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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

December 11, 2023 - 1:38 p.m. *(Electronically*
Public Utilities Commission *filed on 01-09-24)*
21 South Fruit Street Suite 10
Concord, New Hampshire

IN RE: SITE EVALUATION COMMITTEE:

Public Meeting of the full Site
Evaluation Committee to address
Administrative Matters; Discussion
of Rules; Annual Review and
Evaluation of Application Fees and
Filing Fees; SEC 2021-02 Antrim
Wind Energy Facility Complaint
Investigation; and any other
business lawfully before the
Site Evaluation Committee.

PRESENT: SITE EVALUATION COMMITTEE:

Chairman Daniel C. Goldner	Public Utilities Comm.
<i>(Presiding as Chairman of SEC)</i>	
Cmsr. Robert R. Scott	Dept. of Env. Services
<i>(Vice Chairman of the SEC)</i>	
Cmsr. Carleton B. Simpson	Public Utilities Comm.
Cmsr. Pradip K. Chattopadhyay	Public Utilities Comm.
Cmsr. William J. Cass	Dept. of Transportation
Cmsr. Michael C. York	Dept. of Natural and Cultural Resources
Joseph Doiron <i>(Designee)</i>	Dept. of Business and Economic Affairs
James Jalbert	Public Member

Also Present *for the SEC:* Andrew Biemer, SEC Admin.

Court Reporter: Steven E. Patnaude, LCR No. 52

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APPEARANCES AS NOTED:

Reptg. Antrim Wind Energy:

Barry Needleman, Esq.
Thomas B. Getz, Esq.
(*McLane Middleton*)

Reptg. Counsel for the Public:

K. Allen Brooks, Esq.
(*N.H. Dept. of Justice*)

Reptg. the Subcommittee:

John-Mark Turner, Esq.
(*Sheehan Phinney...*)

OTHERS PRESENT (as noted):

Richard Block
Fred Ward
Lisa Linowes
Lori Lerner
Shelley Nelkens
Joe Wilkas
Barbara Berwick
Karen Payne
Robert Edwards
Mary Triick

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P R O C E E D I N G

CHAIRMAN GOLDNER: Okay. Good
afternoon. I call to order the public meeting of
the Site Evaluation Committee. This is a general
business meeting of the Committee. Notice of
this meeting was posted on November 17th on the
SEC website, and on the bulletin board outside
the main offices of the SEC, here at 21 South
Fruit Street, in Concord, New Hampshire.

This meeting notice was also
distributed via the Committee's business meeting
service list, and the service list for the Antrim
Wind Facility's Investigative Subcommittee
overseen in Docket Number 2021-02. Included with
this notice is the expected agenda for today's
meeting.

Before we do anything else, let's
identify the Committee members. I'll ask all
members to identify themselves and their title.
I note that there is a quorum present to continue
with today's meeting.

I'll begin with myself. I'm Chairman
Goldner, Chairman of the Public Utilities
Commission.

1 VICE CHAIRMAN SCOTT: Bob Scott,
2 Department of Environmental Services,
3 Commissioner.

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

6 CMSR. CHATTOPADHYAY: Pradip
7 Chattopadhyay, PUC Commissioner.

8 MR. JALBERT: Jim Jalbert, C&J Bus
9 Lines, member of the Committee.

10 MR. YORK: I'm Michael York,
11 representing the Department of Natural and
12 Cultural Resources.

13 CMSR. CASS: I'm Bill Cass, from New
14 Hampshire DOT, member of the Committee.

15 MR. DOIRON: Joseph Doiron,
16 representing the Department of Business and
17 Economic Affairs.

18 CHAIRMAN GOLDNER: Thank you. And I'll
19 note for the record that an updated letter from
20 Commissioner Caswell was received this morning
21 fully delegating his SEC responsibilities to Mr.
22 Doiron. The letter, as I understand it from the
23 Administrator, has already been posted in the
24 docket.

1 So, moving onto administrative matters.
2 Have the members had the opportunity to review
3 the minutes from the Committee's last general
4 business meeting, held on June 7th, 2023? And,
5 if so, are there any changes or corrections to
6 those minutes?

7 *[No indication given.]*

8 CHAIRMAN GOLDNER: Hearing none --
9 pardon me. Hearing none, do I have a motion to
10 approve those minutes?

11 CMSR. CASS: So moved.

12 CHAIRMAN GOLDNER: Do I have a second?

13 CMSR. SIMPSON: Second.

14 CHAIRMAN GOLDNER: Thank you. All
15 those in favor to approve the June 7th, 2023,
16 meeting minutes say "aye"?

17 *[Multiple members indicating "aye".]*

18 CHAIRMAN GOLDNER: Any opposed?

19 *[No indication given.]*

20 CHAIRMAN GOLDNER: Okay. The minutes
21 are finalized. The Administrator, Mr. Biemer,
22 shall mark these minutes as "final", and the vote
23 was unanimous.

24 Okay. Moving onto Agenda Item

1 Number 2, the discussion of potential changes to
2 SEC rules. Pursuant to RSA 162-H:10, VI, the
3 Site Evaluation Committee is tasked with issuing
4 rules pursuant to RSA 541-A, as required. A
5 review of the SEC 200 rules notes an absence of
6 any rules pertaining to remote -- to remote
7 participation in meetings. Changes to RSA 91-A
8 went into effect on October 3rd, 2023, which
9 required that, if a Committee member participates
10 in a meeting remotely, members of the public
11 shall be permitted to participate remotely as
12 well.

13 However, it is not mandatory that SEC
14 members be allowed to participate remotely. RSA
15 91-A:2, III, states that "a public body may allow
16 remote participation."

17 Given the recent changes to 91-A, does
18 the SEC wish to consider drafting rules
19 concerning when remote participation may be
20 appropriate?

21 And, before we discuss this, I'll turn
22 to Mr. Biemer to explain the practicality of
23 remote participation in the new statutory
24 framework. Mr. Biemer.

1 ADMIN. BIEMER: Thank you.

2 If we were to allow remote
3 participation at this hearing, for example,
4 assuming there was a member or two that had
5 requested to participate remotely, but we had a
6 quorum in the room. Before the remote portion of
7 the hearing commenced, the quorum that was
8 present in the room would have to vote whether or
9 not to allow it to be a remote hearing. At that
10 point in time, we would allow the members who
11 requested remote participation to join. I can't
12 see why they would not be allowed in.

13 But, then, it would also trigger a
14 remote participation requirement for the public.
15 So, the issue there is giving enough advance
16 notice to the public of whether or not the
17 meeting would be remote. It would be extremely
18 unfair to a member of the public, sitting at home
19 waiting for a link to go live, only for it not to
20 go live, because the members in the room voted
21 against it being a public hearing minutes after
22 it began.

23 Conversely, it would not be fair to
24 somebody, who took a day off from work or time

1 off to drive all the way here, to speak in
2 person, only to find out, once they got here,
3 that it was actually a remote hearing, and they
4 could have done it from home.

5 So, in the interest of being as
6 transparent as possible, especially with the
7 public, my recommendation is that we make very
8 clear guidelines under which circumstances we
9 would allow remote participation by Committee
10 members, knowing that it would, therefore,
11 trigger remote participation by the public. And
12 those instances, those scenarios would include
13 some type of emergency, whether something of this
14 sort, but it would also have to come with a
15 statutory timeline emergency, where we also
16 didn't have enough time to reschedule the
17 meeting.

18 So, if there was a, you know, for
19 instance, a snowstorm today, and we wanted to
20 cancel it, we would probably not have enough time
21 to schedule it before the end of this calendar
22 year, with the holidays coming up.

23 So, I think the parameters should be
24 black-and-white, and they should be very well

1 articulated. My preference is to always
2 reschedule, if there's a problem making a quorum.

3 But that is kind of a -- just a
4 description of where we stand, as far as where
5 the rules -- where the rules are concerned.

6 CHAIRMAN GOLDNER: Thank you,
7 Administrator Biemer.

8 I'll turn now to the Committee members
9 for any discussion on this topic of remote
10 participation and rulemaking. Any discussion?

11 Mr. Scott.

12 VICE CHAIRMAN SCOTT: So, if we were to
13 vote to do this, is the Administrator going to
14 draft some rules, or how would we proceed?

15 ADMIN. BIEMER: Yes, sir. I believe I
16 draft rules, and we put together a rulemaking
17 docket, for approval at our next meeting.

18 CHAIRMAN GOLDNER: Anything else from
19 the Committee members?

20 I could make a motion, if there's
21 nothing else. To authorize Administrator Biemer
22 to open a rulemaking docket to address remote
23 participation. Would any member like to move
24 that motion?

1 CMSR. SIMPSON: So moved.

2 VICE CHAIRMAN SCOTT: Second.

3 CHAIRMAN GOLDNER: Okay. Thank you.

4 We have a move and a second.

5 Okay. Let's vote. All those in favor
6 of a motion to open a rulemaking docket to
7 address remote participation, say "aye"?

8 *[Multiple members indicating "aye".]*

9 CHAIRMAN GOLDNER: Any opposed?

10 *[No indication given.]*

11 CHAIRMAN GOLDNER: Seeing none. So,
12 the vote is unanimous.

13 Administrator Biemer is authorized to
14 open a rulemaking docket to address remote
15 participation.

16 We'll now move to our third agenda
17 item, which is to review and evaluate the
18 application fees and filing fees contained in RSA
19 162-H:8-a. Pursuant to RSA 162-H:8-a, we are
20 required to review this fee schedule annually.

21 Mr. Biemer, can you please update us on
22 the current fee schedule and any recommendations
23 for changes?

24 ADMIN. BIEMER: Yes. I have provided

1 the members of the Committee -- sorry. I've
2 provided the members of the Committee with the
3 current fee schedule, which you should have in
4 front of you, and it's also available on the
5 website.

6 The fees are set by the Legislature.
7 And they were changed most recently in July of
8 2022. So, a little over a year ago.

9 The issue with the collection of fees
10 is that, in this past year, we've had no
11 collection of fees, because nobody has filed a
12 application to permit anything.

13 In 2022, we had in the neighborhood of
14 \$7,000 in fees, and that was a small ruling on
15 a -- on a capacitor bank project at the Seabrook
16 Nuclear Power Plant. That was ruled a "not
17 sizable upgrade".

18 Other than that, you would have to go
19 back in time until the Northern Pass Project to
20 find a meaningful collection of fees from the
21 Site Evaluation Committee.

22 So, with all that in mind, my
23 recommendation is we just keep the fees the same,
24 we don't either raise or lower them. But --

1 CHAIRMAN GOLDNER: Thank you,
2 Mr. Biemer. Any discussion from the SEC members
3 relative to approving or potentially changing any
4 fees?

5 CMSR. CASS: I would just -- I would
6 agree. They were redone in 2022, they're not
7 that -- they're not that out-of-date or anything,
8 so --

9 CHAIRMAN GOLDNER: Thank you, Mr. Cass.
10 Anything else from the Committee?

11 CMSR. SIMPSON: Just to clarify. The
12 update in 2022 was done by the General Court?

13 CHAIRMAN GOLDNER: Yes.

14 CMSR. SIMPSON: Is that correct?

15 ADMIN. BIEMER: That's correct.

16 CMSR. SIMPSON: Thank you.

17 CHAIRMAN GOLDNER: Okay. I'll just
18 say, do I have a motion to approve readoption of
19 the fee schedule without amendment?

20 MR. DOIRON: So moved.

21 CHAIRMAN GOLDNER: Thank you. Do I
22 have a second?

23 CMSR. CHATTOPADHYAY: So seconded.

24 CHAIRMAN GOLDNER: Thank you.

1 Let's have a vote. All those in favor
2 of the motion to approve readoption of the
3 current fee schedule without amendment say "aye"?

4 *[Multiple members indicating "aye".]*

5 CHAIRMAN GOLDNER: Any opposed?

6 *[No indication given.]*

7 CHAIRMAN GOLDNER: Seeing none, the
8 motion passes unanimously. And the current fee
9 schedule is hereby readopted without amendment.

10 Okay. We'll now move to our fourth
11 agenda item, which is to review the outstanding
12 issues related to Docket 2021-02. Excuse me.
13 This process will include opening the forum to
14 public comment.

15 Anyone wishing to speak publicly should
16 identify themselves for the record, and
17 understand that you have -- you'll have five
18 minutes to provide your comments. We have a
19 sign-up sheet here, and I see ten, ten people
20 that would like to speak.

21 Is there -- is that correct? Would
22 anyone like to see the sign-up sheet again or to
23 sign up to speak that hasn't already?

24 *[No indication given.]*

1 CHAIRMAN GOLDNER: Okay. Seeing none.
2 We've got ten folks who have signed up to speak.
3 And I'll just remind you that everyone has five
4 minutes, to be fair to all.

5 *[Brief interruption.]*

6 CHAIRMAN GOLDNER: I'm sorry. Let me
7 just finish my prologue here, and then we can
8 come back.

9 After hearing from the public, we'll
10 open the forum to Attorney Allen Brooks to speak
11 to his October 6th, 2023, letter, and then
12 Attorney John-Mark Turner's reply. After hearing
13 from Attorney Brooks and Attorney Turner, I'll
14 then turn to Mr. Biemer to provide an update from
15 the Subcommittee concerning the June 2023 -- I'm
16 sorry, the June 23rd in 2023 order.

17 Finally, the SEC will discuss and
18 deliberate on outstanding complaints. We'll
19 disposition all outstanding sound/ADLS complaints
20 currently docketed, and determine whether any
21 further action in Docket 2021-02 needs to be
22 undertaken.

23 I'll note here that, in accordance with
24 RSA 162-H:12, II, beginning October 7th, 2023,

1 the Department of Energy has assigned its
2 Enforcement Division the responsibility of
3 investigating new complaints concerning
4 violations of certificates granted by the Site
5 Evaluation Committee for the construction and
6 operation of energy facilities. The Division --
7 the Division also has taken on the related duties
8 of monitoring and enforcement in accordance with
9 RSA 162-H:12, I.

10 I'll also note here that the SEC
11 Administrator has received two new complaints
12 today concerning Antrim Wind. The SEC
13 Administrator will contact the complainant with
14 respect to further process, as I mentioned
15 before, with RSA 162-H:12.

16 Before we go to public comment, I think
17 somebody might have had their hand up, or, if
18 that's been resolved, we can move to public
19 comment? Yes.

20 MS. LINOWES: Thank you, Mr. Chair.
21 Thank you for letting me speak.

22 I just wasn't aware that there was a
23 five-minute limit. My comments might be a minute
24 or more, or two over that. And, normally, you

1 would allow the public to know in advance the
2 limit. Are you going to be strict with that five
3 minutes?

4 CHAIRMAN GOLDNER: Well, we won't be
5 very strict today. I think if it's six minutes
6 or seven minutes, I think that would be okay.
7 I'm sure some will be shorter as well.

