

STATE OF VERMONT
ENERGY GENERATION SITING POLICY COMMISSION

Fifth Deliberative Session

March 12, 2013 - 9 a.m.
Giga Conference Room
112 State Street
Montpelier, Vermont

Commission Members

Jan Eastman, Chair
Louise McCarren, Vice Chair
Tom Bodett
Scott Johnstone
Gaye Symington
Deb Markowitz

Staff

Anne Margolis
Linda McGinnis

CAPITOL COURT REPORTERS, INC.

P.O. BOX 329

BURLINGTON, VERMONT 05402-0329

(802) 863-6067

E-MAIL: Info@capitolcourtreporters.com

1 MS. EASTMAN: So we're at the fifth
2 deliberative session of the Energy Generation
3 Siting Policy Commission, and we have one more
4 deliberative session scheduled for March 20th
5 here in Giga, back here. So if you found it
6 today, you should be able to find your way
7 back.

8 We do have -- we've scheduled a public
9 hearing for March 29th. Yes, we know it's a
10 Friday, but that's when we could get the
11 interactive television space. So March 29th
12 from 5 to 7. We'll be in person at the
13 Department of Labor where -- that's where the
14 interactive site is here in Montpelier, and
15 then we'll have Bennington, Brattleboro,
16 Castleton, Lyndonville, Middlebury, Newport,
17 Springfield, St. Johnsbury, White River
18 Junction, and Williston via interactive
19 television, and we have a public hearing
20 scheduled April 3rd. Again, thanks for being
21 able to move the dates, from 5 to 7 p.m., at
22 the Rutland Intermediate School.

23 MS. SYMINGTON: April 8th?

24 MS. EASTMAN: April 3rd. Excuse me if I
25 misspoke. Is the Intermediate School -- I

1 went to Rutland High School.

2 MEMBER OF THE PUBLIC: It's the old high
3 school.

4 MS. EASTMAN: So it's where I went so I
5 know how to get there. So this morning --

6 MS. SYMINGTON: I have a question about
7 that interactive one. Would you like us at
8 different sites? Sometimes I know the
9 Appropriations Committee at the Legislature
10 does that. I think when they have their
11 interactive meeting I think they sort of go --

12 MS. EASTMAN: Maybe that's a good idea.
13 Why don't I come to Montpelier. I can come to
14 Montpelier.

15 MR. BODETT: This is the 29th?

16 MS. EASTMAN: This is the 29th.

17 MR. BODETT: I already made my plane
18 reservations to come back to Burlington.

19 MS. McCARREN: I can do Rutland. Sure.

20 MS. EASTMAN: You would be the only one
21 in Rutland because we're not using that site.
22 It's not available.

23 MS. McCARREN: I'll go down by myself.

24 MS. EASTMAN: Sorry. So, no, Louise,
25 but there's Williston.

1 MS. SYMINGTON: I'm fine if you want to
2 do it all here.

3 MR. JOHNSTONE: Williston is about as
4 good as I can do because my board meets that
5 day.

6 MS. EASTMAN: So Williston is closest
7 for you.

8 MR. JOHNSTONE: My board meetings last
9 as long as my board members tell me they last.

10 MS. EASTMAN: Well I think it's fine
11 that we're not all in the same place. I mean
12 it's a public hearing so why don't you three
13 go to Williston, Tom I'll meet you here in
14 Montpelier, and, Linda, you can go to
15 Williston if you want and not come here. I
16 can have Ann or whatever --

17 MS. SYMINGTON: I'm doing a sleep over
18 at the Spectrum the night before.

19 MS. EASTMAN: I will respond to that.

20 MS. SYMINGTON: So I may be sleepy.

21 MS. EASTMAN: Let's do that.

22 MS. MCGINNIS: I did have one other
23 scheduling question just because Scott can't
24 come on the 20th and I wanted to see if
25 there's a possibility of moving to the 21st.

