the SEC rule  
24 regarding the sound standard. The black bold is

1 other key statements that have been made along  
2 the way.

3 So, as you look down through this  
4 chart, the first one of "February 2013" is the  
5 "Antrim Wind - Deliberation", where, clearly, the  
6 Site Evaluation Committee was going along with  
7 the "shall not exceed" standard. And there had  
8 been quite a bit of discussion about the  
9 potential for averaging. And Chair Ignatius made  
10 the comment "But another way to do it would be to  
11 have a daytime and a nighttime limit, not get  
12 into average over time." It's very clear from  
13 this conversation they were not looking for  
14 averages.

15 As we continue, the SEC rule adoption  
16 was -- determined that "the limits are those that  
17 were adopted by the Subcommittee in the Antrim  
18 Wind case", which again gets us into the not --  
19 I'm sorry. I'm sorry, the Antrim Wind Order and  
20 Decision was a "shall not exceed 45 dBA during  
21 the day, and, at nighttime, shall not exceed 40  
22 dBA."

23 The rule was based on that, as was said  
24 by Attorney Wiesner, with the statement of "These

1 limits are those that were adopted by the  
2 Subcommittee in the Antrim Wind case." And he  
3 goes on in another place to say "This is setting  
4 an absolute standard not to be exceeded."

5 Moving on, we go to "Antrim Wind 2",  
6 they submit their application. And, within their  
7 application, there are statements made "The worst  
8 case sound levels will be less than 40 dBA at any  
9 residence." We will "easily comply", "the  
10 absolute standard of [40?] dBA applies." No,  
11 there's no mention here of any use of a one-hour  
12 averaging.

13 Carrying onto the second page, we get  
14 to the Antrim Wind 2 adjudicative hearing, where  
15 Lisa Linowes is speaking with Robert O'Neal, the  
16 expert for Antrim Wind, and the statement Lisa  
17 makes is "maximum noise level at any property  
18 that would be experienced from the wind turbine  
19 operating project would be 38 decibels, is that  
20 correct?" O'Neal responds "That's correct."

21 Linowes then goes on to say "Is it  
22 appropriate to say that, since a wind project is  
23 not constructed yet, the purpose of a predictive  
24 model is to identify the noise limits that are

1 going to come", and she goes on, and O'Neal says  
2 "That's correct."

3 And, then, she continues, "you're  
4 obviously aware that the standard is a 40 dBA" --  
5 "40 decibel not-to-exceed figure, correct?"  
6 O'Neal responds with "Forty (40) at night, 45  
7 during the day, yes."

8 Within the Order and Decision of Antrim  
9 Wind 2, the Subcommittee has the note that "the  
10 Applicant guaranteed that noise levels associated  
11 with the Project will not exceed the requirements  
12 set forth in [the rules]."

13 We then go on, on December 24th, 2019,  
14 the Project becomes operational. Within a few  
15 weeks, we get the first noise complaints, and  
16 those have started and continue.

17 From there, the Site Evaluation  
18 Administrator hired Tocci. And, for the first  
19 time, we see a reference in his protocol to "A-  
20 and C-weighted hourly equivalent". From that, we  
21 raised concern immediately that there was never  
22 any discussion about any "hourly use" of the  
23 testing.

24 This now leads us to June 21st of last

1 year, during the Subcommittee Public Meeting, for  
2 the first time, thankfully, Mr. Duclos was  
3 pressing Antrim Wind, and he did ask "Is there a  
4 compliance period written into the rule?" And  
5 O'Neal says "There is not."

6 Continuing on, July 1st of 2021, we did  
7 receive a filing from Antrim Wind, and within it  
8 it identified "the preconstruction sound  
9 monitoring for Antrim Wind was done using  
10 one-hour averaging." Until this time, this had  
11 never been relayed to the Site Evaluation  
12 Committee, nor anybody else involved in this  
13 docket.

14 From there, we go to the next  
15 Subcommittee meeting, where Duclos started to  
16 push a bit further, and asked the question of  
17 Mr. Needleman "all preconstruction was done  
18 based" -- "all preconstruction monitoring was  
19 done based on one-hour averaging, right?" And  
20 Mr. Needleman's response was "That is my  
21 understanding."

22 And Mr. Duclos presses further, "Was  
23 there ever any type of comment, I didn't find it  
24 anywhere, about that being the standard or not

1 being the standard that was what was submitted to  
2 figure the maximum decibel of the facility,  
3 right?" Attorney Needleman responded "Yes, I  
4 think Mr. O'Neal can probably speak more  
5 specifically to that piece." Therefore, had not  
6 gone any further.

7 Within the Subcommittee's  
8 Recommendation, we are now seeing that they're  
9 putting forth the recommendation to have average  
10 -- averaging of at least five minutes and longer,  
11 and they also have said "Before we accept this,  
12 we should be initiating a rulemaking."

13 The last page contains all the  
14 references for the statements made in the prior.  
15 And I'm going to turn it over now to Lisa  
16 Linowes.

17 MS. LINOWES: Thank you, Mr. Chair,  
18 members of the Committee. My name is Lisa  
19 Linowes.

20 The slide I handed out, which is the  
21 slide with a graph, this is actual wind turbine  
22 noise collected at the Berwick property, which is  
23 two houses up from Ms. Morrison.

24 This shows that -- and the physical



1 location of the monitor was 3,700 feet away from  
2 the turbines, so more than half a mile. The data  
3 points in blue are collected at 1/10th second  
4 interval, Leg 1/10th second, consistent with both  
5 the ANSI 12.9, Part 3 standard, as well as the  
6 SEC rule.

7 This graph is typical of turbine noise.  
8 You can see that the turbines emit unsteady sound  
9 pressure levels that vary from 4 to 11 decibels  
10 over the 40 decibel nighttime limit established  
11 in the rule.

12 The solid black line is a 38 decibel  
13 mark represents the same sound data averaged over  
14 one hour. Such long-term averaging enables  
15 Antrim Wind to claim compliance with the SEC  
16 noise limit, while neighbors are left to suffer  
17 levels well above that amount.

18 These levels could not have been known  
19 in 2016 when the facility was permitted. That's  
20 because, as Ms. Lerner stated, Antrim Wind  
21 witness, Mr. O'Neal, repeatedly insisted  
22 throughout his 2015-02 sworn testimony, written  
23 and oral, that "worst-case sound levels at any  
24 residence would never exceed 40 decibels." What

1 he never stated, and we now know years later,  
2 that he meant "40 decibels averaged over one  
3 hour."

4 Rapid and large amplitude fluctuations  
5 require a shorter compliance interval in order to  
6 capture noise peaks. The 1/8th second interval  
7 in 301.18 was selected for this purpose. The  
8 1/8th second is entirely appropriate, supported  
9 by the ANSI standard, and obviously doable as  
10 seen from the graph.

11 Yet, last summer, we witnessed Antrim  
12 Wind and its attorney work to confuse the  
13 Subcommittee on this issue, to the point where  
14 the Subcommittee believed (a) the 1/8th second  
15 made no sense, and (b) the SEC rulemakers failed  
16 to specify a compliance interval. They didn't  
17 want anything to do with the 1/8th second.

