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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

July 29, 2020 - 2:00 p.m.
Concord, New Hampshire

[Remote Hearing Conducted via Webex]

IN RE: SITE EVALUATION COMMITTEE:
Public meeting regarding
annual review and evaluation
of application and filing
fees, Request for approval
to retain expert technical
support for review of Antrim
Wind Energy post-construction
sound monitoring report,
Status of investigation into
noise complaints related to
Antrim Wind Energy, Public
Comment, and Any other
business that is lawfully
before the Committee.

PRESENT FOR SITE EVALUATION COMMITTEE:

Chairwoman Dianne Martin	Public Utilities Comm.
(Presiding as Presiding Officer)	
Cmsr. Kathryn M. Bailey	Public Utilities Comm.
Cmsr. Michael S. Giaimo	Public Utilities Comm.
Cmsr. Robert R. Scott	Dept. of Environ. Svs.
Cmsr. Victoria Sheehan	Dept. of Transportation
Will Arvelo, Designee	Dept. of Business & Economic Affairs
Michael York, Designee	Dept. of Natural and Cultural Resources
Susan V. Duprey	Public Member
George I, Kassas	Public Member

1 ALSO PRESENT FOR THE SEC:

2 Michael J. Iacopino, Esq., Counsel to the SEC
3 (Brennan, Caron, Lenehan & Iacopino)

4 Pamela G. Monroe, SEC Administrator

5 J.D. Lavallee, Esq.

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7 COURT REPORTER: Susan J. Robidas, NH LCR No. 44

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1 P R O C E E D I N G S

2 CHAIRWOMAN MARTIN: I apologize to
3 everybody on the Committee and members of the
4 public for the delay. We were having some
5 technical issues.

6 Good afternoon. We are here today
7 for a public meeting of the Site Evaluation
8 Committee. The meeting is being held by
9 remote access due to COVID-19 concerns.
10 Because of that, I'm required to make certain
11 findings before we proceed with the meeting.

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

1 are utilizing Webex for this electronic
2 hearing. All members of the Commission have
3 the ability to communicate contemporaneously
4 during this hearing through this platform,
5 and the public has access to
6 contemporaneously listen and, if necessary,
7 participate. We previously gave notice to
8 the public of the necessary information for
9 accessing the hearing in the Order of Notice.
10 If anybody has a problem, please call
11 (603)271-2431. In the event the public is
12 unable to access the hearing, this hearing
13 will be adjourned and rescheduled.

14 Okay. Let's start with taking a
15 roll-call attendance of the Committee. When
16 each Committee member introduces themselves,
17 please also state whether anyone is present
18 with you in the room, and if so, please
19 identify them.

20 My name is Dianne Martin. I am the
21 Chairwoman of the Site Evaluation Committee,
22 and no one is present with me.

23 Commissioner Scott.

24 COMMISSIONER SCOTT: Good

1 afternoon. I'm Bob Scott, Commissioner with
2 the Department of Environmental Services and
3 vice-chair of the Site Evaluation Committee.
4 I'm alone in my office.

5 CHAIRWOMAN MARTIN: Commissioner
6 Bailey.

7 COMMISSIONER BAILEY: Good
8 afternoon. Kathryn Bailey. I'm a
9 Commissioner at the Public Utilities
10 Commission. I'm alone.

11 CHAIRWOMAN MARTIN: Commissioner
12 Giaimo.

13 COMMISSIONER GIAIMO: Good
14 afternoon. I'm Michael Giaimo, Commissioner
15 at the Public Utilities Commission. I, too,
16 am alone.

17 CHAIRWOMAN MARTIN: Thank you.
18 Commissioner Sheehan.

19 COMMISSIONER SHEEHAN: Good
20 afternoon. Victoria Sheehan, Commissioner
21 for the Department of Transportation. I'm
22 alone in my office.

23 CHAIRWOMAN MARTIN: Thank you.
24 Director Arvelo.

1 DIR. ARVELO: Will Arvelo, Director
2 of the Division of Economic Development,
3 representing the Department of Business and
4 Economic Affairs, and I am alone.

5 CHAIRWOMAN MARTIN: Okay. Thank
6 you.

7 Ms. Duprey.

8 MS. DUPREY: Hi, I am Susan Duprey.
9 I'm in my home in a room where I'm alone. My
10 son, Luke, is in the house, however, but not
11 in earshot of what is going on here. And I
12 represent the public.

13 CHAIRWOMAN MARTIN: Thank you.

14 And Mr. Kassas.

15 MR. KASSAS: Good afternoon.
16 George Kassas, representing the public. And
17 I'm in my office alone.

18 CHAIRWOMAN MARTIN: Okay. Thank
19 you.

20 Do we have any other public members
21 of the Committee present?

22 [No verbal response]

23 CHAIRWOMAN MARTIN: Okay. Doesn't
24 sound like we do. Hopefully, Mr. York will

1 join us shortly.

2 Okay. I think we're going to go a
3 little bit out of order today on the agenda
4 items, and we're going to open with public
5 comment. I have a list of individuals who
6 have requested to make public comment today.
7 I will go through that list, and everyone
8 will have five minutes to speak. I will let
9 you know when you have about a minute left so
10 that you can wrap up.

11 Mr. Wind, do you need to promote
12 anyone in order to hear from them?

13 MR. WIND: One second.

14 CHAIRWOMAN MARTIN: Okay. We'll
15 pause for that.

16 (Pause in proceedings)

17 MR. WIND: I apologize. We should
18 have Mr. York joining by telephone shortly.

19 Do you want to promote people to
20 panelists as they go one at a time, or should
21 I promote everyone who has indicated they
22 want to speak?

23 CHAIRWOMAN MARTIN: I would like to
24 promote them one at a time.

1 MR. WIND: Okay.

2 CHAIRWOMAN MARTIN: I have
3 Ms. Berwick first.

4 MR. WIND: Okay.

5 CHAIRWOMAN MARTIN: Ms. Berwick.

6 MS. BERWICK: Trying. It won't let
7 me unmute.

8 MR. WIND: Yes. Ms. Berwick is
9 unmuted at this time. But I'm unable to make
10 her a panelist, so it will be audio only.

11 CHAIRWOMAN MARTIN: Okay. That's
12 fine.

13 Ms. Berwick?

14 MS. BERWICK: Yes. Hi, can you
15 hear me?

16 CHAIRWOMAN MARTIN: Yes. This is
17 Dianne Martin. I'm the chairwoman of the
18 Committee. We're going to start with public
19 comment, and you were first on my list. If
20 you could -- I know you are aware, but we're
21 going to keep it to five minutes. I'll let
22 you know when you have about one minute left.
23 And if you want to just let us know which
24 agenda item you're speaking to, I think that

1 would help the Committee. And you're welcome
2 to start whenever you're ready.

3 MS. BERWICK: All right. I don't
4 have the agenda in front of me to tell you
5 the item number, but I'm just going to be
6 talking about this sound testing. And
7 basically what we want, and I think I'm
8 speaking for most of the neighbors and
9 myself, is just to be sure that the testing
10 is done by the protocols that were set up by
11 the SEC before. And it's not that we're
12 calling anybody into question, but I know
13 that they just did testing before. They were
14 here for 15 days, and they only ended up
15 with, I think, at our house, something like
16 seven hours of testing that they could count.
17 At one place they only ended up with one hour
18 of testing. If they're able to average the
19 highs and the lows, then you're not going to
20 get any results of how we're feeling, because
21 it's partly the fact that we go from such low
22 intensity to such high intensity that makes
23 the sound be, when it's really obnoxious, be
24 obnoxious. Like right now, it's fine.

1 Nothing's the matter right now. So it's just
2 those times that it's really bad. We'd like
3 there to be some way to measure the sound
4 without notifying Antrim Wind, because I
5 don't believe you should have to, like, let
6 somebody know that they're being inspected
7 before you inspect them. And also, using the
8 protocols that were really set up.

9 And we had a meeting that was going
10 to happen with Mr. Rand and Ms. Linowes and
11 Ms. Longgood and myself, and anyone else I
12 think that was interested, and then suddenly
13 it didn't happen. Mr. Rand is the audio
14 person. I'm not sure what you call them.
15 But, you know, he knows how to do the -- and
16 he knows the rules. And we're just concerned
17 that the rules that were -- the guidelines
18 that are set up right now, exactly what was
19 in the SEC when the SEC had the hearings and
20 set up the rules regarding the sound and how
21 it was going to be done, that they're not --
22 that's not what's being followed right now.
23 That's our only concern.

24 CHAIRWOMAN MARTIN: Ms. Berwick?

1 MS. BERWICK: Yes.

2 CHAIRWOMAN MARTIN: Could you just
3 please identify yourself and how you are
4 related to Antrim Wind.

5 MS. BERWICK: Yes. If we could --
6 if I could show you a video, 'cause I could
7 just walk outside and we can see that we're
8 abutters. I think the closest one is about a
9 half a mile from our house. It borders our
10 property. Obviously, that's what it means
11 we're abutting.

12 CHAIRWOMAN MARTIN: Okay. Thank
13 you for your comments.

14 MS. BERWICK: Thank you.

15 CHAIRWOMAN MARTIN: All right. I
16 have Mr. Fred Ward as the next person who
17 wanted to speak.

18 MR. WIND: Okay. Mr. Ward, you are
19 now a panelist. You can unmute and turn on
20 your video if you so choose.

21 DR. WARD: Can you hear me now?

22 CHAIRWOMAN MARTIN: Dr. Ward?

23 DR. WARD: Yes.

24 CHAIRWOMAN MARTIN: Hi, there.

1 This is Dianne Martin. I'm the Chairwoman of
2 the Committee.

3 DR. WARD: Okay. I'm happy to meet
4 you.

5 CHAIRWOMAN MARTIN: Nice to meet
6 you as well. You have five minutes, and I'll
7 let you know when you're running close to
8 time so that you can wrap up.

9 DR. WARD: Thank you very much.

10 CHAIRWOMAN MARTIN: Okay. Start if
11 you'd like.

12 DR. WARD: Okay. My interest in
13 this is I'm a meteorologist. I can actually
14 see the site. I don't hear much of it, but I
15 see it, and I -- (connectivity issue)

16 (Court Reporter interrupts.)

17 DR. WARD: I'm Fred Ward. I'm a
18 professional meteorologist, years of
19 experience. My interest in this is not so
20 much as a neighbor, although I can see it and
21 I get shadow flicker from it, but I don't
22 really hear much of it. I went to all the
23 hearings. I was trying to put in the fact
24 that, it's a simple fact, is that meteorology

1 is the key to all of this. It drives the
2 thing. The wind makes the noise. The wind
3 makes the -- distributes it around the
4 neighborhood, that determines a whole range
5 of things. Now, there's a general agreement
6 that wind generates the noise -- that is,
7 more wind, more noise -- and the wind
8 direction determines where and how far it
9 goes -- in other words, who gets affected by
10 it.

11 Now, Tuttle Hill is a very
12 interesting place, in that it has very
13 strange and complicated topography: Top of
14 the hill, which is about a thousand feet, and
15 then the windmills go up another tenth of a
16 mile up from there. But all of the area
17 around Tuttle Hill is a very interesting
18 topography. Now, a lot of the information, a
19 lot of the models and things that were done
20 tells you to do certain things, but it always
21 says it doesn't work in strange topography.

22 So in a situation like that, what
23 we learn as meteorologists is that you have
24 to measure the data. Now, no company, no

1 consultant would ever support an analysis of
2 a neighborhood noise without very first
3 analyzing and then presenting their own sound
4 data separately, but for different wind
5 speeds and different wind directions. You'll
6 note, for example, in the report from
7 Acentech, that they had a problem with I
8 believe it was Site 2. There weren't enough
9 weather records there. But we'll get into
10 that a little bit, too.

11 But the point is that you have to
12 get the data. What's going on at Site 2 is
13 totally different from what's going on at
14 Site 1 and at Site 5 and all of those. The
15 results that Acentech, or Antrim Wind,
16 presented, okay, just don't do the job. They
17 were never intended to. Any professional
18 meteorologist who would be asked to try to
19 find out whether Antrim Wind is exceeding the
20 noise levels would, first, before he did
21 anything else, determine what kind of weather
22 conditions, wind, topography, temperature
23 inversions, all of those things, what those
24 did to the sound at the sites that they're

1 testing. You don't just go and select, like,
2 two weeks, which is what Acentech people did.
3 You don't just go through and select two
4 weeks and say I'm just going to look at the
5 data and see what happens.

6 Well, one interesting thing is that
7 those two weeks happen to be very strange two
8 weeks. They were supposed to be doing the
9 wintertime analysis. They're going to do a
10 winter, summer, spring and fall, one of each,
11 two weeks. They selected the very end of
12 winter. If you consider it ends on the 21st
13 of March, they did it on the 18th.

14 But more to the point than that,
15 when I looked at the weather data, that was
16 one of the warmest two weeks we've had in a
17 long time. It was sunny. There was almost
18 no cloudiness. There was almost no wind from
19 the southeast; it was all wind from the west
20 and northwest. And the temperatures averaged
21 5 to 10 degrees above normal. Now, 5 to
22 10 degrees above normal is April weather.
23 That's not winter.

24 CHAIRWOMAN MARTIN: Doctor, you

1 have one minute.

2 DR. WARD: Okay. Now, if you look,
3 for example, at Page 19 of the Acentech
4 report, you will see that the sound -- they
5 say the sound should be measured under
6 downwind conditions. That might be a good
7 thought in open country. But in areas of
8 substantial topography, it's meaningless.
9 Tuttle Hill is the poster boy for crazy
10 topography.

11 On Page 19, No. 6, there, too, they
12 discuss eliminating sounds when there's a
13 variance of 3 decibels. Well, when you have
14 topography, or you have any shifting winds,
15 you're going to get all kinds of things like
16 that. Real changes in the sound. You can't
17 exclude those because what you're going to do
18 is exclude the loud sounds.

19 Now, in summary, they have problems
20 with hourly averaging, which you can't do.
21 Anybody that's ever looked, for example, at
22 what we call a gust recorder trace, which are
23 all available, you realize things change
24 enormously. You can't -- if you average out

1 an hour, you've basically thrown away all of
2 the interesting data. Why not average it for
3 a day, and that way you never exceed the
4 level.

5 I testify in court regularly, and
6 in court it's expected to put -- the
7 attorneys will present only the facts that
8 help their case. That's expected. But in
9 this hearing, we were supposed to get all the
10 real information. But we didn't have any in
11 the report. It reads like an attorney's
12 closing statement to a jury. We need a new
13 study and a new report. Thank you.

14 CHAIRWOMAN MARTIN: Thank you,
15 Dr. Ward.

16 Okay. Ms. Bucu.

17 MR. WIND: Okay. Ms. Bucu is now a
18 panelist. You can turn on your video and
19 unmute yourself.

20 MS. BUCO: Hello?

21 CHAIRWOMAN MARTIN: Hi, Ms. Bucu.

22 MS. BUCO: Can you hear me?

23 CHAIRWOMAN MARTIN: Yes, I can hear
24 you. Can you hear me?

1 MS. BUCO: Yes, I can.

2 CHAIRWOMAN MARTIN: Okay.

3 MS. BUCO: I apologize. I'm on
4 vacation, and I'm in the car trying to do
5 this. But I did want to speak upon the
6 testing. I just had an evaluation done for a
7 complaint that I made in May --

8 CHAIRWOMAN MARTIN: Ms. Buco,
9 before you start, can you just identify
10 yourself and tell us how you're related to
11 the project?

12 MS. BUCO: Oh, yup. My name is
13 Amanda Buco. And I am a neighbor of Mrs.
14 Barbara Berwick, and the windmills are behind
15 our house.

16 CHAIRWOMAN MARTIN: Okay. Go
17 ahead.

18 MS. BUCO: So we had put in a
19 complaint in May for extremely loud noise,
20 and there was a evaluation set up, and it was
21 due to the matching meteorological
22 conditions. And it was not even close to the
23 noise levels that I was -- we were
24 experiencing when I had made the complaint.

1 And I took videos when I made the complaint
2 and e-mailed them to Pam. And I took a few
3 videos to record the noise from my phone from
4 the same location, and I e-mailed them to
5 Pam. And there's a drastic difference. And
6 I know my equipment is not professional. But
7 it's the same phone, the same spot that I
8 recorded it. And I just think this method of
9 validating the complaints is flawed. Hugely
10 flawed. Because the noise that we were
11 experiencing, supposedly in matching
12 meteorological weather conditions, was not
13 the same during the recording as it was when
14 I made that complaint. And that concerns me
15 as a citizen who's dealing with these noises.
16 I'm happy that they weren't loud, and they
17 haven't been very loud lately. But to be
18 able to prevent the loud noises that I did
19 complain about, we need to understand how
20 loud they were when we were experiencing
21 them. And that was not recorded the other
22 day when they came for four and a half hours.
23 And the windmills were shut down for half an
24 hour, I guess, during that time. But I had

1 also recorded at other times. One of my
2 recordings supposedly was during the time
3 that the windmills were shut down, that I
4 wasn't aware of. But I also have other
5 recordings of the windmills being not nearly
6 as loud as they were during my initial
7 complaint. You can hear the crickets and no
8 windmills. And when I complained, the
9 windmills were roaring loud, keeping my
10 husband awake. He has to wake up early for
11 work in the morning. And my children have
12 been scared because of how loud the noises
13 are at night, and it terrifies them.

14 So I would -- I guess I'm just
15 saying I would like a method that validates
16 our complaints truly, because what was done
17 isn't accurate.

18 CHAIRWOMAN MARTIN: Okay. Thank
19 you for your comments.

20 I have Ms. Lerner next.

21 MR. WIND: Ms. Learner, you are now
22 a panelist. You can unmute yourself and turn
23 on your video if you choose.

24 CHAIRWOMAN MARTIN: And before we

1 start with Ms. Lerner, I just want to confirm
2 that Mr. York is on the phone and connected
3 by audio. Is that still the case, Mr. Wind?
4 Oh, you're on mute.

5 Okay. great. So we have Mr. York
6 in the meeting as well.

7 Okay. Ms. Lerner, can you hear me?

8 MS. LERNER: Yes.

9 CHAIRWOMAN MARTIN: Okay. Hi. My
10 name's Dianne Martin. I'm the Chair of the
11 SEC. And if you'd like to make comments, you
12 have five minutes do it. I'll let you know
13 when you're just about to run out of time so
14 you can wrap up.

15 MS. LERNER: Can you hear me okay?

16 CHAIRWOMAN MARTIN: I can.

17 MS. LERNER: Okay. Thank you.

18 Dear Chairwoman Martin and
19 Committee members, my name is Lori Lerner. I
20 was the President of New Hampshire WindWatch
21 during the time of significant procedural and
22 structural changes to the SEC Committee and
23 the structural changes to the SEC statute and
24 rules. I'd like to take a few minutes to

1 share my thoughts regarding some unintended
2 procedural changes which resulted from the
3 legislative changes adopted back in 2014.

4 The first one I'll cover, it's the
5 \$3,000 filing fee for the declaratory ruling.
6 Prior to 2014, or the adoption of SB 245,
7 there was no fee to file a grievance with the
8 SEC Committee. The ordinary citizen had the
9 opportunity to notify the SEC Committee of
10 any failure of an energy facility to comply
11 with the SEC permit and request a hearing on
12 the merits of the grievance. Fast forward to
13 2020. Following the enactment of SB 245,
14 which was a bill intended to improve the
15 public process, the ordinary citizen must
16 file a grievance with the SEC Administrator,
17 with the expectation the Administrator will
18 evaluate the issue and have it adjudicated
19 through the SEC Committee. If that does not
20 occur, the next avenue is to file a request
21 for a declaratory ruling and pay a \$3,000
22 filing fee for the grievance to be heard by
23 the SEC. The cost to file a grievance with
24 the New Hampshire Supreme Court is \$275; yet,

1 that avenue is not available to folks living
2 in the shadows of an energy facility. As per
3 the Doctrine of Exhaustion of Administrative
4 Remedies, they must exhaust all other options
5 before filing with the New Hampshire Supreme
6 Court. SB 626, which was filed earlier this
7 year, reduces that filing fee to \$300. The
8 bill was submitted to the New Hampshire
9 General Court and had passed the Senate
10 before COVID took place and is now sitting in
11 a status of "laid on table" awaiting House
12 review and approval.

13 I'd like to recommend the SEC
14 Committee reduce the filing fee for the
15 declaratory ruling by the authorized
16 20 percent, which falls under RSA 162-H:8-a
17 III, to offer some relief to the ordinary
18 citizen while we await the passing SB 626.

19 The second item I'd like to bring
20 up is the SEC web site posting procedure.
21 Prior to 2014, which again was the adoption
22 of SB 245, all communications submitted to
23 the SEC were posted on the SEC web site
24 within 12 to 24 hours. Fast forward to 2020,

1 and the adoption of SB 245, again, a bill
2 intended to improve the public process,
3 communications are submitted to the SEC
4 Administrator, and they oftentimes take days
5 or weeks to be posted to the SEC web site, if
6 they're posted at all.

7 Additionally, the communications
8 show a posting date of the date of the
9 correspondence. As an example, a recent
10 communication dated June 18 was posted on the
11 SEC web site on July 14, almost a month
12 later, but the posting date is June 18th.
13 Given that there are communications posted on
14 a regular basis, the normal citizen must keep
15 a list of each communication which appears
16 each time they review the web site and must
17 manually compare back in time to see if there
18 are any new, predated posts. This issue can
19 be easily remedied by reverting back to the
20 pre-SEC administrative procedure of using the
21 date the communication is posted -- so
22 today's date, for example -- rather than the
23 correspondence date for the web site posting
24 date.

1 The current procedure caused me to
2 overlook backdated posts of significant
3 concerns. For example, did you know there
4 were two state-endangered bats killed in AWE?
5 Also, did you know that there were inoperable
6 turbines which prevented AWE from conducting
7 the sound study? And these examples, the
8 posting was predated, and therefore I don't
9 always go back to every single historical
10 post to see if it was recently put and
11 confirm whether or not I'm familiar with it.
12 Again --

13 CHAIRWOMAN MARTIN: Ms. Lerner, you
14 have one more minute.

15 MS. LERNER: Okay. Again, simply
16 put: If the date that the post is made is
17 reflected as the web site posting date, that
18 would make this a lot easier to manage.

19 Again, thank you for your
20 consideration of these procedural changes.

21 CHAIRWOMAN MARTIN: Okay. Thank
22 you, Ms. Lerner.

23 MS. LERNER: Thank you.

24 Next I have Ms. Longgood.

1 MR. WIND: Okay. Ms. Longgood, you
2 are unmuted.

3 CHAIRWOMAN MARTIN: Ms. Longgood,
4 can you hear me?

5 [No verbal response]

6 CHAIRWOMAN MARTIN: I don't think
7 we can hear her.

8 Ms. Longgood, do you have your
9 phone on mute? Perhaps you can unmute the
10 phone.

11 [No verbal response]

12 MR. WIND: So I had previously
13 identified each of the call-in users, and it
14 says the number that I had for Ms. Longgood
15 is unmuted at this time.

16 CHAIRWOMAN MARTIN: Okay. Ms.
17 Longgood?

18 [No verbal response]

19 CHAIRWOMAN MARTIN: All right. Why
20 don't we go to Ms. Linowes, and we can come
21 back to Ms. Longgood.

22 MR. WIND: Okay. Ms. Linowes, you
23 are a panelist.

24 MS. LINOWES: Awesome. Thank you.

1 Chairwoman Martin, members -- oh,
2 sorry.

3 CHAIRWOMAN MARTIN: I just wanted
4 to make sure that you can hear me and let you
5 know that you have five minutes. I'll let
6 you know when you have about a minute left.

7 MS. LINOWES: Thank you.

8 My name is Lisa Linowes. I've
9 intervened several times before the Site
10 Evaluation Committee, although I see a lot of
11 new faces today. I also moderated the
12 stakeholder group that developed the rules,
13 the New Hampshire SEC Rule 301.18, which is
14 the sound study methodology.

15 The reason for my testimony today
16 is I want to speak to Agenda No. 2. I
17 respectfully ask that the Committee decline
18 the Administrator's request to fund this
19 study, and here's why: The residents living
20 near the Antrim Wind Energy facility have
21 been experiencing significant noise impacts,
22 both inside and out of their homes. If you
23 haven't read the complaints, please read
24 them. They're posted on the web site.