1 Is that going to be a problem for people?

2 MR. BODETT: I can't do that.

3 MS. MCGINNIS: I thought the 21st was a
4 problem for a lot. Just wanted to
5 double-check.

6 MS. EASTMAN: And the 19th doesn't work?
7 Going ahead doesn't work?

8 MS. MCGINNIS: 19th is a Tuesday.

9 MS. EASTMAN: That doesn't work?

10 MR. BODETT: No.

11 MS. EASTMAN: Just in case. Okay. So
12 we'll keep it at the 20th. Is there any other
13 day the week after in case we needed some more
14 time to finalize things? I know we have to
15 get people out for people to respond to, but
16 if we were still talking the week of the 25th
17 --

18 MS. MCCARREN: Of April?

19 MS. EASTMAN: No. March.

20 MS. SYMINGTON: The 25th is the only day
21 I have any time that week.

22 MS. MCCARREN: I'm good on the 25th.

23 MR. JOHNSTONE: I'm in D.C.

24 MR. BODETT: I'm in Chicago that whole
25 week. I might be able to phone in for a

1 while, if needed, in the afternoon.

2 MS. EASTMAN: Okay. All right. Well
3 let's just --

4 MS. SYMINGTON: You want us to block
5 something off for an afternoon?

6 MS. EASTMAN: I don't know. I'm just
7 wondering do you want to block time off in
8 Rutland before the public hearing on the 4th
9 in case we want to talk about stuff?

10 MS. MCGINNIS: That might be good just
11 to touch base, especially if people are in
12 different places on the 3rd. Rutland is the
13 3rd.

14 MS. EASTMAN: Got it.

15 MS. SYMINGTON: That's not a whole day
16 thing?

17 MS. EASTMAN: No. I was just thinking
18 --

19 MR. JOHNSTONE: It originally was on our
20 calendars for the whole day.

21 MS. EASTMAN: Well I'm wondering if
22 maybe we shouldn't think about getting
23 together then for part -- before that public
24 hearing if we can find some space in Rutland.

25 MR. BODETT: And the point of that would

1 be to --

2 MS. EASTMAN: I think we're not going to
3 be -- I think we're going to be hearing things
4 and still talking about what -- where we're
5 all finally coming down, and I think we ought
6 to -- and maybe we won't need it. Maybe we'll
7 be set.

8 MS. MCGINNIS: Just from my perspective
9 it would be great to get your sense of what
10 you were hearing from the public hearings
11 because I'm going to be trying to make the
12 draft evolve after the public hearings, and so
13 from that each of you may have different
14 interpretations of what you're getting from
15 the public hearings on how the draft might
16 need to be changed as a result.

17 So it would be helpful at least for me
18 because we would only have those two public
19 hearings and then the final report. We still
20 have April 16th on hold which I think we still
21 need to have.

22 MR. JOHNSTONE: Do you want us to hold
23 the afternoon of the 3rd, Jan?

24 MS. EASTMAN: Yes. Why don't we hold
25 the afternoon of the 3rd in Rutland. We would

1 go to Rutland, and again I would just rather
2 have it and it's easier to cancel it than to
3 put it back in.

4 MR. BODETT: Are we still on the 9th?

5 MS. MCGINNIS: Yes.

6 MS. EASTMAN: We're still on the 9th
7 because that's after the public hearings and
8 we would be finalizing and finalizing kind of
9 thing, but I'm just concerned we're not going
10 to have -- there's a whole lot of questions
11 that we still have to answer. Okay. So today
12 I was hoping -- but we can adjust. It's just
13 us. I was hoping this morning we could just
14 finish going through the options.

15 We've ended up at coordination and just
16 talking about it from this first options paper
17 perspective, and then I don't know, do we need
18 some time, a few minutes, to talk about once
19 we come to deciding to making decisions on
20 representations how we're going to do that?

21 Are we just going to think it's going to
22 be consensus, we don't have to take a vote
23 every time, those kind of things, if we want
24 to talk about that, and then after lunch I
25 will say Linda started to put together for us

1 after our most recent meeting is more of a --
2 sort of a package of taking the options and
3 sort of putting it in a package format. So if
4 we did this, this, and this, here's what it
5 would look like as a package, and so we
6 thought maybe after we get through the options
7 this morning, if I can hand that out to you,
8 we could look at it more in that way, sort of
9 a different way of looking at it, and we've
10 got some questions, or she's got some
11 questions that are still unanswered even if we
12 start going down this list.

13 That's a different way to focus our
14 conversation, and because I know as you look
15 at the options we can't do everything. Some
16 things are contradictory. You say yes to all
17 these things what does that really mean.

18 So this next draft takes in a more let
19 me do this first and then this and those kind
20 of pieces. Okay, and is Deb going to make any
21 of this, do we know?