8 MS. LINOWES: Great. Thank you.

9 CHAIRMAN GOLDNER: So, Ms. Lerner?

10 MS. LERNER: I just want to confirm
11 that I'm on the list to speak? I'm not sure if I
12 signed the proper list.

13 CHAIRMAN GOLDNER: Yes. You signed the
14 proper list. I have -- and, if we get to the
15 bottom, and somebody feels like they haven't been
16 recognized, just raise your hand and I'll allow
17 it.

18 I'll just start at the top of the list.
19 And I see a Karen Payne wishing to speak. So, if
20 Ms. Payne wishes to proceed.

21 Yes. And please make sure that the red
22 light is on on your microphone.

23 MS. PAYNE: Okay. Good morning. Karen
24 Payne, from Effingham. Thank you for this

1 opportunity.

2 As we move into one of the most
3 precious parts of our democracy, which is that
4 now the people, the public, can actually speak
5 about laws and regulations that are affecting
6 them. And the neighbors of your projects are
7 here. We're not here because someone is paying
8 us. We're not here because we're politically
9 motivated. But something has touched our hearts,
10 and given us the passion to put in the time and
11 the energy to come here. Something has occurred
12 that has directly affected all of us.

13 These are the people who have lived the
14 repercussions, sometimes unseen, of these huge,
15 wonderful projects. But these are the people on
16 the ground who understand the repercussions. And
17 I am -- I'm your future.

18 I'm here today because I'm wondering if
19 this is possibly the last SEC meeting, as the SEC
20 is currently formatted. Because, on January 5th,
21 House Bill 609 goes to the House, in which these
22 meetings will now be given to the PUC, with two
23 guests that the Governor is going to appoint to
24 join them.

1 So, I'm looking towards our future,
2 when we have input on this project that we would
3 like to bring to you, how will that, so that we
4 know, how -- can you educate us, how will it
5 change how we come to you with our input,
6 following the passage of House Bill 609?

7 CHAIRMAN GOLDNER: I think I can answer
8 that question here.

9 I think the Department of Energy now
10 houses the Enforcement Division. So, any
11 complaints from the public, relative to Antrim
12 Wind, an existing project, will and should be
13 filed with the Department of Energy. And
14 Administrator Biemer can provide sort of helpful
15 -- help and guidance, in terms of how to do that.
16 But that would be the appropriate place for any
17 new complaints.

18 MS. PAYNE: And new wind projects that
19 we might like to be involved in, is that -- what
20 will the process be?

21 CHAIRMAN GOLDNER: A new wind project
22 would follow the existing process with the SEC,
23 as it's been followed before. As you mentioned,
24 there is legislation that could change the

1 formulation of the SEC. But, of course, nobody
2 knows if that legislation will pass or not.

3 So, if it does or if it doesn't, it
4 would still follow the same process.

5 MS. PAYNE: The same process. So, the
6 process is that this SEC will be passed to the
7 next SEC, same process?

8 CHAIRMAN GOLDNER: Correct. You can
9 think of it as a "bifurcation"; the enforcement
10 piece moves over to the DOE, the application
11 piece, the front-end piece, stays at the PUC.

12 MS. PAYNE: Okay.

13 CHAIRMAN GOLDNER: Is that helpful?

14 MS. PAYNE: Thank you. That's helpful.

15 CHAIRMAN GOLDNER: Thank you.

16 MS. PAYNE: Yes. Okay. So, thank you.
17 So, thank you for hearing now what the people on
18 the ground are experiencing.

19 CHAIRMAN GOLDNER: Thank you. Thank
20 you, Ms. Payne.

21 We'll move now to Fred Ward.

22 MR. WARD: Thank you.

23 We really have two main topics that are
24 problems. The first has to do with the lighting

1 or the flashing red lights on the Antrim Wind
2 facility, for which there's been no answers to
3 date. I'm not going to speak to that subject.
4 There are other people here who are. I want to
5 speak to the question of the sounds, and the loud
6 sounds, which many of the neighbors are
7 complaining about.

8 Now, I have to start by saying that I'm
9 a meteorologist, and the sound that the neighbors
10 get is almost completely a meteorological
11 problem. There's been reports, and I'm sure you
12 read them. And I have to confess that I'm not
13 sure exactly where along the line of approval
14 this thing has gotten. I'm not even sure what
15 we're trying to approve. I thought we were
16 objecting to what was going on, but I'm not so
17 sure about that anymore.

18 But, on the assumption that there's a
19 report, either in writing or in everybody's mind,
20 the report that you're talking about, and which
21 was the subject of discussion at our last
22 meeting, depends on a report you got from what I
23 will call the "Evans, Eaton Committee", which you
24 appointed to try to resolve the question of the

1 sound. That report, and the implications of it,
2 is an insult, to you, to me, and to everyone in
3 this room. It does not -- that report, and all
4 of the things that went into it, is in violation
5 of just about any kind of logic that you would
6 apply to it. Now, why do I complain about the
7 logic? That's insulting.

8 The logic is simple. The amount of
9 noise that the turbines make is totally dependent
10 on how strong the wind is. The stronger the
11 winds, the faster the things go, the louder the
12 sounds are. It's not linear and all these
13 things, but as a general rule.

14 Then, there's the other part, the noise
15 is made at the turbine. Now, the neighbors are
16 not at the turbine. So, the question is, how
17 does that noise get to the neighbors? Well,
18 under most conditions, most of the noise goes up
19 and out to space. It gets scattered around
20 everyplace, and then some of it goes downhill,
21 because all of these things are above the
22 neighbors.

23 Now, the question is, what happens to
24 it when it gets downhill? And most of the time,

1 it kind of dissipates and bounces around things,
2 and so forth. But there's one meteorological
3 situation, which happens often, I don't want to
4 say "once a year", "once a month", "once a day,
5 "once an hour", or "every night". Because we do
6 not know, and it will be very much dependent on
7 the topography and all of those things at a
8 particular site. So, if we knew what it was like
9 at one site, and you move 100 miles, it wouldn't
10 necessarily be the same.

11 But there's a particular situation,
12 which we call a "temperature inversion". At
13 night, which is what we're talking about, most of
14 the sound goes into the air, and then goes off.
15 But all of the things at night, the Sun heats the
16 air in the daytime, but the air cools by contact
17 with the ground. The air radiates very little.
18 It's almost all by contact with the ground as it
19 cools. So, you almost always at night,
20 especially on any clear nights, you get the
21 coldest temperatures are right at the ground,
22 and, as you go up a little bit, they warm. Most
23 of the time, or in the daytime, and the warmest
24 temperatures at the ground, they get colder as

1 you go up, but not at night.

2 Now, the problem is that the speed of
3 sound goes up as the temperature goes up. A
4 little faster, not a lot, but it runs faster in
5 warm temperatures than in cold temperatures. So,
6 then, if you have a situation where you've got
7 the cold air at the ground, and it's being
8 kept -- the ground is radiating into space, so
9 it's getting colder, you will get in the area
10 around, in the lower part, away from the
11 turbines, you will get a collection and a gradual
12 pooling of cold air. When sound goes into that
13 pooling of cold air, and the pooling is high
14 enough, it gets trapped in there, because of the
15 way the sound varies as the temperature.

16 It's called an "inversion". You can
17 call it a "pool of cold air", whatever you want
18 to call it, but the difference between the sound
19 coming in from the turbine, it's of that kind of
20 cold air, and you otherwise get -- it's a factor
21 of 10 or 100, many decibels. It isn't a minor
22 effect.

23 So that everybody knows that, everybody
24 in the sound system, and Mr. Menge, who ran the

1 sound test, knows that the times when we're going
2 to exceed the 40 dB noise level at night, are
3 only going to be at times when we have this
4 particular weather situation. As I said, it may
5 be once a year, once a month, once a week,
6 whatever it is, but it happens. Other times,
7 which is certainly more than half the time, it
8 has no effect whatsoever, because most of the
9 sound just goes out into space.

10 So, the problem we have here is we get
11 people who happened -- when these -- when this
12 situation happened, they hear a lot of noises.
13 It's very annoying in the middle of the night and
14 toward dawn, and, so, they complain. Well, it's
15 reasonable to have somebody see whether it's true
16 or not. If I called in and said "Hey, there's a
17 loud noise", you don't know whether there was or
18 not.

19 So, we hired, and there was \$100,000
20 spent on a Mr. Menge, M-e-n-g-e. And he was
21 tasked by a Subcommittee on this Committee to go
22 out and make some tests to determine whether, in
23 fact, the Antrim Wind was exceeding the 40 dB
24 level. And it can only happen under these

1 circumstances.

2 Mr. Menge decided that he would go out
3 only on nights when it was not that way. If you
4 look at his report, it's a disgrace. He gives
5 you times when he went out; there wasn't a chance
6 that they would have an over 40 dB level. The
7 Committee -- or, Subcommittee should have known
8 that. And, if they don't, you need to know it.

9 The net of it is, without getting into
10 much detail, is that there isn't -- at all right
11 now, no evidence to support whether Antrim Wind
12 exceeds the 40 dB or not. The report from your
13 Subcommittee is a total waste of time and money.
14 And you need to either go back and get somebody
15 to run a test, or just say "Antrim Wind violates
16 the 40 dB level and close it down." I doubt that
17 you want to do that. And I think that there
18 would be a lot of the problems if you did.

19 But you need to know, are the
20 complaints that the neighbors are making, and
21 they're making the complaints, you have the whole
22 list of them, they're making complaints that the
23 noise at night is too loud? And I don't know
24 whether it is or not. I suspect it is, but I

1 don't know. Mr. Menge doesn't know, your
2 Subcommittee doesn't know, and you have no way of
3 knowing.

4 Now, I've suggested, for example, the
5 fastest way, and I'll end with this, all you have
6 to do is bring Mr. Menge in here. We were not
7 allowed to question him. They were not -- our
8 questions, which were submitted ahead of time to
9 the Subcommittee, were ignored. So, no questions
10 were ever asked of Mr. Menge. A few very short
11 questions were determined as to whether anything
12 that he did was of value to you in making a
13 decision. You need to know that. And you need
14 to ignore your Subcommittee, which is hopeless.
15 And you need to ignore all the things that Mr.
16 Menge measured when he would get his \$100,000.
17 And you need to know, to answer to the people who
18 are complaining, do we have loud noises? And, if
19 we do, what are we going to do about it? But,
20 first, you need to know whether you're getting
21 them, and you have no data to do that.

22 Thank you.

23 CHAIRMAN GOLDNER: Thank you, Mr. Ward.

24 Attorney Brooks, I have some questions.

1 Is Attorney Brooks here?

2 *[Indication by show of hand.]*

3 CHAIRMAN GOLDNER: Thank you. I have
4 some questions for you and Attorney Turner later.
5 Do you have something -- could you wait until the
6 discussion with you and Mr. Turner, or would you
7 like to say something first?

8 MR. BROOKS: I would actually prefer to
9 go at the end. I just wanted to make sure I was
10 on the list.

11 CHAIRMAN GOLDNER: Well, thank you.
12 Okay. Very good, sir. You're on the list.

13 Barbara Berwick.

14 MS. BERWICK: Hi. Thank you.

15 I am going to actually read you some of
16 the communications that I have had.

17 I'm going to start with April 22nd,
18 2022, and this is an email from Jonathan Evans.
19 And he's asking us, personally, my husband and I,
20 if we will allow a independent sound expert to
21 conduct long-term unattended monitoring on our
22 property. And, at the end of his email, because
23 I'm limited in time, it says "If you are amenable
24 to this request, please let me know, and perhaps

1 we can set up a time to talk, along with our
2 expert, to go over the process and details.
3 Without your permission, the Subcommittee may not
4 be able to adequately assess your concerns
5 related to the Antrim Wind facility."

6 So, on April 27th, my reply: "Thank
7 you for your message." This is to Mr. Evans. "I
8 am writing on the behalf of Jan Longgood and
9 myself, Barbara Berwick. We discussed your email
10 request, and we would like to proceed with the
11 testing. However, since we have been through
12 this process before with the SEC, and Mr. Tocci,
13 back in February 2020. We want to be careful
14 that SEC rules and standards are correctly
15 followed. I, as well as others, have expressed
16 with the SEC and Subcommittee our concerns with
17 the methods followed by Accutech [Acentech?] and
18 Mr. Tocci, concerns separate from just the one
19 hour averaging issue, which is, of course, a
20 major concern. Therefore, before we grant any
21 permissions, we would like to meet with the
22 Subcommittee and your expert, as you've offered.
23 Can this be an informal meeting, where we can
24 speak freely, perhaps a Zoom meeting? Also, we

1 ask that Rob Rand, Lori Lerner, and Lisa Linowes
2 be invited, as they have much more knowledge
3 about the rules and the standards than we do.
4 We'd also like to ask that Antrim Wind Energy not
5 be informed of the testing, and that testing not
6 be done during Motorcycle Week. Is there a time
7 that we can meet? We look forward to hearing
8 back from you."

9 Then, the reply I got was -- I'm sorry.
10 "Good afternoon, Mrs. Berwick. The Subcommittee
11 believes that the data gathered by the sound
12 expert is necessary to adequately assess your
13 complaint. As such, the Subcommittee
14 respectfully requests you grant the firm HMMH
15 permission to enter your property, and hook up to
16 your AC power for the study. If you are amenable
17 to this request, please let me know" -- oh, this
18 is not -- sorry, I'm reading the wrong one.
19 Sorry. Oh. "I would be happy to meet with you
20 and HMMH to discuss logistics for the sound
21 study. But not a general meeting with other
22 parties who have voiced their opposition to the
23 facility. The Subcommittee will consider
24 arguments after the sound studies are complete.

1 HMMH's assignment is to conduct the study in
2 accordance with the Site Committee's rules and
3 relevant" -- "relevant ANSI standards. If you
4 have concerns about methodology, would you mind
5 summarizing them in writing so we can consider
6 them in advance. Antrim Wind is not being
7 notified about this testing, and you made a great
8 point about Motorcycle Week."

9 Okay. So, I'm going to go on. The
10 next one is my reply: "Mr. Evans, I think you
11 need to understand that we have been burned
12 before, take a look at how the last sound study
13 was done. I ran home from work, during the
14 middle of the day, to talk to the people doing
15 the testing. I asked that they send me the
16 standards of how they would conduct the testing
17 and measure the sound. The men that were here
18 were fine with that. They said "No problem",
19 they would send it. I never received a thing.
20 Furthermore, take a look at the number of usable
21 hours of data that were retrieved from our
22 locations. We were promised the standards would
23 be applied then, too. Obviously, it was not the
24 standards that were promised during the SEC

1 hearings, nor was it the standards which were
2 applied during our initial testing
3 pre-construction. These people you are excluding
4 are important to us for our protection. Neither
5 Jan nor I are experts. And, if everything is
6 going to be done according to SEC rules, there
7 should be no objection to them being present in a
8 meeting. I am writing this email on behalf of
9 myself only. I have not talked yet to Jan. As
10 for my husband and I, we are not authorizing the
11 testing without being sure exactly how the
12 testing will be conducted. Just saying "the SEC
13 rules will be followed" is not enough."

