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## ORDERLY DEVELOPMENT

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

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2 CHAIRMAN HONIGBERG: All right.  
3 We're back. That's what public deliberations  
4 can look like. They can look really, really  
5 boring.

6 Yesterday we had, and the day  
7 before, we had a lengthy discussion of orderly  
8 development of the region, which is one of the  
9 major criteria that the Committee has to  
10 consider when it has an application in front of  
11 it. I'm going to summarize the statute and the  
12 rule and the question.

13 The statute is RSA 162-H:16, the  
14 required findings regarding the issuance of a  
15 certificate. Roman IV says, "After due  
16 consideration of all relevant information  
17 regarding the potential siting of routes of a  
18 proposed energy facility, including potential  
19 significant impacts and benefits, the Site  
20 Evaluation Committee shall determine if issuance  
21 of the certificate will serve the objectives of  
22 this chapter. In order to issue a certificate,  
23 the Committee shall find that," and Paragraph  
24 (b) says, "The site and facility will not unduly

1           interfere with the orderly development of the  
2           region, with due consideration having been given  
3           to the views of municipal and regional planning  
4           commissions and municipal governing bodies."

5                         We have two rules that are  
6           directly relevant to this criterion. One is  
7           Site 301.15, which are the Criteria Relative to  
8           a Finding of Undue Interference, and it says,  
9           "In determining whether a proposed energy  
10          facility will unduly interfere with the orderly  
11          development of the region, the Committee shall  
12          consider: (a) the extent to which the siting,  
13          construction and operation of the proposed  
14          facility will affect land use, employment and  
15          the economy of the region; (b) the provisions of  
16          and financial assurances for the proposed  
17          decommissioning plan for the proposed facility;  
18          and (c) the views of municipal and regional  
19          planning commissions and municipal governing  
20          bodies regarding the proposed facility."

21                         The other rule that's directly  
22          relevant is Site 301.09, which I will not read  
23          in full. It refers to the contents of the  
24          Application which directs an Applicant to

1 provide a raft of information that in one way,  
2 shape or form is related to the criteria that I  
3 read from 301.15, which is the way we're  
4 supposed to get at the finding in 162-H:16.  
5 Everybody got that? Good.

6 On the first day, we talked about  
7 financial, managerial and technical expertise,  
8 which is the first criterion under 162-H. And  
9 it was fairly obvious to me that there was a  
10 consensus among the members of the Committee. I  
11 was able to articulate that consensus and get  
12 general agreement that I had it right. I do not  
13 have any sense of where the Subcommittee is on  
14 "undue interference with the orderly development  
15 of the region," and so what we are going to do  
16 is ask people to talk about where they think  
17 they are in this. There's no motion. There's  
18 no vote right now. But we're going to ask  
19 people to say where they are as a way of  
20 bringing the discussion about orderly  
21 development to a close.

22 I think I may have said it  
23 earlier. I know I said it yesterday. Again, it  
24 is the Applicant's burden to establish, more

1           likely than not, that there will not be an undue  
2           interference with the orderly development of the  
3           region. Lawyers love formulations like that,  
4           but no one else does. But the lawyers in the  
5           room understood what I just said, and I think  
6           the members of the Subcommittee do as well.

7                         Mr. Way has graciously agreed to  
8           go first.

9                         MR. WAY: Thank you.

10                        Good morning. All right. In  
11           putting my thoughts together on orderly  
12           development over the last few days, and I think  
13           we had a lot of content yesterday particularly,  
14           let me touch on some of the points that we  
15           discussed. And they may be not in the order  
16           that's in 301.15.

17                        With regards to employment, I do  
18           believe the Applicant has met that burden of  
19           proof that it will positively impact employment.  
20           As I said yesterday, I'm less concerned about  
21           the temporary nature of the majority of the jobs  
22           that will occur during construction. I think  
23           that's the nature, stock and trade of the  
24           construction industry, and it's a value in

1 themselves. I do think that there will be  
2 indirect jobs and induced jobs. I think it's  
3 going to be dependent upon the market as  
4 Commissioner Bailey raised yesterday.

5 I also agree that there could be  
6 significant tax revenue to the towns, depending  
7 upon market conditions. I do believe that there  
8 will be a positive impact to the regional gross  
9 domestic product, and state product as well.

10 And I do believe that there will  
11 be energy savings, albeit we can talk about the  
12 scale of those savings that will be translated  
13 to consumers, manufacturers, et cetera.

14 Regarding the piece on  
15 decommissioning -- and decommissioning has been  
16 important to me -- I find that the proposals for  
17 financial assurance I think can work, and I  
18 think with some conditions, or one or two  
19 conditions, I think it will be appropriate for  
20 the Project. And I know we're going to be  
21 talking about that a little bit more. So those  
22 are the things I agree with.

23 And I think here is where we're  
24 going to part ways a bit. I do believe there's

1 going to be an impact to business, and that  
2 impact's been washed away by simply referring to  
3 the Project as a "region-wide basis," the region  
4 as a whole. I think we've heard from several  
5 businesses, particularly in the underground  
6 route. They believe the Project could  
7 negatively impact their operations. Don't think  
8 this is to be dismissed, as small businesses are  
9 the cornerstone of our economic development.

10 Regarding land use, I was not  
11 convinced that the entire project would be  
12 consistent with the prevailing land use. I  
13 think we pointed out several areas where we had  
14 concerns. I think we brought up the issue of  
15 that tipping point when it's no longer  
16 conforming with what was the original intent and  
17 design for the ROW. I did not find the argument  
18 that master plans lacking specificity in  
19 referencing transmission lines to be convincing,  
20 knowing what we know about master plans and how  
21 they're used and how -- the process for being  
22 developed. The same thing I think with the  
23 references to the zoning as well. In many  
24 cases, I thought that it tended to suggest other

1           than what the Applicant was suggesting.

2                           I've been very clear I think on  
3 the process. I don't think there was enough  
4 interaction with stakeholders to determine if  
5 the siting and construction would unduly affect  
6 the prevailing land use. Once again, I see the  
7 communities as summing up to the regions.

8                           Tourism. No surprise from  
9 yesterday. I do not believe the Applicant has  
10 met the burden of proof that there will be no  
11 impact on tourism. I'm not sure I know one way  
12 or the other. I was critical of the methodology  
13 and findings. I did not find them to be  
14 particularly adequate or convincing. I did not  
15 find the witness to be particularly  
16 knowledgeable about the state, its tourist  
17 destinations, and I didn't feel there was an  
18 adequate outreach to attempt to fill that gap.  
19 Felt very little consideration given to the  
20 tourist businesses, events and resulting  
21 traffic. You know, and particularly on the  
22 traffic, I really didn't think that some of the  
23 pieces were joined together that would have  
24 helped us to make that decision.

1                   Impact to property values. In  
2                   the same vein, I'm not sure I accept the  
3                   argument that there will be no impact to  
4                   property values. It just doesn't make sense to  
5                   me that there won't be any. But once again, if  
6                   we sort of wash it into a region, I guess that's  
7                   the statement that can be made. But I just  
8                   don't think it passes the "straight-face test"  
9                   that there will be none. I think we've heard  
10                  some good testimony to suggest that it could be  
11                  just the opposite. I don't think -- and I don't  
12                  think it may be to the extent that's been  
13                  suggested in some cases. I don't know. So, you  
14                  know, once again, I have questions about the  
15                  process of answering the question, the outreach  
16                  to the stakeholders best able to answer those  
17                  questions. It's a continuing theme of mine.

18                         So I guess with regards to  
19                         whether -- my view at this point, without making  
20                         anything formal, if someone came up to me and  
21                         said, "Will this project unduly impact orderly  
22                         development?" I don't think I'd have a clear  
23                         answer. And to me, that suggests that the  
24                         burden of proof hasn't been met. That's my

1 thought.

2 CHAIRMAN HONIGBERG: Staying to  
3 my right, Ms. Dandeneau.

4 MS. DANDENEAU: Thank you.  
5 First, I think I'll start with some of the  
6 things that I agree with what Mr. Way just  
7 commented upon, and that is that I do think that  
8 we have been shown that there will be energy  
9 savings. And I'm sure, like many people in the  
10 room, that that's -- I appreciate that.

11 In terms of decommissioning, what  
12 we have in front of us makes sense to me. I  
13 feel that financially the Applicant and its  
14 parent companies will be able to decommission  
15 this project, if it were built, appropriately.

16 I also agree with Mr. Way that  
17 there has not been enough interaction with  
18 stakeholders, particularly on a finer scale, to  
19 evaluate this Project's impact on land use.

20 And then in summarizing my own  
21 thoughts over the last couple of days, which I  
22 apologize are not in perfect order here, I am  
23 not convinced that the construction phase of  
24 this project would not have an impact on tourism

1 and the economy. We've heard about and talked  
2 about the traffic plan, or potential traffic  
3 plans extensively, and I'm concerned about  
4 businesses being impacted while construction is  
5 at or near those business locations. And  
6 specifically, I'm concerned about Plymouth's  
7 Main Street businesses and some smaller farms in  
8 the north and central part of the state that  
9 we've heard about. I'm also specifically  
10 concerned about those businesses and residences  
11 who will be impacted by underground  
12 construction. Their travel to and from work,  
13 school and emergency care access also concern  
14 me.

15 In terms of land use, I'm  
16 concerned about vegetative clearing,  
17 particularly in the new right-of-way up north,  
18 in that that vegetative clearing will have an  
19 impact on land use. I don't agree with  
20 Mr. Varney's testimony that, because 80 percent  
21 of the Project is proposed to be in an existing  
22 right-of-way, that it does not change land use.  
23 I also agree with the North Country Council, in  
24 that I have the concern about the cumulative

1 impact of large projects in the North Country in  
2 terms of land use.

3 In terms of the economy and the  
4 LEI study, that was very much outside my comfort  
5 zone. But I do feel that it was very thorough  
6 and that Ms. Frayer obviously knew what she was  
7 talking about. I think that that study looked  
8 at New Hampshire as a whole and did not get at  
9 the finer lens view of potential economic  
10 impacts from this project.

11 In terms of property values, I  
12 agree with a lot of what was said by the  
13 Subcommittee over the last day or so. I did not  
14 find the analysis credible or convincing, and I  
15 do have concern about this project's impact on  
16 property values.

17 In terms of jobs, Commissioner  
18 Bailey commented, I think it was yesterday,  
19 about the REMI model's predictions for job  
20 creations being overinflated, and that makes a  
21 lot of sense to me based on conversation  
22 regarding energy markets and some potentially  
23 changing numbers. I do think that there will be  
24 a net increase in job opportunities, and I think

1           that that is a good thing.

2                           I guess one last comment on  
3           tourism. I don't feel that we have in front of  
4           us at this point in time an analysis of what the  
5           construction phase of this project would or  
6           would not have on tourism. I feel that this is  
7           an oversight by the Applicant and their experts.

8                           And so I guess just in summary I  
9           would say that I'm in a similar position as  
10          Mr. Way, in that I'm not entirely sure that the  
11          Applicant has met their burden of proof to show  
12          that the Project will not unduly interfere with  
13          the orderly development of our region.

14                          CHAIRMAN HONIGBERG: Staying to  
15          my right, Ms. Weathersby.

16                          MS. WEATHERSBY: Thank you. I  
17          can neither type nor think as fast as my  
18          colleagues to the right, so I probably will be  
19          more brief. But I do sense a consensus, at  
20          least with the two of you, concerning the  
21          Applicant's burden of proof in areas where  
22          things are looking good and things are not  
23          looking so good.

24                          I think on the pro side is

1 employment. I think that the testimony has  
2 shown that jobs will be created by this project,  
3 especially during construction. I think there  
4 will be some permanent jobs, and those jobs are  
5 valuable and will contribute to New Hampshire's  
6 economy. I also believe that some jobs will  
7 probably be lost due to construction impacts,  
8 but that those losses will be far less than the  
9 jobs that are created.

10 Another pro I think is the  
11 economy regarding electric rates. We heard a  
12 lot about electric markets, generating  
13 facilities that may retire, et cetera, et  
14 cetera. And I understood most, certainly not  
15 all of it, the finer details. But I do believe  
16 that if this project is constructed, there will  
17 be some favorable impact on electric rates. But  
18 I also take from the evidence that those savings  
19 are not as large as the Applicant forecasted.