22 MR. COSTER: It's on her calendar so I
23 suspect she will be here.

24 MS. MARGOLIS: Chris has some
25 Legislature --

1 MS. EASTMAN: I bet he does. So the
2 options paper I think we were at coordination,
3 and so this is where we get to -- I think we
4 started to talk last time about ANR and things
5 like that. So that one of the options is to
6 create an one-stop shop where all permits are
7 granted under a siting committee or just have
8 one permit encompassing all permit issues like
9 Maine does.

10 Another option is just require
11 concurrent time of ANR permit filing and the
12 Certificate of Public Good. Another option
13 talks about the use of rebuttable presumption
14 which we started to talk about last time, and
15 here again we get to -- well we've got just a
16 process question here about basic information
17 for applicants.

18 We've got the issue of creating a case
19 manager, something like that, to sort of --
20 this is all about coordinating between ANR,
21 other agencies, and the process.

22 MR. JOHNSTONE: Can I just ask for a
23 clarification on number one, which is does
24 number one mean to suggest that the siting
25 process would subsume ANR's authority to issue

1 permits?

2 MS. EASTMAN: I think it does. I think
3 number one -- it does that. I think that's
4 what happens in some states. The actual --
5 all the permits related to it are issued by
6 the Siting Commission relating to a project.

7 MS. MCGINNIS: In a lot of states it's
8 more of an administrative procedure. That
9 basically it's the ANR that says okay go
10 ahead, but then the final actual
11 administrative granting is done under one
12 shop. So that you're not going to separate
13 agencies, but really it's very similar in the
14 fact that they have to listen to whether ANR
15 says go or no go first. That's how it's done
16 in other states.

17 MR. JOHNSTONE: So it could require --
18 may not require, but it could require a change
19 of the primacy delegation?

20 MS. MARGOLIS: Yes.

21 MR. JOHNSTONE: With EPA which isn't
22 impossible I suspect, but it's least not --

23 MR. COSTER: In the other states that do
24 it this way they don't -- the environmental
25 agencies retain jurisdiction over the EPA

1 delegated permits is what we heard.

2 MS. EASTMAN: So it's not everything
3 that goes in. It's just everything that's
4 non-EPA?

5 MR. COSTER: That was my recollection
6 from what we heard.

7 MS. EASTMAN: I don't disagree. That
8 would be, I think, incredibly ridiculous to do
9 that for the number of projects you might
10 have. Okay, but it may be that there's, you
11 know, some issue here about with the siting
12 board you put everything -- at least some
13 conversation about everything in one place.

14 MS. MCGINNIS: I think the pros and cons
15 sort of go over what the major issues are with
16 this in favor and against.

17 MR. JOHNSTONE: To get at what's
18 intended in number one through two through
19 five. If you have a rebuttable presumption
20 and you make it come in on time and you have a
21 case manager, I think you end up -- my sense
22 is you would get the positive aspects of what
23 number one suggests without getting -- without
24 messing with the clarity issue, but I'm trying
25 to understand the problem.

1 MS. EASTMAN: I think there are a couple
2 of things here. One is, you know, having --
3 ANR -- we started to talk about this last time
4 with timing on ANR permits. If we were going
5 to put in time requirements for the CPG
6 process, you know, you've got to issue it
7 within a certain amount of time, you've got to
8 give notice, you've got to schedule hearings,
9 all that kind of stuff, and we started talking
10 about well what happened with ANR permits and
11 do we have -- and have we got to have some
12 timing, you know, push them on timing to say
13 how much time does it take, of course with the
14 proviso that the applicant has to have a
15 complete application, but so that, you know,
16 so it's that; and so to the extent that you
17 have ANR issuing permits at a state level and
18 you have a Certificate of Public Good process,
19 how do we push them both on. If we were
20 asking to push one, it's not going to do us
21 any good if the other doesn't move right along
22 too, and so how do we facilitate that.

23 Do we facilitate that by having ANR come
24 up with here's what it would take with timing
25 and establish some time guidelines at least

1 for those permits? Do we do it also by maybe
2 creating a position of case manager within the
3 Public Service Board, although they don't want
4 that, but I think it would have to be there if
5 you wanted the case manager to actually have
6 some authority to guide and push the whole
7 process. I don't think it could be at any
8 party. I think it would have to be at the
9 decision maker, but I think that's what we're
10 getting -- people were getting at.