18 The Subcommittee then set out to  
19 identify what the rulemakers intended. It first  
20 dismissed any evidence in the SEC's regulatory  
21 history that showed a clear intent to avoid  
22 long-term averaging that's documented in the  
23 report. It then proffered a new rule, based on a  
24 thinly supported assumption that the rulemakers

1           desired consistency with the ANSI standard.  
2           We -- Lori Lerner, I, and many others were  
3           involved in the drafting the Rule 301.18. That  
4           is an incorrect assumption.

5                       The Subcommittee's Bullet Number 3,  
6           which is presumed to be derived from the ANSI  
7           standard, recommends a five-minute interval or  
8           longer to be determined by the person conducting  
9           the sound test. So, what's the problem?

10                      To begin, ANSI 12.9, Part 3, is a  
11           high-level guide for technicians conducting  
12           short-term attendant sound measurements on all  
13           noise sources. There is no place in the general  
14           ANSI standard that even suggests a compliance  
15           interval for meeting regulatory noise limits.  
16           The only reference to a "five-minute time period"  
17           has nothing to do with compliance intervals in  
18           the standard. This was not understood by the  
19           Subcommittee, and it's very frustrating.

20                      Determination of New Hampshire's  
21           turbine noise standard is solely the  
22           responsibility of the SEC. Reliance on a general  
23           ANSI standard to define a statewide limit [sic]  
24           from limiting a specific sound source, that is

1 wind turbines, makes no sense. But that's  
2 exactly what the Subcommittee attempts to do in  
3 its Bullet 3.

4 Further, the Subcommittee's  
5 recommendation is open-ended. Under this scheme,  
6 noise monitoring at a facility, even if conducted  
7 at the same time, same location, but different  
8 persons using different compliance intervals will  
9 produce different, and potentially opposing --  
10 or, opposite findings of compliance. No rule  
11 should be accepted that can lead to such  
12 imprecise outcomes.

13 It is no surprise that Subcommittee  
14 members Eaton and Duclos were unwilling to  
15 support Bullet 3. Bullet 3, if adopted, would  
16 condone hourly sound averaging without any SEC  
17 deliberations, past or present, that examines the  
18 impact of hourly standard. It represents a  
19 significant departure from the turbine noise  
20 conditions imposed in prior SEC dockets, guts any  
21 noise protection intended under 301.14, and shuts  
22 the book on all Antrim noise complaints, since  
23 one-hour averaging would ensure a finding of  
24 compliance.

1 Under Bullet 3, and I will be closing  
2 in a moment, under Bullet 3, the Berwicks and  
3 their neighbors will be condemned to a lifetime  
4 of dominating turbine noise that disturbs their  
5 everyday activities, frightens their children,  
6 these they've documented, and makes it generally  
7 impossible for them to sleep with windows open.  
8 It would also preclude the Berwicks and others  
9 from seeking relief from the very Committee that  
10 permitted the Antrim facility, based on an  
11 expectation it would not produce an unreasonable  
12 adverse effect on public health.

13 The Subcommittee tried to make sense of  
14 a complex issue. The source of its confusion,  
15 and why we're here today, is because Antrim Wind  
16 knowingly, and quietly, applied their own  
17 interpretation of the SEC rule using one-hour  
18 averaging. When noise complaints rolled in, they  
19 attacked the rule as deficient and unworkable,  
20 and created the crisis before us.

21 Nonetheless, options are available that  
22 can resolve this issue for the parties. But we  
23 need a technical forum that we could openly  
24 discuss the issues.

1           My time is up. I'm happy to answer any  
2 questions. Thank you.

3           CHAIRMAN GOLDNER: Thank you. I think  
4 we'll have questions at the end. So, we'll just  
5 keep going.

6           So, next, we have Mr. Wilkas, followed  
7 by Mr. Needleman.

8           MR. WILKAS: Can I do it here? Can you  
9 hear me?

10          CHAIRMAN GOLDNER: Sure. Go ahead.

11          MR. WILKAS: And what I'm going to  
12 do -- my name is Joe Wilkas. I'm going to try  
13 and share the testimony of Barbara Berwick, an  
14 Antrim resident and abutter to the wind facility.  
15 The testimony is from the August 18th, 2021, SEC  
16 Subcommittee Public Meeting, which is available  
17 to everybody on the website.

18                 And thanks for the opportunity. I'm  
19 going to try and just -- we've got the recording,  
20 I'm going to try and put that into the  
21 microphone, so we can hear. It only lasts five  
22 minutes. I also have --

23                         *[Court reporter interruption.]*

24          MR. WILKAS: Well, I have a written

1 copy of the whole thing, too, which I can quickly  
2 hand out.

3 *(Mr. Wilkas distributing documents.)*

4 MR. WILKAS: This is the recording, I'm  
5 putting it up to the microphone.

6 *[Court reporter interruption indicating*  
7 *difficulty to understand the recording*  
8 *being played over the sound system.]*

9 CHAIRMAN GOLDNER: Sir, we can't make  
10 out what's going on. Just a moment. Hold on.

11 *[Court reporter interruption.]*

12 CHAIRMAN GOLDNER: We can insert that  
13 into the transcript, if you'd like?

14 MR. WILKAS: Okay. The good thing  
15 about this, if you could hear it, is there's some  
16 emotion in it. Besides that, and if you'd like  
17 to, you can go onto your own website and listen  
18 to it in high quality, the way I intended to  
19 share it.

20 **This is the transcription of Ms. Berwick's statement**  
21 **from the August 18, 2021 SEC Subcommittee hearing,**  
22 **taken from the Audio Recording at Docket Entry #35**  
23 **within the SEC 2021-02 Docketbook, and to be inserted**  
24 **into this transcript (located at the 8:25 mark of the**  
**recording & ends at the 14:29 mark) and as transcribed**  
**and provided by Mr. Wilkas, reads as follows:**

*So, one point that was frequently*

1           discussed during the hearings was the method of  
2           monitoring. And, during the hearings, Ms.  
3           Linowes definitely mentioned the standards that  
4           were used. She definitely mentioned the time  
5           frequency. Never once was she challenged by  
6           anyone. In fact, there was a general agreement.  
7           Yes, this is how it would be done, yet now Ms.  
8           Linowes is being said that she doesn't know that  
9           she, who was part of the actual committee that  
10          helped create the rules to protect the public  
11          from the sound knows nothing. Mr. Rand, an  
12          acoustician, I know I'm saying that wrong, knows  
13          nothing. Others, better experts, know nothing.

14                    They knew it all along, but they led  
15          deception, deliberate deception. There's always  
16          been so much deception, and the whole SEC, see  
17          here, and I felt was deception from the very  
18          beginning that it was already decided.

19                    There were some particular remarks that  
20          were made. Mr. Robertson, our selectman, made a  
21          remark, when I asked him if he would ever  
22          consider putting the turbines downtown, he said  
23          no. When I questioned why, he stated that it  
24          would affect too many people. So, this answer



1 told me that sacrificing our family was  
2 acceptable, and I guess that that's how the SEC  
3 sees things, too, that there are definitely  
4 families that could become sacrifice [sic]  
5 without any compensation, without any regard.