20 I also believe, regarding  
21 decommissioning, I don't see an issue. I think  
22 the Applicant has met its burden.

23 Concerning tax revenue, there's  
24 kind of pros and cons. I think that Northern

1 Pass infrastructure, the property taxes that  
2 will be paid to communities will be great and it  
3 will be helpful certainly to those communities  
4 and to the economy. But I do have concerns that  
5 over the long term the continued effect of the  
6 Project on property values will diminish the  
7 property taxes that Eversource will pay. I have  
8 real concerns about property values, and I do  
9 believe that property values will be affected by  
10 the presence of this project in a much greater  
11 degree than was stated by the Applicant.

12 Concerning land use, the  
13 Applicant's continued insistence that because  
14 the Project is in an existing corridor doesn't  
15 take into account that that corridor isn't  
16 zoned. It goes through land that is zoned for  
17 something else. It's not, in most cases,  
18 industrial or commercial land, but it's zoned  
19 for agricultural or residential, et cetera, and  
20 the municipalities have specific guidelines for  
21 the use and development of those areas. And  
22 those ordinances and plans don't preempt SEC  
23 jurisdiction, but I do think they need to be  
24 taken into account. And as I think we talked

1 about yesterday, I do think there's a tipping  
2 point in which the nonconforming use, such as  
3 the use of the corridor for the Northern Pass  
4 Transmission Project, becomes a different use in  
5 some places, and I do believe that will be the  
6 case. As to the new right-of-way, my concerns,  
7 similar to Ms. Dandeneau's, those areas  
8 particularly outside of the Wagner Forest, the  
9 Project will be very inconsistent with the  
10 prevailing land uses there to a very large  
11 degree. I also believe the Applicant's analysis  
12 fell short by requiring actual physical  
13 interference with the land use and not  
14 recognizing that land uses could be affected in  
15 other ways. I also think there were some  
16 technical deficiencies, such as not providing  
17 all the information required under our rules.

18 And as I considered the views of  
19 the municipal and regional planning commissions  
20 and municipal governing bodies, I also find the  
21 Project to be contrary to almost all such views,  
22 and I do give that some weight. Again, it  
23 doesn't preempt SEC jurisdiction, et cetera, but  
24 we are required to consider them. And I do, and

1 I find that the Project is inconsistent with  
2 almost all of those views.

3 Concerning tourism, I also  
4 believe the Applicant didn't demonstrate that  
5 there will not be undue interference to tourism  
6 from this project either during construction,  
7 and particularly over the long term. The  
8 analysis by Mr. Nichols was deficient in many  
9 respects, and I was left unpersuaded that New  
10 Hampshire tourism will not be unduly influenced  
11 in a negative manner.

12 So I also agree with my  
13 colleagues that the Applicant has not met its  
14 burden to show that the Project will not unduly  
15 interfere with the orderly development of the  
16 area.

17 CHAIRMAN HONIGBERG: All right.  
18 Moving over to my left, Mr. Oldenburg.

19 MR. OLDENBURG: Thank you, Mr.  
20 Chairman. I guess I don't have too much to add,  
21 so I'll be pretty brief.

22 I agree with Mr. Way's assessment  
23 of the impacts on tourism. I believe there will  
24 be an impact on tourism.

1 I believe that there will be a  
2 positive impact on employment.

3 I think there will be a positive  
4 impact to the state economy concerning the  
5 electric rates, as was discussed.

6 I think there will be business  
7 impacts along the route that will occur during  
8 construction, but I'm not as convinced that they  
9 will be long-term impacts.

10 I do believe, as the other folks  
11 have stated, that the property values will be  
12 impacted in a negative way and that land use,  
13 especially up north, would be impacted. And to  
14 some degree, all the areas would be impacted  
15 from a land-use standpoint, some less than  
16 others I would think, especially in the existing  
17 right-of-way.

18 Concerning the construction, I  
19 know we spent a considerable amount of time  
20 talking about some of the outstanding  
21 information and the construction, but I think  
22 because this process has taken so long, we've  
23 seen the normal course of changes with plans and  
24 the normal design process that happens when a

1 set of preliminary plans is submitted with a  
2 permit application. To the point where you're  
3 trying to finalize those plans, changes occur.  
4 So while there was a lot of consideration that  
5 we don't have a final survey plan, we don't have  
6 a final set of construction plans, we don't have  
7 all these UAM exception requests granted, I'm  
8 not as concerned with that. They will be  
9 finalized. It's a requirement of the Project  
10 that they will be finalized, that the issues  
11 will be addressed. And I think we have enough  
12 information concerning the route, what  
13 construction will take place, where it will take  
14 place, that I don't think the construction will  
15 unduly interfere with the orderly development of  
16 the region.

17 So, all in all, I would -- I'd  
18 say there's certain points that they definitely  
19 missed. But the point I discussed most was  
20 construction, and I don't see that as a  
21 negative. So... do you need --

22 CHAIRMAN HONIGBERG: You want to  
23 go any further than that? You're not obligated  
24 to.

1 MR. OLDENBURG: I would say that  
2 they haven't met their burden of proof overall  
3 and that they will -- it will have an  
4 unreasonable impact on orderly development. Is  
5 that what --

6 CHAIRMAN HONIGBERG: I think  
7 people were probably wondering what your bottom  
8 line was.

9 MR. OLDENBURG: That's my bottom  
10 line.

11 CHAIRMAN HONIGBERG: Mr. Wright.

12 DIR. WRIGHT: Thank you, Mr.  
13 Chairman. I probably will go in order of the  
14 rule. That's just how I laid out my thoughts  
15 here. I do agree with a lot of what's already  
16 been said, but I wanted to still share some of  
17 my thoughts.

18 With respect to land use, I do  
19 have some concerns about the new right-of-way,  
20 but I think that my primary concerns are in the  
21 existing right-of-way. I think Ms. Weathersby  
22 mentioned the idea of a "tipping point." I  
23 wasn't overly convinced by the argument that  
24 because you have an existing right-of-way with

1 utilities, then this would be consistent with  
2 local land use. I say that in consideration of,  
3 one, not only the new line coming in, but also  
4 the work that needs to be done to accommodate  
5 the new line in terms of moving other lines  
6 within the right-of-way. I do view that as  
7 having a potential significant change on the  
8 local land use in many areas of the state.

9 Employment. I do agree overall  
10 there will be a net gain of jobs. It's already  
11 been said. The temporary nature of construction  
12 jobs doesn't concern me. I mean, that's what  
13 construction jobs are; you move on from job to  
14 job. But overall, I do think there will be a  
15 net gain of jobs.

16 I think there will be some  
17 business losses. I think some of that could be  
18 recovered by the business compensation plan that  
19 the Company's offered up. Also, I think the  
20 Company did offer that they would encourage  
21 their workers to use local businesses. I think  
22 that could offset some of the potential loss in  
23 business.

24 With respect to the economy, I

1 think there is credible evidence from Ms. Frayer  
2 that there will be energy savings. We've  
3 already talked about the exact amount of that is  
4 a little unknown, but there certainly seems to  
5 be evidence there would be a net positive.

6 With respect to the real estate  
7 values, I did not find the witness credible. I  
8 thought there was a lot of gaps. I thought we  
9 received significant evidence from other parties  
10 that there could be real estate impacts from the  
11 Project.

12 Tax revenues I think overall is a  
13 positive. I think the Company and the Project  
14 would be a significant tax for many of the  
15 towns. I know we heard some potential feedback  
16 from some folks about appeals and the  
17 methodology for assessing the taxes, but I think  
18 at the end of the day there would be a net  
19 positive there.

20 Tourism. Again, I didn't find  
21 the witness credible for a number of reasons  
22 that have already been stated by others.

23 Decommissioning. I was  
24 satisfied, I thought, with what the Company had

1 offered up at the end in terms of a proposed  
2 condition. And would just note, obviously, that  
3 the Counsel for the Public -- it seemed to be  
4 very consistent with what Counsel for the Public  
5 had asked for.

6 Municipal views. I think we  
7 received overwhelming input from municipalities  
8 that felt like the Project would unduly  
9 interfere with the orderly development of the  
10 region. I won't get into town versus region. I  
11 think that's already been covered. Again, I  
12 wasn't convinced that lack of specificity in  
13 some of the initial plans was sufficient to  
14 indicate that there could not be an impact. I  
15 think we saw in some cases there was a clear  
16 desire by local communities to maintain the  
17 rural nature of their town. And I have  
18 questions as to whether, given the scope, scale  
19 and size of the Project, that we would be able  
20 to accomplish that. I think in some cases we  
21 saw some local ordinance that specifically  
22 mentioned burying transmission lines, and the  
23 Project was not proposed to be buried in that  
24 area.

1 I think when I take all of that  
2 into my mind, I would feel that the Applicant  
3 has not met the burden of proof with respect to  
4 unduly interference with orderly development.

5 CHAIRMAN HONIGBERG: Commissioner  
6 Bailey.

7 CMSR. BAILEY: Let me start by  
8 saying that I agree with most of the comments of  
9 my colleagues. I've learned a lot in this  
10 process, especially about the construction  
11 piece, and I'm very happy that Mr. Oldenburg was  
12 on this Committee to explain it as he has during  
13 these deliberations. I was initially rattled by  
14 the lack of details that weren't there in the  
15 construction plans, but Mr. Oldenburg has  
16 explained that that's a -- it is a normal part  
17 of the process and that it can be dealt with.  
18 So I felt much better about that aspect. But I  
19 still have a concern about the local town roads  
20 and the burial in those roads, and I'm not sure  
21 I have enough evidence to conclude that it can  
22 be constructed -- that we should preempt the  
23 towns. I think, you know, we talked about a DOT  
24 to -- a consultant. And maybe we could have

1 gotten there. But I don't think we really need  
2 to figure that out right now based on our  
3 conclusions about other parts of orderly  
4 development.

5 I agree that I think that the  
6 Applicant demonstrated that it will have some --  
7 the Project would have some positive benefit on  
8 the economy. Therefore, it won't unduly  
9 interfere with the orderly development because  
10 it's not going to be a negative impact on the  
11 economy. I think that there would be a positive  
12 economic impact on the host communities from the  
13 increased tax revenue. But some communities  
14 have claimed that that revenue will not offset  
15 the impacts from the Project due to the change  
16 in the character of the town and possible tax  
17 abatements that they'll face as a result of lost  
18 value in property. And that brings me to the  
19 next point.

20 With respect to property values,  
21 I don't believe that the Applicant has met its  
22 burden to demonstrate that there will not be an  
23 impact on property value. I think that it's  
24 more likely than not that there will be more of

1 an impact on property value than the Applicant  
2 claims. You know, they did admit that there  
3 would be some impact on nine properties, but I  
4 think it's likely more than nine properties from  
5 a project that is this large. And I think that  
6 there could be impact on property values that  
7 don't necessarily abut the transmission line or  
8 that have a right-of-way that go through them.

9 I also, like the others, have not  
10 been convinced that there wouldn't be an impact  
11 on tourism. There may not be, but I don't know.  
12 I think the testimony in that regard was not  
13 sufficient to demonstrate that there wouldn't  
14 be.

15 With respect to the  
16 decommissioning, we haven't really talked about  
17 all the provisions of the plan itself. But with  
18 respect to whether it would be an undue --  
19 whether it would affect orderly development, I  
20 think that the financial assurance that the  
21 Applicant offered will make sure that it's  
22 properly decommissioned, as long as the details  
23 of the decommissioning plan were worked out.  
24 And I think that could be done, so I don't have

1 a problem with that.

2 The statute and the rules  
3 highlight the views of municipal officials. And  
4 in smaller projects -- well, in other projects,  
5 I think most -- you know, we've had -- the Site  
6 Evaluation Committee has had -- has taken into  
7 account views of municipal officials, but  
8 generally they were more positive than they have  
9 been in this case. And sometimes there was a  
10 little debate among municipal officials, but I  
11 think that in smaller projects the Applicant has  
12 been able to work out agreement with municipal  
13 officials that the Project wouldn't have an  
14 undue impact on orderly development through  
15 various agreements that they've had. And  
16 unfortunately, that has not been the case in  
17 this instance. So we really do have to take  
18 into account the views of municipal officials,  
19 and those have all been very negative and have  
20 in many cases demonstrated their belief that  
21 this is not consistent with their master plans,  
22 their zoning ordinances. So, therefore, I don't  
23 think that the Applicant has met its burden of  
24 proof with respect to that either.