1 Pursuant 301.18(i), the
2 Administrator hired Cavanaugh Tocci to
3 conduct sound compliance testing under
4 complaint conditions. Cavanaugh Tocci
5 amended -- the amended protocol for
6 conducting sound testing assumes an SEC limit
7 on turbine noise that is based on a one-hour
8 averaging standard. Antrim Wind's wind sound
9 monitoring also shows Antrim Wind applied a
10 one-hour standard. A one-hour interval,
11 denoted as Leq one-hour, is entirely contrary
12 to the SEC rule and contrary to any previous
13 SEC permit where the Committee imposed
14 turbine noise limits. This would include
15 Lempster, Groton and Antrim 1. The SEC rules
16 specifically site a time frame of 1/8
17 seconds, Leq .125 seconds. This fact has
18 been repeatedly ignored or deliberately
19 misapplied at Antrim Wind. The 1/8 second
20 interval was intentionally selected by the
21 stakeholder group for meeting the SEC sound
22 standard. And by the way, that rule was --
23 that SEC 301.18 was adopted by the Committee
24 verbatim, with minor amendment.

1 To ensure there was no confusion
2 regarding the Leq time frame of 1/8 second,
3 it was given its own rule, New Hampshire Site
4 301.18(e)(6). There is no foundation in the
5 rules that supports an Leq of one hour; yet,
6 the Administrator has acted unilaterally and
7 without authority when she approved a
8 one-hour interval in the Cavanaugh Tocci
9 protocol, despite formal complaints on record
10 showing that the SEC rule was incorrectly
11 being applied.

12 Inserting an hourly average
13 component into New Hampshire Site
14 301.14()(2)(a) significantly changes the
15 standard adopted by the Committee. The rules
16 are firm and are not subject to rewrite or
17 re-interpretation, except by the Site
18 Evaluation Committee. If the Administrator
19 had questions regarding the plain language of
20 the rule, the proper action would have been
21 for the Administrator to call a hearing of
22 the Committee. Instead, she decided to apply
23 a different interpretation of the rule
24 without any apparent notification to the

1 Committee or the public.

2 The Committee's own language from
3 its decision in Docket 2015-02 makes clear a
4 one-hour averaging was never a consideration.
5 In the -- on Page 153 of the decision, it
6 says the Subcommittee notes that the
7 Applicant guaranteed that noise levels
8 associated with the Project will not exceed
9 the requirements set forth in 301.14 -- that
10 is, greater than 45 decibels during the
11 daytime or greater than 40 decibels at night.
12 The Subcommittee finds that so long as the
13 project complies with the noise level, it
14 will not prove an unreasonable adverse effect
15 on health and safety.

16 In conclusion, there can be no
17 disagreement between the plain language of
18 the rules and how the rules are applied.
19 Tasking Cavanaugh Tocci with determining
20 whether AWE sound complies with New Hampshire
21 rules, when Cavanaugh's protocol disagrees
22 with the rule, is misguided, irresponsible,
23 and carries legal risk.

24 The Committee's response to the

1 legislators' April 17th letter was an
2 appalling dismissal of what's happening at
3 Antrim. The lack of engagement by the
4 Committee on this issue, which falls squarely
5 under its authority and cannot be delegated
6 to the Administrator, has created significant
7 angst among the residents living near Antrim
8 Wind and among many others in New Hampshire
9 who worked to ensure that the Site Evaluation
10 Committee adopted sufficiently protective
11 rules. If Cavanaugh Tocci is allowed to
12 proceed, the effect will be a revocation of
13 the SEC rule, with no action by the
14 Committee. Such an outcome would be
15 untenable.

16 So, finally, in lieu of the
17 Administrator's request, I ask that a
18 technical session be convened between the
19 parties that -- between the parties that is
20 moderated by Attorney Iacopino and Attorney
21 David Wiesner, if he's available, both of
22 whom were engaged in the rulemaking
23 proceeding. At that time, the parties can
24 hear from any of the acousticians who

1 participated in the rulemaking process.
2 There were four of them. Cavanaugh Tocci,
3 Epsilon and Acentech were not involved at
4 that time. They did not -- they were not
5 involved in the drafting or adopting of the
6 rules. Thank you.

7 CHAIRWOMAN MARTIN: Thank you, Ms.
8 Linowes.

9 Okay. Were we able to get Ms.
10 Longgood? You're on mute, Eric.

11 MR. WIND: Thank you. Ms.
12 Longgood, you are now unmuted if you can try
13 to speak.

14 CHAIRWOMAN MARTIN: Ms. Longgood?
15 Ms. Longgood, can you hear me?

16 [No verbal response]

17 CHAIRWOMAN MARTIN: Okay. Sounds
18 like it's still not working. Let's go to
19 Mr. Wilkas.

20 MR. WIND: Okay. Mr. Wilkas, you
21 are now unmuted.

22 MR. WILKAS: Okay. I'm calling in
23 on the phone. Can you hear me?

24 CHAIRWOMAN MARTIN: Yes, we can

1 hear you. Thank you.

2 MR. WILKAS: Okay. I guess I
3 called in just to listen to the different
4 testimony and the issues. I was involved
5 also with some of the rule generation years
6 ago. And I just wanted to see how the rules
7 were going and, you know, how they're --
8 whether they're being used or were they
9 causing any challenges or difficulties. But
10 it sounds like the rules have been understood
11 and ignored. So I guess my comment is why
12 were the rules, the obvious rules that were
13 similar to wind sound -- wind turbine sound
14 measurements across the country, why were new
15 and different approaches proposed? And why
16 were the new proposed approaches accepted?
17 That makes no sense to me. I don't think the
18 rules were too difficult. So I guess the
19 question is why did that happen, and what has
20 to be changed so that doesn't continue to
21 happen. Over and out.

22 CHAIRWOMAN MARTIN: All right.
23 Thank you, Mr. Wilkas.

24 All right. Ms. Sanborn.

1 MS. SANBORN: (connectivity issue)
2 -- Groton, and the Groton Wind project
3 that went up --

4 CHAIRWOMAN MARTIN: Ms. Sanborn.

5 MS. SANBORN: Yes.

6 CHAIRWOMAN MARTIN: I'm sorry.
7 Would you mind starting over. We missed the
8 beginning of what you had to say. And if you
9 could introduce yourself as well.

10 MS. SANBORN: Sure. My name is
11 Phoebe Sanborn. P-H-O-E-B-E, Sanborn. I'm
12 in Rumney, New Hampshire. The Groton wind
13 towers are right behind my home. When they
14 were installed, first of all, we were never
15 notified as an abutter as to what was being
16 planned, what was going to be happening.

17 Secondly, when they were put up,
18 they were put up on the Concord Coach Trail,
19 which was an historic trail from Concord to
20 Hanover. That piece was never, apparently
21 never known, never looked into. Nobody -- if
22 they knew about it, I'm not sure. So that
23 ruined a historical trail.

24 Again, we were not notified as an

1 abutter. I have five towers behind my house.
2 They are very loud. It will sound like an
3 airplane just continuing to circle and never
4 landing. It's been I don't know how many
5 years now. When I complained about the
6 noise, the noise was tested by Iberdrola, who
7 was the company that installed the towers.
8 The testing was faulty. It was based in our
9 yard, at the bottom of the -- at the edge of
10 the woods in our yard. So the sound, of
11 course, was not going to carry like it does
12 across the tops of the trees and across the
13 valley. I'm in the Baker River Valley.

14 And so it seems as though not much
15 has changed regarding testing and the effect
16 that these noises are having on people from
17 these towers that are being installed in
18 basically their back yards. We have gone to
19 meetings with the selectmen and with
20 Iberdrola, and nothing came out of it.

21 I just -- you know, in my position,
22 I just wanted to put in where -- how we
23 were -- how things went with our testing; the
24 noise, obviously; the fact that, you know, in

1 the process we were not notified as an
2 abutter; and just wanted to give you a
3 picture of six or seven, five or six or seven
4 years later, still an issue with the noise.

5 The shadows from the blades can be
6 very discerning [sic]. I get -- my husband
7 works in the woods. And he sees these
8 shadows go by occasionally, and it can be
9 very dangerous. He's a logger. And you
10 think that a tree is falling. So there's
11 little things that people don't think about
12 of how these affect people. I know of other
13 neighbors who were affected by these towers
14 with their hearing, their -- it affects their
15 brain.

16 So, again, just from my
17 perspective, I think things really need to be
18 looked into. I'm hearing so many people talk
19 about the wind testing and the noise levels.
20 And again, when you have the company that
21 installed them doing the testing, you know
22 they're not going to be objective. I would
23 love to have somebody come and test them
24 again, somebody who is not associated with

1 them and look at it.

2 CHAIRWOMAN MARTIN: Ms. Sanborn, if
3 you could wrap up, you're almost out of time.

4 MS. SANBORN: Okay. And just again
5 making sure that people who are abutters are
6 notified, making sure you're not impacting an
7 historic trail or the Concord Coach Road when
8 they are doing these things. There's a lot
9 of little things that should be considered.

10 I appreciate your time, and I thank
11 you.

12 CHAIRWOMAN MARTIN: Okay. Thank
13 you, Ms. Sanborn.

14 We have two commenters left.
15 Mr. -- I'm going to say the name wrong --
16 Quinchia?

17 MR. QUINCHIA: Quinchia.

18 CHAIRWOMAN MARTIN: All right.
19 Welcome. You have five minutes. I'll let
20 you know when you're running low on time.

21 MR. QUINCHIA: Okay. Dianne
22 Martin, Chair; Robert Scott, vice-chair;
23 members of the Site Evaluation Committee. My
24 name is Ivan Quinchia. I am the co-president

1 of New Hampshire WindWatch. And I will
2 submit a copy of this testimony in writing to
3 the Administrator.

4 In the years 2015 and 2016, many
5 stakeholders participated in the long process
6 of providing feedback in testimony to the SEC
7 during the promulgation process for
8 rulemaking in the siting of energy generation
9 and transmission projects. I was one of
10 those participants. The process was tedious,
11 as many lawyers were present hoping to lay
12 groundwork for rules that favored developers,
13 utilities and investors. And we were, for
14 the most part, individuals taking time out of
15 our busy schedules to try to provide some
16 balance. In the end, the results were
17 comprehensive rules that took into account
18 individual homeowners, landowners, community
19 needs, and rules to protect their personal
20 and property rights. The rules also provided
21 a road map for developers to follow that were
22 fair and that held developers accountable for
23 claims made during the permitting process.
24 Sound criteria was developed, as was a

1 process for testing when noise complaints
2 became known. This process was scrutinized
3 in detail with various testimony from sound
4 experts, meteorologists, and individuals.
5 And this testimony was considered, resulting
6 in rules detailing this testing process.

7 The proposed testing criteria by
8 the owners of Antrim to handle any noise
9 complaints on Antrim Wind fall far short of
10 these rules. The Site Evaluation Committee
11 members, all the individuals whose lives are
12 being up-ended by this constant barrage of
13 turbine noise to adhere to the rules
14 concerning sound testing. Meteorological
15 conditions, leaf canopy cover and snow cover
16 that existed when the complaints were filed
17 have to be matched so that the results of
18 this testing can be considered valid.

19 Thank you for your time and for
20 your service.

21 CHAIRWOMAN MARTIN: Thank you.

22 Okay. I have Attorney Getz. Does
23 he wish to speak? Attorney Getz, can you
24 hear me?

1 MR. GETZ: I can.

2 CHAIRWOMAN MARTIN: Okay. Welcome.

3 MR. GETZ: Thank you, Madam Chair,
4 members of the Committee. My name's Tom
5 Getz. I'm an attorney with McLane Middleton,
6 and I'm appearing on behalf of Antrim Wind.
7 And I'd like to address briefly three items
8 that are on the agenda.

9 First, Item No. 2, with respect to
10 the request from the Administrator to engage
11 Cavanaugh Tocci to do the review of the
12 winter 2020 report. Antrim Wind has no
13 objection to them being engaged to conduct
14 that review.

15 With respect to Item No. 3, which I
16 take it to be the handling of the various
17 complaints that have been made, Antrim Wind
18 has reviewed the letter that the Chairwoman
19 sent out on June 15th and agrees with those
20 amended protocols, has no objection to them,
21 but would oppose any further changes to the
22 protocol that was approved and, as I
23 understand, has actually been used in a
24 couple of locations so far.

1 time, and then we're going to move on.

2 MR. WIND: Okay. That line is
3 unmuted.

4 CHAIRWOMAN MARTIN: Ms. Longgood,
5 can you hear me?

6 [No verbal response]

7 CHAIRWOMAN MARTIN: Okay. It
8 sounds like that's still not working.

9 Do we have any other members of the
10 public who want to comment?

11 MR. WIND: There is one other
12 member I'd like to check in with who had
13 raised their hands. I'm not sure if that's
14 an intent to comment.

15 But Mr. Block, if you'd like to
16 comment, you're unmuted. If you could just
17 state either way.

18 CHAIRWOMAN MARTIN: Mr. Block?

19 MR. BLOCK: Hello?

20 CHAIRWOMAN MARTIN: Did you want to
21 make a public comment?

22 MR. BLOCK: No, I have no comment
23 at this time.

24 CHAIRWOMAN MARTIN: Okay. Thank

1 you.

2 All right. So we'll close the
3 public comment period and move on.

4 We're actually going to start with
5 Item 2 on the agenda, as Mr. Tocci is
6 available now, but needs to leave as soon as
7 he can.

8 Item 2 involves RSA 162-H:3-a, RSA
9 162-H:10, V and Site 103.04(e). And we are
10 asked to review a request from the
11 Administrator for Committee approval to
12 retain expert technical support to review the
13 post-construction sound monitoring report
14 prepared for Antrim Wind Energy, related
15 deliverables, and allocation of costs.

16 I'm going to ask the Administrator,
17 Ms. Monroe, to give us an overview and
18 background of the whole issue, as well as an
19 overview of the Tocci proposal.

20 ADMINISTRATOR MONROE: Thank you,
21 Madam Chair. You should have all received,
22 via e-mail or in a packet, the proposal from
23 Cavanaugh Tocci. It's also posted on the web
24 site in the Agenda section for this meeting.

1 On May 12th, 2020, I received the
2 post-construction monitoring report that's
3 required by the rules and is a condition of
4 the Certificate. It's a very technical
5 report.

6 On May 21st, I received a number of
7 comments from Ms. Linowes regarding the
8 aspects, technical aspects of the report, and
9 so I asked Mr. Tocci for a proposal to review
10 it.

11 Mr. Tocci has also been retained in
12 Item No. 3, the Certificate that was granted
13 to Antrim Wind Energy that allowed them to
14 construct and now operate the site, gave the
15 Administrator authority to approve the hiring
16 of a third-party expert that's paid for by
17 Antrim Wind Energy. That's specific in the
18 terms and conditions of the Certificate.

19 Mr. Tocci has been -- (connectivity
20 issue)

21 CHAIRWOMAN MARTIN: Ms. Monroe, can
22 you hear me?

23 Let's go off the record for a
24 minute.

1 (Pause in proceedings)

2 ADMINISTRATOR MONROE: Mr. Tocci
3 has testified, has been an expert in two Site
4 Evaluation Committee proceedings. He
5 testified as an expert witness and was hired
6 by Counsel for the Public, who is generally
7 an Assistant Attorney General, and is a full
8 party in SEC proceedings.

9 So when I first received complaints
10 about sound from Antrim Wind, I looked back
11 at various proceedings. And I reached out to
12 Mr. Tocci, and I interviewed him and found
13 him to have a very solid resume and a lot of
14 experience in sound. So he's worked with me
15 in that effort, and I've found him to be very
16 professional in all his dealings, very
17 knowledgeable. And so I asked him to provide
18 the proposal which you have in front of me.
19 As I said, the sound monitoring report is a
20 very technical report, and so I wanted to
21 engage an expert to review that.

22 I would also point out there was
23 additional information that you should have.
24 TransAlta, who's the parent company of Antrim

1 Wind Energy, filed comments on July 17th
2 responding to Ms. Linowes's comments. So you
3 should also have that.

4 So I'm happy to take any questions.
5 Mr. Tocci is on the line if you have any
6 questions about his experience or the
7 proposal itself. But this is not the -- my
8 plan was not to get into the substance of
9 what's in the report, but to ask your
10 approval, in accordance with the statute and
11 the rules, to hire Mr. Tocci to conduct a
12 review.

13 CHAIRWOMAN MARTIN: Okay. Does
14 anyone have questions for Ms. Monroe?

15 Ms. Duprey.

16 MS. DUPREY: Can you hear me?
17 Okay. It's not of Ms. Monroe. I just wanted
18 to be reminded.

19 Did one of the public commenters
20 object to our approving this? And if anyone
21 can remember, can they say why? I believe it
22 was a "she" who objected.

23 ADMINISTRATOR MONROE: I believe it
24 was Ms. Linowes.

1 CHAIRWOMAN MARTIN: Yeah, I think
2 it was Ms. Linowes. I think Ms. Monroe is
3 correct. And I think it relates to the issue
4 we heard a little bit about and was in the
5 letter from Representative Vose about the
6 rule and how the rule is applied. And Ms.
7 Monroe can get into this more. But Mr. Tocci
8 has been retained for the other monitoring,
9 and in that scenario has applied the rules.
10 And I think the essence is that they disagree
11 with the application of the rule and
12 therefore object to him being retained for
13 this purpose as well.

14 MS. DUPREY: I see. Thank you.

15 CHAIRWOMAN MARTIN: Okay. Mr.
16 Kassas, you had questions?

17 MR. KASSAS: Yes, to Ms. Monroe.

18 Do we have more than one proposal,
19 or this is the only proposal that we
20 received?

21 ADMINISTRATOR MONROE: That is the
22 only proposal that I received.

23 MR. KASSAS: I'm sorry. Can you
24 repeat that?

1 ADMINISTRATOR MONROE: That is just
2 the -- I asked Mr. Tocci, again, based on his
3 experience before the SEC, and my work with
4 him as a third-party expert, to address the
5 noise, the noise complaints that I have
6 received. So I didn't send out a formal RFP.
7 I asked Mr. Tocci to provide me a proposal.
8 That's what you have before you.

9 MR. KASSAS: How long does it take
10 to issue a request and receive a proposal?

11 ADMINISTRATOR MONROE: I don't
12 know. I've never -- well, I have done this
13 for a dispute resolution administrator. But
14 I certainly could do some research as to
15 other sound experts and submit a proposal.

16 MR. KASSAS: All right. Thank you.

17 ADMINISTRATOR MONROE: You're
18 welcome.

19 CHAIRWOMAN MARTIN: Ms. Duprey had
20 her hand up, but I'm not able to see her at
21 the moment. Oh, you're back. Go ahead, and
22 then I'll go to you, Mr. Arvelo.

23 MS. DUPREY: So this is a question
24 for Mr. Iacopino. And I'm just wondering why

1 this is a legal issue. Why, if what the
2 scope of the review is -- (connectivity
3 issue)

4 CHAIRWOMAN MARTIN: Ms. Duprey, can
5 you pause for a moment? We can't hear you.

6 Let's go off the record for a
7 minute.

8 (Discussion off the record.)

9 CHAIRWOMAN MARTIN: Let's go back
10 on the record.

11 MS. DUPREY: So my question is to
12 Attorney Iacopino, or whoever other attorneys
13 wish to comment.

14 This seems to me to be a legal
15 issue, whether or not the method of this
16 study complies with the regulations that have
17 been passed. I'm not really sure why we're
18 hiring a sound expert to answer those
19 questions. We have the report. We know what
20 the hourly block is, or, you know, the span
21 of time during which they're doing the
22 measuring. We know the other issues that
23 have been set up. I don't understand why our
24 counsel isn't advising us on this.

1 MR. IACOPINO: The short answer is
2 that counsel is not a sound engineer, and
3 counsel is not charged with reviewing the
4 reports. It's actually the Administrator,
5 and she feels that she needs the assistance
6 of an expert in order to properly assess the
7 report. With respect to -- I assume you're
8 talking about with respect to the review of
9 the Acentech report, which is the seasonal
10 sound study.

11 On the other issue, the noise
12 complaints, under the authority already
13 granted to her, she has hired Mr. Tocci. And
14 Mr. Tocci is in the process of going through
15 the procedure to validate those complaints.

16 MS. DUPREY: If I may, Madam
17 Chairwoman.

18 CHAIRWOMAN MARTIN: Yes.

19 MS. DUPREY: I'm not asking, nor do
20 I think it requires an attorney to look at
21 the sound itself. I think that what's
22 required is to determine whether the protocol
23 that was used conforms to the regulations.
24 And I don't understand why a layperson would

1 be the person to do that. Ultimately, this
2 is going to come down to a lawyer, whether we
3 like it or not, it seems to me in all
4 likelihood. So I'm just not sure -- again,
5 I'm unpersuaded that -- and I hope to be
6 persuaded if this is what the Administrator
7 wants to do. But I'm not persuaded that
8 that's the right person to say that it
9 conforms to the regulations.

10 CHAIRWOMAN MARTIN: Ms. Monroe, do
11 you want to respond to that with an
12 explanation of why you're asking for this
13 type of expert?

14 ADMINISTRATOR MONROE: I'm sorry.
15 Was that for me?

16 CHAIRWOMAN MARTIN: Yes.

17 ADMINISTRATOR MONROE: Well, again,
18 I went through a number of Ms. Linowes' -- I
19 mean, it's a very technical report, this
20 one-hour Leq at 40 dBA. My request was to
21 look at the report for the technical
22 sufficiency of it in accordance with the
23 rules. That's really -- it's a technical
24 review. I hear what you're saying about the

1 dispute about the rules. But this is the
2 first report, the first post-construction
3 monitoring report, which is different than
4 the noise complaints. There's different
5 provisions in the rules. For instance, the
6 meteorological conditions for complaints are
7 different than for the post-construction
8 sound monitoring.

9 So my thought was that, if I could
10 have a technical review to make sure that it
11 was, you know, sufficient and complied with
12 the rules, that that would be helpful to the
13 Committee.

14 CHAIRWOMAN MARTIN: Ms. Duprey.

15 MS. DUPREY: I'm okay with having
16 this done as a step. But I'm going to be
17 looking, ultimately, if I'm involved in this
18 in any way, for an attorney to review it as
19 well. Thank you.

20 CHAIRWOMAN MARTIN: Mr. Arvelo, you
21 had your hand up before?

22 DIR. ARVELO: Yes. Thank you. I
23 have I think a couple of procedural
24 questions.

1 Reading through the material, my
2 understanding was that Mr. Tocci had been
3 hired by Antrim Wind as their noise
4 consultant. So if that's the case, I guess
5 the procedural question is: Can a person
6 acting on behalf of the owner also be hired
7 by the Committee to give us an assessment of
8 what the noise complaints are as it relates
9 to the complainants? And so that's
10 procedural question one.

11 Then the other one is related to I
12 also read in the materials that Mr. Tocci
13 really had no experience in this area of wind
14 noise and working with turbines. And if
15 that's the case, procedurally is that also
16 allowable? Thank you.

17 CHAIRWOMAN MARTIN: Okay.

18 ADMINISTRATOR MONROE: Do you want
19 me to respond, Madam Chair?

20 CHAIRWOMAN MARTIN: Yes, if you
21 can. And if the attorneys have anything to
22 add --

23 ADMINISTRATOR MONROE: Relative to
24 the first question that you had, perhaps I

1 confused you. Mr. Tocci was retained by
2 Counsel for the Public, who was the Attorney
3 General's Office in prior proceedings, as an
4 expert witness to review the application, not
5 hired by Antrim Wind. They have a -- Counsel
6 for the Public has a specific statutory role
7 and acts as a party to the proceeding. So if
8 I wasn't clear on that, I apologize.

9 Mr. Tocci is being paid by Antrim
10 Wind to conduct the third-party review of the
11 complaint. But his hiring, his retention,
12 was approved by me. So does that clarify --

13 DIR. ARVELLO: Thank you. Yes.

14 ADMINISTRATOR MONROE: I think the
15 second part, Mr. Tocci's experience, Madam
16 Chair, if it would be appropriate, I'd ask
17 him to respond to that. I have a resume, but
18 it probably would be better for him to
19 respond to that.

20 MR. IACOPINO: Legally, I would
21 just answer that second part of your
22 question, Mr. Kassas [sic], I believe it was,
23 is that whether or not to hire Mr. Tocci,
24 whether or not he is sufficiently

1 experienced, is a decision that is up to the
2 Committee to make based upon what you've
3 learned of his experience. It's not --
4 there's not a legal standard to be provided
5 to you with respect to what his
6 qualifications need to be. That's up to the
7 Committee to make that determination.