6 The second comment that was made that  
7 stays with me was one that Mr. Clifford made  
8 during deliberations. He commented that, when  
9 you move next to a pig farm, you can't complain  
10 about the odor. He was actually using this to  
11 say that we, the homeowners, don't have any right  
12 to complain about not wanting any of the effects  
13 of the turbines, but we didn't move next to the  
14 turbines. We've been there for years; they moved  
15 next to us.

16 I realize that that doesn't actually  
17 relate to today's decision, but I want you to  
18 understand the long -- the long disrespect that  
19 we have felt as homeowners.

20 How has the windmills affected us  
21 directly? We never sleep with our windows open.  
22 Never, never. I always shut them before going to  
23 bed, if they're open at all, because we cannot  
24 sleep. I live in one of the most rural areas in

1           Antrim. We have a road that is a dirt road that  
2           most people wouldn't even be willing to live on,  
3           but I cannot open my bedroom window at night.

4                   Some nights working at the table in my  
5           dining room, the noise just drums into my head.  
6           There's no way to escape it. Other times, it's  
7           perfect. I'm not going to stand here and say my  
8           windows rattled. My windows have never rattled,  
9           and I'm not going to say it's miserable all the  
10          time. It is not miserable all the time, but,  
11          when it is miserable, it is really miserable, and  
12          there's no way to escape it.

13                   So, today, you are here to decide if  
14          you will follow the rules as they were written  
15          and intended, or if the industry standards are  
16          good enough, and isn't that what the Committee  
17          really meant all along? I have no hope, really,  
18          that you will do what is right. I've long ago  
19          given up that idea. I have no hope that you even  
20          care about the effects from the abutters. I'm  
21          quite sure that, in your eyes, your job is to  
22          approve any energy project. Let the people talk,  
23          and then just approve the projects.

24                   Still, here I am. I think I am the

1 definition of "insanity", to continue to do the  
2 same thing and expect a different result. I  
3 don't know why I did. Where are the complaints?  
4 I haven't filed any complaints. Why not? I've  
5 been asked that, but I did file complaints. I  
6 was asked to document. I was asked to keep  
7 records. I sent in records. I sent him  
8 screenshots of my phone. Nothing ever happened.  
9 How long are we supposed to do that and why  
10 should we continue to complain?

11 If you want, you can call the Antrim  
12 Police Department asking about a report from a  
13 Mr. Ivey, who lives down the road, who called to  
14 complain about the sound. People have no respect  
15 for this Committee and don't think that anything  
16 will happen. No other time involved.

17 My neighbors next door, they have three  
18 young children. The wife spent over three or  
19 four hours on the phone listening to one  
20 Committee meeting in order to try and give her  
21 testimony. We have lives. We're not getting  
22 paid for being here. We have a lot of living  
23 that we have to do, and we can't take the time to  
24 be constantly coming here.

1                   We will all gladly put in our  
2                   complaints of when the sound is really bad, if we  
3                   feel like there's going to be follow-through.  
4                   But, if the follow-through is like the testing  
5                   that was done, a 15-day sound assessment that  
6                   eliminated all but two hours of time, or all but  
7                   one hour of time, then it's just a farce. So,  
8                   I'm asking you to do the right thing. I'm asking  
9                   you to really care about the people that are  
10                  affected. Not just for us, but for other  
11                  windmill projects that are going in.

12                  It does affect people's lives. We did  
13                  go from a beautiful, peaceful place, to a place  
14                  that is no longer like that for us. It has  
15                  affected our life, and it continues to affect our  
16                  life. And I ask that you not allow Antrim Wind  
17                  Energy to control the SEC.

18                  **(End of transcribed statement by Ms. Berwick)**

19                  CHAIRMAN GOLDNER: Thank you. Would  
20                  you like to make any -- so, we'll enter it into  
21                  the record. Is there anything else you'd like to  
22                  add to what we're putting in the record?

23                  MR. WILKAS: Well, I have to totally  
24                  agree with what I've heard so far from Lori and

1 Lisa. I'm an engineer, and the whole concept,  
2 and I was involved with Antrim and the project  
3 before that, and never, ever, ever did I hear the  
4 intent or words of "averaging sound" until after  
5 all -- we're dealing with all these complaints in  
6 Antrim. It was always "not to exceed a maximum  
7 level", and that was all I've ever seen  
8 referenced, including the rulemaking, with the  
9 Legislature, back almost ten years ago.

10 So, I just can't -- I can't believe  
11 that the SEC Subcommittee would have ever,  
12 looking at all the information they did, and with  
13 all the information that was presented to them,  
14 would ever come to a conclusion that they should  
15 use averaging.

16 Anyway, I thank you very much.

17 CHAIRMAN GOLDNER: Thank you.

18 Mr. Needleman.

19 MR. NEEDLEMAN: Thank you, Mr. Chair.  
20 My name is Barry Needleman. I represent Antrim  
21 Wind here today. I was also counsel to Antrim  
22 Wind in the underlying proceeding that resulted  
23 in the issuance of the Certificate here.

24 The key issue before this Committee

1           today is actually fairly simple. It is  
2           compliance with the SEC sound standards based on  
3           an hourly period, an hourly averaging period,  
4           which is how Antrim experts did their work, or is  
5           it based on a 1/8th of a second standard, which  
6           is what Ms. Linowes has advocated.

7                       The Subcommittee concluded that Antrim  
8           Wind's approach complied with the plain language  
9           of the SEC's rules. And I want to just begin  
10          here today by noting that you're here at the end  
11          of a very lengthy process. And I think it's  
12          worth spending a few minutes to remind the  
13          Committee of some of the key aspects of that  
14          process.

15                      It all began almost two years. At that  
16          point, in May of 2020, Antrim Wind filed its  
17          Post-Construction Sound Monitoring Report. This  
18          Report is required under your rules. And your  
19          rules tell entities, like Antrim Wind, what to  
20          file and when to file it. So, they did that  
21          pursuant to your rules. They didn't make it up,  
22          they didn't choose to do it at a particular  
23          point; they followed the rules.

24                      Shortly thereafter, eight days later,

1 Ms. Linowes files a letter criticizing the Sound  
2 Report. In July, the SEC hired its own technical  
3 expert, Cavanaugh Tocci, to review the Winter  
4 Sound Report. That was to get an independent  
5 assessment of the Report for your benefit.

6 In September, your technical expert  
7 submitted its peer review, concluding that Antrim  
8 Wind's experts prepared the Winter 2020 Report  
9 consistent with what you've heard of the ANSI  
10 standards, A-N-S-I, which are the national sound  
11 standards, and consistent with the SEC rules.  
12 That was your own expert that drew that  
13 conclusion.

14 In November of 2020, the SEC considered  
15 that peer review, and voted unanimously to accept  
16 the results. On January 5th of 2021, the SEC  
17 issued an order noting that your expert,  
18 Cavanaugh Tocci, confirmed the methodology used  
19 by Antrim's expert conformed with the SEC rules.