14 Then, he replies: "I understand your
15 interest in having the sound studies conducted
16 according to the rules. That is what the
17 Subcommittee intends and wants to do. To make
18 you feel comfortable with the process, we are
19 happy to speak with you about what the testing
20 entails. At this point, it is not the right time
21 to include faculty" -- "facility or members of
22 the public in the process. We have focused on
23 studying your complaint. Of course, anyone may
24 submit written comments whenever they wish. When

1 submitting comments, though, please bear in mind
2 that we are trying to conduct the studies without
3 notifying the facility ahead of time. A sound
4 study is very important to validate your
5 complaint. So, I request you reconsider your not
6 providing authorization."

7 And, then, "Mr. Evans", this is from
8 Jan Longgood: "Mr. Evans, Barbara Berwick and I
9 discussed your email. We are concerned and want
10 to be very clear that we want the same thing that
11 the state wants. We want the testing to happen
12 on our properties, and we want the methodology to
13 be consistent with the SEC rules and the
14 standards. Our position has not changed in over
15 two years. We are not trying to be
16 uncooperative. You asked that we summarize our
17 concerns in writing. And you can find our
18 concerns in Section 2 of our August 13, 2021,
19 letter to you, and in the submitted concerns to
20 the SEC in our February 4th, 2021, motion for
21 rehearing, Paragraphs 63 to 66. Our request is
22 simple, and we think reasonable. We ask that we
23 be fully informed about the method that will be
24 followed for the sound test, and the opportunity

1 to ask and get answers to specific questions. It
2 is difficult for us to understand why our request
3 is a problem, or why it matters who we want to be
4 included in that discussion."

5 Sorry.

6 CHAIRMAN GOLDNER: Ms. Berwick, we're
7 on about a minute seven --

8 MS. BERWICK: Okay. I'm almost done.

9 CHAIRMAN GOLDNER: Almost done? All
10 right.

11 MS. BERWICK: Okay.

12 CHAIRMAN GOLDNER: Thank you.

13 MS. BERWICK: This is from May 4th.
14 This is from Jonathan Edwards to us, both of us:
15 "Again, we are trying to avoid having anyone
16 beside the homeowner, our expert, and myself in
17 these conversations. We do not want this to turn
18 into an argument session and have the facility
19 and opponents all participate. If you'd like to
20 discuss our planned testing ahead of time, we
21 would welcome that discussion."

22 And, then: "Dear Mr. Evans, you are
23 making assumptions about a meeting that are
24 uncalled for and suggest obvious bias, but you're

1 including your expert, and we request that we
2 have someone meet with us who has expertise in
3 this matter that we trust, a simple request that
4 we have equal representation to understand the
5 methodology that will be used. We understand
6 that testing at our homes is just another task on
7 your desk. But, for us, it is our lives. You do
8 not seem to respect where we're coming from. We
9 want assurances that the tests will be done
10 according to SEC rules and standards. If this is
11 a meeting that we've asked for, and one will not
12 include the full Subcommittee, that you cannot
13 control who will attend with us. Is there a time
14 in the next few weeks we can meet?"

15 Okay. I just wanted to read, just
16 real, real quickly, basically, all of that was
17 just "no", they would not do it. As all of you
18 know, this is from May 1st, and none of this has
19 been addressed. My husband and I are abutters of
20 Antrim Wind Energy. I filed an initial complaint
21 with the Antrim Selectmen shortly after the
22 turbines went into operation; they sent me to
23 Antrim Wind Energy; Antrim Wind Energy told me
24 they were in compliance; end of story.

1 I contacted Pam Monroe and asked what
2 the protocol was. She informed me, indeed, that
3 there was supposed to be some protocol, but they
4 hadn't done anything about it yet.

5 You can read the rest of the story,
6 except I wish to note that I never filed another
7 complaint, because absolutely was done about my
8 initial complaint, nor about any of the many
9 incidents I filed with Pam. Pam asked me to
10 monitor and send her reports when it was very
11 loud. I did. Even recording with a picture the
12 decibel readings on my cellphone; again, nothing
13 was ever done. Nothing.

14 We were asked if we would allow Antrim
15 Wind Energy to do another of their required sound
16 studies on the property, we said "Yes, as long as
17 the protocols that we were promised during the
18 hearing were followed." Well, they came, set up,
19 and did their sound study. And out of over two
20 weeks of monitoring came up with an hour, or
21 maybe it was two, of usable data out of 15 days.
22 I actually rushed home from work to meet these
23 men, and asked if they would provide -- okay, I
24 will skip that.

1 My neighbor, who is caring for his
2 elderly father 24/7, Mr. Shelley Ivey, at one
3 time during the summer called the Antrim Police
4 Department to file a noise complaint about the
5 turbines. The Antrim Police --

6 CHAIRMAN GOLDNER: Ms. Berwick, we're
7 now over ten minutes.

8 MS. BERWICK: Okay.

9 CHAIRMAN GOLDNER: Can you maybe just
10 give a quick summary, and then we can move on?
11 Thank you.

12 MS. BERWICK: Well, my neighbor,
13 Mr. Shelley, filed a report with the police. My
14 neighbors, Josh and Amanda, they filed a
15 complaint, and then they did have a follow-up
16 study. They, while at the ocean, stayed online,
17 for an online meeting that you were having, for
18 almost two hours, in order to be able to say a
19 one-minute statement that the conditions were
20 nothing like the conditions were on the time that
21 they filed the report.

22 To say that "all our complaints have
23 been handled", when nothing has happened, and to
24 say that "we refused to allow Antrim Wind Energy

1 to do the sound testing" is quite unfair.

2 CHAIRMAN GOLDNER: Thank you,
3 Ms. Berwick.

4 We'll move on to Rich Block.

5 *[Court reporter interruption.]*

6 CHAIRMAN GOLDNER: Okay. The court
7 reporter is highlighting that I need to be a
8 little more diligent on the five-minute limit.
9 So, if everyone could just please be respectful
10 of everyone's time, and try to keep it in that
11 five-minute area, I'd appreciate it. Thank you.

12 Please proceed, Mr. Block.

13 MR. BLOCK: Yes. Thank you for this
14 opportunity. I have just two brief statements to
15 make.

16 One is to call your attention to the
17 letter from David Publicover that came in today
18 from the Appalachian Mountain Club. And I just
19 wanted to point out that I've been dealing with
20 them since the Project began. And, over the last
21 few years, during the complaint sessions in the
22 Subcommittee, when I dealt with Mr. Publicover,
23 he generally said "They are really hurting",
24 basically, the Appalachian Mountain Club, through

1 retirements and the COVID thing. So, he's backed
2 off a number of times when I asked him to submit
3 statements.

4 So, when I saw this today that he
5 submitted three pages, to me, that means they're
6 pretty upset about this. And I think it's
7 important to read this and pay attention.

8 The statement I'd like to make is that,
9 if the standard operating procedure of the SEC is
10 to generally ignore all complaints from residents
11 living in proximity to an energy project, then I
12 suggest that we save taxpayer dollars and avoid
13 wasting time by eliminating all complaint
14 processes. And that the state should just issue
15 a blanket statement that "Residents of towns
16 housing energy projects have, from this day on,
17 no protections whatsoever. And that project
18 developers are released from any responsibility
19 to observe any restrictions." That would be the
20 practical thing to do, based on what I'm seeing
21 happening here.

22 So, thank you.

23 CHAIRMAN GOLDNER: Thank you,
24 Mr. Block.

1 And the next person, I'm having trouble
2 reading the handwriting, it looks like "Shelley
3 Welkens"?

4 MS. NELKENS: "Nelkens".

5 CHAIRMAN GOLDNER: Thank you. Please.
6 Please go ahead.

7 MS. NELKENS: Is this on? Now, it is.

8 Hi. I've spoken before here. And I
9 have mentioned, when Pam Monroe was doing your
10 job, I was walking up at the lake every day
11 during construction, and watched as the towers
12 got higher, and higher, and higher; not one
13 light. And I called Pam Monroe. She did not
14 come out, she did nothing. They continued
15 without any lights, which I thought was
16 dangerous. So, I went to the Selectmen, and they
17 called a meeting, and they had the people from
18 Antrim Wind come in, and got them to pay
19 attention, and then we got some lights. Hmm.

20 Now, I understand the issues with the
21 lighting, but, personally, it doesn't bother me,
22 because I'm just not -- I don't see the lights.
23 But I do hear the sound. And the first time I
24 really paid attention to the sound, I was on my

1 way to the dentist, it was, like, 8:00 in the
2 morning, and I went down the road where Barbara
3 lives, and some of the other people who have been
4 complaining, and I did not understand the
5 magnitude of their problem, until I happened to
6 get to the end of this one road, and the end of
7 Craig Road. And, all of a sudden, I was just --
8 I'm from Washington Heights. So, I rode the
9 A-Train all the time. And this sounded like the
10 A-Train coming. And it was appalling, absolutely
11 appalling.

12 And, yesterday, I was up at the lake,
13 and it was all wet, because we were just like
14 walking in a cloud, and they were so loud. I was
15 thinking "I wish you guys would get over there,
16 when the weather is not just gorgeous and
17 perfect."

18 And it just, like, I find it absolutely
19 ridiculous that they are getting away with not
20 dealing with the sound, because it's not being
21 dealt with. I mean, testing when the atmospheric
22 conditions are different than when the complaints
23 go in, is -- I can't think of a word that would
24 be acceptable.

1 So, anyway. Thank you.

2 CHAIRMAN GOLDNER: Thank you.

3 And it looks like the next person might
4 be "Joe Wilisas"?

5 MR. WILKAS: It's "Joe Wilkas".

6 CHAIRMAN GOLDNER: "Wilkas", sorry.

7 MR. WILKAS: That's okay.

8 CHAIRMAN GOLDNER: That was "K". Thank
9 you.

10 MR. WILKAS: That's okay. I'm going to
11 give you the same testimony I gave on June 7th.
12 But the references to the transcript from that
13 didn't appear on your -- on your documentation
14 for this public meeting. You have the meeting
15 minutes, but no transcript.

16 MR. WARD: Is that thing on? Is the
17 mike on?

18 MR. WILKAS: Yes.

19 MR. WARD: Okay.

20 MR. WILKAS: Okay. So, I'll read it
21 anyway.

22 The SEC Subcommittee appears to have
23 concluded that the Antrim Wind turbines are in
24 sound compliance, using the results from the HMMH

1 sound level tests, that have at least three
2 glaring errors if the purpose of the testing was
3 to test at maximum turbine sound level output at
4 required measurement locations. The measurement
5 were not made at the correct locations at
6 affected homes, but at nearby public lands that
7 were actually located further away from the
8 turbine noise sources, thereby lowering the
9 measured sound level.

10 These measurements were made when the
11 turbines were not producing anywhere near their
12 maximum power output resulting in lower sound
13 levels. And wind turbines produce pulsed sound
14 level outputs which were then integrated by HMMH,
15 resulting in lowered reported sound levels when
16 compared to the not-to-exceed SEC limits.

17 So, accepting three methods to insure
18 lower sound levels -- level output results, the
19 SEC Subcommittee has apparently incorrectly
20 concluded that the lower sound levels reported
21 actually tested the SEC's published limits.

22 For another, more accurate sound level
23 report, please refer to the May 11th, 2021, Rand
24 Letter of Acoustic Tests submitted to the SEC on

1 May 14, 2021, showing the Antrim Wind turbines
2 exceeded the SEC limits when measurements were
3 made correctly near the Berwick home.

4 And the much easier to understand
5 lighting issue also seems to have been accepted
6 by the SEC Subcommittee. The flashing red lights
7 are only supposed to be on when airplanes are
8 flying nearby, but instead they are on almost all
9 the time, violating the SEC Project requirements
10 and annoying the nearby residents.

11 There has been so much reporting and
12 documentation about these issues over the past
13 several years that it is totally unacceptable
14 that the SEC has done nothing yet to insure that
15 corrections are made.

16 CHAIRMAN GOLDNER: Thank you.

17 Next, we'll go to Barry Needleman.

18 MR. NEEDLEMAN: Mr. Chair, Committee
19 members, thank you. My name is Barry Needleman.
20 I represent Antrim Wind in this matter. I also
21 represented Antrim Wind through the entire
22 underlying proceeding that led to the issuance of
23 the Certificate here. So, I'm very familiar with
24 all of that.

1 Let me briefly comment about sound, and
2 then I want to turn to lighting.

3 During the course of the last several
4 years, we've been dealing with these sound
5 issues. I don't know, but I want to make the
6 Committee aware, that three different sets of
7 sound experts over the course of that time have
8 all been out to the facility, have all done
9 evaluations, they have all been done consistent
10 with the very detailed and meticulous rules that
11 this Committee has issued regarding sound. One
12 was an expert for Antrim Wind; one, Tocci &
13 Associates, I believe was an expert for the
14 Committee; and, then, most recently, the HMMH
15 report, experts for the Subcommittee.

16 I think it's reasonable to say at this
17 point that this issue has been properly examined
18 exhaustively. And we agree with the
19 determinations of the Subcommittee that it should
20 be brought to a close.

21 Let me now briefly turn to the lighting
22 issues. During the course of the underlying
23 proceeding here, there was very substantial
24 evidence presented to the Committee about

1 lighting, from the Applicant, from opponents,
2 from a range of different people. The Committee
3 at the time heard extensive information, in the
4 form of testimony, written reports, and so forth,
5 which included the agreement that was provided
6 from the Appalachian Mountain Club, between the
7 Committee and AMC. The lighting -- the lighting
8 technology at that time was still largely
9 untested. And one of the reasons that the
10 Certificate condition was written the way it was,
11 was because there was an expectation that, until
12 the FAA approved it, the lighting would not be
13 installed. And that's what happened.

14 So, when you look at the Certificate,
15 which is here, and you look at the lighting
16 conditions, that's what the facility has to
17 comply with, what the Committee put into the
18 Certificate. The Committee could have put
19 performance standards in, they could have put
20 time of operation in, they could have put all of
21 those things in; they didn't do that. They put
22 in just the condition which is here, which said
23 "It will be installed after the FAA "no hazard"
24 determination, and operated consistent with those

1 requirements."

2 So, here we are today, we now have a
3 range of different people asking for all kinds of
4 different additional requirements to be imposed
5 based on what was discussed in the underlying
6 proceeding. That's not fair, and it's certainly
7 not consistent with the law. And I say that
8 turning to the statute that governs this
9 proceeding.

10 First of all, 162-H:12 is your
11 enforcement proceeding -- enforcement provision.
12 It says: "Whenever the Committee, or the
13 Administrator as designee, makes a preliminary
14 determination that any term or condition of any
15 certificate issued under the chapter is
16 violated". There isn't anybody here that has
17 held the Certificate up, looked at the terms as
18 they relate to lighting, and said "This term is
19 being violated." That's because it's not. And
20 Antrim Wind has complied with the terms in the
21 Certificate.