8 DIR. ARVELLO: Thank you.

9 CHAIRWOMAN MARTIN: Okay. Ms.
10 Duprey.

11 MS. DUPREY: Pam, with respect to
12 Issue No. 1 that was raised by Mr. Arvelo, is
13 what you're saying is that he would be
14 answerable to the Committee but paid for by
15 the Applicant?

16 ADMINISTRATOR MONROE: For No. 2?
17 I think for No. 2, that's up to the Committee
18 to decide. And perhaps the Attorney
19 General's Office -- there's two things. So
20 right now the Certificate has a specific
21 condition that requires Antrim Wind to pay
22 for and retain a third-party expert in order
23 to assist myself and the Town to evaluate
24 noise complaints. Mr. Tocci has been

1 approved by me and is being paid by Antrim
2 Wind for that specific -- for those tasks.

3 The second part of it is we have
4 the post-construction sound monitoring
5 report. This is the first one that has been
6 received because of when they started up,
7 which was December of 2019. And the request
8 is for you, for the Committee, to review the
9 proposal that I've submitted to you and then
10 to determine who would pay for that. Does
11 that answer your question?

12 CHAIRWOMAN MARTIN: Ms. Duprey, did
13 you or Mr. Arvelo, did you want to hear more
14 from Mr. Tocci about his qualifications?

15 MS. DUPREY: Not from me.

16 DIR. ARVELLO: Not from me.

17 CHAIRWOMAN MARTIN: Okay.

18 Commissioner Giaimo.

19 COMMISSIONER GIAIMO: Thank you,
20 Madam Chair. We've heard a handful of public
21 comments, and I thought one of the common
22 themes was, though not stated specifically,
23 that timing is of the essence, Ms. Monroe.
24 Can you talk a little bit or provide some

1 sort of overview with what the time line
2 would look like if the consultant was
3 retained and how that time line might be
4 affected if you were forced to go back to an
5 RFP or something similar?

6 ADMINISTRATOR MONROE: I believe
7 that Mr. Tocci could undertake his review and
8 have a report within a month. I think that's
9 reasonable, based on my conversations that
10 I've had with him. If I have to generate an
11 RFP and all the other things, if I have to do
12 that and get it out, I would think that would
13 at least take me that long to review people
14 who are in this field to determine their
15 qualifications, to conduct interviews, and to
16 generate an RFP. Just a guess.

17 But you all have -- you know, if
18 it's a priority, then that's what -- I'll put
19 it to the top of the list.

20 COMMISSIONER GIAIMO: Thank you.

21 CHAIRWOMAN MARTIN: Commissioner
22 Bailey.

23 COMMISSIONER BAILEY: Thank you,
24 Madam Chair. I just want to make sure that I

1 understand this correctly.

2 Antrim Wind provided the first
3 post-construction noise study, and now you
4 want this expert to do a peer review of that
5 study. And will the review determine, in his
6 opinion, whether Antrim Wind followed the
7 rules?

8 ADMINISTRATOR MONROE: I believe
9 that is the case, yes.

10 COMMISSIONER BAILEY: I think that
11 would be very helpful, because I've looked at
12 the report, I've looked at Ms. Linowes'
13 response to the report, and then recently the
14 Company's response to her, and I can't -- I
15 don't know enough about all of these terms to
16 really make an informed decision. So I think
17 we really need a third-party expert to
18 dissect it all for us and interpret it for
19 us, and I think it would be helpful.

20 CHAIRWOMAN MARTIN: Ms. Duprey.

21 MS. DUPREY: Two questions. One is
22 what happens to these reports once they're
23 generated? Do they come back to us, or what
24 happens with them?

1 And two is -- and correct me if I'm
2 wrong, Pam -- but in looking at the Tocci
3 authorization, am I right in understanding
4 that primarily what he's reviewing is whether
5 this complies with the rules, whether the
6 report complies with the rules? He's not
7 going out and independently verifying
8 anything; correct?

9 ADMINISTRATOR MONROE: That is
10 correct.

11 MS. DUPREY: Okay. Thank you.

12 CHAIRWOMAN MARTIN: Other questions
13 or comments? Commissioner Scott.

14 COMMISSIONER SCOTT: I was raising
15 my hand. Thank you.

16 Quick question for the
17 Administrator. Thank you. Is it inherent in
18 the scope of work that, effectively, Tocci --
19 I'm probably pronouncing it wrong -- the firm
20 would be showing their work, you know, how
21 they did the analysis to show whether they
22 agreed or disagreed with whether the rules
23 were followed? Is that a fair statement?

24 ADMINISTRATOR MONROE: That is my

1 understanding, is that he would prepare a
2 peer review report. And then I guess the
3 Committee can determine and tell me what
4 would be the process where I would present
5 that back to the Committee or -- but yes,
6 that is my understanding is it would be in
7 the report.

8 COMMISSIONER SCOTT: I think with
9 that understanding, I think this makes a lot
10 of sense to me. And I thank the
11 Administrator for reaching out. You know,
12 it's going beyond her depth. Obviously she
13 can't be an expert in every facet of the
14 Certificate. So I think this makes a lot of
15 sense.

16 CHAIRWOMAN MARTIN: Okay. And Ms.
17 Duprey, you had asked about what happens with
18 the report. I think that gets to what
19 Commissioner Scott was also raising about
20 whether it comes back to the Committee or
21 not. I don't know if there's any discussion
22 on that.

23 [No verbal response]

24 CHAIRWOMAN MARTIN: Okay. Seeing

1 none, one more follow-up.

2 Ms. Duprey, you had asked for a
3 legal, ultimately to have a legal opinion as
4 to the rules, et cetera. Do you want to go
5 into a non-meeting to have a discussion about
6 that?

7 MS. DUPREY: No, because I think
8 that should come up at the time after we've
9 gotten the report back and then -- I don't
10 know what this process is going to look like.
11 But if the report comes back here to some
12 group of the Committee, then I think it will
13 be up to them to determine whether the report
14 is sufficient in their view or they want a
15 legal analysis of it. I'm just saying for
16 myself, what I think. I don't think we need
17 to go into executive session, no. Thank you.

18 CHAIRWOMAN MARTIN: Okay. Thank
19 you.

20 Any further discussion or questions
21 on this item?

22 ADMINISTRATOR MONROE: I just want
23 to make sure that Attorney Lavallee addresses
24 the cost. I don't know if you want to do two

1 votes or how you want to manage it. But it
2 hasn't come up yet, so...

3 CHAIRWOMAN MARTIN: Okay. Attorney
4 Lavallee, were you planning on addressing a
5 cost issue related to this? I can't hear
6 you. I think you have to unmute your --

7 MR. LAVALLEE: I was not --
8 (connectivity issue)

9 (Court Reporter interrupts.)

10 MR. LAVALLEE: I was not intending
11 to address a cost issue unless there's a
12 specific question that somebody on the
13 Committee wants to ask. And if it requires
14 legal advice, I would certainly say we should
15 hop back into the non-meeting.

16 CHAIRWOMAN MARTIN: Okay. Ms.
17 Monroe, did you have a specific question
18 you'd like to tee off, and then we can decide
19 whether we need to go into a non-meeting?

20 ADMINISTRATOR MONROE: Well, the
21 request before you is to approve retention of
22 Cavanaugh Tocci to review the
23 post-construction monitoring report and to
24 determine the deliverables, if there's

1 anything different than in the proposal, and
2 to determine the allocation of costs for his
3 retention.

4 CHAIRWOMAN MARTIN: So I guess your
5 question is do we need legal advice on the
6 allocation of costs?

7 ADMINISTRATOR MONROE: Yes. I just
8 need to know who -- whatever you decide. And
9 it becomes moot if you don't agree with
10 retaining Mr. Tocci. But if you do, I'll
11 need a determination as to who pays those
12 costs.

13 CHAIRWOMAN MARTIN: Okay. And I
14 think we're in a position to make that
15 decision.

16 ADMINISTRATOR MONROE: Okay.

17 CHAIRWOMAN MARTIN: Unless any
18 Committee member is unclear and would like
19 further legal advice on that?

20 [No verbal response]

21 ADMINISTRATOR MONROE: Okay. Thank
22 you.

23 CHAIRWOMAN MARTIN: Seeing none,
24 does anyone have a motion on this?

1 MR. KASSAS: Madam Chair, George
2 Kassas. I had my hand up.

3 CHAIRWOMAN MARTIN: Oh, I
4 apologize. I didn't see you. Go ahead.

5 MR. KASSAS: No problem. Just one
6 more question regarding this report. So this
7 is going to look at the facts, look at the
8 measurements, look at the data that has been
9 submitted. Are there any new measurements
10 going to be done by Mr. Tocci? And would
11 there be any recommendation, or just here is
12 the interpretation of what we already
13 collected? Just want to see the outcome of
14 the report.

15 ADMINISTRATOR MONROE: To answer
16 the first question, no, there would not be
17 any additional measurements taken at that
18 time. And, you know, depending on what the
19 review turns up, I mean, I think ultimately
20 the goal is to determine whether the data has
21 been processed in accordance with the rules
22 and to review whether the measurements
23 followed the rules.

24 MR. KASSAS: Okay.

1 ADMINISTRATOR MONROE: Does that
2 answer your question, Mr. Kassas?

3 MR. KASSAS: Yeah. But so there's
4 no recommendation, technical recommendation,
5 to get the measurement redone or anything.
6 This is what I'm seeing. This is --
7 (connectivity issue)

8 (Court Reporter interrupts.)

9 MR. KASSAS: Binary.

10 ADMINISTRATOR MONROE: Yes, unless
11 the Committee decides that they want more
12 than that. This proposal does not include
13 revising the data or taking new measurements.
14 It's a different purpose.

15 MR. KASSAS: Okay. Thank you.

16 ADMINISTRATOR MONROE: You're
17 welcome.

18 CHAIRWOMAN MARTIN: Commissioner
19 Bailey.

20 COMMISSIONER BAILEY: Thank you.
21 Will it tell us whether the rule that talks
22 about measuring in one-eighths of a minute or
23 a second and the averaging over an hour, will
24 it sort that out?

1 ADMINISTRATOR MONROE: I'm not
2 quite sure how to answer that. I think the
3 answer is it would review the report, review
4 the rules, and determine if the report
5 followed the rules. Beyond that --

6 CHAIRWOMAN MARTIN: Commissioner
7 Bailey, I just want to add on that. I think
8 that, as you heard from one of the public
9 commenters, the issue is that in other
10 monitoring, Mr. Tocci has already created a
11 protocol, and that applies the rules. And so
12 to the extent there's a dispute, that's the
13 issue that was raised. And so I just want to
14 be sure that you're clear on that.

15 Commissioner Sheehan, did you have
16 something you wanted to say? I think you're
17 on mute still. We can't hear you. You have
18 two lines? I can see that your mute is
19 coming off, but I don't see it --

20 Commissioner Giaimo, do you have
21 some recommendation?

22 COMMISSIONER GIAIMO: It looked
23 like there was a lag where she turned off and
24 on quickly. So I didn't know if the

1 Commissioner just toggled too quickly. But
2 it looks like that's not the case, so I
3 apologize.

4 CHAIRWOMAN MARTIN: Commissioner,
5 if you can't speak and you want to call in,
6 you can. And you can also write in to the
7 chat as a last resort so that we can hear
8 what your concern is. But you can also call
9 in.

10 ADMINISTRATOR MONROE: Do you have
11 the sound on on your computer? Sometimes I
12 forget to do that. Okay.

13 CHAIRWOMAN MARTIN: I want to make
14 sure that you're able to speak and vote.

15 Why don't I go to Ms. Duprey while
16 you work on that issue.

17 Ms. Duprey.

18 MS. DUPREY: Yes. My question is
19 related to the last comment, which is if the
20 report does not conform to the regulations,
21 while Cavanaugh Tocci may not be re-reviewing
22 it, presumably it will go back to the
23 Applicant with further instructions to
24 correct it; right?

1 ADMINISTRATOR MONROE: I would
2 anticipate that, yes.

3 MS. DUPREY: Okay. Thank you.

4 CHAIRWOMAN MARTIN: Attorney
5 Iacopino, did you have anything more on that?

6 MR. IACOPINO: No. I was just
7 nodding in agreement with Ms. Monroe.

8 CHAIRWOMAN MARTIN: Okay. Did
9 anyone else want to speak or have your hand
10 up prior to this?

11 COMMISSIONER SCOTT: I had my hand
12 up, but I'm not sure that's working. --

13 CHAIRWOMAN MARTIN: Commissioner,
14 you're very hard to see because you're in the
15 shadow, and so I don't -- it's much harder to
16 see you than the other folks when they put
17 their hands up. So I apologize for that. Go
18 ahead.

19 COMMISSIONER SCOTT: I had a
20 question probably for the Administrator, but
21 maybe for Attorney Iacopino.

22 Historically, regarding the cost
23 allocation, you know, who would pay for this,
24 if my memory serves, typically this is being

1 done to assist the Administrator in
2 determining whether something that's in our
3 Certificate is appropriate or meeting the
4 Certificate, and I think historically that's
5 paid for by the original Applicant. Is that
6 not correct?

7 MR. IACOPINO: That is correct.
8 Under Section 10 of RSA 162-H, V, you are --
9 the Committee may assess the cost of an
10 expert like this to the Applicant.

11 COMMISSIONER SCOTT: Okay.

12 CHAIRWOMAN MARTIN: Mr. Wind, do we
13 have Commissioner Sheehan back on the line by
14 phone?

15 MR. WIND: Her intent was to log
16 off and call in. I have not seen that show
17 up yet.

18 CHAIRWOMAN MARTIN: Okay. I don't
19 want to move forward until she can get back
20 on and she can ask her question.

21 ADMINISTRATOR MONROE: Does she
22 have the call-in information, Mr. Wind?

23 MR. WIND: I believe so. If not, I
24 can try to reach out to her. If she doesn't

1 call in another moment, I'll try to reach out
2 to her.

3 CHAIRWOMAN MARTIN: Okay. Any
4 other discussion while we're waiting for
5 Commissioner Sheehan?

6 Ms. Duprey.

7 COMMISSIONER SCOTT: Madam Chair,
8 I'm ready to make a motion when you're ready.

9 CHAIRWOMAN MARTIN: Okay. Just a
10 minute. Ms. Duprey was raising her hand.
11 And I just want to wait for Commissioner
12 Sheehan because she had a comment that we
13 didn't get to hear.

14 MS. DUPREY: I'm sorry. I don't
15 know if you can hear me.

16 CHAIRWOMAN MARTIN: I can hear you
17 now.

18 MS. DUPREY: I was wondering if we
19 answered the chat question that had been sent
20 in.

21 CHAIRWOMAN MARTIN: I think the
22 question is from a member of the public, and
23 so I'll defer to the Committee as to whether
24 you want to engage the public at this point

1 in the meeting.

2 Ms. Duprey, would you like to take
3 that question?

4 MS. DUPREY: I don't want to engage
5 the public, but I'm interested in the answer
6 to the question.

7 CHAIRWOMAN MARTIN: Okay. If you
8 want to ask the question as a member of the
9 Committee, you're welcome to.

10 MS. DUPREY: Okay. And I think we
11 covered this, but I just want to be sure.

12 What projects did Mr. Tocci testify
13 for?

14 ADMINISTRATOR MONROE: It was the
15 Antrim Wind 1, we'll call it, which I believe
16 was -- this is before my time, but I believe
17 that was the proceeding -- Attorney Iacopino,
18 you can comment -- where the application was
19 denied. And I believe the other one was
20 Groton Wind.

21 MS. DUPREY: Thank you.

22 MR. IACOPINO: That is correct.
23 Antrim 1 was an application that was denied.

24 MS. DUPREY: All right. Thank you.

1 CHAIRWOMAN MARTIN: Okay.

2 Commissioner Sheehan, you're back on.

3 COMMISSIONER SHEEHAN: I'm back.

4 Can I go now?

5 CHAIRWOMAN MARTIN: Okay. You can
6 go ahead and say whatever it was you were
7 trying to say before.

8 COMMISSIONER SHEEHAN: I apologize.
9 You might have moved on since we were talking
10 about the timing of things.

11 So my understanding was Mr. Tocci
12 would perform this review. It would purely
13 be on whether or not the report met or didn't
14 meet the rules. And then if it failed to
15 meet our rules, then this body would meet
16 again to determine what the appropriate next
17 steps would be. Is that a correct summary of
18 how the process is proposed to play out?

19 CHAIRWOMAN MARTIN: Ms. Monroe.

20 ADMINISTRATOR MONROE: You could do
21 that. Or in the event it doesn't comply with
22 the rules, I could take it from there and
23 send correspondence to Antrim Wind, and they
24 could manage their consultant, Acentech, to

1 answer those questions. It just depends on
2 how you -- on what process you want to
3 undertake.

4 CHAIRWOMAN MARTIN: And I think
5 that goes to how you frame the motion, how
6 you want to authorize proceeding from here.

7 COMMISSIONER SHEEHAN: But there's
8 no need for, as part of this work, to take
9 extra measurements, because if there are
10 failings when it comes to complying with our
11 rules, then the burden would be on Antrim
12 Wind to correct any of their procedures and
13 approaches and make sure that they updated
14 their future reports to conform with our
15 rules; correct?

16 ADMINISTRATOR MONROE: That is
17 correct.

18 CHAIRWOMAN MARTIN: Attorney
19 Iacopino, anything more on that?

20 MR. IACOPINO: No. I think that is
21 correct. And a lot of how this Committee may
22 legally respond once a peer review report is
23 received is going to depend upon what's in
24 the report itself. It may be a situation,

1 for instance, where the Applicant may have to
2 re-review the data that it already has
3 accumulated because they have reviewed it
4 wrong or analyzed it wrong, or it may be that
5 they have to go out and take new
6 measurements, get new data. I think those
7 are all possibilities. And I think the level
8 of compliance, or non-compliance is probably
9 the better word, would probably dictate how
10 you as a Committee decide to proceed. And,
11 you know, ultimately it is up to the
12 Committee. I'm sure that your Administrator
13 will make sure that before you are asked to
14 make any type of decision like that, that you
15 have all of the information that is available
16 with respect to the issues that are involved,
17 whatever they may be.

18 CHAIRWOMAN MARTIN: Okay. Ms.
19 Duprey, did you have more questions or
20 comments on this? Oh, we can't hear you.

21 MS. DUPREY: Sorry. I just want to
22 be assured that if we get a report --
23 (connectivity issue)

24 CHAIRWOMAN MARTIN: Oh, just a

1 moment. We lost you.

2 (Pause in proceedings)

3 CHAIRWOMAN MARTIN: Ms. Duprey, can
4 you start over? We lost you pretty much
5 right after you started.

6 MS. DUPREY: Sure. I just want to
7 be comfortable that if the report comes back
8 saying -- can you hear me? Hello?

9 CHAIRWOMAN MARTIN: We can hear
10 you.

11 MS. DUPREY: Okay. If the report
12 comes back saying that they didn't comply, is
13 this going to devolve into a, yes, I did
14 comply for this reason, or is it really going
15 to be I'm going to go out and redo it? In
16 other words, is this going to get into, you
17 know, more back and forth about the rules by
18 Antrim Wind?

19 CHAIRWOMAN MARTIN: I'm not sure if
20 that's a legal question or an administrative
21 question. Either one who wants to respond
22 can.

23 MR. IACOPINO: I'm happy to address
24 it. I think, Ms. Duprey, that it depends on

1 motion?

2 [No verbal response]

3 CHAIRWOMAN MARTIN: All right.

4 Seeing none, Commissioner.

5 COMMISSIONER SCOTT: Thank you.

6 I'd like to move that we approve the
7 Administrator's request to retain a technical
8 expert to review the post-construction sound
9 monitoring report prepared for Antrim Wind,
10 with the caveat that, at her discretion, that
11 they include enough detail to validate their
12 conclusions. The allocation of the costs
13 should be to the Applicant or to the Project.

14 And I further move that, depending
15 on the outcome of the analysis, if there are
16 corrective actions needed, that we delegate
17 to the Administrator the ability to request
18 those actions of the Project.

19 CHAIRWOMAN MARTIN: Is there a
20 second?

21 DIR. ARVELLO: Second.

22 (Court Reporter interrupts.)

23 CHAIRWOMAN MARTIN: That was Mr.
24 Arvelo.

1 Any discussion?

2 [No verbal response]

3 CHAIRWOMAN MARTIN: Okay. Seeing
4 none, we'll take a roll call vote, starting
5 with Commissioner Scott.

6 COMMISSIONER SCOTT: Aye.

7 CHAIRWOMAN MARTIN: Commissioner
8 Bailey.

9 COMMISSIONER BAILEY: Aye.

10 CHAIRWOMAN MARTIN: Commissioner
11 Giaimo.

12 COMMISSIONER GIAIMO: Aye.

13 CHAIRWOMAN MARTIN: Commissioner
14 Sheehan.

15 COMMISSIONER SHEEHAN: Aye.

16 CHAIRWOMAN MARTIN: Mr. York.

17 MR. YORK: Aye.

18 CHAIRWOMAN MARTIN: Director
19 Arvelo.

20 DIR. ARVELLO: Aye.

21 CHAIRWOMAN MARTIN: Ms. Duprey.

22 MS. DUPREY: Aye.

23 CHAIRWOMAN MARTIN: Mr. Kassas.

24 MR. KASSAS: Aye.

1 CHAIRWOMAN MARTIN: And the Chair
2 votes aye. The motion carries.

3 Okay. We're going to go back to
4 Item 1 on the agenda.

5 ADMINISTRATOR MONROE: Okay. Thank
6 you.

7 CHAIRWOMAN MARTIN: Ms. Monroe,
8 just one second. I want to read through the
9 item before we start.

10 ADMINISTRATOR MONROE: Okay.

11 CHAIRWOMAN MARTIN: Item 1 involves
12 RSA 162-H:8-a, III, Application and Filing
13 Fees. In accordance with RSA 162-H, the
14 Committee is required to conduct its annual
15 review and evaluation of the application and
16 filing fees contained in the fee schedule
17 established in RSA 162-H:8-a, II. Ms. Monroe
18 is going to give us an overview and
19 background so we can discuss the fees.

20 Ms. Monroe.

21 ADMINISTRATOR MONROE: Okay. Madam
22 Chair, I don't often read, but there's a lot
23 of new members, so I just want to make sure I
24 go in chronological order here.

1 So, just a bit of history. The
2 fees were enacted by laws of New Hampshire,
3 Chapter 219 and became effective on July 8th
4 of 2015. So that's when the fees first were
5 adopted in the statute.

6 The first review of the fee
7 schedule was conducted at a public meeting of
8 the Committee on January 12th, 2017. The
9 reason was, again, it went into effect July.
10 The first fees came in around August, and
11 then towards later in the year when the
12 Northern Pass application was filed and the
13 Antrim Wind application was filed. So there
14 was really nothing to review until we had a
15 year under our belt.

16 So in 2017 was the first review.
17 At that meeting, the Committee decided not to
18 either increase or decrease any fee. And I
19 didn't hear if you covered that, Madam Chair.
20 But I do want to let you know that under the
21 statute, the Committee may increase or
22 decrease any amount in the fee schedule by up
23 to 20 percent, with prior approval of the
24 Fiscal Committee of the General Court. So

1 you can approve it. It has to go to the
2 Fiscal Committee for their approval. And any
3 such increase or decrease cannot occur more
4 frequently than once during any 12-month
5 period.

6 So, again, the second time the
7 Committee reviewed the fee schedule was on
8 April 3rd of 2018. The minutes of these
9 meeting transcripts are all up on the web
10 site, as well as the agendas. And at that
11 point in April of 2018, the Committee voted
12 to increase the fee schedule for all fees
13 across the board by 20 percent. The Fiscal
14 Committee request was generated, and it was
15 submitted to the Fiscal Committee, where they
16 approved the SEC's request to increase the
17 fees. And that became effective October of
18 2018. So that revised fee schedule is also
19 posted up on the web site. So it was a 20
20 percent across-the-board increase.

21 The last review by the Committee
22 was conducted on April 22, 2019. At that
23 point, the Committee decided not to increase
24 or decrease the fee.