20 On February 4th of 2021, the landowners  
21 and Ms. Linowes asked this Committee for  
22 rehearing. The SEC reheard or took up that  
23 motion, and, on March 25th of 2021, you voted  
24 unanimously to deny the rehearing request. But,

1 in April, you appointed a Subcommittee. And you  
2 charged that Subcommittee, among other things,  
3 with doing a deep-dive into these technical  
4 issues, to come up with a recommendation for you  
5 of exactly how to interpret this rule. That's  
6 what happened over the course of almost the last  
7 year.

8 On April 20th of 2021, that Committee  
9 held its first public hearing. On June 24th of  
10 2021, New Hampshire Attorney General's Office  
11 filed a written comment agreeing that it was  
12 reasonable for Antrim Wind to use one-hour  
13 intervals to assess compliance. On July 15th,  
14 2021, the Subcommittee issued its proposed  
15 Recommendation, and allowed for comments, which  
16 it received on July 29th. And, then, finally, on  
17 August 23rd, it issued its final report.

18 I will say this is only a partial  
19 chronology of everything that's taken place over  
20 the last two years. But I shared it with you for  
21 a couple of reasons.

22 First, this has been a long, methodical  
23 process. It was fully open and transparent.  
24 Interested parties had multiple opportunities to



1           participate and be heard, and they did. The  
2           Subcommittee conducted a careful and thorough  
3           analysis, based not only on its own assessments,  
4           but on all the input it received from the public.  
5           And, so, there can be no doubt that there was an  
6           adequate basis for the Subcommittee's  
7           Recommendation, and, by extension, an adequate  
8           basis for this Committee to adopt the Report.

9                        I will say, I sat and I listened  
10           carefully to what Ms. Linowes and Ms. Lerner said  
11           today. And I didn't hear anything that wasn't  
12           already said and fully vetted by the  
13           Subcommittee. In essence, what they are saying  
14           to you is, they don't like the Subcommittee's  
15           result, and they want you to toss it out.

16                       I would suggest to you, respectfully,  
17           if that's the direction this Committee is going  
18           to go, what have we done for the last year? And  
19           why did the Subcommittee spend all the time that  
20           it spent doing the work that you asked it to do,  
21           if you're just going to second-guess it all,  
22           without the substantial benefit of doing all the  
23           work they did and listening to all the testimony  
24           that they heard.

1           So, I'll sum this up by saying, the SEC  
2 rules incorporate the ANSI standard. That  
3 standard says that averaging can be anywhere  
4 between five minutes and one hour, in order to  
5 determine a compliance. That was the rule this  
6 Committee adopted. Applicants, like Antrim Wind  
7 and others, don't just make it up. They follow  
8 the rules you adopt. Antrim Wind applied the  
9 ANSI standard, and, therefore, complied with the  
10 SEC rules.

11           And, so, we would respectfully request  
12 that you adopt the Committee's recommendation.

13           CHAIRMAN GOLDNER: Thank you. So,  
14 having heard public comment, the next item on our  
15 agenda is to provide the Committee with the  
16 opportunity to consult with legal counsel.  
17 Pursuant to RSA 91-A:2, I(b), consultation with  
18 legal counsel is exempted by Right-to-Know law  
19 from the definition of a "meeting".

20           Is there a motion to temporarily  
21 adjourn this meeting for the purpose of  
22 consulting with legal counsel?

23           VICE CHAIR SCOTT: Mr. Chair, assuming  
24 there's no questions, I think you had offered

1 questions to the Committee, which I don't have  
2 one, I'd make that motion.

3 CHAIRMAN GOLDNER: Yes. I would  
4 suggest we apply questions after consultation  
5 with legal counsel.

6 Is there a second?

7 CMSR. CHATTOPADHYAY: Second.

8 CHAIRMAN GOLDNER: Okay. Let's take a  
9 voice vote.

10 All in favor say "aye"?

11 *[Multiple Committee members indicating*  
12 *"aye".]*

13 CHAIRMAN GOLDNER: Any opposed?

14 *[No indication given.]*

15 CHAIRMAN GOLDNER: Okay. The motion  
16 passes.

17 We'll now adjourn this public meeting  
18 for the purpose of consulting with legal counsel.  
19 The public must leave the meeting room and the  
20 door will be closed. We expect to take about  
21 fifteen minutes. And we'll plan to reconvene the  
22 public meeting as soon as we are done consulting  
23 with our attorney. Thank you.

24 *(Whereupon a recess was taken at*

## [DELIBERATIONS]

1                   2:45 p.m. for the Committee to consult  
2                   with legal counsel, and the public  
3                   meeting resumed for deliberations at  
4                   3:33 p.m.)

5                   CHAIRMAN GOLDNER: Okay. We're back in  
6                   public meeting after consulting with legal  
7                   counsel. We'll now move to our final agenda  
8                   item, which is to deliberate and take action on  
9                   the Subcommittee's Recommendation.

10                   **DELIBERATIONS**

11                   CHAIRMAN GOLDNER: I'll just briefly  
12                   remind everyone why we're here, which is  
13                   Charge 1. Which is to review the law,  
14                   administrative rules, the Facility's Certificate,  
15                   and all other relevant filings relative to noise  
16                   limits and sound measurement methodology.

17                   Then, the Committee -- the  
18                   Subcommittee, rather, was to forward a written  
19                   recommendation regarding the appropriate  
20                   methodologies for measurement and analysis of  
21                   sound, and procedure for validating noise  
22                   complaints to the full Committee by April 23rd,  
23                   2021.

24                   So, that was Charge 1. Just to remind

## [DELIBERATIONS]

1 everyone why we're here.

2 And I'll just ask if anyone wants to  
3 kick off the discussion?

4 MS. LINOWES: Mr. Chairman, I'm sorry  
5 to interrupt. I just am compelled to correct  
6 something that was stated earlier. I think it's  
7 very important, regarding the claim that the --  
8 that the intervenor -- or, the participant -- the  
9 petitioners had requested a rehearing and were  
10 denied a rehearing based on the Site Evaluation  
11 accepting the Acentech report and the Tocci  
12 report.

13 In fact, in the SEC order of May 14th,  
14 2021, it states that "the Site Evaluation  
15 Committee did not approve a sound study  
16 methodology at its November 25th, 2020 meeting."  
17 And it says that it took -- it received those  
18 documents, but did not approve those  
19 methodologies. And it further states that,  
20 "since it did not accept the methodology, there  
21 was no reason to allow for a rehearing, simply  
22 because it was moot."

23 Our request was -- our understanding  
24 was that they accepted the methodology. The

## [DELIBERATIONS]

1 Committee acknowledged they did not do that.

2 CHAIRMAN GOLDNER: Thank you. I'll ask  
3 everyone moving forward to hold your comments,  
4 and let the Committee discuss. And, if there is  
5 any clarification, I would just ask written  
6 communication after the meeting would be -- would  
7 be welcome. So, thank you.