1                   So, overall, I think that the  
2                   evidence that we have lacks the information that  
3                   I would need to make a finding that there is not  
4                   an undue -- let me get the statute right... that  
5                   the site and facility will not unduly interfere  
6                   with the orderly development of the region. And  
7                   by "region," my thoughts would be the region  
8                   that the transmission line would be constructed  
9                   through.

10                   CHAIRMAN HONIGBERG: I don't  
11                   disagree with most of what I've heard from the  
12                   other members of the Subcommittee regarding land  
13                   uses. I am perhaps more concerned than others  
14                   about the consistency with prevailing land uses  
15                   from the Canadian border through to the  
16                   transition station in, I think it's Bethlehem,  
17                   where the long underground passage starts. I  
18                   think in Pittsburg and Stewartstown and  
19                   Clarksville, the above-ground sections, except  
20                   perhaps in the Wagner Forest, are inconsistent  
21                   with the current -- with what is currently  
22                   there. Those are new. It's a new right-of-way.  
23                   I think the underground sections up in the North  
24                   Country on the town roads present tremendous

1 problems in logistics for the local communities,  
2 for the Applicant if construction were to begin,  
3 and for everyone who lives in that area. I  
4 think as a general proposition, construction can  
5 be managed.

6 And I think over the course of  
7 the line, if construction were to take place, I  
8 think I agree mostly with Mr. Oldenburg, where I  
9 think there is a lack of analysis presented to  
10 us to tell us what the job offsets would be.  
11 There's no question that during the construction  
12 there would be jobs, many of them, to build the  
13 line and to do all the work necessary to make  
14 that happen. But because the Applicant's  
15 experts concluded there would be no adverse  
16 impacts, they didn't analyze the job losses to  
17 those local businesses. So we don't have that  
18 information. I suspect that Mr. Oldenburg's  
19 probably right; the job losses would be less  
20 than the jobs created. But no one has  
21 demonstrated that to me, so I can't say that.

22 With respect to some of the  
23 specific things that the statute and the rules  
24 direct us to look at, there are significant

1 holes in the showing by the Applicant with  
2 respect to, as I just mentioned, the economic  
3 effect of the facility on the affected  
4 communities; the effect of the proposed facility  
5 on real estate values, on tourism and  
6 recreation, and on community services and  
7 infrastructure. All of those showings were  
8 inadequate to me. Now, those are subcategories  
9 of a larger category, and if things were  
10 overwhelming in another direction, maybe those  
11 could be overcome.

12 But I -- unlike some of the  
13 others, while I recognize energy market savings  
14 are likely, and there seems to be no dispute  
15 about that, those are small. Those are a tenth  
16 of what the projected capacity market savings  
17 were supposed to be. And I know there's a lot  
18 of people in this room, in this state, who are  
19 concerned about electric rates, that the rates  
20 are too high, that electric bills are too high.  
21 That has an effect on the economy. But the  
22 savings from this project, demonstrated savings,  
23 are small. In its post-hearing memorandum, the  
24 Applicant noted that the capacity market savings

1 are not dispositive here, and even seemed to be  
2 saying just rely on the energy market savings.  
3 Well, the energy market savings are very small.  
4 And I would note that the energy market savings  
5 and the capacity market savings, to the extent  
6 they can be realized, can be realized by any  
7 similar project should Massachusetts decide not  
8 to go with Northern Pass, or if Northern Pass is  
9 not certificated and they have to go in another  
10 direction. The testimony from all of the  
11 experts is the same, that any similar project  
12 will deliver the same benefits to New  
13 Hampshire's ratepayers.

14 Those were the highlights. As I  
15 said, I don't disagree with most of the rest of  
16 what I've heard from my colleagues. I do not  
17 believe the Applicant met its burden to  
18 demonstrate that the Project would not unduly  
19 interfere with the orderly development of the  
20 region.

21 And I'll note in closing on this  
22 topic that this is not a vote. And I know the  
23 people who are reporting and tweeting on this  
24 are probably going to make sure that that gets

1 out there. We're going to continue the  
2 discussion of all of the rest of the Application  
3 and the other elements. And until a vote is  
4 taken, everything is open for discussion. But  
5 that's where we are right now.

6 So I think we're going to take a  
7 five-minute break and give everybody a chance to  
8 stretch their legs.

9 (Recess was taken at 11:21 a.m.

10 and the hearing resumed at 11:33 a.m.)

11 CHAIRMAN HONIGBERG: All right.  
12 We're going to move to a different topic and  
13 talk about air quality, which is one of the  
14 criteria we have to consider.

15 Mr. Wright, would you please lead  
16 this discussion.

17 DIR. WRIGHT: Thank you, Mr.  
18 Chairman. The rules site for this is Site  
19 1301.14(c) and would determine whether the  
20 Project will have an unreasonable adverse effect  
21 on air quality. The Subcommittee is required to  
22 consider --

23 CHAIRMAN HONIGBERG: Mr. Wright,  
24 just to be clear, it's 301.14(c).

1 DIR. WRIGHT: Sorry. 301. Thank  
2 you.

3 The Subcommittee is required to  
4 consider the determinations of the New Hampshire  
5 Department of Environmental Services. I'll move  
6 so the stenographer can see me better.

7 The Applicant asserts that the  
8 Project will have a positive impact on air  
9 quality. The Applicant has also argued that the  
10 Project will advance state and regional policies  
11 by lowering emissions, diversifying energy  
12 supply and enhancing electric system  
13 reliability. We had evidence supported by Ms.  
14 Frayer and Mr. Varney regarding air emissions  
15 and the fact that the Project would likely  
16 displace older, less-efficient fossil-  
17 fuel-fired generation. The Applicant, through  
18 an analysis, came up with an estimate of  
19 potential reductions of around 3.2 million  
20 metric tons of carbon dioxide. And some other  
21 ancillary benefits included reductions of sulfur  
22 dioxide in the range of 100 to 198 tons, and  
23 also nitrogen oxides in the range of 565 tons to  
24 650 tons.

1 Ms. Frayer further opined that  
2 the social incremental benefits from the CO2  
3 reductions was in the neighborhood of \$207  
4 million. Ms. Frayer also asserted that  
5 hydropower generation that will be transmitted  
6 by the Project will diversify current energy  
7 supplies in the region, produce significant  
8 emission reductions which we've already talked  
9 about, and it will also help meet the climate  
10 goals of the State of New Hampshire.

11 Counsel for the Public, with  
12 respect to the initial estimates of carbon  
13 emissions, expressed some concerns about whether  
14 the Project would actually displace other  
15 zero-emitting sources or existing  
16 natural-gas-fired resources, which is the basis  
17 of the estimates of the carbon emission  
18 reductions. There was also some consideration  
19 as to the value of those emission reductions.  
20 They came up with an estimate of \$140 million to  
21 \$340 million annually. They opine, though,  
22 however, because of the way that New England is  
23 a regional power grid, that the direct benefits  
24 to New Hampshire would only be 10 percent of

1           that. At the end of day, they also concluded  
2           that there is no legal, binding mandate to  
3           reduce greenhouse gas emissions, so the actual  
4           value of those emission reductions is quite low,  
5           based on their opinion.

6                         We had also some preliminary  
7           filings from several municipalities, namely, the  
8           town of Easton. There were some general  
9           concerns expressed by the Board of Selectmen in  
10          Easton, Ned Cutler, and also Ms. Pastoriza from  
11          the Easton Conservation Commission, regarding  
12          general air emissions. I didn't see any  
13          specific references in those sites.

14                        That is basically a very brief  
15          summary of what's in the record. And I could  
16          certainly lead off what I think would be a brief  
17          discussion.

18                        CHAIRMAN HONIGBERG: Why don't  
19          you lead off with what would be a brief  
20          discussion.

21                        DIR. WRIGHT: I would start with,  
22          first of all, just note that the Project does  
23          not require an air permit from the Department of  
24          Environmental Services. The only -- there are

1           some regulations that do apply to the Project,  
2           though, mainly in the form of controlling  
3           fugitive dust from construction activities.  
4           When Mr. Varney was on the stand talking about  
5           air quality, I inquired of him of that, and he  
6           noted that the construction aspect of this would  
7           follow DES Best Management Practices. And I  
8           asked if that was consistent with the  
9           Department's administrative rules on controlling  
10          dust, and he said they were. I would be  
11          satisfied, if we granted something, that we  
12          should just make a reference to the state's  
13          ENV-A1000, which controls fugitive dust  
14          emissions. I was convinced that normal  
15          construction BMPs can normally make sure that  
16          the dust is controlled in that situation.

17                        Regarding the potential emission  
18          reductions, I found Ms. Frayer and Mr. Varney to  
19          be credible. Ms. Frayer went through a very  
20          technical analysis to identify which specific  
21          generation resources would potentially be  
22          displaced by the new line. I found her analysis  
23          to be credible. So I find those potential  
24          emission reductions to be credible. Whether

1           there's a value to them or not, I guess that's  
2           up for debate. I don't know how important that  
3           is at the end of the day. I would say that  
4           certainly potential carbon emissions certainly  
5           do support the state's Climate Action Plan,  
6           which is an aspirational goal. It's not a law.  
7           It's not a regulation. But we do have a goal of  
8           reducing carbon emissions in the state of New  
9           Hampshire to the tune of 80 percent by 2050.  
10          The Project would seem to be consistent with  
11          that.

12                                 With respect to air emissions  
13          from construction equipment associated with fuel  
14          burning, certainly there will be air emissions.  
15          I don't think that there is any evidence  
16          suggesting that that would cause any significant  
17          air quality issues. The emissions would be  
18          temporary in nature, and I can't believe that  
19          they would have any widespread impact on  
20          regional air quality. And I think that's all I  
21          would add.

22                                 CHAIRMAN HONIGBERG: Mr. Way.

23                                 MR. WAY: Thank you, Mr. Wright.

24          I agree with you. I found the witnesses to be

1           convincing, Ms. Frayer and Varney, with regards  
2           to this topic.

3                           One question I have for you  
4           beyond the BMPs. Since there is not going to be  
5           an air permit, beyond the BMPs that occur with  
6           your agency, do you see the need for this  
7           Committee to impose any additional conditions,  
8           or would that -- is that satisfied through the  
9           DES process?

10                           DIR. WRIGHT: I think it could be  
11           satisfied through the DES process. We certainly  
12           have the authority to enforce our own  
13           regulations. Boots and suspenders, would it  
14           hurt to put a condition? Probably not.

15                           MR. WAY: Thank you.

16                           CHAIRMAN HONIGBERG: Mr. Iacopino  
17           has a question for you, Mr. Wright, just for  
18           clarification.

19                           MR. IACOPINO: You cited a DES  
20           regulation for fugitive dust. Can you just tell  
21           me that again?

22                           DIR. WRIGHT: ENV-A1000.

23                           CHAIRMAN HONIGBERG: Ms.  
24           Weathersby.

1 MR. IACOPINO: Thank you.

2 MS. WEATHERSBY: Thank you.

3 Mr. Wright, I didn't hear any  
4 mention about methane. And there has been some  
5 allegations that the source of the power, the  
6 hydroelectric power being generated in Quebec,  
7 is producing methane. Is that not up for  
8 consideration because it's technically not part  
9 of the Project?

10 DIR. WRIGHT: That's a great  
11 question. As I recall Ms. Frayer's analysis,  
12 when she looked at overall carbon emission  
13 reductions, she did look at potential emissions  
14 at the generation source. I recall in her  
15 testimony she made an allowance for that and I  
16 believe subtracted that from the numbers she  
17 reported.

18 CHAIRMAN HONIGBERG: Any other  
19 questions for Mr. Wright?

20 [No verbal response]

21 CHAIRMAN HONIGBERG: Does anyone  
22 disagree with Mr. Wright's conclusion, tentative  
23 as it is, that we're probably okay on air  
24 quality? I think there's lots of nodding heads.

1                   Mr. Wright, want to talk about  
2 water quality?

3                   DIR. WRIGHT: Sure. Let me just  
4 get my notes. We're going to kind of tag team  
5 this a little bit. Ms. Dandeneau is going to  
6 help me with some of the record. There's quite  
7 a bit, an extensive record on water quality in  
8 this case.

9                   The regulatory site is Site  
10 301.14(d), and it requires, again, to  
11 consider -- the Committee consider the  
12 determinations of New Hampshire DES, U.S. Army  
13 Corps of Engineers, and any other state or  
14 federal agencies having permitting or other  
15 regulatory authority in order to determine if  
16 the Project will have an unreasonable adverse  
17 effect on water quality.