1 I do want to just point out a
2 couple things relative to budget. RSA
3 162-H:21, III, provided that in the fiscal
4 biennium ending June 30 of 2019, that if the
5 funds available to pay the operating costs
6 were insufficient, then a request could be
7 submitted to the Fiscal Committee to fund the
8 shortfall. So a transfer from the Renewable
9 Energy Fund in an amount not to exceed
10 \$480,000.

11 Such a request was submitted to the
12 Fiscal Committee in October of 2018. So the
13 provision that allowed for funds to come from
14 the Renewable Energy Fund, which the PUC
15 Commissioners are all very well versed, as
16 well as I'm sure Commissioner Scott, in that
17 fund, that provision in the statute
18 essentially expired or sunsetted effective
19 June 30th of 2019, last biennium.

20 Fast forward to this year. The
21 budget for the SEC included a footnote that
22 provided that, if expenditures were greater
23 than the application or other filing fees,
24 that the Chair, with prior approval of the

1 Fiscal Committee, and approval of the
2 Governor and Council, could authorize funding
3 from the General Funds not otherwise
4 prohibited. That was the case, where there
5 weren't enough funds.

6 So the Chair prepared the request.
7 Chair Martin had come onboard by then. And
8 in preparing the request for the Fiscal
9 Committee to access those general funds, she
10 requested an opinion as to whether the
11 application and filing fees could be used for
12 the fixed costs of the Committee. And I
13 provided to you -- and this is all a matter
14 of public information -- the actual -- and
15 this is in your packet for those that have a
16 hard copy, in Tab 1 -- the requested action
17 to the Fiscal Committee. The second page,
18 last paragraph, outlines the review by DOJ
19 and the fact that the fees can only be used
20 to pay the compensation and reimbursement to
21 the public members, the state agency members,
22 and for Counsel for the Public, but not for
23 the fixed costs of the Committee.

24 So that request to the Fiscal

1 Committee was prepared. It was approved by
2 the Fiscal Committee on March 13th, 2020.
3 Timing's everything. And then it was
4 approved by the Governor and Executive
5 Council on May 6th, 2020. That request was
6 only for fiscal year -- I always get this
7 messed up -- for 2020. The new biennium
8 starts July 1, 2020. It's the biennium for
9 2021.

10 So I did want to just, in addition
11 to the fiscal request -- and I'll just finish
12 with my speech here and then open it up to
13 questions. But I also provided you with an
14 annual review of the application and filing
15 fees. We've had one new application that was
16 filed on October 18, 2019. That's an
17 application for a 30-megawatt solar project
18 out in Fitzwilliam. A couple of you are on
19 the subcommittee for that. The application
20 fee was 60,000. That was the 20 percent
21 increase. The original fees, as adopted by
22 the legislature, was \$50,000 for a base fee.
23 So it was 60,000 that was in effect. And
24 total charges to date against that, because

1 we're very early in the process -- we haven't
2 had the adjudicative proceeding yet. We had
3 the public hearing and the public information
4 session and are in the process of doing
5 discovery. So the fees haven't been drawn
6 down at this point.

7 We also did have a petition for
8 declaratory ruling filed, or, in the
9 alternative, the Applicant asked for a motion
10 to expedite approval for a change in
11 ownership. The application fee for that was
12 \$3600. Again, that was the 20 percent
13 increased fee. And the total charges were
14 \$581 for that.

15 And just of note, when there's an
16 applicant that's filing for these declaratory
17 rulings, the Applicant pays under the
18 provision that Attorney Iacopino cited. I
19 think it's RSA 162-H:10, V. That in the
20 event the applicant -- that it's a
21 certificated facility, they pay the
22 attorneys' fees, as well as the cost for the
23 court reporter, versus a private entity -- a
24 public person, if you will, that filed that.

1 Just one other thing. So the
2 historical section is just that. These are
3 all the past dockets that are closed.

4 I would note that since we had our
5 last meeting of the Committee, that we did
6 receive back in July of 2019, we received a
7 decision by the New Hampshire Supreme Court
8 affirming the decision of the Site Evaluation
9 Committee in the Northern Pass docket. So
10 that's a new piece of information for you.

11 And then in what's known as the
12 Seacoast Reliability project docket, which
13 was approximately a 13-mile power line, 115
14 kV power line in the seacoast area, that was
15 also appealed to the Supreme Court. And on
16 May 22nd, 2020, we received an order, not an
17 opinion, affirming the decision of the Site
18 Evaluation Committee. So I just thought you
19 would want to -- if you weren't following all
20 that, just thought you would want to know
21 that.

22 And the only other item in the
23 historical that has changed is on Page 3.
24 This is the Seacoast Reliability project,

1 Docket 2015-04. There was some additional
2 charges against that docket. So the total
3 charges were \$194,497, with an application
4 fee of \$88,700. So that proceeding cost
5 significantly more than the application fee.
6 So I just bring that to your attention.

7 And with that, if there's anything
8 else, Madam Chair, you'd like me to cover, or
9 I'll open it up to --

10 CHAIRWOMAN MARTIN: I think at a
11 high level, I know it's in the materials, can
12 you just give a high-level explanation of
13 whether the fees, the current fees, on
14 average, cover the cost of the projects, or
15 whether they have, on average, not been
16 sufficient?

17 ADMINISTRATOR MONROE: I didn't
18 calculate it that way. But I think there
19 were a couple. If you look through on Page
20 3, Northern Pass, the fee was \$626,000, and
21 total charges were \$642. So that was close,
22 but it was over. I think the big projects
23 that really were significantly above the fee
24 were the Antrim Wind, which we've been

1 talking about today. The application fee for
2 that project was \$78,800, and the total
3 charges were \$165,000. So, more than double.
4 And the Seacoast project I just pointed out,
5 again, that was well more than double. The
6 only project that was really less than was
7 the Merrimack Valley Reliability project.
8 There was one intervenor in that proceeding.
9 It's an extremely developed right-of-way. I
10 call it a "super highway" for transmission.
11 I bet Commissioner Giaimo could speak to
12 that. But it's a highly developed
13 right-of-way, and that one came in under.
14 But the under for that project doesn't come
15 close to the over on the other projects. But
16 I didn't calculate an average, if you will.

17 CHAIRWOMAN MARTIN: No, that was
18 great. Thank you.

19 Other questions for Ms. Monroe?
20 Ms. Duprey.

21 MS. DUPREY: Did I hear from some
22 members of the public that the state is, it
23 sounded like, close to determining that the
24 declaratory judgment costs should be reduced

1 from \$3,000 to \$350? Is that what she said?

2 ADMINISTRATOR MONROE: It was, yes.

3 And there was a bill. It was Senate

4 Bill 626. I believe that was what Ms. Lerner

5 talked about. It was actually heard in the

6 Senate. The Senate amended I think to make

7 it \$250 from what's now \$3600 because of the

8 20 percent increase to \$250. That provision

9 was then rolled into an omnibus bill, House

10 Bill 1234, which passed both the House and

11 Senate, but was yesterday vetoed by the

12 Governor. So the fee would remain the same.

13 MS. DUPREY: Okay. Got it. Thank

14 you.

15 CHAIRWOMAN MARTIN: Commissioner

16 Scott.

17 COMMISSIONER SCOTT: Thank you. A

18 couple questions. One for the Administrator

19 is, so the statute requires you to do a lot

20 of other things beyond just taking

21 applications and running the dockets to get a

22 certificate. How are those activities

23 funded?

24 ADMINISTRATOR MONROE: Right now,

1 that would be through the General Fund.

2 COMMISSIONER SCOTT: Okay. And as
3 far as trying to determine whether the fees
4 are appropriate or we exercise our plus or
5 minus 20 percent ability and bring it to the
6 Fiscal Committee, what's the current balance
7 right now, or roughly? I don't need it by
8 the penny. But are we running at a deficit,
9 or do we have a huge surplus? I think I know
10 better than that, but...

11 ADMINISTRATOR MONROE: Do you want
12 to take that, Madam Chair?

13 CHAIRWOMAN MARTIN: Sure, sure. I
14 would say that since we haven't gone yet to
15 the Fiscal Committee to get any -- we have no
16 appropriation of general funds, and we have
17 yet to go this fiscal year to get an
18 appropriation of general funds. So, given
19 that we are almost a month into the fiscal
20 year, I would say that we are running in a
21 deficit on the General Fund side.

22 COMMISSIONER SCOTT: So what I --

23 CHAIRWOMAN MARTIN: And Ms. Monroe,
24 perhaps you can respond to the project

1 specifically.

2 ADMINISTRATOR MONROE: Well, the
3 project -- the pending application for the
4 Chinook Solar, you know, we've only spent
5 7681 of the 60,000. Again, there's no -- in
6 that case, there's no intervention. Well,
7 the Town intervened, but they haven't been
8 real active. So as projects go since I've
9 been doing this since 2015, this is a
10 pretty -- there's no opposition that I'm
11 aware of to the project at this point in
12 time. So that certainly changes the
13 landscape somewhat.

14 COMMISSIONER SCOTT: What I'm
15 trying to get at is the pluses or minuses for
16 the fees, the application fees for each
17 project. As you've laid out, some take less,
18 some take more money. Is there additional
19 monies left over in that kitty from other
20 projects, or are we running at a deficit?

21 ADMINISTRATOR MONROE: Yeah,
22 there's nothing left. We actually tapped
23 into the Renewable Energy Fund in 2019. We
24 actually went to Fiscal in 2018. At the same

1 time we asked for the 20 percent fee, we
2 requested the Fiscal Committee to tap those
3 \$480,000 in renewable energy funds. And
4 those were all used. So in addition to the
5 fees that came in, we also used, last
6 biennium, \$480,000 from the REF funds to pay
7 the additional costs, as well as the
8 administrative costs, which is the
9 Administrator of the program.

10 CHAIRWOMAN MARTIN: I just want to
11 clarify, Commissioner Scott. There was a
12 requirement in the statute that remaining
13 funds from the Renewable Energy Funds be
14 transferred back at the end of the biennium.
15 And there were remaining funds that were
16 transferred back, if I'm recalling correctly.

17 ADMINISTRATOR MONROE: Okay. I
18 apologize. I didn't realize that was the
19 case. But you probably know better than I.

20 COMMISSIONER SCOTT: Thank you,
21 Pam. So the reason I asked that is, so it's
22 apparent to me that, as much as I hate to do
23 that, and I've been two years now with the
24 Chair, whoever that was at the time, going

1 before the Fiscal Committee, it sounds like
2 some kind of increase is in order. I don't
3 know if the full 20 percent is the case.

4 I'll also take this opportunity to
5 suggest that in my dealings with the members
6 of Fiscal Committee, it was obvious to me
7 that they did not understand or fully
8 appreciate that the General Fund was to be
9 used for the baseline, if you will, for the
10 Administrator's salary and that type of
11 thing. So there was a -- based on my two
12 years in a row going before them, they seemed
13 to be under the impression that the endeavor
14 should be all covered with fees. So that
15 argues for some structural changes that we
16 may want to look at moving forward.

17 CHAIRWOMAN MARTIN: Commissioner
18 Sheehan.

19 ADMINISTRATOR MONROE: Yes, we need
20 a statutory change for the -- based on advice
21 from the DOJ to use the application fees.
22 But you're right. There's still a problem.
23 The only -- you increase the application fee,
24 you only get that money when the application

1 is filed. And to my knowledge, and I'm not
2 sure where the Granite Bridge project is
3 these days, but that's the only one I was
4 aware of that was in the queue.

5 CHAIRWOMAN MARTIN: Commissioner
6 Sheehan.

7 COMMISSIONER SHEEHAN: Yeah, I was
8 reflecting upon our prior discussions around
9 fees, having served on the SEC for several
10 years now. And I seem to recall the last
11 time we discussed this matter, there were
12 several projects where the costs far exceeded
13 the fees. But since our authority was only
14 to increase the fee by 20 percent, we
15 recognized that we still might fall short in
16 terms of covering project costs. And so we
17 requested the full 20 percent at that time,
18 but we knew that it probably wasn't going to
19 get us back into a positive position. But
20 that was all the statute allowed.

21 So I'm not surprised to hear that
22 we're still struggling, although we've had
23 very few matters come before the SEC since
24 the last increase. And I know we discussed,

1 the last time that we debated the fees,
2 whether or not we had enough history to
3 understand fully what the regular cost of
4 events these projects might be. I think in
5 every category, whether it was certificates,
6 declaratory rulings, modifications to
7 certificates, we had one or two examples
8 where the fee had been adequate and then
9 examples where it was inadequate. And it
10 really did come down to the level of public
11 engagement. So we were somewhat conflicted
12 as to what, you know, an average project
13 truly looked like. But I know that since we
14 only had the 20 percent authority, that was
15 the most we could request. And we thought we
16 might still fall short.

17 CHAIRWOMAN MARTIN: Director
18 Arvelo.

19 DIR. ARVELLO: So, Administrator,
20 can you talk a little bit about the
21 declaratory rulings fee, only because, I
22 mean, in hearing some of the testimony today,
23 the fact that an individual has to pay \$3,000
24 or \$3600, whatever it is, to file a complaint

1 and so on so forth, it seems to me that if
2 that's the case, we're shutting the public
3 out. So I just have a huge concern about the
4 high cost of that. So I'm looking for a
5 little bit of clarity in understanding how
6 that works.

7 And then a more simple question is
8 there's application fees and total charges.
9 What's the difference there?

10 ADMINISTRATOR MONROE: I'll take
11 your second question first. So the
12 application fee is just that. That's how
13 much was submitted with the application, what
14 was required under the statute. The total
15 charges is just that. It's the reimbursement
16 to the agency, it's reimbursement to DOJ, as
17 well as payment to the public members. So
18 those are really the total charges.

19 I have the business office
20 categorizes everything by docket so I can
21 report to you on each project. Does that
22 answer your question?

23 DIR. ARVELLO: So there's separate
24 charges, and they get paid by the filer,

1 right, the person who's -- the project owner?

2 ADMINISTRATOR MONROE: The
3 application fee does, yes.

4 DIR. ARVELLO: And the total
5 charges?

6 ADMINISTRATOR MONROE: The total
7 charges come out of -- are that fee drawn
8 down. There's also additional charges that
9 an Applicant pays. Like Attorney Iacopino's
10 legal fees are paid by them, the cost of a
11 court reporter is paid by the Applicant. But
12 the application fee is just that. It's in
13 the statute. So if you're going to build a
14 power plant that's a 30-megawatt solar
15 facility, it's a \$60,000 fee. And then we
16 use that money to make the agencies whole, to
17 make DOJ whole, and to pay the big charges --
18 right, Ms. Duprey -- to pay the charges of
19 the public members, which is \$35 an hour I
20 think.

21 CHAIRWOMAN MARTIN: For clarity,
22 though, in response to Director Arvelo's
23 question, the fee doesn't always cover the
24 entire charges. Is that -- that's where the

1 deficit comes in.

2 ADMINISTRATOR MONROE: Correct.

3 CHAIRWOMAN MARTIN: Yes. Okay.

4 All right. Other questions?

5 ADMINISTRATOR MONROE: The other
6 part of the question, I mean, I think that
7 gets into, in my mind -- I mean complaints
8 can be submitted to me. I've been -- and
9 this is Item 3 -- managing noise complaints
10 about the facility. Relative to the
11 declaratory ruling question and what that is
12 for, I think in my mind is really a question
13 for the attorneys.

14 MR. IACOPINO: I'm happy to address
15 that. There's a process by which complaints
16 can be made without the filing of a
17 declaratory ruling. A declaratory ruling is
18 designed to basically provide a method for
19 the determination of whether or not
20 particular rules or orders apply, not whether
21 or not a certificate has been violated.
22 There's a separate section in the statute
23 involving enforcement, which authorizes our
24 Administrator to take complaints, and if she

1 determines that there is a violation, to
2 commence an enforcement proceeding. At that
3 point, the complainant is no -- they may
4 choose to try to get involved as an
5 intervenor, but at that point they're no
6 longer necessarily a party to the proceeding.
7 The Committee picks it up and takes it as an
8 enforcement proceeding at that point. To
9 date, we have not had a lot of action in
10 enforcement proceedings. It just hasn't
11 occurred very much. So that's the method
12 that somebody who has a complaint has to
13 proceed. Now, they may not agree with what
14 the Administrator determines, but that is the
15 process that exists right now.

16 So it is not necessary to pay \$3600
17 to make a complaint or to ask the
18 Administrator to investigate whether or not
19 somebody is in compliance with their
20 certificate.

21 CHAIRWOMAN MARTIN: And I just want
22 to add, part of that is in our next item, as
23 to how the Committee wants to handle
24 complaints.

1 Okay. I think Commissioner Sheehan
2 had her hand up.

3 COMMISSIONER SHEEHAN: Just a
4 follow-up question. So is there a cost
5 associated with filing a complaint? From the
6 testimony at the beginning of the meeting,
7 the member of the public that spoke inferred
8 there was a cost.

9 ADMINISTRATOR MONROE: No.

10 CHAIRWOMAN MARTIN: There is a cost
11 for a declaratory ruling. So if you're
12 asking for declaratory ruling. But there is
13 no cost for actually making a complaint.

14 COMMISSIONER SHEEHAN: And was that
15 made clear to the legislature when they were
16 debating the bill to reduce the cost of
17 filing a declaratory ruling? Given that
18 we've had examples where we far exceeded the
19 fee of \$600 -- well, I think the ones that
20 exceeded were actually prior to the last
21 increase in fees.

22 CHAIRWOMAN MARTIN: Ms. Monroe, did
23 you attend that, and did you have any
24 observations at the legislature?

1 ADMINISTRATOR MONROE: I did attend
2 the hearing on Senate Bill 626, and I
3 answered some questions from the Committee.
4 But one of the things I said is that the
5 declaratory ruling is not to re-litigate
6 things that have already been litigated in
7 the underlying proceeding. And that I do
8 address complaints, and it's a separate legal
9 request, if you will. And I also let them
10 know that if they reduced the fee, when I was
11 asked where the money would come from, I told
12 them the General Fund.

13 CHAIRWOMAN MARTIN: Further
14 questions? Mr. Kassas.

15 MR. KASSAS: Yeah, just a quick
16 request for Ms. Monroe. If we could have --
17 as you indicated, the business office may
18 have an income statement, if you will, and
19 the balance sheet for a project. If we can
20 get familiar with those templates for
21 projects so we can have a foundation. If you
22 have any structural suggestions down the
23 road, at least we start from the same base.
24 But a lot of moving numbers. I do understand

1 them, but it's just good to have one
2 financial template that we can operate from.

3 ADMINISTRATOR MONROE: I guess what
4 I tried to do, and this is to summarize that,
5 but --

6 MR. KASSAS: No, I'm happy with a
7 detailed income statement and a balance
8 sheet. Thank you.

9 Madam Chair, I have to attend to an
10 urgent matter that's starting in about five
11 minutes from now, so I will be disconnecting
12 shortly.

13 CHAIRWOMAN MARTIN: Okay. Thank
14 you.

15 MR. KASSAS: Thank you.

16 CHAIRWOMAN MARTIN: Commissioner
17 Bailey.

18 COMMISSIONER BAILEY: I just wanted
19 to ask the Administrator if our business
20 office produces a balance sheet and income
21 statement for each project.

22 ADMINISTRATOR MONROE: I get
23 spreadsheets by fiscal year that are broken
24 out by docket. And then I take those, and I

1 review them year-to-year, if you will. They
2 don't actually do that exercise. It's all
3 broken out by fiscal year. Does that answer
4 your question?

5 MR. KASSAS: Maybe I should
6 clarify. What I was looking for is a
7 financial template, whatever that might be
8 the business office is putting out. It
9 doesn't have to really be an income statement
10 and a balance sheet. I understand we don't
11 have balance sheets. So the financial
12 template as produced by the business office
13 just would be a great foundation to work
14 from, which is, as you indicated, it's
15 yearly, per docket.

16 COMMISSIONER BAILEY: So you're
17 looking for the detail behind the summary
18 that Administrator Monroe has provided?

19 MR. KASSAS: Yeah. Plus, I mean,
20 it gives the sourcing, the in and out, so I
21 understand whether 20 percent is sufficient,
22 whether 20 percent is too much. And it just
23 helps for forecasting and planning.

24 CHAIRWOMAN MARTIN: Okay. Any

1 other questions, comments?

2 Commissioner Sheehan.

3 COMMISSIONER SHEEHAN: I would just
4 say that the information that Administrator
5 Monroe provided in words, I can quickly put
6 that information into Excel, just to see
7 the -- what it was like in fees versus what
8 the actual charges were. And so perhaps
9 that's the recommendation. I don't believe I
10 would need to see any more detail in terms of
11 the specific charges, whether it was mileage
12 or compensation. This level of information
13 is adequate. But maybe presenting in a
14 different fashion so that we could actually
15 see the delta both at the project level, but
16 then also by the type of matter that came
17 before the SEC, so we'd understand whether
18 the fee structure for each type of action is
19 appropriate.

20 CHAIRWOMAN MARTIN: Commissioner
21 Bailey.

22 COMMISSIONER BAILEY: I'm all set.
23 Thank you.

24 CHAIRWOMAN MARTIN: Okay. Anything

1 else?

2 ADMINISTRATOR MONROE: I'm open to
3 any, you know, anything that's helpful to the
4 Committee. Yes, that's an engineer,
5 Commissioner, versus an attorney. Thank you
6 for that.

7 CHAIRWOMAN MARTIN: How does the
8 Committee want to proceed? Do you want to
9 take any particular fees alone or have a
10 motion related to all of the fees?

11 Ms. Duprey.

12 MS. DUPREY: I'm just wondering if
13 there's a recommendation by the Administrator
14 for what she feels that she needs, whether an
15 increase is necessary or not. I'm willing to
16 take all of them together, but others may
17 feel differently.

18 CHAIRWOMAN MARTIN: Ms. Monroe.

19 ADMINISTRATOR MONROE: I don't,
20 other than it'd be nice not to be a footnote
21 in the budget.

22 MS. DUPREY: Got it. Enough said.

23 ADMINISTRATOR MONROE: It's not a
24 fun place to be.

1 CHAIRWOMAN MARTIN: Yeah, I'm
2 fairly new to the Committee, but just my
3 brief experience has been that the projects
4 apparently have not covered the cost for a
5 period of years.

6 Commissioner Bailey.

7 COMMISSIONER BAILEY: That's what
8 it looks like to me as well. It looks like
9 generally the transmission projects and the
10 wind projects, the projects requesting a
11 certificate, don't cover their costs. And
12 the motions for declaratory rulings, a lot of
13 those don't cover their costs. But there may
14 be a misunderstanding by the public about the
15 purpose of a motion for declaratory ruling.
16 And maybe we could ask the Administrator to
17 see if there's a way to clarify that, and
18 then the public wouldn't be exposed to
19 increased declaratory ruling costs if they
20 could file their concerns in another way.

21 CHAIRWOMAN MARTIN: I think I just
22 want to jump in. My brief experience is that
23 the public, at least in this case, are fairly
24 well aware of the complaint process, and that

1 the declaratory ruling process had
2 historically been offered sort of as a second
3 step, or understood as a second step. And
4 so, you know, we've received some clarity on
5 that issue and the use of that on the --
6 (connectivity issue). But I think it really
7 depends upon whether a member of the public
8 is looking for what a declaratory ruling
9 could provide.

10 (Court Reporter interrupts.)

11 CHAIRWOMAN MARTIN: In other words,
12 I think it's often interpreted as a means to
13 get a determination on particular facts and
14 whether there's a violation, as opposed to
15 declare whether a rule or the law says a
16 certain thing.

17 Director Arvelo.

18 DIR. ARVELLO: So I would feel,
19 given the deficits the SEC is running under,
20 and the fact that the legislature really does
21 not understand the inner workings of the
22 budget for the SEC, it seems like this is
23 something that's been recurring year after
24 year. And then, of course, you never know

1 Bailey seconds.

2 CHAIRWOMAN MARTIN: Okay. Any
3 discussion on the motion? Commissioner
4 Giaimo.

5 COMMISSIONER GIAIMO: The
6 declaratory judgment issue, I just want to
7 reinforce the fact that I would be hesitant
8 to get in front of the legislature, when the
9 legislature is clearly going to be acting on
10 this, or is contemplating acting on this.
11 And so with respect to that element of the
12 motion, I certainly do support not getting in
13 front of the legislature.

14 CHAIRWOMAN MARTIN: Okay. Thank
15 you. Any further discussion? Commissioner
16 Bailey.

17 COMMISSIONER BAILEY: Administrator
18 Monroe, can you confirm that those are the
19 only two fees that are available to talk
20 about? It's just the certificate -- or the
21 application fee and the declaratory ruling
22 fees, or are there other fees that we should
23 be talking about?