8 Okay. Mr. Scott, Commissioner Scott.

9 VICE CHAIR SCOTT: Thank you, Mr.  
10 Chair.

11 First, before we get into deliberations  
12 too much, I would like to get on the record, and,  
13 hopefully, the Committee agrees, that I'd like to  
14 commend the Subcommittee for the work they've  
15 done. They put a lot of effort and time into  
16 this. I know it's been, for a lot of different  
17 reasons, this has taken a long time.

18 So, I wanted to, perhaps, the  
19 Committee, at least by head-nod, will say that  
20 they agree with that?

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

23 VICE CHAIR SCOTT: Also, looking at the  
24 Subcommittee Report from August 23rd last year, I

## [DELIBERATIONS]

1 note that -- I think there's three -- two major  
2 recommendations that are, in my opinion, are  
3 responsive to Charge 1, which, as we've noticed,  
4 we're talking about Charge 1.

5 And, then, they also make a  
6 recommendation regarding initiating a rulemaking.  
7 So, maybe I can just opine on the rulemaking. I  
8 do think there is value to that, certainly. The  
9 fact that there's been debate about what the  
10 standard is, would indicate that there be some  
11 advantage in rulemaking. And, obviously, the  
12 Subcommittee is recommending that to us.

13 I would hope that, in the near future,  
14 we'll get an administrator to help things. And I  
15 would suggest that we consider that for the  
16 future. I would also be concerned if we tabled  
17 everything now to do a rulemaking, I'm a little  
18 bit concerned we're kicking the can for all this  
19 for some extended period of time, and, again,  
20 it's already been a long time.

21 So, I, personally, am amenable to  
22 clarifying rules. But I'm not convinced now is  
23 exactly the time, certainly, for this particular  
24 instance.

## [DELIBERATIONS]

1           So, with that, Mr. Chair, what I would  
2           recommend is, perhaps for ease of discussion, we  
3           segment the two major recommendations as I see  
4           them, which is, under the Subcommittee document,  
5           has labeled one as Section 77, and the other is  
6           Section 85.

7           And maybe, if the Chair would like, I  
8           would suggest I could address, to start, their  
9           first recommendation on the noise interval?

10          CHAIRMAN GOLDNER: Please do.

11          VICE CHAIR SCOTT: Yes. So, again, I  
12          think this could benefit in the longer term by  
13          rulemaking, so everybody's, you know, it's  
14          crystal clear as it can be for this type of  
15          thing.

16          But I do recommend, and I would move  
17          that we accept in its entirety, Section 77 from  
18          the Subcommittee.

19          CHAIRMAN GOLDNER: Is there a second,  
20          before we engage in discussion?

21                 *(Indication made by Cmsr. York to*  
22                 *second the motion.)*

23          CMSR. SHEEHAN: I'll second.

24          CHAIRMAN GOLDNER: Second, Mr. York.



## [DELIBERATIONS]

1 So, discussion?

2 CMSR. CHATTOPADHYAY: I have a -- I  
3 mean, this is -- it's not like I'm an engineer.  
4 So, by training, I'm an economist. And I'm  
5 trying to understand the language. So, the  
6 question that I have, maybe, you know, the other  
7 Committee members can help me with is, it's a  
8 pretty minor one, but I just want to make sure  
9 I'm following this.

10 So, when it says "that is at least five  
11 minutes for accelerated measurements and a longer  
12 period", I'm just going to stop there, I would  
13 ask folks to go back to -- let me just go to the  
14 right place.

15 It's Section 41, Page 12. So, what I'm  
16 trying to understand is, when the "LAeq", maybe  
17 that's how it's called, "it's calculated over a  
18 five-minute monitoring period with the source on  
19 and a five-minute period with the source off."

20 Is that what I should imply with the  
21 third bullet, you know, when we go back to  
22 Section 77?

23 CHAIRMAN GOLDNER: So, I, for one, am  
24 just catching up with you, Commissioner

## [DELIBERATIONS]

1           Chattopadhyay. Can you repeat the page number  
2           and section?

3                        CMSR. CHATTOPADHYAY: Sure. Let me go  
4           back there.

5                        So, if you go to Page 12, and  
6           Section 41, this section is talking about  
7           different approaches to measuring sound. And  
8           these are all based on some standards, that is my  
9           understanding. So, as it discusses the  
10          "accelerated measurement procedures", it says "an  
11          LAeq is calculated over a five-minute monitoring  
12          period with the source on, and a five-minute  
13          period with the source off."

14                      And, so, what I'm trying to understand,  
15          going back to Section 77, when it says "that is  
16          at least five minutes for accelerated  
17          measurements and a longer period if ANSI's basic  
18          procedure is utilized", just focus on the first  
19          part, I'm also tempted to say that, you know, we  
20          need to know both on and off. As an economist,  
21          just reading this, I still got that sense.

22                      So, I would like to have opinion from  
23          others on that. Am I reading it right or --

24                      CHAIRMAN GOLDNER: Well, we may want

## [DELIBERATIONS]

1 to -- well, you'll get an opinion from the  
2 mechanical engineer, and then the electrical  
3 engineer, and other engineers may choose to weigh  
4 in.

5 So, yes. Accelerated measurement, the  
6 idea behind that, from the reading here, is to  
7 have an expeditious method for measuring. You  
8 could use the standard method, which is twice as  
9 long. But they're suggesting here that this  
10 accelerated measurement would be just as good,  
11 and yet more expedient, to run the tests. That's  
12 my reading.

13 CMSR. SIMPSON: And my reading would be  
14 that the methodology leveraged would be ANSI  
15 S12.9-2013, noted as the ANSI standard in this  
16 recommendation, on Page 9.

17 So, I believe that the recommendation  
18 is to follow that standard specifically.

19 MR. WARD: May I suggest that we can't  
20 see who's talking because of the screens in front  
21 of you. If you just maybe put your hand up, so  
22 we can see who it is. Thank you very much.

23 CHAIRMAN GOLDNER: Sure. Go ahead now,  
24 Commissioner Scott.

## [DELIBERATIONS]

1                   VICE CHAIR SCOTT: I'm not actually  
2                   contributing to the conversation, but I know Mr.  
3                   Ward can see me.

4                   That type of discussion, to be blunt,  
5                   is exactly why we threw this to a subcommittee to  
6                   try to flesh out all of this, by the way. And I  
7                   don't mean to, for a moment, diminish, in fact,  
8                   I'm doing the opposite, so, this, you know, this  
9                   is weighty, no pun intended, I guess I just made  
10                  a pun, on this content.

11                  So, that's one of the reasons why we  
12                  went to a subcommittee, because it is very  
13                  technical in nature. I guess I'm stating the  
14                  obvious. So, --

15                  CMSR. CHATTOPADHYAY: Which page did  
16                  you mention again? I'm talking to Carleton.  
17                  Sorry.

18                  VICE CHAIR SCOTT: Oh, ANSI --

19                  CMSR. CHATTOPADHYAY: Yes, that  
20                  standard.

21                  CMSR. SIMPSON: Just bear with me for a  
22                  moment.

23                  Page 9, Section 30. And I would agree  
24                  with Commissioner Scott, that the Subcommittee's

## [DELIBERATIONS]

1 charge was to help us with doing a deep-dive into  
2 appropriate methodologies. And it appears that  
3 the methodology recommended here is the ANSI  
4 standard that I had mentioned before, S12.9-2013.