18                   The record in this proceeding  
19 shows that DES issued its final decision and  
20 recommended permit conditions on December  
21 [sic] 1st, 2017. I think on Monday I gave a  
22 very brief description of those four  
23 certifications under the DES rules -- wetlands,  
24 Shoreland Protection, 401 Water Quality

1 Certification and Alteration of Terrain -- under  
2 various state statues. I don't think I need to  
3 repeat that. In total, the DES recommended  
4 conditions are 31 pages in length, including  
5 some 77 conditions and 38 findings related to  
6 wetlands impacts; 9 general conditions and 33  
7 site-specific sets of conditions related to  
8 shoreland impacts; 19 conditions related to  
9 Clean Water Act Section 401 Water Quality  
10 Certification, and 14 conditions related to  
11 alteration of terrain.

12 The Applicant in its filings  
13 asserts that the Project will not have an  
14 unreasonable adverse effect on water quality,  
15 and the Project was designed to meet the  
16 standards set forth in the DES regulations  
17 pertinent to the four DES programs I previously  
18 mentioned, and in addition to the requirements  
19 of the U.S. Army Corps of Engineers 404 Clean  
20 Water Act requirements.

21 With respect to wetlands, the  
22 Applicant provided a lot of testimony, primarily  
23 in the form of from Ms. Carbonneau of Normandeau  
24 Associates, that the Project -- and she opined

1           that the Project was designed to avoid and  
2           minimize impacts to wetlands resources. She  
3           also indicated that the decision to place an  
4           additional 52 miles underground both reduced  
5           permanent and temporary impacts. I know there  
6           have been some questions raised on that, so that  
7           may be something we want to talk about later.

8                       Ms. Carbonneau also testified  
9           that the permanent impacts are limited to around  
10          2.53 acres over the entire length of the  
11          192-mile project. That estimate is consistent  
12          with the DES findings. In addition, permanent  
13          impacts to perennial streams were avoided,  
14          according to Ms. Carbonneau.

15                      Ms. Carbonneau further asserted  
16          that while there was not an expectation that the  
17          Project will enhance wetlands functions and  
18          values, the Applicant is required to restore the  
19          wetlands so existing functions and values will  
20          remain and that the spacing of transmission  
21          structure foundations, in some cases hundreds of  
22          feet apart, will have a long-term -- will help  
23          to minimize the effects on wetlands impact and  
24          also values and functions.

1                   There was further testimony that  
2                   in some cases, you know, many factors dictated  
3                   the location of some structures. It's not just  
4                   wetlands. There are other factors, including  
5                   the transmission design, land availability,  
6                   constructability, and then, of course, natural  
7                   resources impacts, and that there were  
8                   considerable efforts to minimize those impacts.

9                   Temporary wetlands impacts  
10                  primarily associated with the construction  
11                  access paths or roads and crane pads will total  
12                  approximately 140 acres over the length of the  
13                  Project. A lot of that is within the existing  
14                  right-of-way where construction access presents  
15                  a challenge for the Project. There are not a  
16                  lot of adjacent roads and public roadways to  
17                  access the right-of-way; therefore, to traverse  
18                  up and down the right-of-way you need to use the  
19                  right-of-way.

20                  Where practical, the Applicant  
21                  has indicated they will work on in the  
22                  wintertime during frozen conditions or in late  
23                  summer when ground saturation is minimal. And  
24                  generally, if for some reason they can't do

1           that, then they would obviously need to enter  
2           those areas when there is water available and  
3           that they would take, you know, precautionary  
4           measures, including the use of timber mats and  
5           other minimization techniques to minimize  
6           wetlands impacts.

7                                 Secondary impacts from the  
8           Project include the permanent removal of tree  
9           canopy from forested wetlands, clearing of  
10          upland forests within 100 feet of vernal pools  
11          and perennial streams, clearing within 50 feet  
12          of intermittent streams and within 25 feet of  
13          ephemeral streams, and the placement of  
14          temporary timber mats in deep organic soils.  
15          Such secondary impacts total approximately  
16          180 acres and are mainly in the northern portion  
17          in the new right-of-way.

18                                Ms. Carbonneau further went on to  
19          testify that the tree cutting in wetlands and  
20          stream and vernal pool buffers can certainly  
21          create -- impact functions and values of  
22          wetlands, particularly plant and wildlife  
23          habitat, and placing timber mats on deep organic  
24          soils may lead to soil compression in some

1 cases, in addition to local habitat changes. It  
2 was explained that although New Hampshire does  
3 not regulate secondary impacts under its  
4 wetlands programs, the Applicant included in its  
5 wetlands compensatory mitigation measures all of  
6 the secondary impacts.

7 Direct impacts. It was testified  
8 that they are minimal, again, in terms of  
9 permanent impacts, the 2.5. And those impacts  
10 that are unavoidable would be addressed by the  
11 Applicant's compensatory mitigation measures.  
12 The compensatory mitigation measures for  
13 wetlands include: Preservation of 1,621 acres  
14 divided between 16 parcels of land comprising 8  
15 sites; payment into the Aquatic Resource  
16 Mitigation Fund that's administered by DES to  
17 the tune of a little over \$3.3 million, and  
18 funding a partnership with the National Fish &  
19 Game Wildlife Foundation and with the Company in  
20 the amount of \$3 million to fund science-based  
21 conservation projects.

22 With respect to shoreland  
23 impacts, there was testimony from the Applicant  
24 that the Project will not have an unreasonable

1 impact on water quality, and that by locating  
2 most of the Project in the existing right-of-way  
3 where earthwork and footprints of proposed  
4 structures and necessary clearing within the  
5 protected shorelands is fairly limited and  
6 unavoidable. Sorry.

7 There was further testimony  
8 regarding shoreland, that, to the extent  
9 practical, new and relocated structures were  
10 located outside the 50-foot waterfront buffer.  
11 Also, the construction activity within the --  
12 the greatest amount of construction activity  
13 within the protected shoreland would occur near  
14 the Pemigewasset River in New Hampton, Ashland  
15 and Campton, and that in New Hampton and Ashland  
16 the impacts will be temporary and minor  
17 permanent impacts. In addition, she testified  
18 that impacts in Campton would only be temporary.

19 Shoreland impacts in the new  
20 right-of-way. It was testified that limited to  
21 upgrades of temporary access roads in the  
22 shoreland areas of the Connecticut River, Nathan  
23 Pond and Dummer Pond, and a small amount of  
24 trenching and a jacking pit at the Connecticut

1 River.

2 The Applicant opined -- or Ms.  
3 Carbonneau opined that due to the limited nature  
4 of permanent impacts and measures to temporary  
5 impacts, the Project will not have a substantial  
6 negative impact on protected shore -- on water  
7 bodies in the Project area.

8 With respect to surface water and  
9 groundwater quality, we received a lot of  
10 testimony from the Applicant, primarily in the  
11 form of Jacob Tinus with Burns & McDonnell. He  
12 testified and explained that the principal water  
13 quality issue related to the Project is from  
14 stormwater which has the potential to  
15 translocate sediments eroded from disturbed  
16 lands which, if not managed properly, can be  
17 carried into wetlands and aquatic resources.

18 Mr. Tinus testified that Best  
19 Management Practices will be required as part of  
20 the DES requirements and under the 401 Water  
21 Quality Certification, and also the Alteration  
22 of Terrain Permit, and that they will be used to  
23 minimize erosion and sedimentation, stabilize  
24 soils and restore disturbed areas once

1 construction activities have been completed.

2 The AOT permit covers the nine  
3 developmental sites. This includes the  
4 converter station in Franklin, the Deerfield and  
5 Scobie Pond substations. And the nine [sic]  
6 transition stations. Those nine sites will  
7 implement both construction BMPs, as well as  
8 permanent stormwater BMPs. In addition, the AOT  
9 rules require the Applicant to follow the  
10 approaches and BMPs in a number of guidance  
11 manuals notably issued from the Department of  
12 Environmental Services, the former department  
13 known as DRED, and also the Department of  
14 Transportation.

15 Upon the commencement of  
16 activities, Mr. Tinus testified that prior to  
17 construction the Project contractors will mark  
18 or delineate locations of aquatic resources by  
19 flagging, signage or fencing, and then  
20 contractors will install erosion and sediment  
21 control Best Management Practices. During  
22 construction, temporary ditches and swales may  
23 be required, and they're part of the DES  
24 proposed conditions.

1                   There was further testimony that  
2                   appropriately credentialed environmental  
3                   monitors, including certified wetlands  
4                   scientists, would be retained by the Applicant  
5                   and responsible for understanding the conditions  
6                   of the environmental permits for the Project.  
7                   Regular inspections of erosion and sediment  
8                   controls will be performed in accordance with  
9                   the certificate, if issued, and all state  
10                  requirements. There would be ongoing meetings  
11                  between project contractors and project managers  
12                  to help proactively manage construction  
13                  activities.

14                  Mr. Tinus further explained that  
15                  there would be a Stormwater Pollution Prevention  
16                  Plan that will need to be developed and will  
17                  include some things, including: No applications  
18                  of pesticides, restricted use of fertilizers,  
19                  adherence to BMPs, the development of a HDD  
20                  frac-out plan and prohibition on use of road  
21                  salt on all temporary roads.

22                  For construction on the overhead  
23                  portion of the route, BMPs will be used to --  
24                  utilized to avoid and minimize water quality

1 impacts. After construction on the underground  
2 portion of the route, the Applicant indicated  
3 that surface water -- impacts to surface waters  
4 would be avoided and minimized by the use of a  
5 "cut and cover" approach which will greatly  
6 reduce open ground surface and try to reduce the  
7 potential for erosion and sedimentation from  
8 stormwater.

9 Trenchless operations, such as  
10 HDD, which we've talked about a lot in these  
11 proceedings, will be used to avoid most streams  
12 and rivers. A specialized Operations and  
13 Monitoring Plan, as required under the DES  
14 conditions, will need to be developed. And I  
15 believe it needs to be site-specific, developed  
16 to address risks associated with HDD frac-out.  
17 In some locations, stream crossings will be  
18 necessary. In those situations, they'll either  
19 use timber mats or potentially temporary  
20 bridges, and at the end of the job they would be  
21 removed in accordance with permit conditions.

22 All temporary access roads will  
23 be removed and restored in nature. And if for  
24 some reason access roads need to be permanent,

1 then the Applicant requests that DES be  
2 delegated the authority to approve such roads.

3 With respect to groundwater, Mr.  
4 Tinus asserted, on behalf of the Applicant, to  
5 the extent possible, groundwater resources, such  
6 as well, public water supplies, wellhead  
7 protection areas, were proactively avoided in  
8 the siting process. None of the nine  
9 developmental sites he noted were in the  
10 wellhead protection areas of any town or other  
11 municipalities.

12 Construction BMPs and other BMPs,  
13 such as for fueling and maintenance of  
14 construction equipment, will be developed to  
15 protect groundwater from accidental spills of  
16 fuels or oils. Because the Franklin converter  
17 station and the Deerfield station will have  
18 oil-filled equipment, a project-specific Spill  
19 Prevention, Control and Countermeasure Plan is  
20 required and has been prepared.

21 Mr. Tinus further went on to say  
22 that, with respect to groundwater, over 83  
23 percent of the Project is in an existing utility  
24 right-of-way and where prior disturbances have

1 already occurred and will continue to occur over  
2 time mainly due to maintenance activities. Most  
3 of these areas are subject to regular vegetation  
4 activity, such as tree clearing or mowing, which  
5 is typically performed in accordance with the  
6 BMPs.

7 And Mr. Tinus concluded that  
8 proper installation and maintenance of the  
9 erosion and sediment controls, effective  
10 construction monitoring and coordination with  
11 contractors, that water quality will not be  
12 adversely impacted.

13 That leads us -- I think I  
14 already mentioned environmental monitors. We've  
15 had a lot of discussion regarding that in this  
16 proceeding. The Applicant will hire its own  
17 environmental monitors. I think also, obviously  
18 it's been discussed that the state Department of  
19 Environmental Services would also be responsible  
20 for environmental monitoring as well. But I  
21 know we had a lot of discussion on that.

22 That was basically an intro to  
23 what the requirements are and the position of  
24 the Applicant.

1                   CHAIRMAN HONIGBERG: I understand  
2                   that you're handing off to Ms. Dandeneau.

3                   MS. DANDENEAU: I accept the  
4                   baton.

5                   So I'm going to summarize what we  
6                   have seen and heard in the record so far for  
7                   Counsel for the Public and for other  
8                   intervenors.