24 ADMINISTRATOR MONROE: There's --

1 MR. IACOPINO: The statute does
2 contain other fees, Commissioner. It
3 includes -- there's a fee of \$10,500 for a
4 petition for Committee jurisdiction. If you
5 recall, sometimes we have folks come in and
6 ask us to determine whether the Committee has
7 or should exercise jurisdiction over a
8 proposed project.

9 There's a \$10,500 fee, or \$3,000 if
10 heard by a three-member subcommittee, for an
11 Applicant who files, who seeks transfer of
12 ownership of their certificate.

13 There is, again, a \$10,500 fee, or
14 \$3,000 if heard by a three-member
15 subcommittee, if there is a request for
16 exemption from the application requirements.
17 And there is that same fee for a request to
18 modify a certificate.

19 So there are additional fees beyond
20 just the application and the declaratory
21 ruling. And those fees, except for the fee
22 for Committee jurisdiction, those are all
23 \$10,500 if it's the full committee, or \$3,000
24 if heard by a three-member subcommittee. And

1 I think both of those were increased, and
2 they may now be a little bit higher than
3 that. I'm reading right out of the statute.
4 So I think it's \$3600 now for all \$3,000
5 fees.

6 COMMISSIONER SCOTT: If I could,
7 Madam Chair, all those fees, as Attorney
8 Iacopino said, are 20 percent higher now.
9 That's what we did in 2018 through the Fiscal
10 Committee.

11 CHAIRWOMAN MARTIN: Commissioner
12 Sheehan.

13 COMMISSIONER SHEEHAN: I was going
14 to point out the same thing, Madam Chair.
15 The statute never reflected the change in
16 fees from the original amount --
17 (connectivity issue). Everything was
18 increased by 20 percent the last time.

19 CHAIRWOMAN MARTIN: Ms. Robidas,
20 did you get all that?

21 COURT REPORTER: It was pretty
22 broken up, but I think I did.

23 CHAIRWOMAN MARTIN: Okay.

24 COMMISSIONER SCOTT: So, Madam

1 Chair, I had another comment. I am
2 convinced, I think under the current
3 construct, that a fee change is in order in
4 the upward direction. I'm loathe to -- and
5 I'm assuming you'll do this, Madam Chair and
6 not me -- to go to the Fiscal Committee and
7 say we need 20 percent without some kind of
8 why do we need 20 percent. Why isn't it 15?
9 Why isn't it 10? And I don't have the answer
10 to that. So I didn't know if anybody -- or
11 maybe the moving party, you know, why 20.
12 Because we're going to have to answer that,
13 and I don't really have an answer for that.

14 CHAIRWOMAN MARTIN: That's a really
15 great point for discussion.

16 Ms. Monroe, do you want to respond
17 to that?

18 ADMINISTRATOR MONROE: Why 20, not
19 15 or 10?

20 CHAIRWOMAN MARTIN: Yes.

21 ADMINISTRATOR MONROE: I think
22 that's at the discretion of the Committee.

23 CHAIRWOMAN MARTIN: Commissioner
24 Sheehan.

1 COMMISSIONER SHEEHAN: If I may, as
2 I articulated earlier, when we discussed fees
3 and then approved the increase the last time,
4 we increased the fees to the maximum extent
5 that we could per the statute. We knew that
6 that 20 percent was not actually going to
7 cover all of the project costs. So that
8 would be my response to any questions from
9 the Fiscal Committee, that, you know, we
10 truly believe we need to increase fees once
11 again by an additional 20 percent because we
12 didn't make things whole in the last action,
13 because the only authority we had, per
14 statute, was a 20 percent increase, and we
15 knew that we would fall short, specifically
16 when it comes to the original certificate,
17 and that's where we seem to have the largest
18 cost overrun.

19 COMMISSIONER SCOTT: And I can't
20 speak for the legislature, but the
21 legislators that I talked to seem to be
22 favorable to and under the assumption that
23 the current construct is a fee for service,
24 meaning the cost that an Applicant generates

1 is borne by the Applicant, which is not of
2 course the issue. Again, I'm in the realm of
3 law changes now. And, you know, it doesn't
4 provide the certainty I assume that an
5 Applicant would need. But it would be nice,
6 rather than having to guess what the
7 appropriate level is and did we go under or
8 over and did we get this project right or
9 wrong, it would be, in some respects, nice
10 just to be able to invoice the Applicant the
11 true costs and be done with it; that way,
12 there's no under or over, et cetera. But
13 that's not the realm we're in.

14 So I just think, again, there's
15 some structural changes to be made as we move
16 forward, because as the Administrator
17 mentioned, there will likely be some times
18 where we get no application whatsoever, so
19 there's no fees coming in; and yet, there's
20 work to be done, whether it's following up on
21 inspections or even complaints that would
22 have to be borne by the General Fund.

23 This is going to be, I'm stating
24 the obvious, a really hard year to have

1 discussions about whether it's increasing
2 fees or changing fees. You know, there's
3 huge budgetary issues obviously going on. So
4 it's a hard discussion, which is why I was
5 looking for some help, assuming I'm going to
6 be sitting next to the Chair, on why do you
7 need this. So I just wanted to throw that
8 out there.

9 CHAIRWOMAN MARTIN: Director
10 Arvelo, did you have your hand up before
11 Commissioner Bailey?

12 DIR. ARVELLO: I did. I just
13 wanted to echo what Commissioner Sheehan
14 said. And I think that if there has been a
15 number of years where the SEC has run at a
16 deficit, then that should be easy to show. I
17 mean, there's a track record there that you
18 can show the legislators and say, you know,
19 we've been taking in these fees, but we have
20 not met the costs for these number of years.

21 In addition to that, we're not
22 proposing to raise all fees. We're proposing
23 to raise the one big application fee, which
24 is, I would guess, and you folks know better

1 than I would, but that's an application fee
2 that probably most applicants would expect to
3 pay and would expect that it's not a small
4 fee. So I think we're trying to minimize any
5 increases, but we are trying to meet, to some
6 degree, the costs that come with all this.

7 CHAIRWOMAN MARTIN: Thank you.

8 Commissioner Bailey.

9 I see you, Commissioner Giaimo.

10 We'll get to you next.

11 COMMISSIONER BAILEY: I think

12 Commissioner Sheehan's earlier suggestion to
13 ask the Administrator to add up all the
14 application fees and the total charges, and
15 maybe do it by category, will probably show
16 that the total charges were more than
17 20 percent of the total fees.

18 Would you agree with that, Ms.

19 Monroe? You're on mute.

20 ADMINISTRATOR MONROE: You know, I

21 have the spreadsheet that the Commissioner
22 just sent to me. I haven't had a chance to
23 really digest it. But I think that is
24 correct. The overall --

1 COMMISSIONER BAILEY: I mean, it
2 looks to me -- and I wouldn't use the
3 projects that are not completed yet in the
4 analysis. I would just use the completed
5 projects. And I don't know how we do this
6 procedurally. But the other fees that we
7 didn't include in the original motion are
8 also probably fees that developers would pay,
9 for the most part. I think all of those are.
10 And so we may want to consider that as well.
11 Or we may want to do an analysis to see if
12 those kinds of requests, if the application
13 fee actually covered the charges. But I
14 mean, from a quick look at the numbers, it
15 looks like most of them are over. More than
16 20 percent are over the application fee.

17 CHAIRWOMAN MARTIN: Commissioner
18 Giaimo.

19 COMMISSIONER GIAIMO: Thank you,
20 Madam Chair. I certainly don't envy the
21 position that the Chairwoman and Commissioner
22 Scott will be in trying to explain why we've
23 raised fees 40 percent in three years. So I
24 understand. And I think what we're all

1 trying to do is figure out a way to have an
2 objective criteria to justify increasing the
3 fees so that they're consistent with actual
4 costs. And I was just trying in my head to
5 find a way to get there, and one of the
6 things I thought might be helpful, and I
7 don't know if this analysis has been done,
8 but what do our neighboring states charge for
9 something similar? And if the neighboring
10 states are charging, you know, 1.5 times what
11 we're charging, then maybe, just maybe, we're
12 doing something wrong. I don't know if
13 that's an easy apples-to-apples comparison,
14 but at least that provides a barometer with
15 which to gauge something from and to say,
16 hey, we're still -- we're consistent with
17 what other states are doing. So that's just
18 a thought to provide at least some
19 justification and some objectivity to
20 Chairwoman Martin and Commissioner Scott.

21 CHAIRWOMAN MARTIN: Commissioner
22 Sheehan, did you want to follow up with some
23 of Commissioner -- actually, somebody was
24 looking at what you just sent. And I think

1 it might be helpful if you could share.

2 COMMISSIONER SHEEHAN: So what I
3 did, Chairwoman, is I just went through the
4 document that Administrator Monroe shared
5 with her summary of the charges and the fee
6 for projects for all of the past matters
7 before the SEC. Instead of having that in
8 Word, I converted it into a spreadsheet. I
9 think what would be helpful, because there's
10 been so few matters that have come before the
11 SEC since the 20 percent fee increase, if we
12 were to go back and for the prior matters
13 figure out what the application fee would
14 have been for those matters with the fee
15 increase and then show that not only did we
16 have a shortfall under the old fee structure,
17 but if those matters were to come back before
18 the SEC today with our current 20 percent
19 increase, what would the fees have been,
20 you're going to still see a significant
21 shortfall, and that would be your
22 justification for the increase.

23 What I had sent to Administrator
24 Monroe with my Excel spreadsheet was just the

1 actual costs. I'm in the process as we're
2 chatting of just running the numbers to see
3 what the fees would be if the same applicants
4 were to file today. I think that's where
5 you'll see there's still a gap, despite the
6 last increase in fees that were approved by
7 this body.

8 CHAIRWOMAN MARTIN: I think as a
9 procedural question, following on
10 Commissioner Giaimo's suggestion, there's a
11 motion on the floor right now which does not
12 include all fees. And a question for the
13 attorneys is whether we could revisit the
14 other fees if the Committee were to proceed
15 as moved already. Could we revisit the other
16 fees subsequently if research warranted that,
17 or are we bound to make a decision on
18 everything today?

19 (Cross-talk and connectivity issue)

20 CHAIRWOMAN MARTIN: Go ahead,
21 Attorney Lavallee.

22 MR. LAVALLEE: Can you hear me?

23 CHAIRWOMAN MARTIN: Yes.

24 MR. LAVALLEE: All right. Based on

1 the language in the statute in 162-H:8-a,
2 III, you're allowed to review and evaluate
3 the fees, the filing fees and the application
4 fees, and the entirety of the fee schedule in
5 Paragraph 2 at least once in each year. So I
6 see no prohibition on having a conversation
7 talking about other fees at another time. I
8 don't see you have to look at the fee
9 schedule as a schedule as a whole, in other
10 words. That said, if you look further into
11 the statute, you can only change, an increase
12 or decrease, not more frequently than once
13 during any 12-month period. I would say if
14 you read that full sentence, it talks about
15 any amount in the fee schedule. It doesn't
16 say the fee schedule can only be changed once
17 in a 12-month period. So you can change any
18 amount at any time, I would argue, but you
19 can only do that once in a 12-month period.
20 And it might be hard for you to track. But
21 with good tracking, I think you can tinker
22 with the fee schedule; you just have to be
23 cognizant of those dates.

24 CHAIRWOMAN MARTIN: And of course

1 it would involve going to Fiscal multiple
2 times.

3 MR. LAVALLEE: Yeah. Yeah, you
4 would have to follow the full process.

5 CHAIRWOMAN MARTIN: But frankly, I
6 would rather have the research and data to
7 support the request, as Commissioner Giaimo
8 suggested, in going.

9 Okay. Other conversation -- oh,
10 Ms. Duprey.

11 MS. DUPREY: I just wondered if Ms.
12 Monroe knew or not whether the level of the
13 fees actually deterred any projects from
14 coming in.

15 ADMINISTRATOR MONROE: I'm not
16 aware of that being the case.

17 MS. DUPREY: Okay. Good. Thank
18 you.

19 CHAIRWOMAN MARTIN: Commissioner
20 Bailey.

21 COMMISSIONER BAILEY: Would it be
22 possible for us to table this and have some
23 more research done on the actual costs and
24 fees by type of fee before we decide the

1 increase, or do we need to do that today?

2 CHAIRWOMAN MARTIN: I think it's up
3 to the Committee whether they want to make an
4 increase or decrease today or defer that to a
5 later date when they have more information.
6 But I defer to the attorneys to confirm that.

7 MR. IACOPINO: There's no reason
8 that you have to do this today. However, I
9 would just caution you. You will have to
10 convene obviously another public meeting in
11 the future. And hopefully the whole virus
12 thing gets better rather than worse, and it'd
13 be easier to do that. But you can only do it
14 at a public meeting.

15 CHAIRWOMAN MARTIN: Okay. Further
16 discussion on that last question or the
17 motion that is currently pending?

18 COMMISSIONER SCOTT: Again, this is
19 Commissioner Scott. I prefer to get a little
20 more data before, and I prefer to do this
21 once, not multiple times, because I --
22 anyway, I'll leave it at that.

23 CHAIRWOMAN MARTIN: Okay. So,
24 again, I'll ask the attorneys if the pending

1 motion should be withdrawn or whether we
2 should vote. What would be the appropriate
3 process?

4 MR. LAVALLEE: So was it --

5 MR. IACOPINO: Was the motion
6 actually seconded?

7 CHAIRWOMAN MARTIN: I believe it
8 was seconded by Commissioner Bailey.

9 MR. IACOPINO: Then it would be up
10 to the person who made the motion to make a
11 determination whether they seek to withdraw
12 it, and you would need the permission of the
13 second to withdraw it.

14 MS. DUPREY: So we couldn't make a
15 motion to table?

16 MR. IACOPINO: Well, that would be
17 a separate motion. I suppose somebody could
18 make a motion to table this. But quite
19 frankly, it's probably easier for the Chair
20 to inquire of the motioner and the seconder
21 as to whether or not they wish to still
22 proceed, or whether they'd rather get more
23 information before we get into another motion
24 to table the motion.

1 MS. DUPREY: Okay.

2 CHAIRWOMAN MARTIN: Director
3 Arvelo, has this discussion affected your
4 motion?

5 DIR. ARVELLO: Yeah, this is
6 perfectly fine. Given further discussion on
7 the motion, I think it's prudent that we get
8 additional information so that we're nice and
9 ready when we get in front of the Fiscal
10 Committee, and so I move to withdraw my
11 motion.

12 CHAIRWOMAN MARTIN: Commissioner
13 Bailey?

14 COMMISSIONER BAILEY: Seconder
15 agrees.

16 CHAIRWOMAN MARTIN: Do we need a
17 vote on that? Attorney Iacopino, you're on
18 mute.

19 MR. IACOPINO: I'm sorry. The
20 motion then has been withdrawn and there's
21 nothing on the table for the Committee to
22 vote on.

23 CHAIRWOMAN MARTIN: Excellent.
24 Thank you, everyone, for walking through

1 that.

2 Okay. So now we will move to
3 Item 3 on the agenda.

4 Oh, before we do that. Ms.
5 Robidas, would you like to take a break? I
6 know you've been going for a while.

7 COURT REPORTER: Would you mind
8 like a five-minute break? That would be
9 good.

10 CHAIRWOMAN MARTIN: No, I think
11 that's fine. We'll take a five-minute
12 recess.

13 (Brief recess was taken at 4:29 p.m.,
14 and the hearing resumed at 4:38 p.m.)

15 CHAIRWOMAN MARTIN: Let's go back
16 on the record. Before we move to Item 3, we
17 left the last item with the plan to have some
18 additional data and research. Commissioner
19 Sheehan was working on putting together some
20 numbers. Commissioner Giaimo had suggested
21 doing some research in other states. I just
22 want to be clear, for the Administrator's
23 benefit, about who's doing what and what will
24 be provided to her. My suggestion is, to the

1 extent you're working on something, or if
2 anyone thinks it's something that would be
3 helpful, that you provide it to the
4 Administrator. I don't know if anyone else
5 has thoughts on the process, but I think that
6 would be most helpful. And it doesn't have
7 to be something you suggested today. But if
8 everyone could get their information to the
9 Administrator, then we could revisit the
10 issue.

11 Commissioner Bailey.

12 COMMISSIONER BAILEY: It may be the
13 same thing that Commissioner Sheehan's doing,
14 but I was asking if the Administrator could
15 sort the historical projects by fee type and
16 add up the fees and the charges and see what
17 the percent difference is, and then identify
18 those projects that would have had a
19 20 percent increase and add that 20 percent
20 and then see what the shortage is. Is that
21 possible? Or is that what, Commissioner
22 Sheehan, is that what you're doing?

23 CHAIRWOMAN MARTIN: Commissioner
24 Sheehan.

1 COMMISSIONER SHEEHAN: That's
2 essentially what I've done. I had put in the
3 original fees, original charges, and what the
4 balance would be by type of matter that came
5 before the SEC. I just, in the break, was
6 updating what I sent Administrator Monroe
7 previously, to look at what the fees would be
8 today if those same projects were to come
9 back forward and what the difference is in
10 terms of modified fee less the charges.

11 And then I was doing another
12 scenario that if we had moved forward with
13 the motion that was originally made, what the
14 further fee increase would be for each of the
15 respective projects and then where that would
16 have put us from a bottom-line perspective,
17 positive or negative.

18 So I'll finish what I'm doing. And
19 I was just doing it quickly during the break.
20 And I'll send it to Administrator Monroe so
21 she can validate the content.

22 But just looking at the dollar
23 figures, I'm glad we decided to defer this
24 matter and come back to discuss it at another

1 time, because I really do think when we look
2 at what a fee increase would have meant for
3 similar projects if they were to come back
4 before us, I think we would more than cover
5 some of our costs with the revised schedules.

6 So I'd be happy to vet this and
7 work on it offline and then come back as a
8 body to talk through it and look at the
9 numbers more closely then.

10 CHAIRWOMAN MARTIN: Commissioner
11 Giaimo, are you volunteering to do that
12 research, or would you like to have the
13 Committee ask the Administrator to do that?

14 COMMISSIONER GIAIMO: Well, I
15 certainly didn't volunteer. But I would
16 certainly be willing to look into it and
17 maybe work with the Administrator. Maybe I
18 can initially start by reaching out to NECPUC
19 and see what the other -- to the extent that
20 the other states' siting boards are linked
21 administratively to their commissions as
22 well, they may have information.

23 And we could do that collectively,
24 Administrator, and just see as a point of

1 reference how close or how far apart we are,
2 if that's okay.

3 CHAIRWOMAN MARTIN: I think that
4 would great.

5 ADMINISTRATOR MONROE: Yeah, that
6 was my thought, too, to reach out to NECPUC,
7 because years back there was a loosely
8 organized group of siting people. A lot of
9 states do it very differently. So, yeah,
10 happy to help with that.

11 COMMISSIONER GIAIMO: Great. Okay.

12 CHAIRWOMAN MARTIN: Okay. Any
13 other ideas on this, or can we move on to the
14 next item?

15 [No verbal response]

16 CHAIRWOMAN MARTIN: All right.
17 Seeing none, let's go to the next item, which
18 is RSA 162-H:4, III and RSA 162-H:12, and
19 Site 302.01(a) and (b). First, we're going
20 to have an update from Pam on the status of
21 investigations into noise complaints and the
22 noise complaints that have been received
23 related to Antrim Wind Energy Docket 2015-02.

24 Ms. Monroe.

1 ADMINISTRATOR MONROE: So I
2 provided you, for those of you that have a
3 hard copy, and for those who don't,
4 electronically, I just pulled out kind of a
5 smattering of complaints that I've received
6 relative to Antrim Wind Energy and the noise
7 complaints.

8 They started -- the facility went
9 online, they went commercial operation on
10 December 24th of 2019. My first complaint
11 that I received was early on. I think it was
12 January 7th. And about that time is when I
13 reviewed the certificate and worked to bring
14 on Mr. Tocci, which was done sometime middle
15 to the end of January. I went out with him
16 to two of the complainants' properties in
17 early February to do kind of a site visit and
18 review where the monitoring equipment would
19 be set up to take the noise measurements to
20 validate the complaints.

21 He also had developed a protocol at
22 one of the properties -- well, both
23 properties. Ms. Linowes and Ms. Lerner also
24 were there, and they asked if I would provide

1 the draft protocol, which I did. They
2 provided comments on that. The protocol was
3 modified, and at that point I thought we were
4 ready to take some measurements, at least at
5 Ms. Berwick's and Ms. Longgood's home, and
6 they subsequently denied access to their
7 property because they weren't satisfied with
8 the terms of the protocol. Since then, I've
9 had two other complainants: Ms. Buco, who
10 you heard from today, and another
11 complainant, Ms. Morrison. They all live on
12 Reed Carr Road, not that far from Ms.
13 Berwick.

14 And on July 1st I went out with Mr.
15 Tocci and a representative of Antrim Wind to
16 review their properties and the appropriate
17 spot to set up equipment to do the sound
18 monitoring. And the actual forecasted
19 conditions over this past weekend met the
20 requirements of the protocol, and Mr. Tocci
21 and his staff actually took some measurements
22 at both their properties and in accordance
23 with the protocol this past Sunday. And I'm
24 waiting for the results.

1 CHAIRWOMAN MARTIN: Okay. Does
2 anyone have questions for Ms. Monroe on the
3 complaint?

4 This is on the agenda for two
5 reasons, really: One, to tee up the question
6 about designating the Administrator generally
7 to investigate complaints in the Antrim Wind
8 docket; and two, because Ms. Monroe just
9 explained a number of the complaints, and you
10 have all seen the letters that I have
11 received from some legislators related to the
12 project as well, and I felt, given that those
13 have come to myself and to Ms. Monroe, that
14 the Committee should be aware and involved in
15 kind of deciding where to go with that. And
16 so this is an opportunity to discuss any of
17 those issues and ultimately to make a
18 decision about whether or not there should be
19 a delegation of authority, and to what extent
20 and to whom, so that we can operate I think
21 with clarity as to what the process is for
22 this going forward.

23 So with that said, any discussion
24 or questions related to any of those

1 complaints, the letters, any of that?

2 Commissioner Bailey.

3 COMMISSIONER BAILEY: Thank you.

4 Some of the complaints that we heard live
5 today seem to suggest that either the time or
6 the location, you know, the height of the
7 sound measurement, wasn't able to reproduce
8 the sound that the complainants were actually
9 hearing. Can you address that, Ms. Monroe,
10 and whether Mr. Tocci has dealt with that
11 issue?

12 ADMINISTRATOR MONROE: You mean the
13 complaints from Sunday, like Ms. Buco was
14 saying, "It didn't sound like it sounded when
15 I complained"?

16 COMMISSIONER BAILEY: Yes.

17 ADMINISTRATOR MONROE: I can tell
18 you -- so what I've done, the way the
19 protocol is developed, is I got plant data on
20 the dates when I received complaints -- so a
21 myriad of complaints from Ms. Berwick, Ms.
22 Longgood. That was the original review. So
23 the data was what was the -- let me just grab
24 that.

1 Yeah, what was the plant data
2 running at? What were the -- which direction
3 was the wind? What was the electrical power
4 generation of each of the turbines? What was
5 the hub height wind speed? So all that data
6 was reviewed and lined up against the
7 complaints to develop the parameters in the
8 protocol. Those parameters were forecasted
9 to be met on Sunday. And I just want to add
10 also, there was something brought up that
11 they were shut down for a half an hour. That
12 is true. That's part of the protocol,
13 because that's to gather some background data
14 without the turbines running. And that was
15 preprogrammed. These things are all
16 programmed by computers at an action center
17 up in Canada somewhere.

18 So I guess at this point I'm
19 waiting for Mr. Tocci. He's going to review
20 the plant data, he's going to review the data
21 that he took, and I'll get a report from him.
22 And maybe the forecasted conditions didn't
23 meet the requirements. Maybe they did. At
24 this point, I just don't know.

1 CHAIRWOMAN MARTIN: Commissioner
2 Bailey.

3 COMMISSIONER BAILEY: How precise
4 are the forecasted data? Are they to the
5 same hour that the complainant heard -- oh,
6 we lost Ms. Monroe.