11 MR. JOHNSTONE: I think the challenge
12 there would be the definition of a complete
13 application will be a pretty high standard.
14 We're talking about timelines on ANR. Some of
15 the data they have to acquire is seasonally
16 driven. If you make an application in the
17 winter and they need to see spring data around
18 wetlands, they are going to end up opting to
19 say no application's complete until we get the
20 data, which may not be the intention of the
21 dialogue we're having, but it could be the
22 outcome of the dialogue we're having.

23 They should get -- they need that data
24 to make the decision. So I'm not quibbling.

25 MR. BODETT: I can't remember how we

1 kind of came down, if we had a consensus at
2 all about the make up, if we were going to
3 change the make up of the Board, the Public
4 Service Board, and wouldn't that have a lot to
5 do with what we're doing here if there's ANR
6 representation on the Public Service Board.

7 MS. EASTMAN: Here's the thing. I left
8 it that -- from the last meeting thinking we
9 had consensus that it was going to be the
10 Public Service Board as it is. Since then
11 well I'm just wondering not about all the
12 projects, but here's the thing. I want to
13 remember that in other states when they have
14 got siting commissions they are really only
15 looking at the big projects. They are doing a
16 lot of other things at the community level,
17 and I think -- I thought we had a consensus
18 that we wanted to leave things here in
19 Vermont, you know, at a statewide level, not
20 send it back to communities, but I'm wondering
21 about on that highest tier for the big
22 projects do we want a siting board just for
23 those? I mean --

24 MR. JOHNSTONE: Separate.

25 MS. EASTMAN: Where we take the Public

1 Service Board, but, yeah, we do add the
2 Secretary of ANR and we add the Health
3 Department. Is that a way as opposed to
4 adding -- because we've talked about what are
5 -- we want somebody who understands issues so
6 they can ask questions, and so I'm just
7 wanting to throw that out for us to think
8 about for, you know, do we want that process
9 for just those big ones, and then it solved
10 some of my issues about who is going to
11 provide some insight on things.

12 Not that ANR still doesn't do its
13 permits, but if you then had, at least for
14 those projects, and you had Deb sitting,
15 things might be pushed. I don't think it
16 would be that many cases depending upon what
17 size we chose, but I'm just curious if we
18 don't want to think about that.

19 MR. BODETT: That's the way --

20 MS. EASTMAN: Yes. I know you were
21 thinking about that.

22 MR. BODETT: Why I brought it up, but I
23 think it accomplishes, you know, a few things,
24 primarily putting the expertise on these big
25 projects right on the board, and it takes the

1 work load of these huge projects away from the
2 Public Service Board who is dealing with more
3 and more and more of these smaller projects.

4 MS. EASTMAN: Well they still have -- I
5 think you still have the Public Service Board,
6 but you add people.

7 MS. SYMINGTON: I don't like this. I'm
8 a reluctant on this. I think that's mixing
9 the role of advocacy and arbitrator, and so
10 I'm pretty reluctant on that.

11 MS. McCARREN: That's where I'm coming
12 from. I think the unintended consequence is
13 you take someone like Deb, lots of experience,
14 now you put them in a judicial setting. So
15 maybe you change -- do you also change the
16 rules, the contested case rules, for large
17 cases because all of a sudden you subject the
18 mission of ANR, as a party, rules on a
19 particular case, you create a whole set of
20 different issues, right. I think you have to
21 change --

22 MS. EASTMAN: So I'm still wondering how
23 every other state does it.

24 MR. BODETT: How does New Hampshire do
25 it?

1 COMMISSIONER MARKOWITZ: So having sort
2 of run all the quasijudicial boards in the
3 Secretary of State's Office we have this
4 interesting dual role where we were board
5 counsel and we were the prosecutors, and so we
6 created a wall so -- and so it's not so
7 different. So I could -- it would require
8 some internal rules and procedures to create
9 that wall and to actually create the public
10 confidence that there was that wall.

11 That being said, we're having some
12 internal conversations, we haven't had them
13 yet, but in my own mind, you know, I see -- I
14 see -- it hadn't occurred to me that there
15 would be a place at the actual table until we
16 started hearing from other jurisdictions. In
17 my conversations with them it has been
18 successful.