9                   If you recall, Counsel for the  
10                  Public hired experts, Adam Zysk, Brendan  
11                  Alexander and David Taylor of Dewberry. They  
12                  testified that the Project may have an impact on  
13                  soil erosion. They opined that several aspects  
14                  of the Stormwater Pollution Prevention Plan need  
15                  clarification and that the Project will require  
16                  construction within wetlands and water bodies.

17                  They also had a few things to say  
18                  about the Project's impacts on vernal pools.  
19                  These experts opined that the Applicant's  
20                  experts applied ranking protocol inappropriately  
21                  and inconsistently, failed to specify the nature  
22                  of primary impacts and failed to conduct an  
23                  analysis of secondary impacts. Their criticism  
24                  was not with the data collection methodology,

1 but the vernal pool quality ranking methodology;  
2 although, no particular methodology was required  
3 of the Applicant, and DES approved the Wetlands  
4 Permit Application which included vernal pool  
5 identification and impact assessment details.  
6 They concluded that, even considering these  
7 flaws, the nature, extent and duration of  
8 potential effect on vernal pools cannot be fully  
9 determined. They did acknowledge that the  
10 Applicant modified the Project's layout so that  
11 it avoids impact on three specifically  
12 identified vernal pools. And I just would like  
13 to point out that these experts did not go into  
14 the field to confirm that all vernal pools were  
15 identified, nor that delineations were proper.  
16 They were working with what the Applicant had  
17 provided.

18 These experts also opined that  
19 the wetland restoration Best Management  
20 Practices addressing temporary impacts of the  
21 Project on vernal pools did not account for  
22 disruption from soil compacting and rutting, and  
23 therefore, if implemented, most likely will  
24 cause permanent impact to wetlands and vernal

1 pools.

2 They also concluded that the  
3 Applicant failed to propose avoidance and  
4 minimization measures for all impacts, and  
5 therefore, that the Project does not represent  
6 the best practical and most effective measures  
7 available to avoid, minimize or mitigate the  
8 adverse direct and indirect impacts to vernal  
9 pools.

10 Counsel for the Public continues  
11 to maintain that the Project would have an  
12 unreasonable adverse impact on vernal pools  
13 because not all measures were taken to avoid and  
14 minimize impacts to those resources.

15 I'm going to continue with the  
16 municipalities. We heard from many of them.  
17 I'm going to try go by municipality. I will  
18 note that there was a lot of repetition from one  
19 municipality to the next. That's not a bad  
20 thing. I'm just going to do my best to  
21 summarize that.

22 So I'll start with Bethlehem. We  
23 heard from Ms. Cassandra Laleme and Ms. Cheryl  
24 Jensen on behalf of Bethlehem. They filed a

1 report titled, "Assessment of Transmission Line  
2 Proposal on Natural Resources in Bethlehem."

3 The report identified several areas of concern  
4 associated with the Applicant's failure to  
5 delineate wetlands that interconnect. They  
6 pointed out that wetlands extend through and  
7 beyond the right-of-way, and impacts in  
8 immediate areas will affect wetland diversity,  
9 quality and function downstream. They pointed  
10 out that existence of perennial streams, three  
11 named and two unnamed, and the flow of all  
12 water -- excuse me -- of water all leads to the  
13 Ammonoosuc River, with one of these wetlands  
14 being within the Ammonoosuc River and floodplain  
15 area.

16 The report identified the  
17 following specific areas of concern, of which  
18 there are five: The Ammonoosuc River and its  
19 associated floodplain wetlands; No. 2, an  
20 unnamed perennial stream with extensive beaver  
21 ponds and wetland complexes, including forested,  
22 scrub shrub, emergent and open water. This  
23 stream, or the stream that's an unnamed  
24 perennial stream, flows directly into the

1 Ammonoosuc River, and if water quality is  
2 degraded during construction, it will directly  
3 affect the water quality of the Ammonoosuc River  
4 downstream.

5 Third specific area for concern  
6 is Barrett Brook and associated wetlands.  
7 Barrett Brook begins along the north side of  
8 Mount Agassiz and flows through the town forest.  
9 After crossing the right-of-way, it enters the  
10 Ammonoosuc River 1,000 feet downstream.

11 Specific Area No. 4, Black Brook  
12 and its associated beaver ponds and wetlands  
13 that extend well beyond the right-of-way.  
14 They're concerned about the diversity of  
15 forested, scrub shrub, emergent and open-water  
16 wetlands. Black Pond originates between Cherry  
17 Valley Road and Prospect Street, and it flows  
18 directly into the Ammonoosuc River 2,000 feet  
19 after leaving the right-of-way.

20 Specific Area No. 5. An unnamed  
21 perennial stream and its associated wetlands.  
22 This stream flows into Baker Brook, which then  
23 flows into the Ammonoosuc River. And there are  
24 nearly 79 acres of aquifers associated with this

1           perennial stream.

2                           The report also identified two  
3           specific areas where aquifers used by  
4           Bethlehem's residents for drinking water could  
5           be degraded as a result of the construction of  
6           the Project.

7                           Ms. Laleme also expressed concern  
8           about the location of Transition Station No. 5,  
9           stating that in its preliminary report from  
10          2016, DES stated that construction of Transition  
11          Station No. 5 will impact 16,378 square feet of  
12          wetlands and requested that the Applicant  
13          consider a relocation of the station. However,  
14          the final DES report does not identify said  
15          impact and fails to request relocation of the  
16          station. Ms. Laleme expressed her concern about  
17          DES's failure to identify and mitigate the  
18          Project's impact at this particular location.

19                          Ms. Jensen expressed that  
20          Bethlehem's Conservation Commission strongly  
21          opposes the Project and specifically identified  
22          the following information regarding that  
23          opposal: The Project will impact 55 wetlands,  
24          including 4 high-quality wetlands, 7 rivers and

1 perennial streams, 3 intermittent streams, 1  
2 ephemeral stream, 2 high-quality vernal pools  
3 and 3 additional vernal pools in the town of  
4 Bethlehem. Also, the Project will impact  
5 5.75 acres of wetlands in Bethlehem and will  
6 have a temporary impact on 606 square feet of  
7 vernal pools within the town's boundaries.  
8 Also, the Project will have permanent impact on  
9 477 linear feet and temporary impacts on 1,976  
10 linear feet of perennial streams in Bethlehem.  
11 Based on this information, Ms. Jensen opined  
12 that the Project will have unreasonable adverse  
13 effect on wetlands and perennial streams. She  
14 also claimed that the Applicant failed to  
15 account for all currently existing vernal pools  
16 where it conducted its studies six years ago.

17 Ms. Jensen also asserted that  
18 construction of Transition Station No. 5 will  
19 have unreasonable adverse effect on Miller  
20 Brook. Excuse me. I'm a little confused by  
21 what I've seen in the record. It's either  
22 Miller Pond or Baker Brook Pond. And perhaps  
23 it's referred to as both colloquially because  
24 it will be located across from the pond. And

1 DES specifically requested avoidance of such  
2 impact as a condition for the Project's  
3 construction.

4 Ms. Jensen further opined that the  
5 Applicant underestimated the Project's impact  
6 on wetlands by failing to identify all  
7 staging and laydown areas and their impacts  
8 on wetlands. Ms. Jensen also claimed that  
9 the Applicant's experts failed to account for  
10 wetlands that are interconnected with  
11 wetlands outside of the right-of-way and,  
12 consequently, failed to identify the effect  
13 of the Project on wetlands that are located  
14 outside of the right-of-way but that might  
15 still be impacted by the Project due to its  
16 direct impact on connected wetlands.

17 Next I'm going to talk about  
18 Northumberland. We heard from Mr. Edwin  
19 Mellett. And I'll note that it was a little  
20 unclear whether Mr. Mellett was testifying on  
21 behalf of the Town of Northumberland or for  
22 Northumberland's Conservation Commission.

23 He noted two documents: One entitled,  
24 "Assessment of Transmission Line Proposed on

1 Natural Resources Throughout Northumberland,  
2 New Hampshire," produced in April 2016 by  
3 Elise Lawson and John Severance, both  
4 certified wetlands scientists; and a second  
5 document, "Functional Assessment of Wetlands  
6 Throughout Northumberland, New Hampshire,"  
7 produced in November of 2016. And this  
8 report was prepared by Watershed to Wildlife,  
9 Incorporated and the North Country Council.

10 Mr. Mellett opined that the Applicant  
11 had failed to assess the impact of the  
12 Project in identifying avoidance,  
13 minimization and mitigation measures of the  
14 Project's impact on wetlands that extend  
15 beyond the right-of-way or interconnect with  
16 wetlands that extend beyond the right-of-way  
17 in Northumberland. In this regard, the  
18 reports submitted by Mr. Mellett identified  
19 the following areas of concern where the  
20 wetlands delineated within the right-of-way  
21 may impact wetlands outside its boundaries.  
22 And he identified three areas of concern:  
23 One that he labeled the "Northern Area of  
24 Concern," one labeled as the "Central Area of

1 Concern," and one labeled as the "Southern  
2 Area of Concern," all largely within the  
3 township of Northumberland. And I do have  
4 specific information about where those areas  
5 are located on the ground if any of the  
6 members of the Subcommittee need that.

7 The specific concerns associated with  
8 these wetlands and other identified wetlands  
9 include: Increase of public access and  
10 cutoff of aquatic connectivity that may be  
11 caused by road construction; loss of  
12 biodiversity; increased opportunity for  
13 establishment of invasive species; erosion  
14 and stream bank destabilization at the site  
15 and sedimentation downstream in all  
16 intermittent and perennial streams; aquifer  
17 degradation, and potential impairment of  
18 surface water quality in the streams and in  
19 the Ammonoosuc River downstream. The reports  
20 conclude that if the Project is approved,  
21 careful monitoring of the entire area will be  
22 crucial to minimize the Project's effects on  
23 wetlands, upland buffers, surface water and  
24 groundwater quality.

1           The reports also highlighted concerns  
2 associated with the Applicant's assessment of  
3 the Project's impacts on vernal pools and  
4 associated habitat, of which I think there  
5 are four, four major concerns. First, the  
6 Applicant might have underestimated the  
7 Project's impact on vernal pools where it is  
8 very difficult to assess the effects of  
9 temporary impacts.

10           Am I doing okay, Sue?

11           Second, the Applicant might have failed  
12 to account for all vernal pools that will be  
13 affected by the Project where it conducted  
14 vernal pool studies during one season only.

15           Third, the Applicant failed to assess  
16 the upland buffer around vernal pools and  
17 failed to determine the effect on the species  
18 that breed and live in the surrounding upland  
19 and wetland areas.

20           And then four, the Project may have  
21 permanent impact on habitat associated with  
22 vernal pools if the Project's construction  
23 takes place during the breeding season or  
24 during a time when egg masses, insect larvae,

1 crustaceans and other species are developing  
2 and require the water level to be  
3 undisturbed. The report asserts that the  
4 Project may have substantial negative impact  
5 on vernal pools. It acknowledges, however,  
6 that such determination cannot be made at  
7 this time due to the lack of data and  
8 deficiencies in surveys performed by the  
9 Applicant.

10 Mr. Mellett also expressed some concern  
11 about the Project's impact on Roaring Brook  
12 and Dean's Brook, and he noted that these  
13 directly feed into the Upper Ammonoosuc,  
14 which is a tributary to the Connecticut  
15 River.

16 Mr. Mellett also claimed that mitigation  
17 of the Project's impact on wetlands in  
18 Northumberland is inadequate because the town  
19 will not benefit from \$84,692.61 that will be  
20 provided by the Applicant to the ARM Fund,  
21 and mitigation preservation parcels are  
22 crossed by the right-of-way and were not  
23 purchased by the Applicant for the purposes  
24 of mitigation of the Project's impact on

1 wetlands.

2 We heard Mr. Mellett request that the  
3 Subcommittee require the Applicant to use  
4 mitigation funds to stabilize the riverbank  
5 on the Connecticut River, I believe he noted  
6 next to one of the town cemeteries.

7 Next I'll talk about Easton. We heard  
8 from Mr. Ned Cutler, on behalf of the Town of  
9 Easton's Board of Selectmen. And he claimed  
10 that construction of the Project along Routes  
11 116 and 112 in the towns of Easton -- excuse  
12 me -- in the town of Easton will affect  
13 wells' water quality and availability;  
14 interfere with future maintenance or repair  
15 of the water pipes; and will cause the  
16 disruption of wetlands, contamination of  
17 groundwater and erosion that will result from  
18 damage to the trees and their root systems.