7 CHAIRWOMAN MARTIN: Let's go off
8 the record for a minute.

9 (Pause in proceedings)

10 CHAIRWOMAN MARTIN: There you are.
11 Can you hear us?

12 ADMINISTRATOR MONROE: I can hear
13 you. I don't know what happened.

14 CHAIRWOMAN MARTIN: We lost you
15 pretty much for the entire time Commissioner
16 Bailey was asking you --

17 COMMISSIONER BAILEY: So how
18 precise is the data? As an example, if the
19 complainant says, "I heard a horrible noise,
20 a really loud noise at 10:00 on June 14th, at
21 10 p.m. on June 14th," then does the data
22 that you collect look at what was going on
23 meteorologically and with the power being
24 generated at 10:00 on that date, or is it

1 just that date in general?

2 ADMINISTRATOR MONROE: No. We've
3 tried to narrow it down to the time when we
4 receive the complaint. He's reviewed that,
5 so then -- am I not answering? Sorry.

6 COMMISSIONER BAILEY: You keep
7 saying "the time that we receive the
8 complaint." So you mean if the person said
9 it was 10 p.m. on June 14th, is that the time
10 that you're looking at, or the date that you
11 received the complaint was June 15th?

12 ADMINISTRATOR MONROE: No, the time
13 frame in the complaint, when the complaint
14 happened and the date of the complaint.

15 COMMISSIONER BAILEY: Thank you.

16 CHAIRWOMAN MARTIN: Ms. Duprey.

17 MS. DUPREY: So I didn't sit in any
18 of these wind cases, and I don't know a lot
19 about them. I've done a lot of work with
20 cell towers over the years, but not wind
21 towers.

22 Several people said that it sounded
23 like an airplane. Is that a typical sound
24 that would happen at a certain wind speed and

1 power generation speed?

2 ADMINISTRATOR MONROE: I mean, I've
3 been out to the site, on site underneath one
4 of the multiple turbines and -- but that's at
5 the site. And I can tell you there's a
6 sound. It's more like a, I guess I would
7 call it a thumping sound. But again, we have
8 standards. So the standard is based upon
9 background plus the contribution of the
10 turbines to that sound. So I've been to the
11 property of all four of the complainants.
12 I've never -- you know, and they've commented
13 every time I've been there, "Well, today it's
14 not that bad." So I've never heard myself
15 what they are complaining of. But I've
16 listened to their videos. And, you know,
17 again, that's from a cell phone. There's
18 very specific requirements in the rules about
19 the type of equipment, et cetera. But I've
20 heard them, and I've heard sounds that would
21 be consistent with what I heard when I was on
22 site. But I don't know if that meets or
23 exceeds the standard that's in the rule.
24 That's the missing part.

1 CHAIRWOMAN MARTIN: Ms. Duprey, I
2 think you're on mute.

3 ADMINISTRATOR MONROE: Yeah, she's
4 on mute.

5 MS. DUPREY: Sorry. It sounded
6 like some of these complaints were later than
7 10 p.m. I don't know what we do about that.
8 Is there a reason why it might be louder
9 after 10:00 than before?

10 ADMINISTRATOR MONROE: They've
11 happened at various times. I've had
12 complaints in the morning. I've had
13 complaints -- the time frame that was
14 developed in the protocol was to cover --
15 there's a daytime standard and a evening
16 standard. So the monitoring happens between
17 6:00 and 10:30, I think it is, to cover each
18 of those standards. But I don't know that I
19 have, off the top of my head, any way -- the
20 actual date. But the time, I could look
21 back. I don't know that they've all come in
22 after 10:00 at night. I don't have an answer
23 to that. I'll let you know.

24 MS. DUPREY: Thank you.

1 CHAIRWOMAN MARTIN: Other questions
2 on that line of -- oh, Director Arvelo, go
3 ahead.

4 DIR. ARVELO: So, Administrator,
5 I'm trying to just get a picture of this. So
6 you have these abutters that are complaining.
7 Are there abutters that are neighbors to
8 these abutters equidistant, maybe in the same
9 vicinity, that didn't file complaints? So
10 I'm just trying to get in my -- understand in
11 my mind whether, you know, there were others
12 in the neighborhood that could have
13 complained but didn't, and if they didn't,
14 why not, that type of thing. And I don't
15 know if we have any information related to
16 that.

17 ADMINISTRATOR MONROE: I mean,
18 there are other people that live on Reed Carr
19 Road that -- I know of the four that I've
20 heard from. And Ms. Longgood is the only one
21 that's not on Reed Carr Road. She lives on
22 Salmon Brook Road, which is kind of a
23 different area of -- from there. I don't
24 know exactly how far. But she's further away

1 from the turbines than the people on Reed
2 Carr Road. I think Ms. Berwick said a half a
3 mile. I think that's about right. So...

4 CHAIRWOMAN MARTIN: Anything else
5 on that?

6 [No verbal response]

7 CHAIRWOMAN MARTIN: I just wanted
8 to add that my understanding of the, I'll
9 call it a complaint, but the letter that we
10 received from the legislators was that the
11 process that is being used is not consistent
12 with the rule. Although, I think at this
13 point in the updated protocols, the language
14 is consistent with the rule. I think that
15 the problem -- and perhaps, Ms. Monroe, you
16 can help me say this correctly -- is that
17 some of the data is excluded in the way the
18 protocol is applied.

19 Ms. Monroe, can you elaborate a
20 little bit on what the concern is there?

21 ADMINISTRATOR MONROE: My sense of
22 what the concern is, is that there's an
23 averaging time and that they don't agree with
24 that's what the rule requires.

1 I think what you're talking about
2 was, I know Ms. Berwick had some concerns
3 about the post-construction monitoring report
4 that they -- because those are attended
5 measurements. So there's attended and
6 unattended. But they go through -- and
7 again, I'm not an expert. But they go
8 through the data, and if there's something
9 that corrupts data, like crickets are
10 chirping too loud or -- you know, Ms. Buco
11 has some live animals -- you know, there are
12 things -- there are reasons why that
13 particular subinterval, if you will, gets
14 thrown out. But it's really a technical
15 question that I'm probably not answering very
16 well.

17 CHAIRWOMAN MARTIN: And I'm sure
18 I'm not helping. But it's definitely a
19 technical question, and it also relates to
20 different processes between the
21 post-construction sound monitoring and the
22 complaint investigations. So there is some
23 crossover there. I just wanted to make sure
24 the Committee was aware of that.

1 And also you heard the request
2 from Ms. Linowes for a technical session, and
3 I received a similar request from
4 Representative Vose, that the Committee --
5 that this information be shared with the
6 Committee and that there be further public
7 meeting with public comment, and now we've
8 heard today about the request for the
9 technical session. So I just want to make
10 sure all of those are before the Committee,
11 because as I've told the individuals writing
12 the letters, I don't have any individual
13 authority to act on any of those. It really
14 is in the Committee's purview. And I think
15 it puts the Administrator in a difficult
16 position of not knowing clearly what her
17 authority is. So I think coming out of today
18 it would be very helpful to have direction
19 from the Committee on how to proceed on that
20 and how you would like to have investigations
21 in the Antrim Wind case, or complaints,
22 handled.

23 Under 162-H:12, the Administrator,
24 as designee, can do certain things, but there

1 has not been a general designation of the
2 Administrator in this case. So I would ask
3 that you consider how you want to handle
4 that, discuss it here, and make a decision so
5 that it's clear for the Administrator going
6 forward.

7 Any questions or comments or
8 discussion on that? Director Arvelo.

9 DIRECTOR ARVELO: Just what would
10 be your recommendation? Obviously, you've
11 been thinking about this with the
12 Administrator. You guys have had some
13 conversations on this. What do you recommend
14 for us to move on?

15 CHAIRWOMAN MARTIN: On which issue?
16 The designation?

17 DIRECTOR ARVELO: Yes.

18 CHAIRWOMAN MARTIN: I think it's
19 really just a question of how does the
20 Commission -- the Committee want to proceed.
21 If the Committee wants to make a designation
22 and have the Administrator have the authority
23 to investigate and make a determination under
24 the statute, I think that's perfectly fine.

1 But it needs to be done in writing
2 confirming. That would certainly help the
3 Administrator. If the Committee would prefer
4 to have an investigation with a report and
5 recommendation back to the Committee to make
6 a determination, I think that's fine as well.
7 So it really is just about how the Committee
8 wants to handle it, whether they want to be
9 more involved or less involved. But I think
10 my biggest concern is clarity for how to go
11 forward.

12 Ms. Duprey.

13 MS. DUPREY: I'm just mindful that
14 we've gotten communication from two senators
15 and a representative, and so I think that in
16 addition to the clarity, that we also want to
17 be -- I don't know if this is the right word
18 to say, but protective of the Administrator.
19 And so we might want to consider that when we
20 decide what we want our rule to be. I
21 thought we were, in essence, having an
22 investigation by having the Cavanaugh & Tocci
23 report being done that's going to talk about
24 whether it's done in accordance with our

1 rules and regulations. I realize it's not a
2 direct answer to specific complaints, but a
3 lot of those complaints relate to whether or
4 not the owner of the facility is using the
5 right standards to measure from. If they are
6 using the right standards to measure from,
7 then it's one avenue, it would seem to me.
8 If they're not using the right standards to
9 measure from, then perhaps it's a different
10 avenue.

11 Let's say that the study comes back
12 and says that there are -- that they are
13 measuring with the right standards. Then,
14 under normal circumstances, Administrator
15 Monroe, what would happen with these
16 complaints?

17 ADMINISTRATOR MONROE: Well, the
18 facility would be in compliance --
19 (connectivity issue) would be in compliance,
20 and that would be the end of it, except for
21 when it comes to the noise complaints. There
22 is additional 301 -- so, you know, on Sunday
23 they took the data. And I'll get a report.
24 And that's going to state either they're in

1 compliance or not. But in 301.18(i), there's
2 also an additional provision that said
3 validation of noise complaints submitted to
4 the Committee shall require field sound
5 surveys --

6 (Court Reporter interrupts.)

7 ADMINISTRATOR MONROE: Shall
8 require field sound surveys, except as
9 determined by the Administrator to be
10 unwarranted.

11 So the question will be, let's just
12 say this comes back and they're in
13 compliance, but now I've got people that
14 said, well, it didn't sound like it sounded
15 like when I heard it. You know, maybe there
16 will be additional reasons to go gather some
17 data during the winter or some other period
18 of time. I don't know. But at some point,
19 you know, we'll gather some data, and it will
20 show compliance or not. And if not, that
21 clearly gets referred up to the Committee
22 under your authority and under the statute to
23 take appropriate enforcement. If it doesn't
24 [sic], I guess, and you want me to do

1 something else with it, I guess I need to
2 know that, because the way I would think
3 about it today is nothing further would
4 happen at that point.

5 MS. DUPREY: Okay. Thank you.

6 CHAIRWOMAN MARTIN: Ms. Monroe, can
7 you just highlight what you have? I see you
8 working off something. Can you highlight in
9 the Certificate what authority you were given
10 related to Antrim Wind so that the Committee
11 is aware of the specific authority you have
12 already as part the Certificate versus what
13 the statute contemplates to be delegated?

14 MR. IACOPINO: I think you probably
15 want to look at Page 153 of the decision.

16 ADMINISTRATOR MONROE: Well, are
17 you talking about the noise, Mike?

18 MR. IACOPINO: Yes, on noise.
19 Well, noise, and then there's -- you may want
20 to look at Appendix 2 of the order and
21 Certificate. So the decision, the opinion,
22 is Page 153, and then it's Appendix 2, which
23 is the agreement between the Town and the
24 Applicant that is attached to the Certificate

1 itself.

2 ADMINISTRATOR MONROE: Right. But
3 the Certificate has the --

4 MR. IACOPINO: Right, and that
5 would -- you have to go into Appendix 2 of
6 the Certificate.

7 ADMINISTRATOR MONROE: All right.
8 So Appendix 2 is the agreement with the Town.

9 MR. IACOPINO: Right.

10 ADMINISTRATOR MONROE: But there
11 was nothing really -- trying to think back
12 because this came up early on. There
13 was really -- (connectivity issue) -- there
14 was something in the -- I think in my mind,
15 the answer to the question is on Page 9 of
16 the Certificate. It says, "Further ordered
17 that the Applicant shall retain a third-party
18 noise expert, as approved by the
19 Administrator" -- that's what we've been
20 talking about today -- "to assist the Town
21 and the Administrator in taking field
22 measurements in order to evaluate and
23 validate noise complaints." That's real
24 specific.

1 But in addition, we haven't talked
2 about the lighting. There's been complaints
3 about the aircraft detection lighting system
4 which I've addressed, which there is no
5 specific grant of authority for me to
6 investigate and report or take action or not
7 on those. I've investigated them and I've
8 gathered information and determined that
9 there's no further action required. But
10 there's no grant of authority for me to
11 specifically do that, which is why I think
12 the Chair is --

13 CHAIRWOMAN MARTIN: That is the
14 crux of the issue, and that is the language
15 that I was hoping you would highlight for the
16 Committee so that they could consider whether
17 they would like to grant additional authority
18 to you to do that work.

19 Mr. York, you had your hand up for
20 quite some time. So if you have something
21 you'd like to say, please go ahead.

22 MR. YORK: I agree with Mrs.
23 Duprey. I think we need to be careful about
24 putting the Administrator in a position where

1 the legislators have an opportunity to
2 complain about the dictatorial power of a
3 public employee, et cetera, 'cause I believe
4 that's exactly what they will do. I think we
5 need to assert our authority with this. And
6 frankly, having read the complaints, I don't
7 know how you address these. My guess is a
8 lot of these people probably didn't want
9 these things in their back yard to begin
10 with, and this just confirms what they
11 thought all along. I've been hearing from
12 people for years that people have no idea how
13 annoying it can be to have that noise all day
14 long. So I'm not sure that there's anything
15 that any of us can really do to make these
16 complaints go away. I think they're always
17 going to be there.

18 I think we need to have a process
19 in place where we show we've been thoughtful
20 about their complaints and have tried to not
21 just show them the facts, 'cause there's that
22 old saw about "If you can't argue the facts,
23 then you argue the process." And that's what
24 they're doing now. They're talking about the

1 fact that we haven't done all the things that
2 we should have done. We should have been
3 down at a lower level, not up at the height
4 of the hub and all of that. So I think we
5 have to be very careful about just dumping
6 this on the Administrator, quite frankly.

7 CHAIRWOMAN MARTIN: Thank you.

8 Thank you for that. I mean, that is sort of
9 the concern that we're trying to get to is,
10 if the Committee wants the Administrator to
11 do it, it needs to be clear and give her some
12 written form as well so she has that to
13 support what she's doing. And to the extent
14 that, to your point, the Committee thinks
15 that that's putting her into an unfair
16 position, that's obviously another approach.

17 So I just wanted to raise the issue
18 because I think it's obviously very
19 difficult, and it's a big ask of the
20 Administrator to do all of this. And also, I
21 think there's a misconception in the public
22 about the process: Who's responsible for
23 what? Who has ultimate decision-making
24 authority? And right now under the statute,

1 it's the Committee, and so we need to decide
2 if that's how we want to proceed. And to the
3 extent there are questions about process now
4 under the statute, certainly we need to be
5 clear with that.

6 Commissioner Sheehan, you've had
7 your hand up.

8 COMMISSIONER SHEEHAN: I just want
9 to make sure I understand. In the statute,
10 the responsibility to address all complaints,
11 irrespective of which particular project
12 we're discussing, that's with the SEC as a
13 body. In our rules, the only authority that
14 we have given to the Administrator is to do
15 validation of noise complaints specifically,
16 not to be responsible for resolving them, but
17 to conduct the field investigations for
18 validation. That's what Ms. Monroe spoke to
19 in 301.18(i). But in general, are there any
20 other provisions within the certificate of
21 specific projects that grant authority to the
22 Administrator, or is it always the
23 responsibility of the SEC as a body to handle
24 the outcome of a complaint?

1 CHAIRWOMAN MARTIN: Attorney
2 Lavallee, do you want to weigh in on that?

3 COMMISSIONER SHEEHAN: I ask this
4 because it's not just about noise. We are
5 seeing, with Antrim Wind in particular, we
6 are seeing noise and non-noise complaints.
7 But then in general, especially in light of
8 our conversation around fees and this concern
9 that the public had around the need to file a
10 declaratory ruling application, I just want
11 to make sure I'm understanding how we're
12 handling any complaints that's brought
13 forward with respect to a project.

14 MR. LAVALLEE: Certainly. So I
15 can't speak to specifics of certificates that
16 have been granted. I quite frankly have not
17 looked through all the certificates. So Pam
18 and Attorney Iacopino -- so the Administrator
19 and Attorney Iacopino could probably speak
20 much more intelligently about specific
21 Certificate provisions.

22 What I can say is, under your
23 authorizing statutory scheme, right, you as a
24 Committee have the authority to delegate

1 monitoring the construction or operation of
2 any facility. So, essentially, the
3 Administrator, or to any other state
4 official, state agency official, state
5 employee, you can delegate that authority.
6 And you can choose, you know, insofar as
7 you're authorized to delegate the authority,
8 you can choose not to or you can choose how
9 much to.

10 When it comes to enforcement in
11 particular, the statutory scheme -- sorry. I
12 should have referenced the original statute.
13 The cite I was just talking about is 162-H:4.
14 If you look at the Powers of the Committee,
15 Roman Numeral III talks about your ability to
16 delegate monitoring construction and
17 operation. If you look at 162-H:12, your
18 enforcement authority, you as the Committee
19 can ultimately be the determining body that
20 there is a violation, or you can designate,
21 okay, delegate to the Administrator that
22 authority to make the determination that
23 there is a violation. And you can see that
24 transferred into your administrative rules.

1 If you go and look at your administrative
2 rule, you have what Pam did cite about noise
3 complaints specifically, right. So that was
4 301.18(i) that you just referenced. And that
5 gives the Administrator -- so in other words,
6 the Committee by rule has already determined
7 the Administrator does have at least a small
8 role to play in noise complaints, insofar as
9 the regulatory scheme that has been adopted
10 by the Committee allows the Administrator to
11 determine that sound field surveys could be
12 unwarranted. She could receive a
13 complaint -- or the position. The
14 Administrator position could always receive a
15 complaint and make the determination that a
16 field sound survey is unwarranted. That is
17 sort of vested in the administrative
18 regulatory scheme to the Administrator
19 position.

20 But if you go to your
21 administrative rules, the next provision,
22 Enforcement of Terms and Conditions, and you
23 go to 301.01, Violation, that matches your
24 statutory scheme, right, where it talks about

1 the Committee could determine on its own in
2 response -- so either on its own or in
3 response to a complaint. Or if you --
4 jumping back a little bit, it says "whenever
5 the Committee or the Administrator as
6 designee determines on its own or in response
7 to a complaint."

8 So I think the question -- and
9 again, I don't have an answer for you. But I
10 think the conversation here is saying does
11 the Administrator -- has the Administrator
12 been delegated or designated as the
13 individual to make the determination that a
14 certificate violation is occurring, or does
15 that still rest with the Committee as a body?
16 And I think getting some clarity amongst
17 yourselves is a good idea when it comes to,
18 you know, this particular project, when it
19 comes to all projects, whether that's in your
20 certificate already or whether you want a
21 clear delegation. I would encourage you to
22 think about do you want the Administrator as
23 designee to make determinations, or do you
24 want the Committee to reserve that power to

1 itself? I hope that's helpful.

2 CHAIRWOMAN MARTIN: Yes. Thank
3 you.

4 And I think -- correct me if I'm
5 wrong, Ms. Monroe. But in the Antrim Wind
6 case, there was no broad delegation. There
7 was a sound -- I think you read it before,
8 related to noise complaints. But there was
9 not a broad delegation. And we've actually
10 had complaints related to things other than
11 sound. We've had lighting complaints and
12 other things.

13 And so I think it's clear that that
14 broad delegation hasn't been made in this
15 case. And so to the extent the Committee
16 wants to, I would ask that you do that today.
17 And to the extent you want to reserve it to
18 yourself for the reasons you've articulated,
19 that you make that decision today, but just
20 so we have a clear direction about how the
21 Committee would like to act.

22 Commissioner Sheehan.

23 COMMISSIONER SHEEHAN: So I think
24 it makes sense potentially to give the

1 Administrator the authority to validate all
2 complaints, not just noise, as stipulated in
3 our rules, but to have her be responsible for
4 the investigation to confirm whether or not,
5 in fact, something has been done that doesn't
6 fall within compliance of the certificate. I
7 think, echoing some of the comments earlier,
8 that would be appropriate for that
9 information to be brought forward to the SEC
10 Committee for our determination as to what
11 the appropriate next steps would be. You
12 know, it could be similar to what we heard
13 with the ongoing monitoring
14 post-construction, that there's a difference
15 of opinion in terms of what the certificate
16 required or what the regulation require, and
17 we might need to review that to determine
18 whether or not, in fact, the recommendation
19 from the Administrator is valid.

20 So I would be inclined to broaden
21 the responsibilities beyond the investigation
22 to just noise, to investigate and provide
23 information back to the Committee, and then
24 ultimately the Committee would determine how

1 to move forward.

2 CHAIRWOMAN MARTIN: Ms. Duprey, you
3 had your hand up before?

4 MS. DUPREY: I just had a question
5 about what happened in the case when this was
6 approved? In 2015-04, which was the Seacoast
7 Reliability project, so-called, we made a lot
8 of rulings that the Administrator was going
9 to be responsible for all kinds of things.
10 We addressed numerous of those situations.
11 And I'm curious as to why that didn't happen
12 here -- (connectivity issue) -- radically
13 different. And I'm just wondering if that
14 was purposeful on the part of the Committee.

15 CHAIRWOMAN MARTIN: Commissioner
16 Scott, do you have an answer on that?

17 COMMISSIONER SCOTT: Well, I was
18 presiding officer, so I guess I could say it
19 wasn't purposeful in that respect --
20 (connectivity issue) I will go back to an
21 earlier question. I think you're correct. A
22 lot of certificates -- (connectivity issue)

23 MS. DUPREY: I'm sorry. You're
24 very muffled to me. I'm sorry. I can't hear

1 you clearly.

2 COMMISSIONER SCOTT: Is that any
3 better?

4 (Court Reporter interrupts.)

5 COMMISSIONER SCOTT: So let me cut
6 to the chase on my suggestion. I was
7 piggybacking on Commissioner Sheehan. I
8 think one of the things we need to decide
9 upon is, given there's multiple complaints
10 you know, likely to continue maybe, we want
11 to get it resolved. If every one of them
12 have to be investigated and resolved at the
13 Committee level, I don't find that realistic,
14 as far as we should want to see these things
15 resolved -- (connectivity issue) -- for the
16 people involved.

17 So my recommendation would be that
18 we do allow or grant -- or delegate, rather,
19 the authority to the Administrator to
20 investigate the complaints generally and make
21 a finding. And assuming there's a finding
22 that they're not compliant, then that, with a
23 recommendation, gets referred to the
24 Committee. I think if we don't do that,

1 we're not going to be doing the complainants
2 any favors by, if we take the normal time
3 for -- especially non-COVID, it takes a while
4 to convene a full committee for these things.
5 And I'm not sure justice is going to be
6 served well if we do it that way.

7 CHAIRWOMAN MARTIN: Commissioner
8 Scott, can I just ask you to clarify that? I
9 heard you say make a finding, and assuming
10 the finding is non-compliant, a
11 recommendation to the Committee. So is it a
12 preliminary finding in that case? I just
13 want to be cautious about language because
14 the statute says "determination." And if a
15 determination were a finding, it would
16 ultimately already be done if we delegated
17 that beyond a preliminary.

18 COMMISSIONER SCOTT: Yeah, if it
19 matches better, I think preliminary
20 determination or preliminary finding, I'm not
21 sure what the best word would be.

22 MR. IACOPINO: Madam Chair, I would
23 just point out that if Section 12 of the
24 statute is followed with the Administrator as

1 the designee, it is still the Committee
2 itself that issues any sanction for a
3 violation, whether it be suspension or
4 revocation. You would have to have a
5 hearing. And the Applicant, or whoever is
6 the subject of the sanction, does have the
7 right to have a hearing. Presumably that's a
8 full adjudicative hearing at which they
9 can -- you know, which the party bringing --
10 because our rules say the party bringing an
11 action has the burden of proof. So there
12 would be a process that would occur. It
13 would not be a matter of just the
14 Administrator making a determination you're
15 in violation, here are -- your license -- or
16 your permit is suspended -- your certificate
17 is suspended. Only the Committee itself can
18 suspend the certificate.