22 Instead, what they're saying "We want
23 the terms to be different. We want things that
24 were discussed in that underlying proceeding to

1 now be imported into the Certificate, and we want
2 them to be" -- "we want Antrim Wind to be held to
3 those requirements." That's not how the
4 Certificate works, and it's certainly not how the
5 law works.

6 In fact, at the time the Certificate
7 was issued, any party to the proceeding could
8 have said to the SEC "You didn't get it right.
9 This Certificate is wrong. It doesn't reflect
10 things that should have been in it." It's called
11 a "Motion for Rehearing", and the statute
12 requires that it's filed within 30 days of the
13 time that the certificate is issued. Nobody
14 filed that motion for rehearing. Nobody said
15 "This is wrong", nobody said "These conditions
16 should be different." That was the end. The
17 Certificate was made final. And, now, here we
18 are, years later, and, essentially, now people
19 are making that motion for rehearing. Now,
20 they're saying "We want the Certificate to be
21 different." It's not the way the law works, and
22 it's certainly not fair to certificate holders or
23 permit holders to change the rules of the game
24 years and years after they were issued a

1 certificate and it was made final.

2 Thank you.

3 CHAIRMAN GOLDNER: Thank you,
4 Mr. Needleman.

5 We'll move now to Lisa Linowes.

6 MS. LINOWES: Thank you, Mr. Chairman.

7 Before you start the clock, I just
8 wanted to comment on the minutes. That, if the
9 minutes that you approved today are the minutes
10 that are posted on the website, they fail to
11 mention that Mr. Jalbert was an active member of
12 the Committee on June 7th, and that the vote that
13 happened at the end was actually a 5-3-1 vote,
14 not "5-2-1 vote". And I don't know if you wanted
15 to address that at some point in this hearing --
16 meeting, rather.

17 CHAIRMAN GOLDNER: Thank you.

18 That's -- your comments are noted.

19 MS. LINOWES: Thank you.

20 So, thank you for letting me speak
21 today. My name is Lisa Linowes. I am a resident
22 of the State of New Hampshire. I, too, have been
23 part of the Antrim Wind process, both in 2012, as
24 well as the most recent 2016-17 docket.

1 My testimony today addresses the noise
2 compliance, as referenced in the Administrator's
3 October 11, 2023, report, specifically
4 Paragraphs 18 and 19, as it pertains to Janice
5 Longgood's complaint that she filed on or around
6 May 1st.

7 Before I get into my testimony, I would
8 like to respond to a statement made at the
9 June 7th meeting, because it has a direct impact
10 on what I'm -- or, it bears on what my comments
11 are today.

12 Specifically, at the June 7th meeting
13 of the SEC, Mr. Dell'Orfano repeatedly argued to
14 the Committee that New Hampshire Site 301.18(i),
15 which is the rule that requires the complaint
16 validation be conducted under the same
17 meteorological conditions as when the complaint
18 was happened, could be waived by the
19 Administrator and by the Subcommittee acting in
20 that capacity as Administrator.

21 To be clear, there is no language in
22 New Hampshire Site 301.18(i), or the SEC rules,
23 or Jus 803.03, or RSA 162-H, that gives the SEC
24 Administrator authority to waive rules.

1 Mr. Dell'Orfano misread 301.18(i), and I won't
2 take the time here to say -- explain how, but
3 that rule is listed in the back of my testimony,
4 which I'll give you at the end of the meeting.
5 But he misread the rule and he misled the
6 Committee, which is very unfortunate.

7 While the presiding officer of the
8 Subcommittee can waive rules, the authorizing
9 order that formalized the Subcommittee did not
10 grant the Subcommittee the power to waive the
11 rules, nor was there any reason for the
12 Subcommittee to waive the rules. That was
13 what -- it was not put in force to do that.

14 However, Presiding Officer Evans and
15 the Subcommittee did something far worse. They
16 looked the other way, and when the contractor,
17 HMMH, ignored Site 301.18(i), and two other SEC
18 rules, specifically New Hampshire Site
19 301.14(f)(2)(a), which, in part, talks about the
20 limit, threshold of 40 decibels at night, and
21 also the placement of where the monitor is where
22 measurements are taken. And they also failed to
23 follow New Hampshire Site 301.18(e)(1), which
24 requires that at least one hour of the study --

1 survey taken during any monitoring be done at
2 night under the worst operating conditions.

3 As I will detail in a moment, had the
4 Subcommittee enforced the SEC rules as written,
5 the HMMH study would have shown that the Antrim
6 Wind turbines are producing noise exceedances at
7 the Longgood property and similarly situated
8 properties. And I will explain why.

9 Janice Longgood is an immediate abutter
10 to the Antrim Wind facility. She's 3,600 feet
11 from Turbine Number 5, and is in the line of
12 sight of several other turbines. Ms. Longgood's
13 complaint states that she is experiencing high
14 turbine noise levels at her home. And this has
15 been ongoing since 2019.

16 HMMH acoustician Christopher Menge did
17 not measure turbine noise at Ms. Longgood's
18 residence, as would be required under
19 301.14(f)(2)(a). Instead, he placed his monitors
20 more than a half -- I'm sorry -- more than a
21 quarter-mile further away from the turbines than
22 Ms. Longgood's home. And he took measurements
23 during periods when most of the turbines were
24 operating at or less than 50 percent power. This

1 is in violation of 301.18(e)(1). Again, I'll
2 give you the list of these rules when I'm done.

3 Yet, according to the Administrator's
4 rule -- report, at Paragraph 19, the Subcommittee
5 dismissed Ms. Longgood's complaint, based on Mr.
6 Menge's claim that his study's findings are
7 "valid, even though conducted from state
8 property", so not on her property, because the
9 wind turbines are a "line source" of sound,
10 "sound levels drop off fairly slowly with
11 distance from a source like that", meaning that
12 sound dissipation will be -- arguing that it will
13 be roughly the same at her property as it would
14 be a quarter-mile away. He also adds that "given
15 the distances we measured and the distance the
16 homes were, I think", Mr. Menge says, "that the
17 difference in sound level will be very small,
18 certainly less than a decibel."

19 Mr. Menge's general reference to "line
20 sources" and his off-the-cuff assertion that line
21 sources do not decrease rapidly over distance are
22 gross simplifications of noise propagation in a
23 complex environment. Mr. Menge has no data to
24 support his claim, and it relates -- as it

1 relates to the Antrim facility. More
2 importantly, his statement is contradicted by the
3 sound propagation model prepared by Antrim Wind
4 that showed the facility sound emissions would
5 drop off by as much as 3 decibels, between
6 Mr. Longgood's property and where Mr. Menge sited
7 his monitor.

8 Mr. Menge measured nighttime turbine at
9 39.2 decibels, more than a quarter a mile further
10 away from the turbines at Ms. Longgood's home.
11 Even if we were to accept his claim that the
12 noise levels at Ms. Longgood's property were
13 roughly what they would be where he measured,
14 they would be over the 40 decibel. Applying
15 Antrim Wind's propagation model, which he should
16 have done, the noise at Ms. Longgood's would be
17 well over 40 decibels nighttime limit.

18 Given the nighttime turbine levels that
19 HMMH measured, more than a quarter-mile away
20 further from the turbines than Ms. Longgood's
21 residence, we can reasonably conclude from this
22 data, Mr. Menge's own data, that the Antrim Wind
23 turbines are exceeding the SEC threshold.

24 Ms. Longgood submitted a valid

1 complaint to the Subcommittee. The
2 Subcommittee's basis for dismissing the complaint
3 was not valid. And its deliberate ignoring of
4 the SEC rules is unlawful.

5 To Mr. Needleman's comment, where he's
6 arguing that this test has been done multiple
7 times by different experts, well, in Paragraph 19
8 of the Administrator's report, it describes the
9 Subcommittee's attempt to bolster the validity of
10 the HMMH study by referring to the Cavanaugh
11 Tocci study survey conducted in 2020 at locations
12 on Reed Carr Road. Cavanaugh Tocci cannot
13 validate HMMH's test for the simple reason that
14 the methodology followed by Tocci bears no
15 resemblance to that followed by HMMH, nor does it
16 follow the SEC's adopted interpretation of the
17 noise rule. Tocci misapplied the ANSI standard.
18 He misused and abused the rules of the SEC, and
19 failed to properly isolate turbine noise only
20 under test.

21 His conclusion that the Antrim Wind
22 turbines "likely conforms" to the SEC limits,
23 which is what he said in his report, is nothing
24 more than opinion, and it is not supported by the

1 data.

2 To conclude, I want to reference a
3 comment by Ms. Duprey at the June 7th meeting,
4 where she stated "With respect to future
5 complaints, aren't we just going to go through
6 the same process? I don't really see what the
7 purpose is. We're just going to bring HMMH back.
8 They're going to do the same thing they did this
9 time. The findings are going to be the same.
10 So, I don't see how we're addressing complaints."
11 She's absolutely right.

12 Unfortunately, we are in this situation
13 because the Subcommittee ignored the SEC rules
14 relative to noise complaint validation. If the
15 SEC, this Committee, if your group, takes
16 action to -- takes action to enforce its own
17 rules, and allows for greater transparency in the
18 process, the outcomes will be more legitimate and
19 not contrived. We've been dealing with contrived
20 reports over and over again.

21 Neighbors of the Antrim Wind turbine
22 facility have been suffering excess noise
23 conditions since December 2019. Their complaints
24 have been discounted and dismissed by the

1 Subcommittee, and the SEC rules have been
2 unlawfully ignored.

3 I ask that the SEC not to accept the
4 Subcommittee's Recommendation, and take the
5 necessary action to properly investigate the
6 noise issues that have been open for four years.

7 Thank you.

8 CHAIRMAN GOLDNER: Thank you.

9 And, finally, we'll turn to Lori
10 Lerner. And, then, after that, we'll turn to
11 Attorney's Turner and Brooks.

12 *[Ms. Lerner distributing documents.]*

13 MS. LERNER: Does everybody have a
14 copy?

15 *[Commissioner Simpson indicating in the*
16 *affirmative.]*

17 MS. LERNER: Thank you. Can you hear
18 me okay? Perfect. All right.

19 Chairman Goldner, members of the SEC,
20 thank you for the opportunity to speak today.
21 For the record, my name is Lori Lerner, and I'm a
22 New Hampshire resident.

23 My testimony comments on the ADLS
24 issue as referenced in the Administrator's

1 October 11th summary report.

2 CHAIRMAN GOLDNER: Ms. Lerner, I'm just
3 going to interrupt you briefly. The court
4 reporter has a hard time with pace,
5 understandably, he's typing every word. So, if
6 you could just slow down a little bit for him,
7 I'd appreciate that.

8 MS. LERNER: Sure. Thank you.

9 The Subcommittee has concluded that
10 Antrim Wind is compliant with its Certificate
11 regarding the ADLS based on the following:
12 Number one, the SEC permit only requires ADLS to
13 be installed with no performance standard for how
14 long lights can be on; number two, a 20 to 30
15 percent on-average nighttime illumination period
16 is good enough for determining compliance with
17 the Certificate.

18 Taking the latter claim first, there is
19 insufficient data available from Antrim Wind to
20 show that the 20 to 30 percent on-average "lit"
21 condition is reliable. Antrim Wind has provided
22 only two months of data since the presumed final
23 repair was completed this past June. Given the
24 extended timeframes when the ADLS was inoperable,

1 it is not possible to assess performance across
2 similar periods from one year to the next.
3 Consequently, there is no basis for concluding
4 the ADLS will deliver consistent performance
5 month-to-month or year-to-year. And we can look
6 at that at the attachment.

7 There is also no evidence in the record
8 that confirms Antrim Wind took all actions
9 necessary to ensure the ADLS is operating as
10 efficiently as possible. Documents submitted by
11 Antrim Wind on May 17th, 2021, June 17th, 2021,
12 January 31, 2022, shows that a flight test was
13 slated to be flown during a period of
14 full-foliage cover to test the ADLS
15 functionality, but there's no record this flight
16 test has happened.

17 Due to the geographic relief and
18 tree -- a quote: "Due to the geographic relief
19 and tree canopy around the Antrim Wind facility",
20 Antrim Wind has stated that "a land mask is
21 required to prevent the ADLS system from
22 activating turbine lights due to detections of
23 the tree canopy." The "land mask", according to
24 Antrim Wind, may need to be updated annually to

1 reduce the frequency of light activations at the
2 facility. There is no information on the record
3 that this step has been implemented.

4 While these are concerning
5 deficiencies, the larger question of compliance
6 is tied to the intent of the SEC when it issued
7 the Certificate and the requirements imposed on
8 the SEC by RSA 132-H [162-H?].

9 The SEC found in 2017 that, by
10 installing ADS -- I'm sorry -- ADLS prior to the
11 Antrim facility being placed in service, it would
12 ensure the facility does not create an
13 unreasonable adverse effect on aesthetics. This
14 decision was taken after the SEC accepted the
15 sworn testimony by Antrim Wind that, in quotes,
16 "the system will only activate the nighttime FAA
17 obstruction lights in the event there is no --
18 there is an aircraft flying at low altitude at
19 night in close proximity to the Project, which
20 will almost eliminate this nighttime light
21 source." On this basis, the SEC did not require
22 Antrim Wind to provide detailed information about
23 nighttime lighting, including visual simulations
24 of nighttime conditions, as required by the

1 Application.

2 The Committee's expectation of the ADLS
3 performance is derived directly from Antrim
4 Wind's statements and memorialized in an exchange
5 between the Presiding Officer Robert Scott and
6 the John Clifford of the PUC Legal Division.

7 When asked by Presiding Officer Scott if the
8 Committee may have erred in its consideration of
9 nighttime lighting, Mr. Clifford responded "I
10 don't think we erred in that area, because we
11 again addressed that through the radar lighting
12 system...And it seems to me that the new
13 technology avoids the issue of having the lights
14 on from, you know, sunrise to sunset. So, to
15 that extent, I believe that we covered they were
16 going to light up when jet aircraft approached,
17 and for a limited period of time. So, I think we
18 discussed that, and so I see nothing new here."

19 The Committee members also understood
20 that installing the ADLS prior to the facility
21 being placed in service was necessary, or else
22 their review of the Application relative to
23 nighttime lighting would be incomplete.

24 RSA 162:H [162-H:16?] requires that, in

1 quotes, "After due consideration of all relevant
2 information regarding the potential siting,...
3 the committee shall find" --

4 CHAIRMAN GOLDNER: Ms. Lerner, I'm
5 sorry, I'm just going to pause you there. It's
6 not a time check, it's the court reporter --

7 MS. LERNER: Sorry.

8 CHAIRMAN GOLDNER: -- is having a hard
9 time keeping up. So, maybe just take 20 seconds,
10 let him catch up. And, then, please, please
11 continue.

12 MS. LERNER: So sorry. Thank you.

13 MR. PATNAUDE: Go ahead.

14 MS. LERNER: Thank you.

15 "The committee shall find", among other
16 things, that "(c) The site and facility will not
17 have an unreasonable adverse effect on
18 aesthetics."