19 We also heard from Mr. Robert Thibault,  
20 on behalf of the Town of Easton, who  
21 testified that the town has concerns  
22 regarding underground water channels being  
23 disturbed or blocked which could adversely  
24 affect residents' well water supply. Mr.

1 Thibault further expressed concern that pipes  
2 which run across the Project route will  
3 impact wells.

4 We also heard from Ms. Deborah Stever,  
5 on behalf of the Easton Board of Selectmen,  
6 who testified that construction would impact  
7 water quality and availability due to wells  
8 being located on one side of the road and  
9 potentially the people who use them being  
10 located on the other. She asserts that the  
11 Project as proposed will cause disruption of  
12 wetlands, contamination of groundwater and  
13 damage to trees along the route from injury  
14 to root system and result in erosion and  
15 water runoff onto private property.

16 We also heard from Ms. Pastoriza, on  
17 behalf of the Easton Conservation Commission,  
18 who argued that the Project will cause  
19 siltation of local watershed and wetlands  
20 from trenching and siltation and pollution of  
21 the watershed with mud and drilling fluid  
22 during horizontal directional drilling  
23 practices, which, as the geotechnical borings  
24 have shown, could or will migrate out along

1 the water bearing strata, carrying bentonite  
2 and polymer additives with it.

3 Ms. Pastoriza also had concerns about  
4 frac-outs, impacts to aquifers, concerns  
5 about damaging wetlands, concerns about the  
6 release of toxins into soil mixes associated  
7 with the fluidized thermal backfill, and  
8 concerns about groundwater contamination from  
9 blasting scenarios.

10 We also heard from Jim Collier, on  
11 behalf of the Town of Easton Planning Board,  
12 who testified that construction activities of  
13 the Project might cause harm to the Ham  
14 Branch River and its tributaries through the  
15 pollution of wetlands, surface water or  
16 groundwater. He also had concern about  
17 residential wells located close to the burial  
18 site, the proposed burial site of the  
19 transmission line.

20 We heard from folks, some folks in  
21 Plymouth, including Ms. Sharon Penney, on  
22 behalf of the Town of Plymouth. She claimed  
23 that the town's water and sewer and its  
24 stormwater infrastructure will be negatively

1           impacted as a result of construction of the  
2           Project along Main Street in Plymouth.

3           Some folks from Pittsburg, Clarksville  
4           and Stewartstown, notably the members of  
5           those select boards, claimed that  
6           construction of the Project will have adverse  
7           direct effects on wetlands.

8           We heard from Ms. Kate Hartnett of  
9           Deerfield, on behalf of the Town of  
10          Deerfield, who opined that the Project will  
11          have negative effects on the vernal pool  
12          located east of Thurston Pond Road in  
13          Deerfield and exemplary natural communities  
14          associated with this pool.

15          She opined that the Applicant should  
16          modify its plans to avoid any and all impact  
17          on natural communities associated with this  
18          pool. She also testified that the Deerfield  
19          Conservation Commission believes, based on  
20          local field research, that the Project's  
21          impacts to wetlands, including exemplary  
22          vernal pools, will be long-term rather than  
23          temporary.

24          In March of 2017, the Deerfield

1 Conservation Commission visited four varied  
2 wetlands sites in Deerfield to evaluate what  
3 potential long-term impacts to wetlands could  
4 be expected. They found that, one, the  
5 construction and use of the proposed access  
6 road will create long-term impacts on at  
7 least 40 acres across Deerfield, including  
8 issues with erosion, soil compaction, altered  
9 runoff patterns, increased imperviousness  
10 reducing recharge, loss of vegetative cover,  
11 increased habitat degradation and the likely  
12 spread of invasive species that results from  
13 those stressors and construction of towers,  
14 poles and wires.

15 Two, they found that the Applicant's  
16 wetlands evaluation only included  
17 jurisdictional wetlands within the  
18 right-of-way, while impacts will be  
19 experienced well beyond the right-of-way.  
20 That was definitely a theme throughout the  
21 other folks' testimony.

22 Three, documented steep slope erosion  
23 already exists within the right-of-way in  
24 Deerfield and has not been restored, and

1           there are long-term impacts along the river  
2           and stream banks that have been documented in  
3           other areas of both the Lamprey and  
4           Pemigewasset River watersheds.

5           And then four, they found that  
6           uncontrolled secondary access adds to  
7           construction and operations and maintenance  
8           impacts and has been extensively documented  
9           by communities and organizations throughout  
10          the corridor.

11          In general, Ms. Hartnett expressed  
12          concerns that the Project will not have  
13          appropriate vegetative buffers for wetlands.

14          From Pembroke, we heard from Ms.  
15          Stephanie Verdile, on behalf of the Town of  
16          Pembroke. She's the town planner there. She  
17          expressed concerns that the Project's  
18          structures constructed within the Wetlands  
19          Protection District and the Wellhead  
20          Protection Area may impact water quality  
21          negatively. She explained that there are  
22          three wells located within the Project  
23          right-of-way. She noted they were  
24          acknowledged in Plan Sheets 164 and 165. And

1 she expressed concerns regarding having  
2 industrial construction activities, soil  
3 disturbance, slope disturbance, and larger  
4 structures within, around and on top of the  
5 protected well radii of the water supply for  
6 the town of Pembroke.

7 She also testified that in Plan  
8 Sheet 165 it shows a large area of high-value  
9 wetlands and hydric soils and that these  
10 areas are fragile and that disturbance of  
11 these wetland areas negatively affects proper  
12 functions to provide flood protection and  
13 stormwater filtration.

14 We also heard from Ms. Amy Heiser from  
15 Pembroke. She is the chairman of the  
16 conservation commission there. And she has  
17 concerns regarding an increase in siltation  
18 in brooks, streams and vernal pools due to  
19 diversion of roadside streams during the  
20 construction phase. Ms. Heiser also further  
21 testified her concerns regarding the Project  
22 having impact on highly valued wetlands  
23 within the town of Pembroke and also  
24 expressed specific concern regarding the

1 crossing of the Soucook River. And she notes  
2 that three new pole structures will be  
3 installed within the Pembroke Shoreland  
4 Protection Zones.

5 From Concord, we heard from Mr. Rick Van  
6 de Poll, on behalf of the City of Concord.  
7 Mr. Van de Poll owns and operates Ecosystem  
8 Management Consultants, LLC, and is a  
9 certified wetlands scientist in New  
10 Hampshire. Upon his review of current color  
11 infrared aerial photography, Mr. Van de Poll  
12 opines that both the temporary and permanent  
13 impacts to wetlands in the city of Concord  
14 are significantly more than stated by the  
15 Applicant in their October 2015 Wetland  
16 Permit Application filed with DES.

17 Mr. Van de Poll also asserted that in  
18 the 28 map sheet pairs for the city of  
19 Concord, there are a total of 38 errors,  
20 representing 71,610 square feet, which is  
21 about 1.64 acres, of additional probable  
22 wetland impacts. Mr. Van de Poll indicated  
23 that his assessment of permanent wetlands  
24 impacts includes a number of reduced wetland

1 functions, including: Wetland-dependent  
2 wildlife habitat, fish and aquatic life  
3 habitat, scenic quality, flood storage,  
4 groundwater recharge, and loss of rare and  
5 endangered species habitat.

6 He also had some concerns about the  
7 Project's assertion regarding temporary  
8 impacts. He asserted that the 50-ton pieces  
9 of equipment moving over soft hydric soils  
10 will have a permanent compacting effect,  
11 regardless of the protective mats that are  
12 intended to be used. He also purported that  
13 temporary impacts to wetlands associated with  
14 the Project -- strike that.

15 With respect to the purported temporary  
16 impacts to wetlands associated with the  
17 Project, Mr. Van de Poll opined that the  
18 placement of over 1,100 tons of fill at some  
19 of the 9,000 square-foot temporary  
20 construction pads, combined with regrading,  
21 filling and returning to original condition  
22 of access roads will result in alteration of  
23 water runoff patterns, infiltration rates,  
24 and likely result in much larger impervious

1 areas than what currently exists.

2 He also opined that the Applicant's  
3 proposed mitigation of wetlands impacts fails  
4 to ensure the removal of old towers and  
5 construction of new ones to restore wetland  
6 functions where they're being directly  
7 impacted.

8 We also heard from Jan McClure and  
9 Kristine Tardiff, on half of the City of  
10 Concord's Conservation Commission. They  
11 testified that, as part of the conservation  
12 commission's Open Space Section and master  
13 plan, they aim to, among other things,  
14 protect and enhance surface and groundwater  
15 quality and maximize the potential for use of  
16 these water resources as potable water  
17 supplies. Ms. McClure and Ms. Tardiff  
18 asserted that the proposed Project will  
19 impact 35 wetlands, totaling 51.8 acres. The  
20 most notable of these is the 15.26 acres of  
21 wetlands adjacent to Turtle Pond, which,  
22 according to the Application, provides  
23 significant functions and values, including  
24 like we've already heard, groundwater

1 discharge and recharge, habitat, flood flow  
2 alteration, retention of sediment, nutrient  
3 removal, shoreland stabilization, production  
4 export and wildlife habitat.

5 Ms. McClure and Ms. Tardiff assert that  
6 the Project will have temporary impacts of  
7 more than seven acres within the city of  
8 Concord, and they also argued that it is  
9 extremely significant and that the  
10 conservation commission believes that the  
11 work needed to access these areas is likely  
12 to cause long-term damage.

13 Ashland. We heard from the Ashland  
14 Water and Sewer Commission who expressed  
15 concerns regarding the water quality of their  
16 town wells, aquifer and well protection area.  
17 Specifically, Ashland Water and Sewer notes  
18 that the aquifer in Ashland provides an  
19 almost unlimited supply of water, which is  
20 key to providing water to the town's  
21 residents and businesses and is vital for  
22 business development. They argue that any  
23 damage that limits the flow would impair the  
24 health and welfare of the town.

1           They also explained that the septage  
2 lagoons at wastewater treatment facility  
3 construction -- were constructed in 1986 and  
4 lined with clay. They believe that the  
5 lagoons were damaged during dredging in the  
6 1990s but are not fully aware of the extent  
7 of the damage and are concerned that  
8 construction in areas close to these lagoons  
9 and the water testing wells that have been  
10 put in around the lagoons might cause some  
11 issues.

12           We heard from the Grafton County  
13 Commissioners. They offered testimony  
14 through Linda Lauer. Ms. Lauer noted that  
15 the Applicant's maps failed to depict certain  
16 rivers, streams and wetlands, thereby making  
17 assessment of the Project's impact difficult.  
18 Additionally, she expressed concerns that  
19 burial of portions of the line will impact  
20 utilities, including the water and sewer  
21 lines in Plymouth. They also have concerns  
22 about the effects of blasting and drilling on  
23 water quality and wetlands and groundwater.  
24 And Ms. Lauer specifically testified that the

1 Grafton County Commissioners have serious  
2 concerns about the impacts of the  
3 construction phase of the Project on private  
4 wells, specifically those adjacent to the  
5 proposed project route. And she highlighted  
6 that the locations of these wells, there's no  
7 other alternative town water supply, and so  
8 those residents rely on those private wells  
9 for their water supply.

10 Mr. Chairman, I'm about to change gears  
11 a little bit. Would now be a good time to --

12 CHAIRMAN HONIGBERG: Yes, in fact  
13 it would.

14 MS. DANDENEAU: Excellent.

15 CHAIRMAN HONIGBERG: All right.  
16 We're going to break for lunch. I think we'll  
17 come back at... probably be closer to quarter to  
18 two.

19 (Lunch recess taken at 12:24 p.m. and  
20 concludes the Morning Session. The  
21 hearing continues under separate cover  
22 in the transcript noted as Afternoon  
23 Session.)  
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C E R T I F I C A T E

I, Susan J. Robidas, a Licensed  
Shorthand Court Reporter and Notary Public  
of the State of New Hampshire, do hereby  
certify that the foregoing is a true and  
accurate transcript of my stenographic  
notes of these proceedings taken at the  
place and on the date hereinbefore set  
forth, to the best of my skill and ability  
under the conditions present at the time.