19 CHAIRWOMAN MARTIN: Yeah, I think
20 that's helpful, because I think the statute
21 is complicated on that. And so it's the
22 Committee, or the Administrator as designee,
23 who makes a determination whether a term or
24 condition of the Certificate is being

1 violated. That piece can be done without a
2 hearing. And then if the Committee wants to
3 consider suspending the Certificate as a
4 result of that determination, then there's a
5 notice and hearing requirement.

6 So really the question is does the
7 Committee want to make the determination that
8 there's a violation, or does the Committee
9 want the Administrator to make a
10 determination? And what Commissioner Scott
11 was just describing was I think a preliminary
12 determination, with recommendation to the
13 Committee. And I think what Attorney
14 Iacopino is pointing out is that, if it were
15 left with the Administrator to make the
16 determination, there would be no suspension
17 of the Certificate as a result without the
18 Committee taking action.

19 Ms. Duprey.

20 MS. DUPREY: Aren't there other
21 possibilities for resolving things besides
22 sanctions?

23 And also, if we're making a
24 determination now about how to handle all

1 complaints, are we talking about this case or
2 all complaints that come in?

3 CHAIRWOMAN MARTIN: Well, the
4 question I think at hand was in this case.
5 But certainly the question could be had for
6 the entire, for all complaints.

7 MS. DUPREY: Well, it seems to me
8 if it's for all complaints -- (connectivity
9 issue)

10 (Court Reporter interrupts.)

11 MS. DUPREY: Sorry. How about now?

12 Okay. I'm just wondering if --
13 (connectivity issue)

14 CHAIRWOMAN MARTIN: Ms. Duprey, I
15 think we're just having bandwidth issues.

16 MS. DUPREY: But then it seems
17 like -- (connectivity issue)

18 CHAIRWOMAN MARTIN: Ms. Duprey, we
19 lost you.

20 MS. DUPREY: Still losing me.

21 Okay.

22 CHAIRWOMAN MARTIN: You're cutting
23 in and out.

24 MS. DUPREY: I'm going to turn off

1 my video hub and -- (connectivity issue)

2 MS. DUPREY: Okay. Can you hear me
3 now? Is that any --

4 Okay. So my question is, if we're
5 trying to make a ruling with respect to -- a
6 delegation with respect to all matters, that
7 seems like rulemaking to me. Wouldn't it
8 then need to be in the rule if we were doing
9 that? It seems like it's an end run around
10 rulemaking. If it's specific to this case, I
11 can see it. But also for me, the other
12 question is aren't there other things besides
13 sanctions and -- besides suspending a permit?
14 And short of suspending a permit, would that
15 come before us? It sounds like it wouldn't.

16 CHAIRWOMAN MARTIN: I'll turn to
17 Attorney Lavallee. He had his hand up. But
18 my understanding is there are no other
19 remedies. If it's not in the Certificate and
20 it's not in the statute, it doesn't exist,
21 and suspension and revocation seem to be the
22 only --

23 MS. DUPREY: So in this case --

24 (Court Reporter interrupts.)

1 CHAIRWOMAN MARTIN: Suspension and
2 revocation seem to be the only remedies.

3 MS. DUPREY: And but --

4 CHAIRWOMAN MARTIN: Ms. Duprey,
5 before you continue, I'd like -- Attorney
6 Lavallee had his hand up, so I want to give
7 him the opportunity to make sure I'm not
8 saying something different than he would say.

9 MR. LAVALLEE: Thank you. And I
10 apologize for going back and forth. And I
11 know there's lots of attorneys here, and I'm
12 sensitive to dragging things on.

13 I heard, I think, three questions,
14 though, or two questions and one other matter
15 that I wanted to address. I wanted to just
16 put a finer point on what Attorney Iacopino
17 pointed out regarding a hearing process.

18 I would say if you do delegate
19 down, I just wanted to note that whoever,
20 whether it's delegated or whether it's still
21 retained by the Committee, whoever makes that
22 determination is then responsible for
23 essentially sending an order to the facility
24 operator, essentially a "knock it off" order,

1 "get into compliance" order. So that
2 determination is one piece of the power.

3 And then the other piece is a
4 mandated order to the facility that says you
5 have 15 days to get into compliance. And I
6 think that goes to -- I hope that goes to
7 sort of the question about what are the
8 remedies available. And so you make a
9 determination that there's a violation. That
10 triggers a mandate to issue an order
11 essentially saying correct it, a fix-it
12 order, a get-into-compliance order. You have
13 15 days to get into compliance. And once
14 that 15-day period elapses, that's when the
15 Committee either, you know, first gets to it
16 if it's been designated -- or, you know,
17 still has it in front of them and says, okay,
18 now we can consider our arrows in the quiver,
19 if you will. And surprisingly, or maybe
20 unsurprisingly, you do have -- you have two:
21 You have suspension of a certificate or
22 revocation of a certificate. You don't have,
23 you know, a \$100 fine or something of that
24 nature.

1 So I think that -- I hope that I
2 addressed a couple of the questions that
3 might have been percolating underneath some
4 of the comments just now. And I'll be quiet.

5 CHAIRWOMAN MARTIN: Well, before we
6 move on from that one, though, I think
7 clarity on the statute related to the notice
8 that you just mentioned, the order and 15
9 days to comply, the statute says "It shall in
10 writing notify." Does that mean that the
11 Committee, after a determination either by
12 the Committee or the Administrator, depending
13 on the scenario, that the Committee shall
14 notify the person holding the certificate of
15 the violation if it says "it" and --
16 Attorney?

17 MR. LAVALLEE: So my view would be
18 that the order is going to be from the
19 Committee. I mean, it's going to be on
20 Committee letterhead. It's going to have the
21 power and force of the Committee behind it.
22 But I think if the Administrator as designee
23 is making the determination, essentially the
24 Administrator is binding the Committee to

1 sending the order. So I would say you could
2 retain the authority to send the order. But
3 if you designated to the Administrator the
4 power to make the determination, well,
5 essentially, then you just said, as soon as
6 the Administrator makes the determination we
7 have to send this order, so, you know, get
8 together and sign the order. I would say
9 it's probably just functionally and
10 practically easier to say, hey, the designee,
11 the Administrator as designee, is going to
12 have the power to have the Committee send a
13 15-day fix-it order, if that makes sense.

14 CHAIRWOMAN MARTIN: It does. I'm
15 just trying to get at whether in that
16 provision ultimately the Committee would be
17 aware of the determination when that went
18 out. But it sounds like potentially,
19 depending on the amount of the delegation,
20 that could happen without the Committee
21 knowing. Is that right?

22 MR. LAVALLEE: I think that's fair
23 for you guys to debate and say this is the
24 process that we want to run. I would assume

1 anything that's sent out -- well, I don't
2 want to assume. I know what assuming does.

3 I think the Committee would be
4 bound to send an order upon a determination
5 of a violation.

6 COMMISSIONER SCOTT: So just to
7 clarify, this discussion's kind of gone
8 beyond where I was. I was only suggesting
9 that we clarify that the Administrator has
10 our delegation to investigate. And if she
11 finds there's a -- if she makes a preliminary
12 determination that she thinks there's a
13 violation, that she brings it to us. I
14 wasn't suggesting anything beyond that, that
15 the Administrator issue orders or any of that
16 type of thing. So that wasn't my suggestion.
17 I just want to be clear on that.

18 CHAIRWOMAN MARTIN: Okay. Thank
19 you for that.

20 I see you, Ms. Monroe. And I just
21 want to make sure I didn't miss someone. I
22 saw another hand at some point. Yeah, it was
23 Commissioner Sheehan. I'll go to
24 Commissioner Sheehan and then Ms. Monroe.

1 COMMISSIONER SHEEHAN: As you were
2 having this conversation, I was just looking
3 at the rules again. And in 302.01(a), that's
4 where they talk about "whether the Committee
5 or the Administrator as designee determines."

6 So what I was proposing originally
7 was very similar to what Commissioner Scott
8 is suggesting, that the Administrator would
9 have the authority to do the investigation
10 and come up with an initial determination,
11 but then the Committee would actually issue
12 the notice to the entity holding the
13 certificate that there was a violation. That
14 would be in accordance with what's currently
15 in the rules.

16 CHAIRWOMAN MARTIN: Ms. Monroe.

17 ADMINISTRATOR MONROE: So in my
18 mind, the easier thing is, you know, I get
19 information and there's a violation. I send
20 that up to the Committee. I think a lot of
21 the concern by the public is that, for those
22 complaints where I investigate, let's just
23 say the lighting, where I've looked at the
24 certificate, I've looked at all the

1 information provided, I've determined that
2 there's nothing further to do. One, I think
3 I need some broad delegation to do that
4 because I don't think I have it in this
5 particular matter, even though, I mean, in
6 practice I've been, you know, doing that.
7 I've been responsive to the public and
8 investigating these things.

9 But I think the question in my mind
10 is for those things that don't rise to the
11 level of triggering, you know, this 15-day
12 opportunity to cure, that's where people have
13 concerns. I've investigated. I say there's
14 no violation here. There's nothing further.
15 And that's -- then what happens?

16 CHAIRWOMAN MARTIN: I would echo
17 that. I think that's the more difficult
18 scenario for the Administrator to handle.
19 Because she's getting a complaint from the
20 public, she's looking into it, finding that
21 it doesn't violate the certificate, in her
22 opinion, and there is a sense from the public
23 that there's some sort of a wrong happening.
24 But the standard that the Administrator is

1 applying is: Does it violate the
2 certificate? It just puts her into a
3 difficult situation when she says no, and
4 it's just her and there's no other recourse
5 for the public. And so I think that's been
6 the bigger problem.

7 ADMINISTRATOR MONROE: Which, you
8 know, I have no problem doing that. I've
9 done that for lots of my career. But that's
10 when you get letters from legislators saying,
11 you know, she doesn't know what she's doing
12 or she's not qualified, you know, to make
13 these determinations. That's when it gets
14 bubbled up, and that is the harder issue.

15 CHAIRWOMAN MARTIN: Commissioner
16 Sheehan.

17 COMMISSIONER SHEEHAN: I think what
18 Commissioner Scott was suggesting would work
19 in either case. We delegate the
20 responsibility to do the investigations, not
21 just for noise, but for any complaints
22 associated with this particular project. We
23 can talk about whether or not we need to
24 change the rules longer term so that we have

1 a process for any complaint. But whether
2 it's a finding, a preliminary finding that
3 there's no violation or that there is a
4 violation, either way it would come to the
5 full Committee for us to review that and
6 either concur and take no action if there is
7 no legitimate complaint or a demonstrated
8 violation of the certificate. And if we
9 review it and concur, yes, there was a
10 violation, then we move to what the rules
11 dictate, which is we issue the notice to the
12 person holding the certificate and start the
13 15-day remedy process. So either way, it
14 could come back to the Committee.

15 CHAIRWOMAN MARTIN: Good point.

16 Ms. Duprey.

17 MS. DUPREY: I like that process.
18 I'm just wondering if we could just do it at
19 a public meeting as opposed to a public
20 hearing.

21 CHAIRWOMAN MARTIN: Counsel?

22 MR. IACOPINO: I think that the
23 statute permits that. RSA 162-H:12 and Rule
24 302.01 permits you to designate. There's

1 nothing in the rules or the statute that says
2 that that designation must be only determined
3 at a time when -- after you've had a public
4 adjudicative hearing. I think that you can
5 do that in the context of your authority as a
6 committee. As a practical matter, I think
7 it's what happens anyway, but...

8 MS. DUPREY: I'm not sure that
9 you're thinking -- or responding to my
10 question. But let's see.

11 What I mean is when the
12 determination by Pam comes before us to say
13 we agree or disagree with her, does that have
14 to be at a public hearing?

15 MR. IACOPINO: I'm sorry. I didn't
16 understand that to be your question.

17 No, I don't think so, because in
18 theory you can do it as a committee. But
19 what I would caution the Committee to do is
20 to make sure that when you act, you act in a
21 manner so that you can still provide a fair
22 hearing down the road in an adjudicative
23 process. But I think that the statute, the
24 way it's written, and the rule, speaks of

1 "or." It says the "Committee or the
2 Administrator as designee." So I believe
3 that it would be you wouldn't have to hold a
4 public hearing in order to do that. I think
5 you would have to do it at some kind of
6 meeting, though, where you do have a quorum
7 of your Committee to issue the notice.

8 MS. DUPREY: Okay. I just want to
9 be sure I'm not putting us into a situation
10 where we're essentially reopening this case
11 and, you know, having days long of public
12 hearings over it. Thank you.

13 CHAIRWOMAN MARTIN: No, I agree. I
14 think that the statute provides that we can
15 make this determination. It does not require
16 notice and a hearing to make the
17 determination. Obviously, we have the notice
18 of the public meeting. I think that's
19 obviously subject to challenge if somebody
20 wants to challenge the statute. But that's a
21 completely different issue. I think what we
22 have to hold a public hearing on is
23 suspension or ultimately revocation.

24 Ms. Monroe.

1 ADMINISTRATOR MONROE: I just
2 wanted to be clear, because I think what I
3 heard from Commissioner Sheehan and what I
4 heard from Commissioner Scott aren't the same
5 thing. But I just want to confirm where
6 you're going.

7 So if I -- for instance, I got a
8 complaint about the lighting. I reviewed it.
9 I determined that there's not a violation of
10 the Certificate or the rules. Then I think
11 what Commissioner Sheehan has said is that I
12 would report that up to the Committee at a
13 public meeting to agree or disagree with me.
14 I wasn't quite sure that I heard that from
15 you, Commissioner Scott, but I could be
16 wrong.

17 And I guess what I raise is if
18 that's what you want, that's fine. But what
19 would be the timing? Or what would be the
20 expectation that that determination -- I
21 assume I'd group them and, you know, and send
22 them up? If you could clarify that, it would
23 be helpful. Thank you.

24 CHAIRWOMAN MARTIN: Commissioner

1 Scott, feel free to jump in. What I'm
2 hearing I think from both of you, although I
3 think Commissioner Sheehan elaborated more,
4 and I understood you to be saying that there
5 would be an investigation -- a delegation of
6 the authority to investigate and make a
7 preliminary determination, which would be
8 reported to the Committee for further action.
9 Is that what you both were proposing?

10 COMMISSIONER SCOTT: Yeah.

11 Commissioner Sheehan kind of elaborated and
12 expanded on what I was talking about. But I
13 guess I'm okay with that if we're going to go
14 that route. Basically, I think Pam's thought
15 was that there would be no choice but to kind
16 of group them together. So, you know, that
17 would be maybe the final venue.

18 I was really thinking about the
19 determination if there was a -- (connectivity
20 issue) --

21 (Court Reporter interrupts.)

22 COMMISSIONER SCOTT: Sorry, Sue.

23 I was really thinking along the
24 lines of there was a preliminary

1 determination of violation. I was not really
2 thinking to -- my thinking was not along the
3 lines of the Administrator was --
4 (connectivity issue)

5 (Court Reporter interrupts.)

6 COMMISSIONER SCOTT: I was not
7 thinking along the lines of if the
8 Administrator made a determination that there
9 was not a violation.

10 I'm going to change my microphone,
11 see if that helps.

12 (Pause)

13 COMMISSIONER SHEEHAN: No, I would
14 just say that originally I was thinking we
15 were only going to take on the matters that
16 were associated with a preliminary finding of
17 a violation. But I do agree with some of the
18 earlier comments, that we don't want to be
19 placing this responsibility on the
20 Administrator to have to address the
21 situations where people feel passionately
22 that there was a violation and she disagrees
23 with that. I think it's equally appropriate
24 that be brought to the Committee for us to

1 either confirm her finding or ask for
2 additional investigation, you know, bring in
3 another third-party expert if necessary,
4 whatever the unique circumstances warrant.

5 CHAIRWOMAN MARTIN: Commissioner
6 Bailey.

7 COMMISSIONER BAILEY: If we were to
8 have the Administrator summarize her analysis
9 about why there was not a violation, would
10 that require every single time that the full
11 Committee get together? Could a subcommittee
12 take that up? Or what's the process involved
13 with that issue?

14 CHAIRWOMAN MARTIN: That's a good
15 question. I think counsel might be in the
16 best position to answer that.

17 MR. IACOPINO: Legally, you're
18 entering an unknown universe. So, I mean, as
19 I expressed before, I have some concerns with
20 administrative and adjudicative hearings
21 where not only is the decision maker who's
22 going to ultimately decide whether there was
23 a violation and should be a sanction or not
24 is also the prosecuting authority. I think

1 there are concerns there that should be
2 considered by the Committee.

3 But in terms of how -- there's
4 nothing in our rules about how you would
5 break this down and maybe just have a
6 subcommittee or somebody -- or some smaller
7 body of the Committee approve a
8 recommendation from the Administrator. The
9 statute and the rule, as they are published
10 now, are kind of binary. I mean, it sort of
11 anticipates it's going to be the Committee or
12 the Administrator that's going to determine
13 the violation, and then there's the process,
14 the 15-day process, but then ultimately the
15 hearing.

16 So JD, you may have more experience
17 with the rules as they are interpreted with
18 other committees. Maybe you would know more
19 about how that would happen here.

20 MR. LAVALLEE: I do think there are
21 potential due process concerns. But at the
22 same time, I can say that, you know, if you
23 consider the SEC a licensing body, which it
24 is, you know, and you can liken it to

1 licensing boards, councils or commissions,
2 the board, council or commission typically
3 makes the determination to hold a hearing,
4 right, saying, hey, there's enough here to
5 move forward on a disciplinary adjudicative
6 hearing, but without reaching the ultimate
7 issue on saying, okay, we have found
8 misconduct has occurred, and therefore we are
9 implementing some form of disciplinary action
10 or remedial action. And then oftentimes
11 they'll have a committee member or a staff
12 member designated as a party to make the case
13 as to why the committee or board should make
14 a ultimate determination that misconduct has
15 occurred. And then the remaining
16 committee -- or the person that argued it is
17 recused, and then the remainder makes the
18 determination as to whether or not -- the
19 final adjudication, if you will, if that
20 makes sense.

21 So I think it could naturally play
22 out, that if it was designated to the
23 Administrator, the Administrator would bring
24 the case to the remainder Committee body, and

1 then the Committee would ultimately, after an
2 adjudicative proceeding, determine, yes, we
3 do want to suspend the certificate, or no, we
4 don't.

5 CHAIRWOMAN MARTIN: Commissioner
6 Bailey.

7 COMMISSIONER BAILEY: And when the
8 Administrator determines there is no
9 violation, do we have to meet to decide
10 whether we agree with that or not? And if
11 so, does it have to be the full Committee?

12 MR. IACOPINO: I think from a legal
13 perspective, that depends upon what you
14 designate, how you make your designation.

15 I would point out, though, if the
16 concern is that somebody disagrees with the
17 Administrator, or even the Committee's
18 decision or determination that we're talking
19 about, when the determination is that there
20 is no violation, they're not entirely without
21 a remedy. They can always go to the superior
22 court and seek injunctive relief or a writ of
23 mandamus if they believe that the Committee
24 is acting unlawfully or in violation of your

1 own rules, or somehow causing harm to them.
2 They can seek relief in the courts. They're
3 not without a remedy. There are remedies
4 available to them, they're just not through
5 the Site Evaluation Committee.

6 CHAIRWOMAN MARTIN: And I just want
7 to respond on that. I'm sensitive that
8 through our lawyers that sounds fairly
9 simple. I think members of the public who
10 have a complaint related to something going
11 on near their home, to bring some kind of a
12 petition or a writ of mandamus or something
13 in superior court is both expensive and
14 difficult.

15 Ms. Duprey.

16 MS. DUPREY: I want to make a
17 ruling today that is simply related to this
18 case, not beyond it. We don't have hardly
19 any other cases coming forward at this point.
20 So it's not like it's that burdensome.

21 So I'd like to take Commissioner
22 Sheehan's suggestion, which I agree with, and
23 use that for the purposes of this case.
24 Thank you.

1 CHAIRWOMAN MARTIN: Would you like
2 to make a motion?

3 MS. DUPREY: I'd be happy to make a
4 motion, if I can refer to Commissioner
5 Sheehan's proposal and not have to enumerate
6 it specifically. Otherwise, I'm going to ask
7 her to make the motion.

8 CHAIRWOMAN MARTIN: Okay.
9 Commissioner Sheehan, would you like to
10 respond to -- (connectivity issue)

11 COMMISSIONER SHEEHAN: I'm happy to
12 make the motion.

13 So I would move that we delegate
14 the responsibility to investigate all
15 complaints with respect to Antrim Wind to the
16 Administrator and that she will make a
17 preliminary determination as to whether or
18 not the Certificate has been violated and
19 present that information to the SEC for our
20 action.

21 CHAIRWOMAN MARTIN: Is there a
22 second?

23 MS. DUPREY: Second.

24 CHAIRWOMAN MARTIN: Okay. Thank

1 you. Any discussion on the motion?

2 [No verbal response]

3 COMMISSIONER BAILEY: Can we add
4 something that -- oh, sorry. I wasn't called
5 on.

6 CHAIRWOMAN MARTIN: Commissioner
7 Giaimo, did you have something you wanted to
8 say? You had your hand up before.

9 COMMISSIONER GIAIMO: I did. I
10 guess I echo Ms. Duprey's concern about kind
11 of venturing into rulemaking area here. But
12 I'm certainly fine with this.

13 I just want to make sure I
14 understand the question -- the proposal. The
15 preliminary determination goes to the full
16 Committee or to a subcommittee?

17 CHAIRWOMAN MARTIN: I think the
18 discussion so far has been, and my
19 understanding from counsel, is it's a quorum
20 of the full Committee. The statute says "the
21 Committee."

22 COMMISSIONER GIAIMO: Okay. And I
23 think the question then for Commissioner
24 Bailey is she would offer a friendly

1 amendment, to the extent that she would want
2 one. So, okay. Thank you. That helped
3 clarify my questions. Thank you.

4 CHAIRWOMAN MARTIN: Okay. Thank
5 you.

6 Commissioner Bailey.

7 COMMISSIONER BAILEY: I'm sorry for
8 interrupting before. I don't know what
9 friendly amendment I could make. But the
10 motion as stated sounds like the full
11 Committee has to take action one way or the
12 other on every determination that the
13 Administrator makes, whether there was a
14 violation or there was not a violation. And
15 I think that if we're going to delegate --
16 well, I guess if it's a -- here's the
17 problem: If it's a preliminary determination
18 about whether there was a violation or not a
19 violation, and the preliminary determination
20 is that there was not a violation, then if
21 it's preliminary, we still have to get
22 together and she has to present it to us, and
23 we have to, I guess, make a decision about
24 whether we agree. And I'm wondering if

1 that's going to be overly burdensome.

2 CHAIRWOMAN MARTIN: Any discussion
3 on that question?

4 Commissioner Sheehan.

5 COMMISSIONER SHEEHAN: I would
6 share the concerns that this could become
7 certainly burdensome. But I think we're
8 having this conversation today because of the
9 number of complaints, and then subsequent to
10 what was perceived to be resolution of some
11 of those complaints, others felt that the
12 Administrator had not made the right
13 decision. So we want to support her and
14 ensure that the Committee is reviewing all of
15 these complaints and acting on her
16 recommendations as appropriate.

17 So I agree that it would be much
18 more efficient if we could form a
19 subcommittee. But I am aware that there is
20 no provision for that in our current rules,
21 and we don't want to circumvent rulemaking.

22 So to Ms. Duprey's comment about
23 how we could come up with a solution for this
24 project at this time, I would stand by my

1 original motion, with the understanding that
2 we'd monitor the number of complaints and how
3 expeditiously we're able to address them, and
4 then modify our process going forward if it's
5 necessary.

6 CHAIRWOMAN MARTIN: Attorney

7 Lavallee, are there any options for -- we've
8 already talked about the subcommittee. But
9 any options for a process or a way to be able
10 to do this without having to have a public
11 meeting for every preliminary finding, I
12 guess in one way or the other?

13 MR. LAVALLEE: I mean, in asking
14 are there any options, I don't think I could
15 say that there aren't any options. You could
16 be as creative and as expansive as perhaps we
17 could pool our collective heads together.