5 CHAIRMAN GOLDNER: Is there any further  
6 discussion on Commissioner Scott's motion to  
7 accept the summary recommendation concerning  
8 noise standard, that's F.77?

9 CMSR. CHATTOPADHYAY: Again, being new  
10 to the process, can I ask -- I thought we could,  
11 you know, I'm sort of thinking about, when you  
12 measure these things, and the presentation that  
13 we had before, from the public, can I ask some  
14 questions to make sure I'm following things?

15 CHAIRMAN GOLDNER: Of course.

16 CMSR. CHATTOPADHYAY: Okay. So, I  
17 think one -- one thing that I heard was -- I'm  
18 raising my hand here, I know I'm short -- was,  
19 you know, I heard that there are times that, you  
20 know, that is worse enough that that's when you  
21 want to measure how, you know, the noise is.

22 And, so, that's something I want to  
23 make sure, for example, the graph that was shown  
24 in this, in the first graph, it's dated "March

## [DELIBERATIONS]

1           24, 2021", right? Is that day one of such a day  
2           or this was just chosen randomly?

3                   MS. LINOWES: The reason that date is  
4           there, what happened was, because it's very  
5           difficult to capture a point when a complaint is  
6           issued. Under the rules, a complaint, whenever  
7           there's a complaint filed, the expert has to go  
8           out under the same meteorological conditions and  
9           try to replicate that complaint and validate it.  
10          So, what we did in that case is, we put a monitor  
11          at the Berwick property for a period of a week,  
12          during a period when we expected significant wind  
13          conditions.

14                   And, when Ms. Berwick complained about  
15          the noise, which is that circle there, that one  
16          location at the very beginning where it's  
17          circled, when she registered a complaint, she  
18          notified the acoustician. And the acoustician  
19          took the data for that hour, and that's what we  
20          identified, that there were significant  
21          exceedances at that point.

22                   So, that's why it was that day. And  
23          there were other days as well, but that's just  
24          one graph.

## [DELIBERATIONS]

1 CMSR. CHATTOPADHYAY: Okay. So, --

2 CHAIRMAN GOLDNER: I'm sorry,

3 Commissioner Chattopadhyay. I'll just remind the  
4 Commission that we are to limit our discussion to  
5 what was discussed today, to the extent that we  
6 can stay within our those boundaries. Thank you.

7 CMSR. CHATTOPADHYAY: Okay.

8 CHAIRMAN GOLDNER: Any further  
9 discussion?

10 *[No indication given.]*

11 CHAIRMAN GOLDNER: So, there's a motion  
12 to accept the summary recommendation concerning  
13 the noise standard and bifurcating that in  
14 Charge 1.

15 So, I'll take a roll call vote to  
16 accept, to accept that noise standard as written.  
17 Beginning with Commissioner Sheehan?

18 CMSR. SHEEHAN: Aye.

19 CHAIRMAN GOLDNER: Thank you. Mr.  
20 Kassar?

21 MR. KASSAS: Aye.

22 CHAIRMAN GOLDNER: Mr. York?

23 MR. YORK: Aye.

24 CHAIRMAN GOLDNER: Commissioner

## [DELIBERATIONS]

1 Chattopadhyay?

2 CMSR. CHATTOPADHYAY: Aye.

3 CHAIRMAN GOLDNER: Commissioner

4 Simpson?

5 CMSR. SIMPSON: Aye.

6 CHAIRMAN GOLDNER: Commissioner Scott?

7 VICE CHAIR SCOTT: Aye.

8 CHAIRMAN GOLDNER: And the Chair votes  
9 "aye". The motion passes.

10 And, so, perhaps, Commissioner Scott,  
11 you'd like to move to the second part of the  
12 charge?

13 VICE CHAIR SCOTT: Yes. And, again, in  
14 the context of Charge 1, you know, they asked, in  
15 my opinion, Charge 1, from the Chair at the time,  
16 talks about the sound standard, and how do you  
17 analyze that, and then it went on to say "and  
18 procedure for validating noise complaints, that  
19 belongs to the Full Committee." And I believe  
20 that's what Section 85, on Page 25 of the  
21 Subcommittee's Report to us, from August of last  
22 year, talks about. So, I just want to put that  
23 in that context.

24 And, based on that, I'll also note that



## [DELIBERATIONS]

1 the Committee rules have a process that, once  
2 something becomes a complaint -- or, excuse me, a  
3 potential violation, comes before the Committee,  
4 there's a process laid out there also. So, I  
5 assume that would apply, were we to adopt these.

6 I believe these recommendations are  
7 intended to be, my read of these, is what the  
8 Committee -- the Subcommittee should do for their  
9 process, in order to get to Charge 2 and 3. So,  
10 that's the way I view that.

11 So, in that context, I move that we  
12 also accept those recommendations, which are  
13 labeled under F -- I guess it's still "F", is  
14 that right, 85, in their entirety as well.

15 CHAIRMAN GOLDNER: Is there a second on  
16 the motion?

17 CMSR. CHATTOPADHYAY: Second.

18 CHAIRMAN GOLDNER: Thank you.

19 Discussion?

20 CMSR. SIMPSON: I would ask the  
21 Committee to look at the last sentence in the  
22 last bullet of Section 85, on Page 25, for "the  
23 Subcommittee to recommend to the Committee find a  
24 violation and take the appropriate enforcement

## [DELIBERATIONS]

1 actions", if their interpretation is that taking  
2 that enforcement action would lead to Charge 2  
3 and 3.

4 That's my understanding. And I want to  
5 confirm that with others.

6 VICE CHAIR SCOTT: Would you mind  
7 restating that just one more time?

8 CMSR. SIMPSON: That if Section 85 lays  
9 out the process to complete Charge 1, the final  
10 bullet states that "If the Committee accepts the  
11 findings of any field survey, it shall recommend  
12 to the full Committee denial of a complaint if  
13 the field survey does not validate the complaint.  
14 If the field survey does validate the complaint,  
15 the Subcommittee will recommend the Committee  
16 find a violation and take the appropriate  
17 enforcement actions."

18 With emphasis on "taking the  
19 appropriate enforcement actions", my  
20 understanding is that those enforcement actions  
21 would lead us to Charges 2 and 3.

22 CMSR. SHEEHAN: Mr. Chair, that would  
23 not be my interpretation.

24 I'm reading Section 85 as their

## [DELIBERATIONS]

1 recommendation as to how they're going to conduct  
2 Charge 2. And, then, at the conclusion of this  
3 process, the last bullet, in accordance with  
4 Charge 3, they'd be making recommendations to the  
5 full Committee as to whether or not we should  
6 deny the complaint, because their field study  
7 conducted under Charge 2 did not validate the  
8 complaint, or, if they conduct the analysis and  
9 they believe the complaint was legitimate, they  
10 would recommend to the Committee that a violation  
11 had, in fact, occurred. And, then, we would take  
12 the appropriate action.