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

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

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1                                   **STATE OF NEW HAMPSHIRE**

2                                   **SITE EVALUATION COMMITTEE**

3                   **February 1, 2018 - 1:50 p.m.**

**DELIBERATIONS**

4                   49 Donovan Street  
5                   Concord, New Hampshire

**DAY 3**  
                                  **Afternoon Session Only**

6                   {Electronically filed with SEC on 02-02-18}

7                                   **IN RE:    SEC DOCKET NO. 2015-06**  
8    **Joint Application of Northern**  
9    **Pass Transmission, LLC, and**  
10    **Public Service Company of**  
11    **New Hampshire d/b/a Eversource**  
  **Energy for a Certificate**  
  **of Site and Facility.**  
  **(Deliberations)**

12                   **PRESENT FOR SUBCOMMITTEE/SITE EVALUATION COMMITTEE:**

13                   **Chrmn. Martin P. Honigberg**   Public Utilities Comm.  
                                  *(Presiding as Presiding Officer)*

14                   **Cmsr. Kathryn M. Bailey**       Public Utilities Comm.  
15                   **Dir. Craig Wright, Designee**   Dept. of Environ. Serv.  
16                   **Christopher Way, Designee**    Dept. of Business &  
  Economic Affairs

17                   **William Oldenburg, Designee**   Dept. of Transportation  
18                   **Patricia Weathersby**           Public Member  
19                   **Rachel Dandeneau**             Alternate Public Member

20                   **ALSO PRESENT FOR THE SEC:**

21                   Michael J. Iacopino, Esq., Counsel for SEC  
22                   Iryna Dore, Esq., Counsel for SEC  
23                   *(Brennan, Lenehan, Iacopino & Hickey)*

24                   Pamela G. Monroe, SEC Administrator

*(No Appearances Taken)*

**COURT REPORTER:   Steven E. Patnaude, LCR No. 052**

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

*(Before commencement of the  
Afternoon Session the Committee  
members met in a non-meeting  
with SEC Counsel at 1:50 p.m.)*

***(Deliberations resumed at 2:29 p.m.)***

CHAIRMAN HONIGBERG: Sorry for the  
delay, folks. We needed some help from our  
lawyer.

Am I recognizing you, Commissioner  
Bailey?

CMSR. BAILEY: Yes. Thank you. Mr.  
Chairman, I move at this time that we deny the  
Application for a Certificate of Site and  
Facility, because the Applicant has failed to  
prove by a preponderance of the evidence that  
the site and facility, the Project, will not  
unduly interfere with the orderly development  
of the region, with due consideration having  
been given to the views of municipal and  
regional planning commissions and municipal  
governing bodies.

CHAIRMAN HONIGBERG: Is there a  
second for Commissioner Bailey's motion?

1 MS. DANDENEAU: I'll second that.

2 CHAIRMAN HONIGBERG: Commissioner  
3 Bailey, are you interested in speaking to your  
4 motion?

5 CMSR. BAILEY: Yes. By statute, we  
6 have to make findings, we have to make four  
7 findings in order to grant the Certificate. I  
8 think the conversation that we had earlier this  
9 morning, it was clear that we can't make one of  
10 those findings. And I know that there are pros  
11 and cons of proceeding with our deliberations  
12 on the rest of the considerations that we have  
13 to make. But, at this point, I don't think we  
14 are able to grant the Certificate. And I think  
15 that there are some -- some risks in continuing  
16 the deliberations, and -- well, let me say it  
17 this way. I think, let's keep it simple.  
18 We've reached a point where we know we can't  
19 grant the certificate, if everybody votes the  
20 way that we articulated on orderly development.  
21 So, for a number of reasons, and we  
22 know that this is going to be appealed, it may  
23 be better for us just to stop now. And I just  
24 want to have an open conversation about that,

1 and we have not discussed this amongst  
2 ourselves back in the room. You know, we  
3 talked about -- I asked about what the  
4 procedure could be.

5 And, so, I'd like to hear everybody's  
6 thoughts on this.

7 CHAIRMAN HONIGBERG: Anyone like to  
8 offer some additional thoughts? Ms. Dandeneau,  
9 you seconded the motion. What is your thinking  
10 on this?

11 MS. DANDENEAU: I will say that I  
12 agree with Commissioner Bailey, in that, at  
13 this point, based on our conversations earlier  
14 today, that it would seem to me that we can't  
15 grant a Certificate.

16 I do have a concern about doing  
17 diligence to the rest of the information that  
18 we've had presented before us over the course  
19 of 70 days of hearings. But, on the other  
20 hand, like you said, Commissioner Bailey, is  
21 that beyond the point right now, if we know  
22 that we can't grant the Certificate?

23 So, I'll say that for now.

24 CHAIRMAN HONIGBERG: Other thoughts?

1           Anyone? Mr. Way.

2                   MR. WAY: This morning's straw vote  
3 was revealing to me. In that I was sort of  
4 somewhat surprised of the amount of agreement  
5 that we had amongst each other. I was also a  
6 little surprised that each time I heard from  
7 our different disciplines, I found that I  
8 agreed more and more on certain things that  
9 even I wish I had said. And, so, I guess my  
10 point is, on orderly development, it's not even  
11 close, doesn't seem close to me. That it's not  
12 something where we're going to be able to come  
13 back and walk out of it. It seems like that --  
14 that today was sort of a decision point, and it  
15 would be hard to go somewhere from here. And  
16 it would be hard -- I agree, I don't see how  
17 you could issue a Certificate, given our  
18 decision, even though it was a straw decision,  
19 of this morning.

20                   CHAIRMAN HONIGBERG: Ms. Weathersby.

21                   MS. WEATHERSBY: I'd love to be done.  
22 I think everyone here would love to have  
23 this -- a final decision on this. But the  
24 lawyer in me says we should be sure to dot all

1           our i's and cross all our t's -- dot our t's  
2           and cross our i's.

3                       And we have heard a lot of  
4           information over the past 70 days, we've read a  
5           ton of reports, we've got everybody's briefs.  
6           There's been a lot of work. And I think it's  
7           worth considering all of the different  
8           arguments on all of the different factors.

9                       I think that this Committee can do a  
10          good and thorough job. And we've made good  
11          progress in deliberations. It's gone quicker  
12          than I think, I know, more quickly than I  
13          thought it would go. And that, if -- I don't  
14          know what -- if expediency is at all a  
15          rationale for stopping now, I think that  
16          without too many more days we can be done and  
17          have addressed all of the topics.

18                      I think there is some risk in not  
19          addressing them that we should consider, if,  
20          for some reason, I can't imagine how, but if we  
21          ever got reversed on an appeal, that we would  
22          then need to consider everything. And with the  
23          passage of time, our memories perhaps would  
24          fade, or we may have different members of the

1           Committee. And I think that that's a pretty  
2           big risk.

3                       CHAIRMAN HONIGBERG: Commissioner  
4           Bailey.

5                       CMSR. BAILEY: Just by way of  
6           conversation, I think I'm coming at it from an  
7           engineering perspective, you're coming at it  
8           from a legal perspective. And I appreciate the  
9           difference, I really do.

10                      But, as an engineer, I look at things  
11           from a more practical matter than from a legal  
12           matter. And I'm worried that, if we continue  
13           with our deliberations, we will really need to  
14           figure out what conditions we would impose on a  
15           lot of things. And that's not -- that's not  
16           going to be simple and it's not going to be  
17           fast. And there's going to be a lot more  
18           things to appeal. And I think we have a pretty  
19           good record right now.

20                      So, because I'm not a lawyer, I lean  
21           a little bit more toward let's just keep it  
22           simple and stop here.

23                      CHAIRMAN HONIGBERG: Mr. Wright.

24                      DIR. WRIGHT: Thank you. I'm really,

1 really conflicted on this, to be honest with  
2 you. On one hand, I can hear Bill Belichick  
3 telling me to "do my job and finish what you  
4 started".

5 But, also, I'm an engineer, too. I'm  
6 a realist. We essentially have a four-legged  
7 stool, instead of the proverbial three-legged  
8 stool, and we know, as of this morning, I think  
9 we all know how we feel on at least one of  
10 those legs. And you need four legs to stand up  
11 in this case.

12 And I guess I'm really conflicted  
13 right now by the two of those things. But I  
14 would love to hear further discussion.

15 CHAIRMAN HONIGBERG: Ms. Dandeneau.

16 MS. DANDENEAU: So, I guess I have a  
17 question. Because I'm thinking about the  
18 amount of time that we've all put into this,  
19 and over the length of time that we've all been  
20 involved so far. And I'm not a lawyer, so I  
21 don't fully comprehend the different steps that  
22 would be taken after today, should we choose  
23 not to grant the Certificate.

24 I understand some of them. But, on a

1 longer time scale, is there a chance that the  
2 Subcommittee for this could change, if the same  
3 body of information had to be heard again. And  
4 if that happens, would they have the same  
5 length of time that we've had?

6 I guess that's my question.

7 CHAIRMAN HONIGBERG: I guess I'm  
8 going to ask Mr. Iacopino to try to address  
9 that, if you can.

10 MR. IACOPINO: It's really a very  
11 difficult question to answer, so many variables  
12 in terms of what might happen in the future.

13 Traditionally, once the Site  
14 Evaluation Committee makes a decision, they  
15 issue a written decision. Within 30 days, the  
16 parties have 30 days to file a motion for  
17 rehearing, trying to point out to the Site  
18 Evaluation Committee what they overlooked or  
19 misapprehended.

20 One, if the motion for rehearing is  
21 denied, there is then a 30-day window to appeal  
22 to the New Hampshire Supreme Court, where the  
23 Appellant has to demonstrate that the action of  
24 the Committee was unreasonable or unlawful.

1 And from there, it's the Supreme Court's  
2 decision and it's the Supreme Court's  
3 timeframe.

4 MS. DANDENEAU: Okay.

5 MR. IACOPINO: And it could be short,  
6 it could be long. There are certain cases that  
7 are supposed to take precedence on the Court's  
8 docket. I don't believe that ours is the type  
9 of case that does, you know, fits in that  
10 category.

11 MS. DANDENEAU: Okay.

12 MR. IACOPINO: But I can't tell how  
13 long it would be. And I certainly can't tell  
14 you what the make-up of the Site Evaluation  
15 Committee would be at any point after 2:40  
16 today.

17 So, that's -- there's just too many  
18 variables to give you a solid answer on what  
19 would happen.

20 CHAIRMAN HONIGBERG: But can you put  
21 up a bound on one of those variables or at  
22 least an educated guess as to the length of  
23 time, just assume a shortest case and a longest  
24 case in the Supreme Court for this type of

1 appeal?

2 I mean, I have opinions on that, but  
3 I'm not sitting here as a lawyer right now.

4 MR. IACOPINO: We have pending before  
5 the Supreme Court right now the Antrim Wind  
6 appeal, which was just argued last week.  
7 There's not been a decision on that. And --

8 ADMIN. MONROE: It was in July, I  
9 believe, when the case was accepted.

10 CHAIRMAN HONIGBERG: When was the  
11 decision made in Antrim Wind?

12 ADMIN. MONROE: The final written  
13 decision of the Committee was issued, I  
14 believe, on Saint Patrick's Day, March 17th.

15 CHAIRMAN HONIGBERG: Of 2017?

16 ADMIN. MONROE: Correct. And the  
17 appeal was accepted the end of July.

18 MR. IACOPINO: And there was a  
19 motion, if my recollection is correct, there  
20 was a Motion for Expedited Treatment of that.  
21 So, expedited treatment meant they had their  
22 oral arguments last week, --

23 ADMIN. MONROE: Correct.

24 MR. IACOPINO: -- from March. And

1 when the Supreme Court will issue a decision in  
2 that case, I don't know. But I would tell you,  
3 Mr. Chairman, that, in my opinion, that's the  
4 short end of the range. And the long -- and  
5 the more common, at least in my experience, and  
6 some of my experience comes from my criminal  
7 defense practice, is that a typical appeal  
8 takes about a year from the time that it's  
9 accepted by the Supreme Court.

10 But that's -- and quite frankly, I  
11 think a lot of the criminal cases that I have  
12 are of a different nature and different level  
13 of complication than these types of issues.

14 CHAIRMAN HONIGBERG: Thank you,  
15 Mr. Iacopino.

16 I'll offer up that I am of two minds  
17 on this. As a lawyer, I understand and fully  
18 agree with Ms. Weathersby's view that the best  
19 time to do something is when it's freshest in  
20 your mind to go through all of the issues.