19 In Docket 2015-02, Antrim Wind did not
20 provide the information necessary for the SEC to
21 conduct a thorough review of the impacts of
22 nighttime lighting. There were no witness
23 testimonies, no exhibits related to nighttime
24 lighting, and no cross-examinations or informed

1 deliberations that investigated the level of
2 lighting that could result in an unreasonable
3 adverse effect.

4 If this Committee were to accept the
5 Subcommittee's Recommendation that 20 to 30
6 percent "on average" illumination is an
7 acceptable lighting threshold, such an action
8 would be unilateral, arbitrary, and an abuse of
9 discretion and contrary to RSA 162-H.

10 The correct process for moving forward
11 would be to open an adjudicative proceeding on
12 this issue and investigate the lighting question
13 to determine an evidence-based threshold for
14 lighting. The SEC should also require Antrim
15 Wind to proceed with its flight test and land
16 mask mitigations, and to continue to report
17 performance levels.

18 If I can quickly draw your attention to
19 the final, it's "Attachment A", you can see
20 there, there were periods where the lighting was
21 on constantly. And you can also see here, from
22 June 1st, until the date we have been provided,
23 to August 1st, there's many exceedance -- maybe
24 the average is 20 to 30 percent, but there's

1 still a high level of exceedances beyond that
2 threshold.

3 I'd also quickly like to comment on
4 Mr. Needleman's comment, that the -- that this
5 should not be coming up at this point in time.
6 I'd like to remind everybody here, that the
7 Application specifically requires the nighttime
8 visual assessment, which was never done. The
9 Application should have been rejected out of the
10 gate for being incomplete. It was not. And it
11 was actually just continued on, and dismissed the
12 notion of the nighttime lighting assessment,
13 because the ADLS was intended to be providing 99
14 percent dark night skies, which was the
15 understanding of everybody on the Committee, and
16 what the public had been told.

17 Thank you very much.

18 CHAIRMAN GOLDNER: Thank you.

19 Did I miss anybody from the public,
20 before we turn to Attorneys Turner and Brooks?

21 MR. WARD: I just had one short
22 comment.

23 The weather radars, which measure drops
24 that are this small *[indicating]*, have been

1 operating very well for almost 75 years. If we
2 had the problems with the weather radars that we
3 have with Antrim Wind, we would be forecasting
4 thunderstorms and tornadoes probably every
5 afternoon.

6 Thank you.

7 CHAIRMAN GOLDNER: Thank you.

8 We'll turn now to Attorney Brooks. So,
9 Attorney Brooks, on October 6th, 2023, you sent a
10 letter to the Presiding Officer of the
11 Subcommittee, Mr. Evans, and the Chair of the SEC
12 via interoffice mail, concerning this docket.
13 The correspondence has been entered into the
14 record.

15 At this time, we would like to provide
16 you with an opportunity to address your concerns
17 to the SEC.

18 MR. BROOKS: Thank you. And, before I
19 start, I just want to make sure people understand
20 that, the folks on the Subcommittee, the people
21 who have helped them, the Administrator, and
22 others, and I know you worked very hard to do
23 this. So, I don't mean to imply by anything that
24 I say that they have not been diligent or they

1 have not tried. But I feel that there are
2 several things that I have to point out, and I've
3 done that in my letter. But I'd like to go to
4 the November 20, 2023, response from John-Mark
5 Turner that you referenced.

6 First of all, in terms of process, and
7 being notified of the meeting on September 1,
8 yes, Josh Harrison, it's "Harrison", not
9 "Harrington", was here, he was here because I
10 asked him to. I did know that it existed right
11 before the meeting, what I didn't know was all
12 the information. So, you can see from the
13 letter, the November 20 letter, the timeframe.
14 So, all of that information was mailed out on
15 August 31, for a September 1 hearing. So, it was
16 the day before. That's not enough time to
17 meaningfully prepare and participate. And a lot
18 of folks have other things to do, I know, I was
19 one of them.

20 So, that was what was meant by that
21 comment. And I think that that's been taken to
22 heart. I'm sure that people don't do this on
23 purpose. But, if you want to have faith in that
24 process, I just encourage you to consider that

1 going forward.

2 On the more substantive points, the
3 first heading for -- regarding the Subcommittee's
4 Recommendation, says "The Mean and the Median are
5 poor gauges to the System's Effectiveness", this
6 is the comment from John-Mark Turner in his
7 letter. That, apparently, first of all, is in
8 disagreement with what the Subcommittee actually
9 found, because it appears that they did use
10 median. I suggested to go and look at the mean
11 and the average of what was going on. That was
12 not to suggest you should use the average. But
13 the problem with "median" is that it excludes the
14 most important data points.

15 When you're doing enforcement, and
16 you're supposed to have a condition, it's the
17 aberrations from that condition that you're
18 looking for. You're trying to figure out how
19 many times does the system not function as
20 planned. When you use the median, you're
21 specifically, mathematically, taking out those
22 points where there's an aberration. That's the
23 thing you shouldn't do. And there is no basis
24 for that. For folks who do enforcement, for

1 people who look at these issues and try to figure
2 out if there is compliance, you never take the
3 median.

4 I've been doing compliance for 23
5 years. I don't know if other people have been
6 doing it as long, or do it in other contexts.
7 But we would never do that. You look at all the
8 data, especially the data that shows that you're
9 not in compliance.

10 The statements in the letter justify
11 that use by saying "Well, you should use the
12 median, because the facility was "long down
13 periods" -- "there were long down periods", and,
14 therefore, "even the median is an overstatement",
15 and that there were "three extended periods of
16 100 percent illumination and the dramatic effect
17 on the average" of including that data. Yes.
18 It's a very dramatic effect. It's even more
19 dramatic if you live there, and you have to see
20 these lights on all the time. You don't discount
21 that, and you don't say "Well, there's a reason
22 why that perhaps could not occur or could not
23 perform as it was promised."

24 It takes issue with me saying that,

1 even if you take out the periods of complete
2 noncompliance, that it's still on approximately
3 20 percent of the time.

4 I believe, if you go, and I hope that
5 you spend time with it, because I know that we
6 all did. But this chart, I did my own color form
7 of this chart, but I know it's in your materials.
8 I tried to take out the extraneous information.
9 Spend some time with that, and decide what
10 actually the performance is under that chart, and
11 whether that's good performance.

12 So, ask yourself, if you bought a
13 furnace, and you said to the dealer "I live in a
14 cold climate. I really need assurances that this
15 is not going to need repair right off. It's not
16 going to break." And the seller said "This will
17 almost never need to be repaired." And, then,
18 later on, come to find out, he says "Well, what I
19 meant by that was that your furnace will need to
20 be repaired maybe between 20 to 30 percent of the
21 time. And that's only if you don't count the
22 long periods when it won't work at all." That's
23 not acceptable. Even if you don't have a
24 percentage in that agreement, that is beyond what

1 reasonable is.

2 The letter goes on to say, this is
3 Page 4, says "Counsel's proffered", meaning me,
4 Counsel for the Public's "proffered standard is
5 unmoored from the language of the Order and
6 Certificate." I assume that he means "unmoored
7 with respect to the connection between the two"
8 and not to me individually, because that's only
9 partly true.

10 MR. TURNER: Correct.

11 MR. BROOKS: I appreciate that. Well,
12 the fact is, there's not a lot to moor to in
13 their Certificate, but there is a requirement in
14 the Certificate. And Antrim Wind has said today
15 "The law does not allow you to do anything else
16 than look at the few words that are in the
17 Certificate."

18 I'll tell you what the law says as
19 well. Which is that, if you have an agreement or
20 an order or a deed or a contract, New Hampshire
21 law allows you, if there's an ambiguity, and I
22 will tell you that this language is ambiguous,
23 that, if there's an ambiguity, you can look to
24 other sources, you can look to other documents,

1 you can look to communications, you can try to
2 figure out what the parties intended. In this
3 case, that includes looking at the testimony.

4 There's also a requirement in New
5 Hampshire, and I'll read it to: "Every contract
6 imposes upon each party to be of good faith and
7 fair deal in its performance and its enforcement.
8 There is an implied obligation of good faith to
9 be reasonable in the exercise of discretion, when
10 a contract permits one party to exercise
11 discretion in performance of the contract
12 sufficient to deprive the other party of a
13 substantial portion of the contract's value."

14 So, in this case, Antrim has some
15 discretion, and I agree to that, in how it
16 operates underneath this condition. And, in the
17 last part of my first letter, I say "Yes, if they
18 have to change a light bulb, if something comes
19 up, normal maintenance, maybe that's okay." So
20 there is some discretion there.

21 But it's not unbounded. What is it
22 bounded by? It's not bounded by a percent. It's
23 not bounded by an average. It's not bounded by a
24 median. And it's not bounded by 20 or 30

1 percent, or something that the Subcommittee
2 created, which really isn't in the Certificate.
3 There is no 20 or 30 percent median in that
4 Certificate.

5 It's bounded by a reasonableness, and
6 how you look at that, or what's the exact
7 language of that law in New Hampshire.

8 Does a contract allow a defendant to
9 exercise discretion? Yes, it does. Antrim can.
10 Did the parties intend to make that legal and
11 enforceable? Well, I hope you found that that
12 Certificate was supposed to be legally
13 enforceable.

14 And, three, was the defendant's
15 exercise of discretion reasonable? That's what
16 you're looking for. You're trying to figure out
17 if this chart, based on an assertion that it will
18 almost -- those lights will almost never be on,
19 is that a reasonable performance or not?

20 I have heard throughout the process,
21 and it is disturbing for me, I actually have, by
22 the way, I hold opposing counsel, I'll call him
23 "opposing" now, because, obviously, we're
24 adverse, in the highest regard. They practice at

1 the very highest standards. I don't mean to
2 impugn. But I've heard from the facility this
3 refrain that says "Well, first of all, we don't
4 have any performance standard that you can
5 measure us to." I even heard it today. I heard
6 the claim that says the Certificate, holding up
7 the Certificate, doesn't include a specific
8 number. But I haven't heard them say when, in
9 fact, they could ever be held accountable to the
10 performance of that system, no matter how
11 infrequently it worked.

12 And I've heard them say over and over
13 again, "Well, you know, we were in a shake-down.
14 We were in a start-up. This is new technology,
15 we don't know", and today I heard it again, said
16 "it was untested."

17 What were the assurances given to
18 people at the time? This is from Day 6 of the
19 testimony during the actual hearing for the
20 Certificate. And, by the way, I'll point out
21 again the same point, which is that there is a
22 rule that Antrim should have been required to do
23 a visual analysis. This Committee said to Antrim
24 Wind "You do not have to fulfill that obligation,

1 you do not have to do the visual analysis,
2 because of your promises about the ADLS system."

3 So, what were their promises? Did they
4 say "it was untested", as they're saying now?

5 From Page 159, and this is a
6 cross-examine -- may have been cross-examined by
7 Mr. Block, as a matter of fact. The question is:
8 "The FAA ADLS lighting. Is that new technology?"
9 And the response: "It's not new technology. No.
10 It's been around for quite some time on a variety
11 of different types of structures. Tall
12 transmission towers, primarily tall transmission
13 towers. It's recent that it has been in use and
14 commercially available for wind turbines. It has
15 been in testing for some three or four years at
16 least."

17 And, then, later on, "So, final
18 question is, with all this sort of newness, is
19 there anything you can say to the residents of
20 Antrim to assure us that we're not guinea pigs in
21 a massive experiment?" And the answer is:
22 "Sure. I think, again, I take exception to the
23 characterization of either the ADLS, necessarily,
24 or the shadow control systems being new...Our

1 belief is that this Project is going to be a
2 great asset to the Town of Antrim, and,
3 obviously, we'll [all] be held accountable."

4 And I have not heard them say since
5 that time that they would be accountable.

6 I urge you to look at the AMC's letter
7 as well, in terms of performance. There were
8 assertions made about trying to figure out
9 whether or not the system actually works, meaning
10 not are the lights on or off, but are they even
11 on when there's an aircraft? Is it even
12 detecting aircraft properly? That chart that you
13 see, a lot of that data, a lot of times the light
14 is on may be unnecessary. We don't know, because
15 they have never done that.

16 In the Subcommittee report, and I know
17 they tried hard, but it basically says "They
18 don't have to do anything." There are a lot of
19 things that are reasonable that they ought to be
20 doing. The Antrim Wind facility, the people of
21 that facility, should be showing up every day
22 thinking "How can we mitigate the impacts of this
23 lighting?" "How can we spend resources to help
24 the people who are impacted?"

1 And they're not. They're spending
2 resources and saying "We don't have a
3 requirement." That's not acceptable to me.

4 You don't have to tear the facility
5 down. You don't have to say "they can't have a
6 facility", but there are a lot of things to do.

7 One is, you could simply acknowledge
8 the fact that there's an issue, and start the
9 process from there. You could, if you had to,
10 require them now to do a visual impact that they
11 -- assessment that they never did before, and
12 then see what you're going to do with it. You
13 could require them to mitigate some of the
14 impacts that we know are happening now to the
15 people that are out there, and put resources into
16 it.

17 There have also been assertions that
18 "It's not our fault", "It's somebody else's
19 fault", "There was a part that was missing",
20 "There was a supply chain problem."

21 For those components that they need to
22 run that facility to make money, most facilities,
23 and I believe this facility, probably warehouses
24 those components, and make sure that they have

1 them on-hand at some distribution center, where
2 they can repair those things and make sure they
3 continue to make money.

4 Why don't they have those things for
5 the lighting system? Why don't they have that
6 same priority? Why do we keep having excuses?
7 And, if someone has to say "It's not my fault", I
8 would say the residents could say "It's not my
9 fault." Because they listened to these
10 assurances at the hearing, and they believed
11 them. There was no need to ask for a rehearing.

12 So, I would say, at this point, find
13 that there is an issue. Find that this is
14 unreasonable performance. And I hope it doesn't
15 continue like this. But find that it's
16 unreasonable, take measures to assure that it
17 does not continue, and require the facility to
18 begin to do an analysis, and to mitigate the
19 impacts of those lights.

20 Thank you.

21 CHAIRMAN GOLDNER: Thank you.

22 We'll turn now to Attorney Turner. On
23 November 20th, '23, as the legal representative
24 of the Subcommittee, you filed a response to

1 Attorney Brooks's letter. This correspondence
2 has been entered into the record.

3 At the time, we would invite you to
4 address your concerns to the SEC.

5 MR. TURNER: Thank you very much. I'm
6 happy to answer any questions --

7 *[Court reporter interruption regarding*
8 *the use of the microphone.]*

9 MR. TURNER: Yes. Sorry.

10 I'm happy to answer any questions
11 afterwards, too, because I know the Committee has
12 some questions. I'll just briefly respond.

13 I heard a lot of what the facility
14 could do to be reasonable to comply with the duty
15 of good faith and fair dealing, which is a
16 contract concept, not a regulatory concept, and
17 whether there is good performance.