19 On the other hand, there's probably
20 other things we could do to get to the same
21 result like, for example, having deference,
22 providing deference to our scientist's
23 testimony so that it changes the burden of
24 proof for somebody who is bringing in other
25 evidence, and it requires the Board to really

1 pay attention to it instead of just taking it
2 under advisement.

3 So there may be other ways to accomplish
4 that same goal of making sure that the
5 environmental factors or the municipal -- the
6 local factors are taken into account, but I
7 think that's the right goal. We need to think
8 about what's the process that we're going to
9 add, create, or suggest gets created that
10 enhances the status of those local
11 considerations and the environmental
12 considerations.

13 MS. McCARREN: My straw, and again it's
14 just a straw, throwing it out on the table
15 here, would leave the Public Service Board
16 jurisdiction the way it is now; to change the
17 rule, and you have heard me say this, I should
18 just hold up a card, right, local I think for
19 smaller projects, and I don't have a specific
20 number. Towns who have considered and have
21 zoning, right, have the power to zone. It
22 doesn't mean they have the veto power, but
23 they have the power to say to zone, and I
24 think that would take care -- and that zoning
25 controls. It doesn't mean --

1 MS. EASTMAN: See I'm not going to go
2 with you with zoning. I will go with you to
3 planning, but zoning, I mean I do not want to
4 change the law that says electric generation
5 is subject to local zoning and that's what
6 that would require. It is subject to local
7 zoning and they couldn't zone it out.

8 What we have right now is a process
9 where the town plan is considered and the
10 regional plan is considered, and I'm willing
11 to consider those need more weight, or at
12 least regional plans need more weight or even
13 on smaller ones local may need more weight if
14 they are appropriately planned, but going to
15 zoning is not going to get much for small
16 communities, okay, because you have to plan so
17 well to actually have your zoning be
18 officially done.

19 I've worked at the Department of Housing
20 and Community Affairs after Act 200, and as I
21 used to say we could drive a Mack truck
22 through every zoning reg throughout Vermont
23 because it wasn't done properly, and I don't
24 think it helps developers or communities and I
25 don't think a lot of our small communities

1 want that.

2 So I'm with you that we got to push it
3 where it wants to go, and there are some
4 places it doesn't all need to be and
5 communities to get a say in that, but I'm not
6 on zoning. That's too big a change for me,
7 and I think --

8 MS. MCCARREN: That raises the question
9 what's the difference between a town plan and
10 a town zone, you know, right?

11 COMMISSIONER MARKOWITZ: One is
12 regulatory and one is aspirational, and so the
13 courts have dealt with that over the years.
14 So the plan is really what we want to look at
15 is what is the -- I agree with Jan. It's
16 what's the town aspire for when it's thinking
17 about what its buildout is, what it's going to
18 look like, and what its character is going to
19 be, and some of those plans are more robust.

20 MR. BODETT: Does 248 give deference to
21 plans like 250 does?

22 COMMISSIONER MARKOWITZ: No.

23 MS. EASTMAN: They consider local plans,
24 but it can't win as it does in Act 250 and
25 that's what we have been talking about. Is

1 there a time -- I mean we have talked about
2 that as we've been going through that. Is
3 there is a time or can there be a time, do we
4 believe there's a time and place where a
5 regional plan can control, local plan?

6 MR. JOHNSTONE: So I tend to fall
7 similarly. I've been trying to figure out,
8 Louise, that you have been consistent about
9 this, but what I've been trying to figure out
10 so I think everybody is interested in how do
11 we create a voice for towns and create the
12 right atmospheres for towns, and so if I can't
13 go to zoning, which I won't say can't, but I'm
14 reluctant.

15 MS. McCARREN: Right.

16 MR. JOHNSTONE: What I started to think
17 about is there -- if we've got a Comprehensive
18 Energy Plan and legislative goals, is there a
19 way to create the right incentives for towns
20 that actually want that. Some towns don't
21 want it. Some towns do. That's fine. No
22 value judgment there for me, but could we
23 actually think about a way to -- for those
24 towns that want to host different types of
25 generation that is consistent with the CPG, do

1 we create the right sort of incentives as a
2 way to empower towns, and maybe then we can
3 actually meet all the generation needs in the
4 towns that want it.