18 I mean, one option, right, would be
19 if the concern is the Administrator is
20 getting so much and particularly focused on,
21 you could designate a Committee member, you
22 know, and move it around. So the first
23 complaint, preliminary decision is going to
24 go to Committee Member No. 1; the second

1 complaint will go to Committee Member No. 2;
2 the third complaint will go to Committee
3 Member No. 3. I know that's how certain
4 licensing boards will determine or
5 investigate; they'll do a round-robin. Your
6 number's called, you're the next one up.
7 That's different than a subcommittee where
8 there's a group of you that's going to try
9 and get together for a public meeting. But
10 it is designating down to one official.

11 I mean, obviously under -- I would
12 have a little bit of concern, though, just
13 looking at -- I think we'd have to talk,
14 because I don't necessarily believe that
15 there's a hundred percent alignment between
16 162-H:12 and 162-H -- sorry -- 162-H:4. And
17 what I mean by that is, I think there's
18 investigative and monitoring power that you
19 can delegate down to an individual, and then
20 determination power I think actually does
21 require either the Administrator as the
22 individual or the Committee.

23 But if we want to talk additional
24 legal concerns, I would recommend maybe we

1 too.

2 MS. DUPREY: I wonder if we're not
3 getting overly concerned about how much time
4 is going to be taken up by this. It seems to
5 me that these complaints can be grouped in
6 lighting, and your report is involved with
7 following the rules and it's too loud. And
8 there may be some other groups. But we have
9 a bunch of these complaints right now. If it
10 turns out that it's ridiculously
11 overburdensome, then we can reconvene and
12 change things if we need to. And that's one
13 of the reasons why we need to limit it just
14 to this case. So it seems to me that we
15 could try it this way. If it doesn't work,
16 then we'll pull back and do something
17 different.

18 CHAIRWOMAN MARTIN: Yeah, that's a
19 good point.

20 Ms. Monroe.

21 ADMINISTRATOR MONROE: I would just
22 add that, yes, that's what you have in front
23 of you now as far as the complaints. But,
24 you know, I've had various inquiries. I

1 heard some things today about bats, birds,
2 shadow flicker. There's a number of other
3 things that could surface, and that's just
4 off the top of my head.

5 MS. DUPREY: I still think you can
6 group them together and bring them before us.

7 ADMINISTRATOR MONROE: I don't
8 disagree. I just want you to be aware there
9 may be others.

10 MS. DUPREY: Yeah, salamanders and
11 spotted frogs. I got it.

12 CHAIRWOMAN MARTIN: Commissioner
13 Giaimo.

14 COMMISSIONER GIAIMO: Was there a
15 second to Commissioner Sheehan's motion?

16 CHAIRWOMAN MARTIN: Yes. Ms.
17 Duprey. And so we were in discussion --

18 COMMISSIONER GIAIMO: Okay. I
19 just...

20 CHAIRWOMAN MARTIN: Any more
21 discussion?

22 [No verbal response]

23 CHAIRWOMAN MARTIN: Okay. Seeing
24 none, we'll take a roll call vote.

1 All right. Commissioner Scott.
2 You're on mute.

3 COMMISSIONER SCOTT: I changed
4 microphone. Sue, can you hear me?

5 COURT REPORTER: Yes, thank you.

6 COMMISSIONER SCOTT: Okay. Just
7 for you.

8 A reluctant yes or yea, with just a
9 caveat that, again, I don't think it needs to
10 be a -- I think it can be grouped together.
11 And I guess effectively what I see would
12 happen in this scenario is Pam would give us
13 at some frequency, probably at the Chair's
14 election, she would submit all the
15 preliminary determinations, and we just
16 validate them. And then obviously that would
17 be a key for people to write in letters, et
18 cetera.

19 (Court Reporter interrupts.)

20 COMMISSIONER SCOTT: I said that
21 the way I would see this being implemented
22 would be the Administrator would, at some
23 frequency at the Chair's call, submit to the
24 Committee a summary of all the preliminary

1 determinations that she'd made for
2 validation.

3 CHAIRWOMAN MARTIN: Okay.
4 Commissioner Bailey.

5 COMMISSIONER BAILEY: I think that
6 that is a very good idea. And I don't know
7 if it's too late, but maybe we could ask that
8 that be done quarterly or something like
9 that. But as far as the motion goes, I vote
10 aye.

11 CHAIRWOMAN MARTIN: Why don't we
12 hold off on -- unless you think it needs to
13 be an amendment to the motion, why don't we
14 hold off and we can have a discussion after
15 about the expectations.

16 Commissioner Giaimo.

17 COMMISSIONER GIAIMO: Yes, with the
18 caveats already discussed earlier by
19 Commissioners Bailey and Scott.

20 CHAIRWOMAN MARTIN: Commissioner
21 Sheehan.

22 COMMISSIONER SHEEHAN: Aye.

23 CHAIRWOMAN MARTIN: Mr. York.

24 MR. YORK: Aye.

1 CHAIRWOMAN MARTIN: Ms. Duprey.

2 MS. DUPREY: Aye.

3 CHAIRWOMAN MARTIN: Mr. Kassas
4 left. I think I missed Director Arvelo.

5 DIRECTOR ARVELO: Aye.

6 CHAIRWOMAN MARTIN: And the Chair
7 votes aye. The motion carries.

8 Before we move to anything else, I
9 think Commissioner Scott and Commissioner
10 Bailey were raising sort of a timing issue.
11 I'm thinking that Commissioner Scott's
12 approach makes some sense, because if we get
13 a whole bunch in a short period of time, we
14 may want to bring them to the Committee
15 sooner. And so some discretion in making
16 that determination about when to actually
17 call for a meeting would I think make some
18 sense. If we don't have any, then we won't
19 need to have one.

20 Ms. Monroe.

21 ADMINISTRATOR MONROE: Just a point
22 of clarification regarding the noise
23 complaints and the grant of authority that's
24 currently in the Certificate.

1 The question is: Would I continue
2 to do what I'm doing, which is engage Mr.
3 Tocci, and to evaluate those complaints and
4 get a report, and then that report would then
5 be presented to the Committee? I just want
6 to make sure that that's clear. Because
7 versus the expectation that every time I get
8 one of these noise complaints, I've got to
9 bundle it up and say, well, this is what I'm
10 going to do, I'm going to engage Mr. Tocci.
11 Just to clarify. Thank you.

12 CHAIRWOMAN MARTIN: No. I think
13 the motion and its adoption gave you the
14 authority to do the investigations. You
15 already have the authority to validate noise
16 complaints. And so you would be able to do
17 that and make a preliminary determination
18 which you would present to the Committee with
19 a report.

20 ADMINISTRATOR MONROE: Okay. Thank
21 you.

22 CHAIRWOMAN MARTIN: Commissioner
23 Sheehan, did you have something to say on
24 that?

1 COMMISSIONER SHEEHAN: It was just
2 to clarify the same details that you covered.
3 So...

4 CHAIRWOMAN MARTIN: Okay. One
5 thing before we move on. We had the request
6 for a technical session you heard today and a
7 request for a public hearing. In light of
8 what we just did, does anybody think that the
9 Committee needs to contemplate that, or is
10 the Committee prepared to move on?

11 Commissioner Bailey.

12 COMMISSIONER BAILEY: Was the
13 technical session request intended to sort
14 through the application of the rule with
15 respect to the measurements for sound?

16 CHAIRWOMAN MARTIN: That was my
17 understanding, that it was. And for the
18 counsel that was requested to attend, I think
19 they were involved in the original
20 establishment of the rule related to the
21 sound monitoring. And so I'm assuming,
22 although I don't know for sure, that that was
23 the intent.

24 COMMISSIONER BAILEY: I think that

1 may help to possibly provide education to
2 members of the public about the rules. And
3 also, maybe if there was a sound expert there
4 who could explain the technical details of
5 what the rules mean, I don't see why we
6 wouldn't do that.

7 COMMISSIONER SCOTT: Madam Chair,
8 if I might. If we're going to go down that
9 road, wouldn't we be better to wait? We
10 authorized the Administrator to hire the
11 technical expert. That seems -- what that
12 technical expert does I think will be at the
13 crux of the technical session anyways. So
14 wouldn't we be better off to -- again, not to
15 push that decision off, but to push that off
16 until we get those results? Maybe it's a
17 timing issue. If we were to do that, I think
18 without being informed by that review from
19 the technical expert, I don't think it's
20 going to be all that productive.

21 CHAIRWOMAN MARTIN: Commissioner
22 Bailey, any follow-up on that?

23 COMMISSIONER BAILEY: No. I think
24 it... no. I don't know what to say about

1 that.

2 CHAIRWOMAN MARTIN: I think to your
3 point, the underlying issue is whether the
4 rule requires a certain approach or not. And
5 so the current process that's already in
6 process involves a certain application and
7 understanding of the rule. To the extent you
8 think it would be helpful to have more
9 discussion about what the rule provides for
10 in order to inform that process, I think
11 doing it sooner makes some sense. To
12 Commissioner Scott's point, that is in
13 process at this point. And so I guess it's
14 just a question of timing when you think it
15 would be most helpful.

16 Anybody else want to speak on that?

17 Ms. Duprey.

18 MS. DUPREY: I thought we weren't
19 really capable of saying what the rule meant,
20 and that's why we were hiring this expert.
21 So I'm not sure how we could have a meeting
22 where we can really accomplish what's desired
23 without having this expert go out and do his
24 work and tell us whether it complies with the

1 rules.

2 CHAIRWOMAN MARTIN: Well, I think a
3 technical session is sort of a term of art
4 for the Public Utilities Commission. It's
5 sort of an opportunity for stakeholders to be
6 involved in getting input. It doesn't
7 involve the Committee or the Commission in
8 that case. So I think the proposal was that
9 the folks who had come up with the rule would
10 be involved with the conversation and maybe
11 provide some insight.

12 Okay. Does anyone want to take
13 action related to that? Is there a motion,
14 or do we want to move on?

15 [No verbal response]

16 CHAIRWOMAN MARTIN: I don't see any
17 motion, so I think that I will take from that
18 that the Committee does not want to act at
19 this time. And consistent with Commissioner
20 Scott's thought, we'll defer that til after
21 receiving information from the investigation.

22 Okay. We have the last item, which
23 is any other business that's lawfully before
24 the Committee. And I know Ms. Monroe has

1 something on that.

2 We had public comment at the end.
3 We did open with the public comment. I do
4 want to share with the Committee that Ms.
5 Linowes has asked to speak again and
6 indicated she did not use her entire five
7 minutes. I defer to the Committee as to
8 whether they want to reopen public comment,
9 but I did not want to proceed without at
10 least letting you know that was requested.

11 Ms. Monroe.

12 ADMINISTRATOR MONROE: I just want
13 to note one other thing, is that I received
14 an e-mail from Ms. Longgood, who we attempted
15 to connect with a few times. And she said
16 her phone was on speaker and it did not
17 broadcast. She's been listening for two
18 hours and is available for comment.

19 CHAIRWOMAN MARTIN: What's the will
20 of the Committee? Would you like to reopen
21 public comment for an additional minute or so
22 by Ms. Linowes and to hear from Ms. Longgood?

23 Commissioner Giaimo.

24 COMMISSIONER GIAIMO: Are they

1 mutually exclusive? Are there two different
2 questions? Because Ms. Linowes has had an
3 opportunity to speak. But I forget the other
4 -- Ms. Longgood, sounds like she had
5 technical issue and never had that
6 opportunity. So I certainly would like to
7 hear from her, to the extent she's been
8 waiting two hours and has additional
9 comments. I'm less persuaded that a person
10 that already spoke for four and a half
11 minutes should get more time.

12 COMMISSIONER SCOTT: I agree with
13 that. I'd like to allow Ms. Longgood to
14 speak. She had a technical issue. That's
15 one of the premises of doing these remote, I
16 don't know what the right word is. But we're
17 not in person and, you know, we should be
18 accommodating that.

19 In reference to Ms. Linowes, you
20 know, we're at 6:15 now. We had public
21 comment already. I think that's sufficient
22 from my end. So that would be my desire.

23 CHAIRWOMAN MARTIN: Anyone else?

24 MR. YORK: I'd like to have both of

1 them speak, if it's only for one minute for
2 Ms. Long -- for Ms. Linowes.

3 CHAIRWOMAN MARTIN: Okay. Do you
4 want to take a vote on this since we have
5 differing opinions?

6 Commissioner Giaimo.

7 COMMISSIONER GIAIMO: I certainly
8 don't need to vote on it. I had an opinion.
9 But I would defer to my fellow commissioner,
10 Mr. York -- sorry, Committee member, Mr.
11 York, on this.

12 CHAIRWOMAN MARTIN: Okay. Then it
13 sounds like we will reopen public comment.

14 Mr. Wind, thank you for still being
15 here, and Ms. Robidas. Would you be able to
16 promote Ms. Longgood?

17 MS. LONGGOOD: I'm right here if
18 you can hear me.

19 COURT REPORTER: And who is this?

20 MS. LONGGOOD: This is Janice
21 Longgood. I'm sorry.

22 CHAIRWOMAN MARTIN: Ms. Longgood,
23 this is Dianne Martin.

24 MS. LONGGOOD: Hi.

1 CHAIRWOMAN MARTIN: I'm the Chair
2 of the Committee. You have five minutes. I
3 apologize that you had some technical issues
4 earlier. And the Committee would like to
5 hear from you.

6 MS. LONGGOOD: Well, thank you very
7 much. I will not take the full five minutes.
8 But as one of the complainants, I do want to
9 emphasize how incredibly loud these turbines
10 can be at times. But certainly for several
11 days they can be normal sump(?) time, and
12 other times it is like jet engines. And I
13 know other neighbors on Salmon Brook Road
14 have not complained officially, but I think
15 even the neighbors across Salmon Brook Road
16 that are further away from the turbines can
17 hear it in their house. Some nights you just
18 say, wow, those things are -- they're like
19 jet engines, particularly at night. And I
20 don't think you will ever get to the essence
21 of the noise complaints if you average sound
22 because there are certainly peaks. It's been
23 okay today. I can hear them a bit. But it's
24 not as loud as when I've been out with a

1 decibel reader and it's extraordinarily loud.

2 So I guess I'm just -- and I do
3 understand when I did finally turn my phone
4 on and noticed that I'd lost about an hour,
5 that you are going to have an analysis of the
6 rules by Mr. Tocci, which I am in support of.
7 And I'm certainly in hopes that we can get
8 some accurate reading over time of what these
9 turbines sound like here.

10 I am an abutter. I can see four
11 turbines from my home. And certainly shadow
12 flicker has been something I've experienced.
13 It's not pleasant. But I'm sure it's within
14 the rules in terms of timing. But it is the
15 noise that I find -- and I am west of the
16 turbines. And I know the folks over on Reed
17 Carr are east. So I don't know if weather
18 has an impact on that. But I just do want to
19 emphasize how variable the sound is and how
20 incredibly loud it is at times. But
21 certainly if you average it out over a few
22 hours, you're not going to get those ups and
23 downs.

24 That is basically my comment, and I

1 appreciate the ability to be able to talk at
2 this late date.

3 CHAIRWOMAN MARTIN: Okay. Thank
4 you, Mrs. Longgood.

5 All right. Then Ms. Linowes.

6 MS. LINOWES: Yes, Madam Chair.
7 Can you hear me okay?

8 CHAIRWOMAN MARTIN: We can.

9 MS. LINOWES: Okay. Thank you. I
10 just had two quick comments I wanted to make.

11 During the course of the discussion
12 regarding the sound, the people on the
13 Committee, and it sounded like from Ms.
14 Monroe as well, there was a distinction
15 between complaints and post-construction
16 sound monitoring, the seasonal monitoring.
17 In fact, the rule is exactly the same. The
18 rules are exactly the same. The only
19 difference between the two is that if it's a
20 complaint, the study has to be done under the
21 same meteorological condition. So there is
22 no separation between the two.

23 Second point I wanted to make is
24 thank you for the discussion about having a

1 technical session. I listened. And as I
2 mentioned earlier, I drafted the rule that is
3 now 18, the sound methodology. And it's very
4 difficult to hear Ms. Monroe struggle with
5 what the wording meant. And I just want you
6 to know the purpose of the technical session
7 was to bring in fact the lawyers in and the
8 stakeholders to discuss what it meant,
9 because as Ms. Duprey said, this is a legal
10 question, not a -- how the rules are
11 implemented is a legal question, not a
12 question that can be answered by an expert.
13 Experts should not be giving legal answers.
14 Thank you.

15 CHAIRWOMAN MARTIN: Okay. Thank
16 you. And Mr. Getz -- Attorney Getz.

17 MR. GETZ: I'd just respond to the
18 last issue about the technical session. And
19 from Antrim's position, we are objecting to a
20 technical session. We think it's time to let
21 the Administrator and the third-party expert
22 do their jobs and not to set up another
23 opportunity for a bite at the apple to change
24 the protocols. And so we are happy with the

1 decision not to schedule a tech session at
2 this point. Thank you.

3 CHAIRWOMAN MARTIN: Okay. Thank
4 you. All right. So I think that's everyone
5 for public comment.

6 Now we can move to our last item,
7 which is any other business that is lawfully
8 before the Committee. I think Ms. Monroe had
9 something to raise here.

10 ADMINISTRATOR MONROE: I do.

11 On July 24th I received a request
12 to adjust the schedule and location for the
13 post-construction sound monitoring. It's
14 been distributed to you. It's posted on the
15 web site. It's also been sent to Ms.
16 Linowes. She had some questions, and I had
17 received it and I sent it to her
18 specifically. And Paragraph 3, which is on
19 Page 3 of the request, also has a request to
20 waive -- a waiver of the rules. So I bring
21 that before you for your consideration.

22 CHAIRWOMAN MARTIN: Does anybody
23 have any questions or comments related to
24 that?

1 Ms. Duprey. I'm sorry. You can go
2 ahead.

3 MS. DUPREY: I just have a question
4 as to who was the property owner that said
5 that they couldn't come on the property?

6 ADMINISTRATOR MONROE: There are --
7 (connectivity issue)

8 (Court Reporter interrupts.)

9 CHAIRWOMAN MARTIN: Ms. Robidas,
10 did you get that?

11 COURT REPORTER: I got the
12 question, and I thought Ms. Monroe was
13 starting to answer.

14 CHAIRWOMAN MARTIN: Okay. Ms.
15 Monroe.

16 ADMINISTRATOR MONROE: There are
17 two property owners that have denied access,
18 Ms. Longgood and Ms. Berwick, to have Mr.
19 Tocci, who did the initial site visit. They
20 dispute the contents of the protocol and have
21 denied access. I'll reach out to Ms.
22 Longgood, in light of what she just said, to
23 see if she's changed her mind. But I've
24 asked Ms. Berwick on numerous occasions, and

1 she's denied access to her property.

2 MS. DUPREY: And is the study not
3 valid if it can't be -- (connectivity issue)

4 (Court Reporter interrupts.)

5 MS. DUPREY: Is the study not valid
6 if it's not conducted at all five points?

7 ADMINISTRATOR MONROE: That's a
8 good question.

9 MS. DUPREY: I'm reluctant to not
10 go forward with these studies. Just really
11 reluctant. I feel like the whole sound thing
12 is the basis of a lot of issues here. And I
13 guess I'm concerned if we would let months
14 roll by without it, even if it can't be
15 conducted everywhere. I feel like we should
16 go back to the individuals who denied access
17 and see if they'll reconsider. But I think,
18 it seems to me, the studies should go
19 forward.

20 CHAIRWOMAN MARTIN: I want to
21 remind the Committee that this is the place
22 where we need to decide whether we would act
23 today, in light of this being in the "Other
24 Business," but not having been on the agenda.

1 So I think we should discuss that first and
2 make a decision about whether to act at all,
3 or whether a further proceeding would be
4 required for this. Does anybody want to
5 weigh in on that?

6 Commissioner Bailey.

7 COMMISSIONER BAILEY: I think it
8 may be prudent to have another proceeding. I
9 think that we're all very tired, for one
10 thing. And for another thing, I would like
11 to hear from both sides on the issue before,
12 so that I can fully understand. It seems
13 like a no-brainer, but nothing is ever a
14 no-brainer. And so I think we should have
15 another meeting to consider this waiver
16 request, or maybe assign it to a
17 subcommittee.

18 CHAIRWOMAN MARTIN: Okay. Anybody
19 else?

20 [No verbal response]

21 CHAIRWOMAN MARTIN: Seeing no
22 one --

23 COMMISSIONER SCOTT: This is
24 Commissioner Scott. I think I like all of

1 that. My concern is obviously we have a lot
2 of people in contention with a lot of the
3 issues around this, and I think it would be
4 helpful. Yes, technically I know this got on
5 the web site. But since it wasn't explicitly
6 referenced in the agenda, I wouldn't mind
7 having that as a separate proceeding. Having
8 said that, I will argue that, one way or
9 another, it sounds like we can't ask a party
10 to do the impossible. And if they're not
11 allowed to -- if they were barred from doing
12 it by the property owners, in some fashion I
13 would argue there needs to be some
14 accommodation for that. So, you know, I
15 certainly recognize that.

16 CHAIRWOMAN MARTIN: Okay. Anyone
17 else?

18 [No verbal response]

19 CHAIRWOMAN MARTIN: All right.
20 Seeing none, looks like we don't have a
21 motion, so we won't take any action on that
22 item.

23 Is there any other business before
24 the Committee? Ms. Monroe.

1 ADMINISTRATOR MONROE: I just want
2 to clarify. So I would convene the Committee
3 with an agenda item to consider this waiver
4 request. Is that what is expected?

5 CHAIRWOMAN MARTIN: That's my
6 understanding based upon what Committee
7 members just said.

8 COMMISSIONER SCOTT: Remind me. Is
9 this more appropriate for a subcommittee, or
10 does it need the full Committee?

11 CHAIRWOMAN MARTIN: Counsel, is a
12 subcommittee an option here? If we need more
13 time, we can --

14 MR. IACOPINO: No. Yes, the
15 subcommittee is an option. Under RSA
16 162-H:4-a, the Chairperson may establish a
17 subcommittee to consider applications, blah,
18 blah, blah, or to exercise any other
19 authority or perform any other duty of the
20 Committee under this chapter, except that a
21 subcommittee may not approve budgetary
22 requirements. So, yes, I think you could
23 assign a subcommittee to determine whether or
24 not the motion for a waiver should be granted

1 or denied.

2 CHAIRWOMAN MARTIN: Okay. So
3 understanding that that authority exists,
4 though, does the Committee prefer to have it
5 done by a subcommittee, or is this something
6 that's of interest to the members that we
7 have today? Anybody want to be heard on
8 that?

9 COMMISSIONER SCOTT: Well, my
10 suggestion is a subcommittee, if nothing
11 else, to get a timely disposition of this. I
12 don't know how hard it was for the
13 Administrator to get us all together. But
14 historically, the more people, the harder it
15 is to get everybody together.

16 CHAIRWOMAN MARTIN: Okay. Well,
17 we'll make an effort to have as many
18 Committee members involved as possible, but
19 we'll be able to use a subcommittee if need
20 be.

21 All right. Anything else? Any
22 other business?

23 [No verbal response]

24 CHAIRWOMAN MARTIN: Seeing none,

1 let's -- do I have a motion to adjourn?

2 COMMISSIONER SCOTT: I move we
3 adjourn.

4 CHAIRWOMAN MARTIN: Thank you. All
5 right. And then fortunately we have to take
6 a roll call vote for that.

7 Commissioner Bailey.

8 COMMISSIONER BAILEY: Aye.

9 CHAIRWOMAN MARTIN: Commissioner
10 Giaimo.

11 COMMISSIONER GIAIMO: Aye.

12 CHAIRWOMAN MARTIN: Commissioner
13 Sheehan.

14 COMMISSIONER SHEEHAN: Aye.

15 CHAIRWOMAN MARTIN: Commissioner
16 Scott.

17 COMMISSIONER SCOTT: Yes.

18 CHAIRWOMAN MARTIN: Director
19 Arvelo.

20 DIRECTOR ARVELO: Aye.

21 CHAIRWOMAN MARTIN: Let's see who I
22 missed. Ms. Duprey.

23 MS. DUPREY: Aye.

24 CHAIRWOMAN MARTIN: Mr. York.

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MR. YORK: Aye.

CHAIRWOMAN MARTIN: And the Chair
votes aye. We are adjourned. Thank you,
everyone, for your time.

ADMINISTRATOR MONROE: Thank you
all for your time, everyone. Good night.

(Whereupon the hearing was adjourned at
6:29 p.m.)

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C E R T I F I C A T E

I, Susan J. Robidas, a Licensed Shorthand Court Reporter and Notary Public of the State of New Hampshire, 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.

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