18 You can hear in those terms that
19 there's a lot of ambiguity, at "What is
20 reasonable?" "What is good performance?" And
21 the task of the Subcommittee and the Committee
22 was just determining whether there is compliance
23 with the Certificate itself or the Order. The
24 Subcommittee was not tasked with trying to decide

1 whether the facility is operating as efficiently
2 as it can or the ADLS system is operating
3 perfectly. It was only tasked with trying to
4 recommend to you whether the facility is
5 complying with the terms of its Certificate. So,
6 you have to look at the Certificate. The
7 Certificate only says that "The facility has to
8 operate and utilize a system", the lighting, the
9 ADLS system.

10 So, for you to find that there's -- or,
11 for the Subcommittee to have recommended, and for
12 you to find that there's a violation, you would
13 have to find that the facility is not operating
14 or utilizing an ADLS system. And the evidence
15 submitted in front of the Subcommittee did not
16 show that. It is using a system. Is it
17 operating perfectly? The answer is "no." It,
18 obviously, isn't. It's coming on, and it's
19 having false positives, and the evidence showed
20 that. But that doesn't mean that the facility is
21 not operating or utilizing a system.

22 And to go back into the application
23 process, and to find testimony that somehow binds
24 the certificate holder afterwards, I think is a

1 very dangerous precedent, because it makes it
2 impossible for the facility or the regulators to
3 actually determine what the compliance standard
4 is here.

5 There is no compliance standard in the
6 Certificate saying that the ADLS has to work
7 perfectly or it has to work at a certain level.
8 So, the Subcommittee is left in a difficult
9 position like you are. How do you determine
10 compliance with a certificate condition that just
11 says "you have to operate system", when the
12 system isn't working perfectly?

13 The Subcommittee's decision was "We're
14 going to stick with the language of the
15 Certificate. And, because the facility is
16 operating and utilizing a system, it's in
17 compliance with the Certificate." That's the
18 basis of the recommendation to the full
19 Committee.

20 A little bit -- there's been a little
21 discussion about sound today, and some problems
22 with the sound study. And I would just remind
23 the Committee that you previously decided at your
24 previous meeting to accept the Subcommittee's

1 Recommendation and that sound study. So, the
2 Subcommittee, after that, did not look at the
3 methodology again of the sound study, but took
4 its instructions from the Committee that that
5 issue was decided.

6 So, if you have any other further
7 questions, I'm happy to answer them. But that's
8 the basis of the Subcommittee's decision.

9 CHAIRMAN GOLDNER: Thank you, Attorney
10 Turner.

11 So, at this point, I'll move forward
12 with a report from Administrator Biemer, relative
13 to the June 23, 2023, Order.

14 Mr. Biemer, could you please provide
15 the Committee with an update from that directive?

16 ADMIN. BIEMER: Thank you.

17 Following last meeting, the
18 Subcommittee was given two directives. The first
19 was to provide a full accounting and disposition
20 recommendation of complaints. On September 1,
21 the Subcommittee held a public meeting, at which
22 we reviewed the list of outstanding complaints,
23 and solicited additional complaints from the
24 public via public comment. The Subcommittee

1 voted unanimously to accept the list of
2 complaints as the official full accounting of
3 complaints, as directed by the SEC. The list
4 accepted by the Committee was produced through a
5 thorough review of all Antrim dockets by myself
6 and Attorney John-Mark Turner. Together, we
7 compiled a list of complaints with the Company
8 and links to the email message, meeting
9 transcript, or exhibit submission. Once the list
10 was accepted by the Subcommittee as the official
11 full accounting of complaints, we discussed those
12 complaints in separate categories, which I am
13 happy to go over for you here today.

14 The first category was "sound
15 complaints". The sound complaints left
16 outstanding are similar enough, redundant, or
17 identical to the sound complaints from the past
18 previous meeting of the full SEC. Those
19 complaints were addressed by a comprehensive
20 sound study by HMMH, Incorporated. And the SEC
21 voted for no further enforcement action.

22 I want to remind everyone here that the
23 SEC, as Attorney Turner mentioned, accepted the
24 HMMH study, and took no enforcement action based

1 on the findings of that study. So, we are not
2 here to re-argue or re-litigate the acceptance of
3 that study, rather to decide its relevance to the
4 other outstanding sound complaints.

5 Regarding the remainder of the
6 outstanding ADLS complaints, I will now read my
7 summary of investigation filed on August 31st,
8 2023, into the record: To assist the
9 investigatory Subcommittee in Docket Number
10 2021-02, I reviewed all dockets involving the
11 Antrim Wind facility to make an accounting of all
12 operational complaints that have been made.
13 Specifically, I reviewed the following dockets:
14 2015-02, 2015-02 Post-Certificate Filings,
15 2019-01, and, of course, 2021-02. I reviewed the
16 filings in these dockets, as well as the
17 comments. I also reviewed the transcript of
18 previous public meetings of the Subcommittee.
19 Using my best efforts, I identified the
20 operational complaints that are listed on the
21 spreadsheet. Because there is no definition of
22 what constitutes a "complaint", I flagged
23 communications from neighbors or those affected
24 by operations that allege certificate or

1 regulatory violations. I did not include as
2 complaints comments about the investigative
3 process, the Subcommittee's interpretation of
4 rules, or any subject matter other than a
5 complaint about a specific violation.

6 As the spreadsheet showed, the only
7 potential operational complaints that have not
8 been addressed are (1) Richard Block's July 20th,
9 2021, comment about the ADLS; Mr. Block's
10 statement at the Subcommittee of February 2, 2023
11 and May 15, 2023, Public Meetings also concerning
12 ADLS. And (2) five sound complaints from Ms.
13 Berwick and Ms. Longgood. These communications
14 are hyperlinked below.

15 As the spreadsheet indicates, all
16 operational complaints concern either sound or
17 ADLS. The Subcommittee's May 31st, 2023,
18 recommendation concerning disposition of sound
19 complaints specifically referred to the fifteen
20 complaints covering multiple days. After
21 reviewing the dockets, we labeled the following
22 communications as "sound complaints" that were
23 not listed in the Subcommittee's Recommendation.
24 Those are a March 2nd, 2020, from Barbara

1 Berwick; a May 14, 2021, from Barbara Berwick and
2 others; a July 1st, 2021, from Barbara Berwick;
3 an August 11, 2021, from Janice Longgood; a
4 January 10, 2022, from Janice Longgood; a May 1,
5 2023, from Janice Longgood.

6 The Subcommittee should note that I
7 have labeled Ms. Berwick's as complaints, even
8 though she told the Subcommittee, in her May 1,
9 2023, communication, that she never filed a
10 complaint after her first complaints. We
11 regarded all communications as complaints.

12 In addition, erring on the side of
13 caution, I deemed the following communications to
14 be "complaints" concerning the operation of the
15 ADLS: February 28, 2020, from Richard Block;
16 March 13, 2020, from Barbara Berwick; April 30,
17 2020, from Mr. Block; August 13, 2020, from
18 Richard Block; March 25, 2021, from Mr. Block;
19 July 20, 2021, from Mr. Block; April 28, 2023,
20 from Mr. Block; February 2, 2023, from
21 Mr. Block's testimony at a Public Meeting; and
22 May 15, 2023, from Mr. Block's testimony at a
23 Public Meeting.

24 I conducted further investigation into

1 the functioning of the Antrim Wind aircraft
2 detection system, ADLS, in 2022 and 2023.
3 Specifically, I obtained records from the
4 facility documenting the percentage of nighttime
5 hours the ADLS system illuminated per day during
6 2022 and 2023. The attached spreadsheet displays
7 by day the percentage nighttime hours of
8 illumination. And I should add, that this is all
9 posted on the website. The spreadsheet is in the
10 same section, and this document I'm reading from
11 right now is in the same section on the docket
12 page.

13 The median time illuminated per day in
14 the entire period is 29.38 percent; the average
15 time is 43.22 percent; the disparity between the
16 median and average is explained by approximately
17 60 days of 100 percent illumination in 2022 and
18 100 days in 2023.

19 To determine why the system was
20 illuminated 100 percent of nighttime hours, or
21 another abnormally large percentage, I conducted
22 an investigation at the facility, including an
23 inspection, as well as interviews and
24 communications with facility personnel and

1 counsel. The facility reported that "during '22
2 and 2023, there were two separate instances of
3 equipment failure in the ADLS installed by Terma
4 North America, Inc., that activated the lights
5 for lengthy periods of time. The first period of
6 was for 55 days, beginning on June 13, 2022, and
7 the second period was for 89 days, beginning on
8 February 18, 2023. In both cases, the system
9 outages were caused by equipment failures in the
10 ADLS, which resulted in the lights defaulting to
11 the continuous activation mode for safety
12 purposes. Consistent with FAA requirements, at
13 no time during either period were lights not in
14 operation during nighttime hours."

15 The facility reported that in the
16 June 2022 incident, "the transformer that powers
17 the ADLS tower failed, which required complete
18 replacement by Terma. When one of the two radars
19 is not functioning, the lights default to the
20 "ON" mode in the dark or during nighttime hours.
21 After replacing the transformer, Terma determined
22 that the Lighting Control Server, the LCS, also
23 failed and needed to be replaced."

24 With regard to the February 2023

1 incident the facility reported that "an air
2 conditioning unit in the radar failed. The air
3 conditioning unit is located inside the radar
4 enclosure within the tower, and is responsible
5 for ensuring that the radar is operating within
6 the specified temperature range. Terma ordered a
7 new unit, which was shipped from Europe, and
8 which required a specialized support team from
9 the manufacturer to complete the installation."

10 To assess these assertions, I inspected
11 the facility and interviewed the facility's
12 manager. I was able to view the comments that
13 failed. The components and parts necessary for
14 repairs come from a single manufacturer that is
15 also responsible for conducting the installation
16 and repair work. The delay in installation and
17 repair for both instances was caused by a
18 shortage in parts. Once the parts were obtained,
19 the manufacturer of the system conducted the
20 necessary installation and repairs.

21 And this is a public -- in the Antrim
22 docket, called the "Administrator Summary of
23 Investigation".

24 Following discussion and public

1 comment, the Subcommittee passed the following
2 motions on September 1, 2023: First, they voted
3 to accept the full accounting of complaints
4 document as the official full accounting of
5 complaints. Second, they voted to adopt the
6 Administrator's Summary of Investigation, which I
7 just read into the record. Third, they voted to
8 recommend no further enforcement action on
9 outstanding sound and ADLS complaints. Fourth,
10 the Committee voted a unanimous request that they
11 be dissolved, "they" being the Subcommittee.

12 Finally, the Subcommittee instructed
13 me, the Administrator, to author a final report
14 to the full SEC outlining their recommendations.
15 This document has been added to the docket, and
16 distributed to the public, the document titled
17 the "Administrator's Report", was posted publicly
18 on October 11, 2023.

19 The second directive was to provide
20 recommendations to approve the enforcement and
21 investigative process. It is the opinion of the
22 Subcommittee, DOJ counsel, and external counsel,
23 and myself, that this point is now moot, given
24 the statutory change that has sent investigative

1 functions to the Department of Energy.

2 Thank you, and I'm happy to answer any
3 questions.

4 MS. BERWICK: Could I --

5 CHAIRMAN GOLDNER: So, we'll --

6 MS. BERWICK: Could I --

7 CHAIRMAN GOLDNER: I'm sorry, just a
8 moment. We'll pause here and ask if the
9 Committee has any questions for Mr. Biemer, at
10 this point?

11 *[No indication given.]*

12 CHAIRMAN GOLDNER: And, I'm sorry, from
13 the audience, there was a question?

14 MS. BERWICK: Could I just say one --
15 two things?

16 First, most of the people in Antrim
17 have no idea how to file a complaint. And,
18 secondly, I feel like, when the complaint that
19 included a lot of my neighbors, and just listed
20 it under my name, was a deliberate attempt to
21 squash their voices and not have them listed, and
22 make it seem like I'm just the troublemaker
23 making a lot of complaints.

24 CHAIRMAN GOLDNER: Thank you.

1 Yes, I'll just add that I think,
2 speaking on behalf of the SEC, that we take all
3 the complaints seriously. And, in fact, what I'd
4 like to do next is go through the remaining
5 complaints one-by-one, and get Administrator
6 Biemer's comments relative to those remaining
7 complaints.

8 So, just to recap -- I'm sorry. Just
9 to recap, in the last SEC meeting, many of the
10 sound complaints, I believe a dozen or so, were
11 dispositioned in that meeting. That's been
12 completed. Those have been dispositioned. There
13 are still fifteen additional complaints that
14 Administrator Biemer has referenced, and I'd like
15 to go through at this point one-on-one [*sic*].

16 So, yes?

17 MS. LINOWES: Yes, Mr. Chairman. Thank
18 you.

19 Before you get any further, I just
20 wanted to comment quickly with regard to a
21 statement by Mr. Turner and also Mr. Biemer.

22 My comments today regarding Janice
23 Longgood's complaint, it's not an attempt to
24 re-litigate the HMMH study. I am talking

1 specifically about Paragraphs 18, 19, and the
2 Subcommittee's actions on Janice Longgood. I'm
3 using HMMH's data to show that there's an issue.
4 But I am not asking to re-litigate the HMMH
5 study.

6 Thank you.

7 CHAIRMAN GOLDNER: Okay. Thank you for
8 the clarification.

9 So, what I'll do at this point is, I
10 show fifteen complaints that are still -- that
11 have not been dispositioned by the full SEC. So,
12 that's a big reason why we're here today. We
13 have complaints that are still outstanding.

14 And, so, what I'll do is I'll go
15 through them one-by-one. Administrator Biemer
16 went through them previously. I'll go through a
17 bit slower and capture the complaints for the
18 record.

19 So, in Docket 2015-02, dated February
20 28th, 2020, Richard Block filed an ADLS
21 complaint. In that same docket, 2015-02, on
22 March 13th, 2020, Barbara Berwick filed an ADLS
23 complaint. And on -- in that same docket,
24 2015-02, on April 30th, 2020, Richard Block filed

1 an ADLS complaint.

2 And the reason I mention the people
3 here is not, Ms. Berwick, to your point, to do
4 anything other than so everyone has the same
5 reference and they know which complaint we're
6 talking about. That's the only purpose for my
7 highlighting the names, so that everyone knows
8 which complaint it is.

9 CMSR. SIMPSON: Can I just stop you
10 there for a moment, Mr. Chairman? So, you
11 addressed a February 28, 2020, complaint and a
12 March 13th, 2020, complaint?

13 CHAIRMAN GOLDNER: Uh-huh.

14 CMSR. SIMPSON: I'm looking at a
15 spreadsheet that has a sound complaint.

16 CHAIRMAN GOLDNER: Yes.

17 CMSR. SIMPSON: Are you just addressing
18 the ADLS --

19 CHAIRMAN GOLDNER: The ADLS for now.

20 CMSR. SIMPSON: For now. Thank you.

21 CHAIRMAN GOLDNER: I'll go back to
22 sound, yes, Commissioner Simpson. I'll go back
23 to sound. So, we'll do ADLS first, and then
24 sound next.