5 MS. McCARREN: I totally support that
6 and I would -- my mission is that would take
7 place through town planning and town zoning,
8 and the town would simply -- could zone -- it
9 could zone a renewable energy part or whatever
10 it chose to do.

11 I think the problem that I'm trying to
12 solve is that, and maybe this is going to get
13 solved through the Department's change in the
14 way it runs the SPEED program, what I'm
15 concerned about is projects that are literally
16 -- so I really have kind of solar in mind,
17 wind as well, there are multiple potential
18 sites in the state, okay, and so that says to
19 me the fact that -- and there are many of
20 these as well, right? That is what is so
21 fundamentally different.

22 MS. EASTMAN: I agree. I agree.

23 MS. McCARREN: Okay. So the question is
24 what's different here and how do you have an
25 orderly way to do this?

1 MS. EASTMAN: But it doesn't have to
2 just go in one place. There are some options.

3 MS. McCARREN: I think part of the
4 problem is created by the mistake with the
5 SPEED program.

6 MR. JOHNSTONE: I think what you'll need
7 with planning is some incentives. We haven't
8 really talked about what incentives might get
9 -- might encourage a town that is close to
10 wanting to go there to say yes.

11 MS. EASTMAN: Like all those hundred
12 towns with energy committees.

13 MR. JOHNSTONE: Well and some of them
14 would want certain things and some would want
15 different things, but the dialogue we had with
16 Waterbury I thought was instructive. There's
17 a town that wants to do it. Are there some
18 barriers that we could talk about incentives
19 that would actually help get them moving even
20 faster along a path they say they want, right?

21 I know I raised incentives and the time
22 limit of money and all that, but there's
23 always creative solutions to things.

24 MS. EASTMAN: So we obviously always
25 come back to the issue of the regional and

1 town planning and zoning, and we've mentioned
2 the deference issue regarding permits, but
3 that gets us -- still doesn't get us to me if
4 we're --

5 MS. McCARREN: Where I am on that issue
6 is I think absolutely any permit granted by
7 the ANR should have -- I mean very high
8 presumptive --

9 MR. JOHNSTONE: Option three.

10 MS. McCARREN: Well I want to point out
11 that's different than expert testimony offered
12 by the ANR.

13 MR. JOHNSTONE: Right.

14 MS. EASTMAN: But that doesn't get us to
15 the issue of having a process that -- I mean
16 we've talked about, as I say, having time
17 constraints potentially on the CPG process.
18 That doesn't get us to the issue how do we get
19 ANR there. You know I mean if they are going
20 to have rebuttable presumptions, then they
21 have to issue their permit.

22 MR. JOHNSTONE: Doesn't option two do
23 that? What I was saying if you take option
24 two, three, four, and five --

25 MS. EASTMAN: Well the current timing of

1 an ANR permit filing for CPG you need -- for a
2 wetlands permit you need more than -- how long
3 -- that's what I mean.

4 MR. JOHNSTONE: They are not going to
5 consider the application. That's what I was
6 saying at the top. The way they will manage
7 -- I think, I don't mean to speak for them --
8 they will just deem you have to have your data
9 collection to support your case before the
10 application is complete.

11 MS. EASTMAN: And I guess for me, and I
12 don't know if it's possible, Billy and Deb,
13 what would it look like? I don't even know
14 because it's been so long. We talk about
15 concurrent timing of ANR permit filing and
16 CPG. I mean I think some ANR permits would
17 have to be filed much earlier --

18 COMMISSIONER MARKOWITZ: That's right.

19 MS. EASTMAN: -- to meet the thing. So
20 what does it look like if you scope this out
21 and what does it do about -- I got to just say
22 this. Are we then going to have a rebuttable
23 presumption for a permit that was filed back
24 here with ANR but towns didn't have notice of
25 that, are they then going to be, whoa, I

1 didn't know about that?

2 COMMISSIONER MARKOWITZ: All of our
3 permits have a public process associated with
4 it. So there will be -- we put out a draft
5 permit for comments before it becomes final.
6 So there will be local.

7 So let's take an example which is, let's
8 say, a water withdrawal permit. You've got a
9 biomass plant that's going to be using
10 groundwater, which was briefly suggested with
11 Springfield and then they, because of this
12 timing, went to surface water. So that took a
13 two-year study that's required before you're
14 able to withdraw large quantities of water
15 from the groundwater, and there's lots of
16 scientific reasons why it's a two-year study,
17 and that relates to the hydrology.