13 That's how I am reading this.

14 MR. KASSAS: Mr. Chair, may I?

15 CHAIRMAN GOLDNER: Yes, please.

16 MR. KASSAS: The other sentence, or two  
17 words that I would like some clarity from the  
18 Subcommittee on, when we say "field survey", are  
19 we indicating individuals going out and  
20 surveying, or there's some technology put in  
21 place to survey and collect data for whatever  
22 period of time, two minutes, twenty days,  
23 whatever it be?

24 "Field survey" could be left wide open.

## [DELIBERATIONS]

1 If we can just narrow it down to a specific  
2 activity required, whether human, technology, or  
3 a combination.

4 Thank you.

5 CHAIRMAN GOLDNER: Thank you.

6 Commissioner Scott, would you like to --

7 VICE CHAIR SCOTT: I just want to  
8 understand that. So, is that a separate motion  
9 you're making, Mr. Kassas?

10 MR. KASSAS: Well, it could be a  
11 separate motion, because I thought this was an  
12 open conversation about the different bullet  
13 items. So, that's -- but it definitely could be  
14 a separate motion on it.

15 CHAIRMAN GOLDNER: So, you're looking  
16 for a definition on a "field survey"?

17 MR. KASSAS: Yes. Just a description,  
18 what does it entail? A human visit, technology,  
19 a test set, whatever the technical committee here  
20 can recommend for us.

21 CHAIRMAN GOLDNER: Thank you. Mr.  
22 York.

23 MR. KASSAS: Adopting the ANSI  
24 standard, which we just did.

## [DELIBERATIONS]

1 CHAIRMAN GOLDNER: Yes. Thank you.  
2 Mr. York.

3 MR. YORK: That was going to be my  
4 concern. Do we have to give this back to the  
5 Subcommittee with the expertise to tell us which  
6 modality should be used, in order to determine  
7 the question here? Because it seems to me we  
8 have to kick it back to them, in order to get the  
9 correct answers.

10 CHAIRMAN GOLDNER: Yes. I think so.  
11 So, would there be a second to Mr. Kassas's  
12 motion?

13 CMSR. SIMPSON: Could we have that  
14 motion restated please?

15 CHAIRMAN GOLDNER: Yes. Yes. Would  
16 you like to restate your motion, Mr. Kassas?

17 MR. KASSAS: We'll give it a shot. So,  
18 the motion is to seek a further definition of  
19 what "field survey" entails, in terms of assets  
20 to conduct the survey; human, technology,  
21 monitoring, and, if possible, the duration,  
22 adequate duration of the survey.

23 CHAIRMAN GOLDNER: Do I have second?

24 MR. YORK: I'll second that.

## [DELIBERATIONS]

1 CHAIRMAN GOLDNER: That's been  
2 seconded. Discussion?

3 Commissioner Sheehan.

4 CMSR. SHEEHAN: I'll agree there's some  
5 inconsistency in terminology. You know, but my  
6 interpretation of this was that, when they talk  
7 about "field survey", they really mean conducting  
8 the field measurements that are anticipated to be  
9 collected as part of validation of any noise  
10 complaint.

11 And, so, you know, in Section 84, they  
12 talk about how, in our existing rules and  
13 process, the Administrator would be hiring  
14 technical expertise and conducting field  
15 measurements to validate complaints.

16 And, so, my understanding of this is  
17 that they are proposing a process of how they  
18 would approach this as a Subcommittee. But, when  
19 they talk about "field survey", they really mean  
20 "field measurement".

21 But I don't disagree, they're using  
22 inconsistent terminology. So, if others feel  
23 it's appropriate to give it back to the  
24 Subcommittee for them to clarify that, I could

## [DELIBERATIONS]

1 understand the concern.

2 CHAIRMAN GOLDNER: Further discussion?  
3 Commissioner Scott.

4 VICE CHAIR SCOTT: So, I wish I had  
5 brought my computer so I could do a quicker  
6 search. So, I'm thumbing through the rules,  
7 because I'm not convinced we don't have -- you're  
8 right, that the terminology may be mixed from  
9 what they used, but I, and maybe it's faulty  
10 memory, but I thought the rules provided some  
11 clarity on what that would be. But perhaps I'm  
12 remembering wrong. I'm not finding it.

13 CHAIRMAN GOLDNER: Any further  
14 discussion?

15 *[No indication given.]*

16 CHAIRMAN GOLDNER: So, we're going  
17 to -- we're going to take a vote on the motion to  
18 seek further definition of what "field survey"  
19 means, in terms of duration, time, location  
20 etcetera. Correct?

21 *(Mr. Kassas nodding in the*  
22 *affirmative.)*

23 CHAIRMAN GOLDNER: Okay. So, we'll  
24 vote on that. Commissioner Sheehan?

## [DELIBERATIONS]

1 CMSR. SHEEHAN: I apologize.

2 CHAIRMAN GOLDNER: No, that's --

3 CMSR. SHEEHAN: Before you call the  
4 vote, I was looking through the rules as well.  
5 So, I might have some clarity.

6 CHAIRMAN GOLDNER: Oh, sure. Take your  
7 time. We'll pause the vote.

8 CMSR. SHEEHAN: Just so we can make  
9 sure. I'm very sensitive to the fact that we  
10 have complaints that we need to address  
11 adequately. That, if we send things back to the  
12 Subcommittee for further interpretation and  
13 clarification, we're delaying the resolution of  
14 the complaints. So, my hope is to move things  
15 forward as quickly as possible.

16 But I believe, in Part 301 [301.18?],  
17 under (i), it says "Validation of noise  
18 complaints submitted to the Committee shall  
19 require field sound surveys, except as determined  
20 by the Administrator to be unwarranted, which  
21 field studies shall be conducted under the same  
22 meteorological conditions", *etcetera, etcetera*.

23 So, I think it -- when the Committee is  
24 talking about the "field survey", they're



## [DELIBERATIONS]

1 referring to the type of data collection that was  
2 already anticipated in our rules. And,  
3 typically, it would be the Administrator who'd be  
4 directing the collection of that data.

5 In this case, they're suggesting the  
6 Subcommittee would need that as part of their  
7 process for these particular complaints that they  
8 have been tasked with addressing.

9 I don't know if that changes people's  
10 opinion on the lack of consistency of  
11 terminology.

12 CHAIRMAN GOLDNER: Mr. Kassas, would  
13 you like to move forward with your motion or  
14 withdraw it?

15 MR. KASSAS: No. I'd like to keep it,  
16 because inconsistency could lead to further  
17 interpretation down to road. So, if it is what  
18 the Commissioner indicated, then they can come  
19 back and say "It is right there. That's what we  
20 meant." That, to me, comes from a lot of  
21 background in site surveys and field surveys, and  
22 they could mean a whole lot of things.

23 It just -- it could be just pointing an  
24 arrow to "this is the text that we meant". And

## [DELIBERATIONS]

1 we can put them on the phone right now and get  
2 them, get that answered.

3 CHAIRMAN GOLDNER: Yes. Unfortunately,  
4 we can't do that.

5 MR. KASSAS: Yes.

6 CHAIRMAN GOLDNER: But yes. So, we'll  
7 renew the motion on, really, the definition of a  
8 "field survey", what it means, duration, time,  
9 location, etcetera. So, Commissioner Sheehan?