1 Okay. Just continuing. The same
2 docket, 2015-02, filed August 13th, 2020, Richard
3 Block. And, again, these are all ADLS
4 complaints.

5 2021-02, so a new docket, July 20th,
6 2021, Mr. Block; 2021-02, same docket,
7 February 2nd, 2023, Mr. Block; same docket,
8 2021-02, April 28th, 2023, Mr. Block; and,
9 finally, docket 2021-02, May 15th, 2023,
10 Mr. Block.

11 And I'm just highlighting these,
12 because these are the undispositioned complaints.
13 And the task for the Committee today, one of
14 them, is to disposition the remaining complaints.

15 So, I'll stop there. Those are -- that
16 is the list one-by-one of all the ADLS
17 complaints. And I'll ask Attorney Biemer to
18 comment on those complaints.

19 ADMIN. BIEMER: Thank you, Mr.
20 Chairman.

21 I've preemptively commented on the ADLS
22 complaints when I read my report of Summary of
23 Investigation into the record. I can have
24 Attorney John-Mark Turner add some clarification,

1 if he deems necessary, if there's anything I left
2 out. And, also, if anyone has questions, based
3 on my Summary of Investigation, that might be a
4 good way to get the conversation started, too.

5 CHAIRMAN GOLDNER: So, maybe what I'll
6 do, Attorney Turner, --

7 MR. TURNER: Sure.

8 CHAIRMAN GOLDNER: -- is just mention
9 that I believe the question at hand, and I'll
10 start with you, Attorney Turner, and if anyone
11 else, please weigh in, is that these -- these
12 lighting complaints are from a period before the
13 Company believes that or sort of states that the
14 problem is fixed.

15 So, if, indeed, the problem is fixed,
16 then I wonder if the SEC has any jurisdiction to
17 handle a complaint where the issue has already
18 been fixed?

19 So, Mr. Turner, if you could please
20 start.

21 MR. TURNER: You know, I think that's
22 an interesting question. I'd say there is some
23 legal argument you could make that, since these
24 violations have occurred in the past, there's

1 currently no jurisdiction for you to order to do
2 anything. So, the conditions have already
3 occurred, the fixes have been made, and the
4 lighting, for some of these going back into early
5 2020 and 2021, those conditions are no longer
6 operative anymore.

7 So, I'm not sure what the Committee can
8 really do at this point about those past
9 violations.

10 CHAIRMAN GOLDNER: I want to give
11 Attorney Brooks the opportunity to comment as
12 well, as the Counsel for the Public.

13 MR. BROOKS: I don't know how you can
14 ever do enforcement if you don't look at things
15 that have happened in the past, if you don't know
16 what the next thing is going to be.

17 Right now, you have more than -- much
18 more than 20 percent average of the lights being
19 on, it's climbing up, and you have repeated
20 instances of failure. So, once you've
21 established that, and you've established what the
22 facility has done or not done, then you decide to
23 take action. And, if what that conditions are
24 are unreasonable, then you can put conditions in

1 the future, and that might be a performance
2 condition. That says "If this happens, here's
3 how you're going to mitigate that." "Here's the
4 study that you're going to do if we see a
5 complete failure again." Or, "Here's some extra
6 conditions about how you're going to make sure
7 you have replacement parts." "You're going to
8 make a report to us." And, maybe, as part of
9 that, if it happens again, you can indicate ahead
10 of time that "you anticipate having some
11 mitigation from the people that are impacted."

12 So, I'm not sure how you could say
13 "It's in the past, and it's all over."

14 MR. TURNER: If I could make a
15 follow-up comment?

16 CHAIRMAN GOLDNER: Please do.

17 MR. TURNER: So, the problem is, the
18 conditions no longer exist. Under the statute
19 and the rules, if the Committee finds a
20 violation, then you order the facility to stop
21 the violation. And, if they don't, then you
22 start an adjudicative proceeding afterwards. It
23 would be very hard for the Committee to order the
24 facility to change something or stop a violation

1 that is no longer occurring.

2 So, that's, basically, my point.

3 CHAIRMAN GOLDNER: Thank you.

4 I'll turn back to the Committee at this
5 point for a further discussion of those ADLS
6 complaints. We'll turn to the sound complaints
7 in a minute. But I'd like to finish the
8 discussion on ADLS first, the lighting complaints
9 first.

10 Anything else?

11 *[No indication given.]*

12 CHAIRMAN GOLDNER: Okay. Seeing none,
13 we'll turn now to sound.

14 So, I'm sorry for the long summary
15 here. But there's a half dozen sound complaints
16 or so, and I'll just read them into the record,
17 the remaining complaints.

18 So, in Docket 2015-02, March 2nd, 2020,
19 Barbara Berwick registered a sound complaint; in
20 Docket 2021-02, May 14th, 2021, Barbara Berwick,
21 another sound complaint; and, then, finally, for
22 Ms. Berwick, in Docket 2021-02, a July 1st, '21,
23 sound complaint. I'll move to three complaints
24 from Ms. Longgood. Those are all in Docket

1 2021-02, dated 08-11-2021; 01-10-2022; and
2 05-01-2023.

3 And I'll stop there. There is a
4 complaint from Mr. Block that was categorized as
5 both "sound and ADLS". And we'll save that one
6 for last, since it's in two different categories.

7 So, I think -- I think the position
8 here, and, again, I'll turn to Attorney Turner
9 for a comment, I think the position of the
10 Subcommittee here was that these sound complaints
11 are similar or the same as the complaints that
12 were dispositioned in the last full SEC meeting.
13 Is that an accurate summary?

14 MR. TURNER: Not -- not quite.

15 CHAIRMAN GOLDNER: Okay.

16 MR. TURNER: Almost all of them, except
17 for one.

18 Most of these predate the HMMH study,
19 the ones you're talking about. So, all of them,
20 except Ms. Longgood's May 1st, 2023, complaint.
21 And these -- the Committee previously adopted the
22 Subcommittee's Recommendation. In Paragraph 85
23 of the Recommendation, the August 23rd, 2021,
24 Recommendation says that, if the Subcommittee

1 accepts the findings of any field survey, that
2 the Subcommittee has to recommend denial of a
3 complaint.

4 And, so, since all of these complaints
5 predated that HMMH study, the Subcommittee felt
6 that it had to recommend denial, since the sound
7 study did not show a violation.

8 CHAIRMAN GOLDNER: Thank you. And
9 Attorney Brooks.

10 MS. LINOWES: Except for Janice
11 Longgood's.

12 MR. TURNER: Correct. Except for the
13 May 1st, 2023, complaint from Janice Longgood,
14 which took place, I think, --

15 *[Court reporter interruption.]*

16 MR. TURNER: Sorry. Yes, sorry. The
17 May 1st, 2023, complaint from Janice Longgood,
18 which I think was a few days after the completion
19 of the HMMH study.

20 Right, a few days after the study was
21 released to the public.

22 CHAIRMAN GOLDNER: I'd like to give
23 Attorney Brooks an opportunity to comment please.

24 MR. BROOKS: Thank you. I don't have

1 much to offer on the sound complaints. I think
2 that it's unfortunate the way the rule and the
3 Certificate were written at that time. But I
4 think that you've heard those kind of concerns of
5 mine, I've tried to take that into account the
6 best I can.

7 I certainly feel for the people who are
8 experiencing these problems, and I think you
9 probably do, too. But I don't think I have
10 anything additional right now.

11 CHAIRMAN GOLDNER: Thank you. And I'll
12 turn to Administrator Biemer. Sorry, I think I
13 called you "Attorney Biemer" earlier. 2015-02,
14 the March 25th, 2021, complaint from Mr. Block,
15 that was categorized as both "sound and ADLS".
16 Could you clarify for the Committee what was
17 meant by that distinction?

18 ADMIN. BIEMER: Yes. I have it pulled
19 up on my computer. I'm looking at it right now.
20 But I'm going to ask Attorney Turner to explain
21 why we decided to code that as both "sound and
22 ADLS"?

23 MR. TURNER: I think that was a mistake
24 on my part. Basically, if you look at it, it's

1 really an ADLS complaint. But there is a
2 statement in there where he says "It's loud."

3 But, under the way the Subcommittee
4 looked at complaints, things that didn't have a
5 lot of specifics, in terms of days or times, were
6 not considered "complaints".

7 So, that really should just be an ADLS
8 complaint.

9 CHAIRMAN GOLDNER: Okay. Thank you for
10 the clarification.

11 Mr. Ward.

12 MR. WARD: Yes. All of the complaints,
13 the sound complaints --

14 CHAIRMAN GOLDNER: Mr. Ward, you'll
15 need a microphone.

16 MR. WARD: Sorry. All of the sound
17 complaints are likely due to specific weather
18 conditions. Given that, the first thing is that
19 there has to be some requirement that, if we're
20 going to look at a sound complaint, we need to
21 find out what the weather was at the time of the
22 complaint. It says that very clearly in 162-H,
23 in the rules. It continues. Everybody agrees
24 that there's some relationship. I'm not arguing

1 I know the relationship. But there's some
2 relationship between the sound complaints, that
3 is they're occurrence at all, and their
4 intensity, and something with the weather.

5 And there has been no -- Antrim Wind is
6 sort of pretending it never happened. And the
7 Committee has been, I mean, they know, and nobody
8 disagrees, there has never been a disagreement
9 with my statement that it's due to the weather,
10 even though I don't know which kind of weather it
11 would be.

12 During our hearings on the original
13 thing, back in 2015, or '12, I can't remember
14 now, there were all kinds of comments about "Yes,
15 it's due to the weather", and all of that. And,
16 if there were complaints, whatever the offending
17 turbine would be, it would be shut down.

18 When I asked "how the hell they'd know
19 which turbine it was?" It was smiles all around.

20 It's been sort of considered that, yes,
21 everybody agrees it's there, but what are we
22 going to do about it.

23 And I -- I don't know what I want to
24 suggest that you do, except that somehow or other

1 there has to be a recognition to the -- whoever
2 it is that's doing the analysis, and in which
3 case the Subcommittee would have been the obvious
4 place, that there's something that has to do with
5 the weather. And, if you're never going to find
6 out what it is, then you're never going to solve
7 it. I don't know that you can solve it. But I
8 know damn well you can't solve it until you know
9 what the weather is that's producing them.

10 And there's been a requirement for
11 Antrim Wind to ever do the slightest little bit
12 of analysis. I don't know what to suggest to do.
13 But, if you don't do something in that, we're
14 getting no place.

15 Thank you.

16 CHAIRMAN GOLDNER: Thank you. Go
17 ahead.

18 MS. PAYNE: Karen Payne.

19 You have a group of people here who are
20 suffering. You have the power to help them heal
21 this situation. Antrim Wind, you have the legal
22 speak and the money to work you're way around it.
23 Do you really want to be the bad guy here, and
24 get your way, but watch all of these human beings

1 walk out of this room and continue to suffer?
2 Because that's what will happen.

3 Let's, you know, New Hampshire, Antrim
4 Wind, let's lead the way here, and show clean
5 energy how we can all live together and be
6 healthy, and not hurt people.

7 CHAIRMAN GOLDNER: So, I'll turn to the
8 Committee here in a moment. I'll just, since
9 Antrim was addressed in these comments, I'll give
10 Mr. Needleman an opportunity to comment, if he
11 wishes?

12 MR. NEEDLEMAN: Thank you, Mr. Chair.
13 I appreciate it.

14 I'm kind of at a loss. I am not Antrim
15 Wind, but I am their representative. I spend a
16 lot of time working with entities in this state
17 that hold permits. My clients take that very
18 seriously. Antrim takes it very seriously.

19 This Committee created an
20 extraordinarily detailed set of rules to deal
21 with sound at wind facilities. Antrim Wind made
22 ever effort to comply with those. Three
23 different sets of tests, from three different
24 professionals, have determined that they are in

1 compliance with your rules.

2 I get that people don't like your
3 rules. And maybe one day you'll choose to change
4 your rules. But that's the standard we're
5 talking about today, and Antrim Wind has complied
6 with it.

7 CHAIRMAN GOLDNER: Thank you,
8 Mr. Needleman.

9 Yes, Ms. Berwick. This will be the
10 last public comment, and then we'll turn back to
11 the Committee.

12 MS. BERWICK: There's many, many, more
13 complaints that I could have filed, but I didn't
14 feel any purpose of filing them when nothing was
15 done.

16 And the other thing is, averaging sound
17 over an hour period of time makes it totally mute
18 any testing that was done.

19 I do think that, when the Committee was
20 formed, there was strict and stringent rules.
21 But those rules have changed, and now it's just
22 the industry standard, instead of the rules that
23 we were promised. And the rules that, I remember
24 people sitting on their thing saying "I feel

1 comforted by the fact that we have these
2 protections in place." But I don't, I mean,
3 we're not comforted.

4 CHAIRMAN GOLDNER: Thank you.

5 So, I'll turn back to the -- I'll turn
6 back to the Committee. I think the task at hand
7 that I've put in front of the Committee is the
8 disposition of these fifteen complaints. Of
9 course, everyone in the room knows that new
10 complaints go to the New Hampshire Department of
11 Energy, as of October 7th, 2023. But we have the
12 task today of dispositioning these final fifteen
13 complaints that were filed with the SEC.

14 So, I'll turn again to the Committee,
15 and ask for any questions, before any motion on
16 the disposition of these complaints?

17 CMSR. CHATTOPADHYAY: Could I, just to
18 make sure I'm following everything, for the sound
19 complaint that happened after the study, can you
20 just provide your recommendations for the record?

21 MR. TURNER: Sure. If you look at
22 Administrator Biemer's report, it's Paragraph 19.
23 But it's recommending that the Committee take no
24 further action, because it found that that report

1 lacked any specifics about time, dates, the
2 amount of how loud it would be. It was simply a
3 statement that she "experiences loud, disruptive
4 noises on an intermittent basis."

5 So, the Subcommittee found that the
6 previous sound study, even though it was before
7 this complaint, showed the -- the Subcommittee
8 was comfortable that that complaint should not
9 result in further enforcement action as well.
10 Paragraph 19 of the report.

11 CMSR. CHATTOPADHYAY: Any response from
12 the Public Counsel?

13 MR. BROOKS: No further response.

14 MS. LINOWES: Mr. Chairman, may I
15 respond?

16 CHAIRMAN GOLDNER: I said we would --
17 that would be the last public comment. But I'll
18 make an exception. Please proceed.

19 MS. LINOWES: Thank you.

20 I just want to make sure that the
21 commentary in Paragraph 19, where they dismiss
22 Ms. Longgood's complaint, has to do with
23 statements by Christopher Menge that were not in
24 his report. So, we're arguing that "his report

1 covers Ms. Longgood's complaint" is not accurate.

2 MR. TURNER: Okay. In Paragraph 19,
3 sorry, refers to some statements by Mr. Menge, I
4 think that was testimony at the public meeting,
5 where he explained his report, and he stood by
6 that report.