18 So they would have to -- so we need to
19 figure out a way to make that permit
20 consistent and the timing of that consistent
21 with the CPG process, which would mean that as
22 they are conceptualizing the project they want
23 to do groundwater withdrawal, well you better
24 start that now while you're doing all your
25 planning and study so you can make sure at the

1 end of the day you have that done.

2 In our conversations before though about
3 timing, one of the things that I heard from
4 applicants that was interesting is that the
5 project changes during the -- and we heard
6 this from the Board too, the project changes.
7 It's iterative at the Board and how do we
8 manage that, and Billy, I don't know if our
9 staff thought about that.

10 MS. EASTMAN: Is it iterative at the
11 Board because of your permits in part?

12 MR. COSTER: In part, but I think it's
13 also part of the way the process works with
14 all the parties. There are negotiations,
15 there are refinements to the project that
16 occur after a CPG application has been filed.

17 So I think, you know, Deb's absolutely
18 right. There's ways we could give some
19 clarity around how long permits would take so
20 people can kind of anticipate and plan for
21 them, but what I think we're looking at for
22 concurrence is that they are filed before or
23 at the same time as the CPG. That the initial
24 stages of review would be the deeming of
25 technically complete, start of discovery are

1 in step, but then from that point forward it's
2 -- they kind of have to go separately because
3 if something changes because of the Board
4 process, it's going to have to change the
5 application to us for the separate permits,
6 and it's unlikely we're going to actually
7 issue the permits before the CPG is issued
8 because of those potential changes.

9 MS. EASTMAN: And our -- when you say
10 public process, remind me though, is it
11 noticed to adjoiners or is it noticed to
12 towns?

13 I mean I guess here's my other -- and
14 now I'm thinking big projects that are causing
15 concern and people are talking about. This is
16 something that I don't think we're going to be
17 able to address all the things I wish we could
18 address relative to that because -- because
19 based upon what I think I've learned since
20 October 31st is there are a lot of things out
21 there being talked about that are never going
22 to happen, and it's causing a lot of anxiety
23 in communities and individuals that I think we
24 could do something about. That would be my
25 primary thing, and I don't think we can then

1 be thinking about that you say if you have a
2 public process with all the permits and some
3 of them are going to start before the --
4 before somebody files for a CPG, even if we go
5 with what we were talking about last time with
6 a filing with some sort of public process, 150
7 days or whatever before -- wait a minute. I
8 mean are we going to get people antsy because
9 you're doing a public process about something
10 two years ahead, and I always remember this,
11 going and saying wait a minute I'm just a
12 normal person. I don't go and look at a
13 project as a wildlife issue or as a water
14 issue or I'm looking at the whole thing.

15 So is that -- does that create a problem
16 for public perception if we've got not only
17 the public hearings or public process for the
18 CPG, but different ones for every ANR permit?

19 COMMISSIONER MARKOWITZ: It sort of
20 doesn't matter in some ways where the starting
21 point is so long as, from our perspective I
22 believe, that we have that before there's
23 discovery, before we have to testify we know
24 what they are asking.

25 So one of the challenges that we've had,

1 because there isn't this idea that you have
2 got to apply concurrently, is we have had to
3 go before the Public Service Board to talk
4 about water quality issues without even seeing
5 what they are planning to do for stormwater
6 management, and because they haven't filed
7 their permit application with us, they did
8 that at the very end in some cases, and that's
9 not acceptable. That really doesn't -- we
10 don't do a good job in front of the Board. It
11 means that there could be inconsistent
12 decisions. So that's the problem, I think our
13 biggest problem, that we want to fix.

14 There's a way to do that I think by
15 requiring, and Billy can fine-tune this, we
16 can come in a more fine-tuned way that
17 requires at filing all of the permits to be
18 filed, all of the requests, so that we know.
19 Our staff can start doing the work.

20 Now it may be that there's a permit
21 that's going to take two years for them to do
22 the studies, which means that if we also have
23 time frames in the statute that they become
24 flexible, that they are somehow tied to what
25 the timing is of our permit processes, and our

1 staff might give a little bit if we put
2 guideline goals, but I think we can do that so
3 long as there's an ability to change them as
4 circumstances on the ground change.