21 There's another part, another part of  
22 the lawyer in me, however, that recognizes the  
23 simplicity or complexity of this appeal is  
24 affected by how long the decision is and how

1 many decisions have been made. I'm fairly  
2 confident that there will be litigants who are  
3 happy with some aspects of whatever decision  
4 will be made and are unhappy with others. So,  
5 there will be cross appeals on top of the  
6 appeal, the main appeal, on every issue. And  
7 that will increase the complexity, increase the  
8 length of time, increase the briefs, the  
9 briefing lengths, the consideration of the  
10 issues that the Supreme Court will have to  
11 engage in.

12 Just dealing with the issue as it  
13 stands right now, that's a much simpler case to  
14 bring to the Supreme Court. But it does -- it  
15 does run the risk of, if there's a reversal,  
16 having to do a lot of things when it's not --  
17 when they're not fresh in our minds.

18 I mean, that said, I have a lot of  
19 confidence in the work that the Subcommittee  
20 has done, the care with which it reviewed the  
21 record, considered the submissions of all the  
22 Parties, the evidence, and the record we have.  
23 But I don't get a vote at the Supreme Court.

24 Other thoughts on this?



1                   CHAIRMAN HONIGBERG: That's two. The  
2 motion carries five to two.

3                   Before I entertain a motion to  
4 adjourn, there's a number of people I want to  
5 thank for all the hard work they have done on  
6 this.

7                   I want to thank our Administrator,  
8 Pam Monroe, for all the work she put into this,  
9 and all the time she spent with the Parties,  
10 the Applicant, Counsel for the Public, all the  
11 intervenors, all the members of the public,  
12 everyone she interacted with, and the  
13 professional manner in which she did that.

14                   I want to thank our lawyers, Mike  
15 Iacopino, Iryna Dore, and all the people at  
16 their office, who provided tremendous support  
17 to us in facilitating our work, making sure  
18 that it went as smoothly as possible. When  
19 things didn't go smoothly in hearing, it was  
20 usually my fault, not the fault of those who  
21 prepared us or helped get all this put in  
22 place.

23                   I want to thank all the folks who  
24 worked in this facility, making it a good place

1 to hold a hearing. The folks in the back,  
2 Mr. Wagner, and all the folks he worked with.  
3 The folks from Eversource, who put in a  
4 tremendous amount of time to get this all put  
5 in place. I want to thank again Sandie  
6 Merrigan, from Primmer, and Dawn Gagnon, from  
7 McLane, who kept all the records for all the  
8 Parties, cooperated with each other, and with  
9 everyone who needed help from them, with good  
10 humor.

11 I never questioned the competence or  
12 the diligence of any of the people who were  
13 advocating for their positions in this. The  
14 lawyers, the nonlawyers, some of whom could  
15 have gone to law school and done just fine.  
16 Some of the lawyers could take a lesson from  
17 the simplicity and the directness with which  
18 some of the nonlawyers pursued their cases.

19 I want to recognize the diligence and  
20 enthusiasm of the members of the public who  
21 came to public -- public hearings, public  
22 comment opportunities. This was a robust  
23 process by any standard.

24 *(Chairman Honigberg conferring*

1                   with Atty. Iacopino, and then  
2                   conferring with Ms. Weathersby  
3                   as well.)

4                   CHAIRMAN HONIGBERG: What we're  
5                   talking about up here, and thanks to Mike, is  
6                   to make sure that we have a correct set of  
7                   decisions that have been made so that the  
8                   decision of the Subcommittee is clear.

9                   I got so fixated on something I  
10                  didn't expect to have to do today that I lost  
11                  my train of thought.

12                 MS. WEATHERSBY: So, when I voted  
13                 "no", in my head I was voting on "no" to stop  
14                 now. I'm in favor of denying the Application,  
15                 which was not my vote, but I was in favor of --  
16                 my preference would be to deny it after a full  
17                 analysis of all the issues.

18                 So, I was confused, and I don't know  
19                 what we do about that, as to what I was voting  
20                 on at that time.

21                 CHAIRMAN HONIGBERG: I'm in the same  
22                 situation.

23                 Mr. Iacopino, can you offer us a  
24                 route to an endpoint that will make the record

1 clear?

2 MR. IACOPINO: Yes. If somebody who  
3 was in the majority, one of the majority five,  
4 makes a motion to reopen, you can then vote  
5 again -- to reconsider, I'm sorry, you can then  
6 vote on the motion to reconsider. If the vote  
7 is in favor of reconsideration, you can then  
8 take a vote on the motion again.

9 CHAIRMAN HONIGBERG: Can you read the  
10 motion again? Because maybe I need to be --

11 CMSR. BAILEY: No. I think we're  
12 right. The motion was "I move at this time  
13 that we deny the Application for a Certificate  
14 of Site and Facility, because the Applicant has  
15 failed to prove by a preponderance of the  
16 evidence that the Site and Facility, the  
17 Project, will not unduly interfere with the  
18 orderly development of the region, with due  
19 consideration having been given to the views of  
20 municipal and regional planning commissions and  
21 municipal governing bodies."

22 So, as I understand it, the people  
23 who voted "no" were saying -- they voted "no,  
24 we don't think the Certificate should be

1 denied."

2 And I'm willing to reconsider that  
3 motion, and --

4 CHAIRMAN HONIGBERG: Unscripted  
5 reality television.

6 CMSR. BAILEY: -- and reopen the  
7 record, maybe take a vote on orderly  
8 development, and then I'll make the motion  
9 again.

10 CHAIRMAN HONIGBERG: That's what I  
11 was thinking. That the first motion should be  
12 to find that the Applicant failed in the ways  
13 that you just said. Once that motion is voted  
14 on, assuming it comes out the way I am fairly  
15 certain it will, there would then be a second  
16 motion, --

17 CMSR. BAILEY: Right. To deny --

18 CHAIRMAN HONIGBERG: -- to deny the  
19 Application, and then a third motion to  
20 adjourn.

21 CMSR. BAILEY: Right.

22 CHAIRMAN HONIGBERG: Mr. Iacopino, is  
23 that -- would that get us from here to where we  
24 need to be?

1 MR. IACOPINO: I think it would.

2 CHAIRMAN HONIGBERG: All right.

3 MS. WEATHERSBY: Would it be helpful  
4 to have another, not to complicate things, but  
5 to have another motion on whether or not we  
6 should end the proceedings now and take this  
7 next vote? Or is that --

8 CMSR. BAILEY: I think the only way  
9 to end the proceedings is to deny the  
10 Certificate, isn't it?

11 CHAIRMAN HONIGBERG: And then --

12 MS. WEATHERSBY: No, but to -- to end  
13 deliberations, excuse me.

14 CMSR. BAILEY: Oh. So, have a  
15 motion --

16 MS. WEATHERSBY: You know, our  
17 conversation about whether we should stop now  
18 or keep going, do we want to have the positions  
19 of people outlined?

20 MR. IACOPINO: And I apologize. When  
21 Ms. Bailey asked me to help her with the  
22 motion, it probably -- the motion, probably the  
23 first one should have been to move to end  
24 deliberation at this point and then take a

1 vote.

2 So, that's probably on me.

3 CHAIRMAN HONIGBERG: All right. I'll  
4 entertain a motion to reconsider the vote we  
5 just took?

6 MR. WAY: Second.

7 CHAIRMAN HONIGBERG: No, somebody  
8 needs to move.

9 MR. WAY: Okay.

10 CMSR. BAILEY: So moved.

11 CHAIRMAN HONIGBERG: All right.  
12 Commissioner Bailey moves.

13 MR. WAY: And I'll second.

14 CHAIRMAN HONIGBERG: And Mr. Way  
15 seconds.

16 All in favor say "aye"?

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

19 CHAIRMAN HONIGBERG: All right. That  
20 motion is now back up for debate. Commissioner  
21 Bailey, it's my understanding that you would  
22 like to withdraw that motion at this time and  
23 substitute a motion to end deliberations, is  
24 that correct?

1 CMSR. BAILEY: Do I want to end  
2 deliberations before we take up a motion -- a  
3 vote on orderly development?

4 (Atty. Iacopino nodding in the  
5 affirmative.)

6 CMSR. BAILEY: Okay. Yes. So moved.  
7 I move that we end deliberations.

8 CHAIRMAN HONIGBERG: Is there a  
9 second? There better be.

10 MR. WAY: Second.

11 CHAIRMAN HONIGBERG: Mr. Way seconds.  
12 Do we need any further discussion?

13 *[No verbal response.]*

14 CHAIRMAN HONIGBERG: Seeing none.  
15 All in favor say "aye"?

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

18 CHAIRMAN HONIGBERG: Are there any  
19 opposed? No.

20 MS. WEATHERSBY: Opposed was to end  
21 deliberations or --

22 CHAIRMAN HONIGBERG: Yes.

23 MS. WEATHERSBY: I'm opposed to  
24 ending deliberations.

1                   CHAIRMAN HONIGBERG: All right. As  
2                   am I.

3                   So, it's five to two on ending  
4                   deliberations.

5                                 *(Whereupon the deliberations*  
6                                 *ended at 2:53 p.m.)*

7                   CHAIRMAN HONIGBERG: Commissioner  
8                   Bailey, do you have a motion to make regarding  
9                   the required finding on orderly development of  
10                  the region?

11                  CMSR. BAILEY: I do.

12                  CHAIRMAN HONIGBERG: And that motion  
13                  would be?

14                  CMSR. BAILEY: I move at this time  
15                  that we find that the Application -- that the  
16                  Applicant has failed by a preponderance of the  
17                  evidence to demonstrate that the Site and  
18                  Facility, the Project, will not unduly  
19                  interfere with the orderly development of the  
20                  region, having given due consideration to  
21                  municipal views and regional planning  
22                  commissions and municipal governing bodies.

23                  CHAIRMAN HONIGBERG: Commissioner  
24                  Bailey has made that motion. Is there a

1 second? Ms. Dandeneau?

2 MS. DANDENEAU: Yes. I second.

3 CHAIRMAN HONIGBERG: All right. Is  
4 there any further discussion necessary on the  
5 motion?

6 *[No verbal response.]*

7 CHAIRMAN HONIGBERG: Seeing none.  
8 All in favor say "aye"?

9 *[Multiple members indicating*  
10 *"aye".]*

11 CHAIRMAN HONIGBERG: Are there any  
12 opposed?

13 *[No indication given.]*

14 CHAIRMAN HONIGBERG: All right. The  
15 motion carries unanimously.

16 CMSR. BAILEY: All right. Now, I  
17 move at this time that we deny the Application  
18 for a Certificate of Site and Facility, because  
19 the Applicant has failed to prove by a  
20 preponderance of the evidence that the Site and  
21 Facility, the Project, will not unduly  
22 interfere with the orderly development of the  
23 region, with due consideration having been  
24 given to the views of municipal and regional

1 planning commissions and municipal governing  
2 bodies.

3 This is to deny the Application.

4 CHAIRMAN HONIGBERG: Is there a  
5 second?

6 MS. WEATHERSBY: Second.

7 CHAIRMAN HONIGBERG: Commissioner  
8 Bailey has moved that we deny the Application;  
9 Ms. Weathersby has second.

10 Is there any further discussion  
11 necessary on the motion?

12 *[No indication given.]*

13 CHAIRMAN HONIGBERG: Seeing none.  
14 All in favor say "aye"?

15 *[Multiple members indicating*  
16 *"aye".]*

17 CHAIRMAN HONIGBERG: Are there any  
18 opposed?

19 *[No indication given.]*

20 CHAIRMAN HONIGBERG: The "ayes" have  
21 it unanimously and the Application is denied.

22 Now, I'll entertain a motion to  
23 adjourn?

24 Oh, wait. There's another group of

1 people I need to thank: Our stenographers. If  
2 the stenographers weren't here, it's as if it  
3 didn't happen. So, we want to thank  
4 Mr. Patnaude and his colleagues for all the  
5 work that they did.

6 Now, a motion to adjourn?

7 MR. WAY: I'll make a motion to  
8 adjourn.

9 *[Indication given by Mr.*  
10 *Oldenburg.]*

11 CHAIRMAN HONIGBERG: Mr. Way moves we  
12 adjourn; Mr. Oldenburg seconds.

13 All in favor say "aye"?

14 *[Multiple members indicating*  
15 *"aye".]*

16 CHAIRMAN HONIGBERG: We are  
17 adjourned.

18 ***(Whereupon the proceedings were***  
19 ***adjourned at 2:55 p.m.)***

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