7 MS. LINOWES: But the statement about
8 "line sources" and "slow degradation of sound" is
9 not in his report. And, again, that was never
10 tested or accepted by the Committee.

11 MR. TURNER: It was testified to and it
12 was accepted.

13 CHAIRMAN GOLDNER: All right. Thank
14 you.

15 So, we'll just turn to any final
16 comments from the Site Evaluation Committee,
17 before any motion?

18 *[No indication given.]*

19 CHAIRMAN GOLDNER: Okay. So, do I have
20 a motion to accept the final disposition of these
21 complaints, disband the Subcommittee, and close
22 the matter, with future complaints directed to
23 the New Hampshire Department of Energy?

24 MR. DOIRON: Mr. Chairman, so moved.

1 CHAIRMAN GOLDNER: Thank you. Is there
2 a second?

3 CMSR. CHATTOPADHYAY: Second.

4 CHAIRMAN GOLDNER: Okay. So, let's
5 move to a roll call vote, given the length of
6 time between -- a discussion? Sorry, Mr. --
7 sorry, Commissioner Scott. Let's move to a
8 discussion.

9 CMSR. CASS: Can I ask for a
10 clarification? Oh.

11 CHAIRMAN GOLDNER: Yes, sir. I'm
12 sorry.

13 CMSR. CASS: I didn't mean to interrupt
14 Commissioner Scott. But I was just -- a
15 clarification, are we talking all of the -- all
16 of the complaints, sound and noise taken
17 together, or are we taking sound as a group
18 and --

19 CHAIRMAN GOLDNER: The proposal is to
20 take all fifteen as a body. If somebody would
21 like to do them independently or differently, we
22 could certainly do that as well. But the motion
23 was for all fifteen.

24 CMSR. CASS: All fifteen, okay.

1 CHAIRMAN GOLDNER: Any further
2 discussion?

3 *[No indication given.]*

4 CHAIRMAN GOLDNER: Okay. Let's move to
5 a roll call vote, beginning with Commissioner
6 Scott.

7 VICE CHAIRMAN SCOTT: Yea.

8 CMSR. SIMPSON: Yea.

9 CMSR. CHATTOPADHYAY: Yea.

10 MR. JALBERT: Yea.

11 MR. YORK: Yea.

12 CMSR. CASS: Yea.

13 MR. DOIRON: Yea.

14 CHAIRMAN GOLDNER: And the Chair votes
15 "yea".

16 So, the motion passes unanimously. The
17 fifteen complaints have received their final
18 disposition, the Subcommittee is disbanded, and
19 future complaints will be directed to the New
20 Hampshire Department of Energy.

21 So, finally, I'll move to an
22 administrative matter. And I'll bring up the
23 issue of SEC meetings for 2024. I would propose
24 that the Administrator schedule quarterly

1 meetings, which could be canceled or expanded
2 upon as needed, to provide a regular meeting
3 cadence.

4 So, I'll ask if there's any discussion
5 to a regularly scheduled quarterly meeting, that
6 could be canceled or added to it as needed? But,
7 right now, we don't really have a regular
8 cadence. So, I thought it would be a proposal I
9 would bring to the SEC.

10 VICE CHAIRMAN SCOTT: Mr. Chair?

11 CHAIRMAN GOLDNER: Commissioner Scott.

12 VICE CHAIRMAN SCOTT: Yes. I support
13 that kind of a mechanism. At least I'll speak
14 for myself. It's easy to get something on my
15 calendar way in advance, and then, if not needed,
16 take it off. It's really hard to do the
17 opposite. So, I think it would serve -- it would
18 make it easier for things to happen for the
19 Committee, if we have a standing quarterly setup.
20 And, then, again, I'll leave it to your good
21 judgment, if there's not enough context for a
22 meeting, then to cancel the meeting.

23 CHAIRMAN GOLDNER: Thank you,
24 Commissioner Scott. Any other comments?

1 Mr. Doiron.

2 MR. DOIRON: Agreed. Agree with by
3 colleague, Commissioner Scott. I think, also to
4 just, you know, for public input and transparency
5 and whatnot, having those scheduled and figured
6 out is a good plan moving forward.

7 CHAIRMAN GOLDNER: Okay. Thank you.
8 Commissioner Chattopadhyay.

9 CMSR. CHATTOPADHYAY: I just agree with
10 everything the Commissioner has said.

11 CHAIRMAN GOLDNER: Okay. Thank you.
12 So, I'll move --

13 MR. WARD: Excuse me. May I just have
14 a clarification? That's all. Is what you're
15 saying that now all of the old things are dead,
16 or we have to file them and do something else?

17 I'm not sure I understand where we're
18 sitting. Are we cleaning up the old things, and
19 they're all dead, and we can't complain about
20 them? We -- okay?

21 I'm not saying "good" or "bad", I'm
22 just asking.

23 CHAIRMAN GOLDNER: Yes. What the SEC
24 just voted to do was to disposition all fifteen

1 complaints as being fully resolved. And that any
2 new complaints should be filed with the New
3 Hampshire Department of Energy, per statute, as
4 of October 7th, 2023.

5 MR. WARD: And, so, we couldn't refile
6 anything from further back with the Department of
7 Energy, or what?

8 CHAIRMAN GOLDNER: If you, for example,
9 had a complaint tomorrow, or next month, or next
10 year, those complaints would be filed with the
11 New Hampshire Department of Energy, and they
12 would -- they would manage that complaint.

13 MR. WARD: But if we wanted to do
14 anything toward anything further back?

15 CHAIRMAN GOLDNER: Back in time
16 everything has been dispositioned. So, as of
17 today -- well, I should say, as of October 7th,
18 everything has been dispositioned.

19 MR. WARD: Thank you.

20 CHAIRMAN GOLDNER: Okay.

21 Okay. So, do I have a motion to have
22 Administrator Biemer schedule quarterly SEC
23 meetings for 2024?

24 MR. DOIRON: So moved.

1 CHAIRMAN GOLDNER: Do I have a second?

2 CMSR. CASS: Second.

3 CHAIRMAN GOLDNER: Thank you.

4 *[Court reporter interruption regarding*
5 *who seconded the motion.]*

6 CHAIRMAN GOLDNER: Mr. Cass.

7 Commissioner Cass.

8 Any discussion?

9 *[No indication given.]*

10 CHAIRMAN GOLDNER: Okay. All in favor
11 of Administrator Biemer scheduling quarterly
12 meetings for 2024 say "aye"?

13 *[Multiple members indicating "aye".]*

14 CHAIRMAN GOLDNER: Any opposed?

15 *[No indication given.]*

16 CHAIRMAN GOLDNER: Seeing none, the
17 motion passes unanimously.

18 Okay. With that, I believe this
19 concludes the pending business before the
20 Committee.

21 Do any members of the Committee have
22 additional business that needs to be addressed?

23 Commissioner Scott.

24 VICE CHAIRMAN SCOTT: I'd actually like

1 to make a motion for the Committee's
2 consideration.

3 So, I'll start with, regarding the
4 complaint process, I think the word
5 "dissatisfied" comes to mind, you know, our
6 history of our timeliness, and our ability to
7 respond to complaints. I also am a bit
8 dissatisfied with where we are legally to be able
9 to retrospectively address past violations. And,
10 hopefully, the new law change, which moves that
11 to the Department of Energy, will, if nothing
12 else, by -- again, our hope is that the
13 Department of Energy will be able to act more in
14 an agile matter, if you will, to address these.
15 So, hopefully, that was what was seen by the
16 Legislature, too, in doing this.

17 I'm also not totally happy with the
18 notion of the ADLS system, and the reliability of
19 the system in the past.

20 So, my motion, if anybody else wants to
21 second it, is to ask that Administrator Biemer
22 work in coordination with the Department of
23 Energy to inquire about the project's plans to
24 address reliability issues for the ADLS system,

1 and to report those back to the Committee.

2 MR. JALBERT: I'll second.

3 CHAIRMAN GOLDNER: Would anyone like to
4 move that?

5 MR. JALBERT: I will second that.

6 CHAIRMAN GOLDNER: We need a movement
7 first.

8 MR. JALBERT: I move the motion to do
9 that.

10 CHAIRMAN GOLDNER: We have a motion.
11 Do we have a second?

12 CMSR. CHATTOPADHYAY: Second.

13 CHAIRMAN GOLDNER: We have a second.
14 Okay. Discussion?

15 ADMIN. BIEMER: Who made the motion?

16 VICE CHAIRMAN SCOTT: Well, I can, but
17 I guess Jim did.

18 ADMIN. BIEMER: Pardon me. Who made
19 the motion and the second?

20 MR. JALBERT: I made the motion.

21 ADMIN. BIEMER: Okay.

22 VICE CHAIRMAN SCOTT: Pradip seconded.

23 CHAIRMAN GOLDNER: Pradip seconded it,
24 yes.

1 Any discussion?

2 CMSR. SIMPSON: I'll be supporting the
3 motion, because I agree with Commissioner Scott
4 that the complaint process was rightfully
5 addressed by the General Court and empowering the
6 Department of Energy to investigate these types
7 of complaints in the future.

8 So, I'll be supporting the motion.

9 CMSR. CASS: I would also say, I think
10 there are -- it seems, in my mind, that there are
11 still lingering concerns or issues about the
12 ADLS. That some of the stuff in the report here
13 talks about before the Vose complaint, when the
14 ADL work -- ADLS work was completed. But it
15 seems like, you know, even after that was
16 completed, that there is a functioning system,
17 but it isn't functioning as it intended. And I
18 think that's what maybe you're trying to get at,
19 Commissioner Scott.

20 I recognize the Subcommittee's report,
21 and, you know, that they had a regulatory thing,
22 and they were reading, you know, the literal
23 wording of the Certificate in making their
24 recommendation.

1 But I think acknowledging that there is
2 still probably some functional issues with that
3 that could be looked into is appropriate.

4 CHAIRMAN GOLDNER: And, as a
5 clarification -- Mr. Jalbert.

6 MR. JALBERT: And I would just add,
7 what was the spirit and intent of the system,
8 from the onset?

9 CHAIRMAN GOLDNER: And, Commissioner
10 Scott, you're -- the SEC, I suppose, can't demand
11 that the DOE do something, but we can request it.
12 Is that your understanding?

13 VICE CHAIR SCOTT: Correct. So, I
14 tried to choose my words carefully. So, again,
15 what I was suggesting, which I think was the
16 motion, was that the Committee charge
17 Commissioner [sic] Biemer to coordinate with the
18 Department of Energy to inquire about the
19 project's plans to address reliability issues
20 with the ADLS system, and report those back to
21 the Committee.

22 CHAIRMAN GOLDNER: Okay. Any further
23 discussion on that topic? Mr. Doiron?

24 MR. DOIRON: No. I'm just happy

1 that -- I thank my colleague for the motion. I
2 think, you know, Attorney Brooks brought up
3 several concerns that are worth following up on.

4 Thank you.

5 CMSR. CHATTOPADHYAY: And can I just
6 add a comment?

7 I think, based on what I've heard, and
8 based on the latest filings, and I can call them
9 "complaints" that, you know, one of them came
10 today, there's the issue of what information was
11 provided by Antrim that led folks to assume that
12 the ADLS would solve everything, in terms of the
13 lighting?

14 And, so, I'm kind of -- I'm not in a
15 position to say that I've looked at it all, but
16 that bothers me. Like, there must be, if the
17 information wasn't right, we need to also revisit
18 that. That is there a process that can be put in
19 place to improve, at least bring more clarity as
20 to when the -- when, for example, Antrim provides
21 the information, what does it mean? Because, if
22 you're having issues here, not knowing exactly
23 what that means and how the others have viewed
24 it.

1 Thank you.

2 CHAIRMAN GOLDNER: And I think,
3 Commissioner Chattopadhyay, I think what you're
4 suggesting is, in the letter, the recommendation
5 be made that communication from Antrim to the
6 public perhaps be improved? Is that a good
7 summary?

8 CMSR. CHATTOPADHYAY: That is an
9 additional consideration. So, for example, if
10 it's -- if, for some reason, there's a defect,
11 and, therefore, you have lights at night 100
12 percent, the folks living in Antrim, they should
13 know what's going on. And, so, that is almost
14 like an additional consideration.

15 But I'm talking about, even how things
16 proceeded, you know, understanding the
17 information that was used, to assume that, once
18 the ADLS would be there, things would be all set.

19 So, right now, given what I'm reading,
20 and I don't have the bandwidth to do more than
21 that, this whole discussion about "20 percent",
22 "30 percent", you know, I mean, I'm sort of
23 asking "what was the understanding?" So, it's
24 like, and was the information correct or not?

1 That's the issue.

2 CHAIRMAN GOLDNER: Any further
3 discussion from the Committee members?

4 *[No indication given.]*

5 CHAIRMAN GOLDNER: So, Attorney *[sic]*
6 Scott, because your motion had many tentacles, I
7 will ask you to repeat the motion, and then we'll
8 take it to a vote.

9 VICE CHAIRMAN SCOTT: After I put it
10 all away.

11 CHAIRMAN GOLDNER: Sorry about that.

12 VICE CHAIR SCOTT: Okay. One more
13 time.

14 So, the motion was that we ask or
15 direct Administrator Biemer to coordinate with
16 the Department of Energy to inquire about the
17 project's plans to address reliability issues
18 with the ADLS system, and report back to the
19 Committee.

20 CHAIRMAN GOLDNER: Thank you,
21 Commissioner Scott. So, we'll bring it to a
22 vote, all in favor say "ayes"?

23 *[Multiple members indicating "aye".]*

24 *[Court reporter interruption, noting by*

1 *mistake that the motion hadn't been*
2 *seconded, but, in fact, it had been*
3 *moved and seconded previously.]*

4 CHAIRMAN GOLDNER: Oh, it was
5 previously motioned and seconded. I just had
6 Commissioner Scott repeat it.

7 MR. PATNAUDE: Okay.

8 CHAIRMAN GOLDNER: Yes.

9 MR. PATNAUDE: Sorry about that. Go
10 ahead.

11 CMSR. SIMPSON: The motion was made by
12 Mr. Jalbert.

13 MR. PATNAUDE: Yes. Okay.

14 CHAIRMAN GOLDNER: Commissioner Scott
15 just repeated it to make sure it was in the
16 record concisely.

17 MR. PATNAUDE: Sorry.

18 CHAIRMAN GOLDNER: Okay. Any opposed?
19 *[No indication given.]*

20 CHAIRMAN GOLDNER: Okay. The motion
21 passes unanimously.

22 Is there any additional business to be
23 discussed today?

24 *[No indication given.]*

1 CHAIRMAN GOLDNER: Okay. Hearing none,
2 we are adjourned.

3 *(Whereupon the Public Meeting of the*
4 *full Site Evaluation Committee was*
5 *adjourned at 3:51 p.m.)*

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C E R T I F I C A T E

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

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

/s/ Steven E. Patnaude (01-09-2024)

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