10 CMSR. SHEEHAN: I vote "no". I think  
11 it's clear what they intended.

12 CHAIRMAN GOLDNER: Mr. Kassas?

13 MR. KASSAS: Aye.

14 CHAIRMAN GOLDNER: Mr. York?

15 MR. YORK: Aye.

16 CHAIRMAN GOLDNER: Commissioner  
17 Chattopadhyay?

18 CMSR. CHATTOPADHYAY: Aye.

19 CHAIRMAN GOLDNER: Commissioner  
20 Simpson?

21 CMSR. SIMPSON: Aye.

22 CHAIRMAN GOLDNER: Commissioner Scott?

23 VICE CHAIR SCOTT: Nay.

24 CHAIRMAN GOLDNER: And the vote of --

## [DELIBERATIONS]

1 the Chair votes "nay".

2 So, the "ayes" have it, if I counted  
3 correctly. Yes? Yes. Thank you.

4 Okay. Very good. Okay. So, we've  
5 clarified the last bullet, Commissioner Simpson,  
6 to your satisfaction, on 85. Was there anything  
7 further on 85?

8 CMSR. SIMPSON: No. The discussion was  
9 helpful, Mr. Chairman.

10 CHAIRMAN GOLDNER: Okay. Thank you.

11 Would anyone like to make a motion to  
12 move Section 85 forward, make a motion in that  
13 regard?

14 CMSR. SIMPSON: I think Mr. Scott's  
15 motion remains outstanding --

16 CHAIRMAN GOLDNER: Okay.

17 CMSR. SIMPSON: -- pertaining to that.  
18 The only question I would raise is whether the  
19 Committee feels comfortable moving forward, in  
20 light of seeking some clarity from the  
21 Subcommittee on "field survey"?

22 I think I would feel comfortable that  
23 we could obtain that information subsequent to a  
24 vote on this section. But I would raise that for

## [DELIBERATIONS]

1 the rest of the Committee.

2 CHAIRMAN GOLDNER: Any discussion?

3 CMSR. SHEEHAN: Mr. Chair, perhaps we  
4 need to revisit the motion.

5 CHAIRMAN GOLDNER: Okay.

6 CMSR. SHEEHAN: And state what we  
7 believe the Subcommittee meant, in terms of the  
8 investigation. So that, if, in fact, they  
9 confirm that that was their intention, we would  
10 have already approved this section.

11 CHAIRMAN GOLDNER: Very good. Would  
12 you like to make a motion?

13 CMSR. SHEEHAN: It was not my motion.  
14 It was Commissioner Scott's motion.

15 CHAIRMAN GOLDNER: Mr. Scott's motion.  
16 Okay. Cmsr. Scott, would you like to re-motion?

17 VICE CHAIR SCOTT: I'll accept that as  
18 a friendly amendment.

19 CMSR. SHEEHAN: So, I would move that,  
20 if the Subcommittee concurs that the field survey  
21 that they anticipated would be consistent with  
22 the scope of the field sound surveys articulated  
23 in current rules, then it would be appropriate  
24 for them to move forward with this process.

## [DELIBERATIONS]

1 CHAIRMAN GOLDNER: Okay. Do I have a  
2 second?

3 VICE CHAIR SCOTT: Second.

4 CHAIRMAN GOLDNER: Any further  
5 discussion?

6 *[No verbal response.]*

7 CHAIRMAN GOLDNER: Okay. We can vote.  
8 Commissioner Sheehan?

9 CMSR. SHEEHAN: Aye.

10 CHAIRMAN GOLDNER: Mr. Kassas?

11 MR. KASSAS: Aye.

12 CHAIRMAN GOLDNER: Mr. York?

13 MR. YORK: Aye.

14 CHAIRMAN GOLDNER: Commissioner  
15 Chattopadhyay?

16 CMSR. CHATTOPADHYAY: Aye.

17 CHAIRMAN GOLDNER: Commissioner  
18 Simpson?

19 CMSR. SIMPSON: Aye.

20 CHAIRMAN GOLDNER: Commissioner Scott?

21 VICE CHAIR SCOTT: Aye.

22 CHAIRMAN GOLDNER: And the Chair votes  
23 "aye". The motion passes.

24 So, we've moved through the elements of

## [DELIBERATIONS]

1 Charge 1. I guess the only thing outstanding in  
2 my mind is, does the Committee, sans the  
3 clarification voted on relative to the "field  
4 survey", accept the Report in its entirety? Or,  
5 is there something that should be removed from  
6 the Report before potentially accepting it?

7 Because, thus far, we've only accepted  
8 two sections, 77 and 85.

9 CMSR. SHEEHAN: Mr. Chair, the only  
10 other recommendation that I believe they made was  
11 concerning Item 78, which is the recommendation  
12 around rulemaking. I would share the same  
13 concerns that Commissioner Scott articulated  
14 earlier. I agree that rulemaking is warranted,  
15 but perhaps it's not the right time to embark on  
16 that endeavor, but I certainly would accept the  
17 recommendation.

18 And, so, if we've already acted on 77  
19 and 85, my interpretation of the Report is that's  
20 the only piece that's outstanding. So, I would  
21 make the motion to adopt the Report in its  
22 entirety.

23 CHAIRMAN GOLDNER: Okay. Thank you.  
24 Is there a second?

## [DELIBERATIONS]

1 MR. YORK: Second.

2 CHAIRMAN GOLDNER: Second. Discussion?

3 CMSR. CHATTOPADHYAY: Just for the  
4 record, I kind of like the need for a rulemaking  
5 to, you know, establish a definitive time limit.  
6 Of course, I also learned, you know, given I only  
7 started in December of 2021, that this process  
8 has been going on for a while. So, I like what  
9 Commissioner Bob Scott had suggested. So, I just  
10 wanted to put that in the record.

11 CHAIRMAN GOLDNER: Okay. Thank you.  
12 Any further discussion?

13 *[No indication given.]*

14 CHAIRMAN GOLDNER: Okay. We'll move to  
15 a vote. Commissioner Sheehan?

16 CMSR. SHEEHAN: Aye.

17 CHAIRMAN GOLDNER: Mr. Kassas?

18 MR. KASSAS: Aye.

19 CHAIRMAN GOLDNER: Mr. York?

20 MR. YORK: Aye.

21 CHAIRMAN GOLDNER: Commissioner  
22 Chattopadhyay?

23 CMSR. CHATTOPADHYAY: Aye.

24 CHAIRMAN GOLDNER: Commissioner

## [DELIBERATIONS]

1 Simpson?

2 CMSR. SIMPSON: Aye.

3 CHAIRMAN GOLDNER: Commissioner Scott?

4 VICE CHAIR SCOTT: Aye.

5 CHAIRMAN GOLDNER: Aye. Okay. We have

6 reached a determination on the final agenda item.

7 And we are adjourned. Thank you.

8 ***(Whereupon the Public Meeting,***  
9 ***including the Deliberations, was***  
10 ***adjourned at 4:07 p.m.)***

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**C E R T I F I C A T E**

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

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

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