5 MS. McCARREN: Hey, Deb, how do you now
6 on the ground -- or, Billy, how do you guys
7 interact with the Department in terms of these
8 projects because it kind of cries out for some
9 kind of quote -- we've used the term case
10 manager, but someone on both who is managing
11 this. How do you guys interact?

12 COMMISSIONER MARKOWITZ: So Billy and
13 we've got staff who actually manage the large
14 projects for us, and in fact because of some
15 challenges in the process we've actually had a
16 series of meetings with the Public Service
17 Board staff to talk about process to see if
18 they can understand it from our perspective so
19 that as they are putting in discovery orders
20 and these timing things that they really
21 understand our reality, which is to say it
22 hasn't been done very well so far, but there's
23 a general recognition that we need to be doing
24 something better in a more coordinated
25 fashion.

1 MR. COSTER: Yeah, and typically that's
2 true and we also work with the Department.
3 There's usually a staff person, in most cases
4 an attorney, who is the lead for the Public
5 Service Department in the case, and our lead
6 attorney will be in open communication with
7 them around scheduling around the issues
8 related to the case. So there's open channels
9 for that sort of communication, but again for
10 most of the large projects the current
11 situation is that applicants don't seek our
12 permits first. That they wait until after
13 they get their CPG. So they are voluntarily
14 postponing that process until later.

15 MS. MCGINNIS: I have a question on that
16 just from comments that I've been receiving
17 from others. When you're applying, for
18 example, for a stormwater permit you don't
19 have to have a final design when you're
20 applying, right, or do you?

21 MR. COSTER: You need to at least
22 identify the areas of disturbance, the amount
23 of impervious, for your construction
24 stormwater permit.

25 MS. MCGINNIS: A final stormwater design

1 because part of the issue that's come up,
2 because if I'm listening to Deb it's pretty
3 simple, we could recommend two simple things.
4 One is this option two, require concurrent
5 timing, for example, requirement of a complete
6 CPG application when they have filed the ANR
7 -- showing that they have filed for ANR.
8 You're not saying you need to have complete
9 ANR applications, just that you filed with
10 them concurrently prior to allowing them to go
11 for a CPG.

12 COMMISSIONER MARKOWITZ: That way, if
13 they are impervious, because they are still
14 negotiating --

15 MS. MCGINNIS: Okay. They can amend
16 that, but does that then lengthen it further
17 down the line? So it's the notion -- this is
18 one of the comments. So this could be
19 problematic from a project phasing perspective
20 because, for example, final stormwater designs
21 require significant investment and do not make
22 sense to complete until the project is near to
23 complete with regards to layout and project
24 design. So I'm trying to get at where what's
25 required at filing.

1 MR. COSTER: I think it somewhat depends
2 on the different programs, but people should
3 know when they file for their CPG generally
4 what their project is going to look like.
5 There should be --

6 MR. JOHNSTONE: It may change.

7 MR. COSTER: There should be enough
8 information to file their stormwater --

9 MS. MCGINNIS: And you guys would be
10 okay with not a final but an idea?

11 MR. COSTER: Well it's what they think
12 they are going to build, and if that changes
13 due to the Public Service Board process,
14 that's fine. That happens all the time, but
15 they shouldn't be entering the Public Service
16 Board process with such a conceptual plan that
17 they can't even fill out these other permits.

18 MS. EASTMAN: I guess that's interesting
19 because I would hope that nobody was filing
20 for a CPG who just had a concept about
21 something and then was willing to just sort of
22 play out and use the resources -- I mean use
23 your resources.

24 COMMISSIONER MARKOWITZ: They don't.

25 MS. MCCARREN: If someone has a concept,

1 where do they go now?

2 COMMISSIONER MARKOWITZ: Sometimes what
3 they will do is -- they have a concept. They
4 will go to an engineer, a company that -- a
5 firm that's done this before, so Jeff Nelson
6 who does a lot of the stormwater, and they
7 will say okay this is what we're looking at.

8 MS. McCARREN: So they hire consultants.

9 COMMISSIONER MARKOWITZ: And some are
10 better than others obviously, but they have --
11 for these complex projects one would hope they
12 are hiring consultants who had experience
13 already dealing with our permits, dealing with
14 the Board.

15 MS. MCGINNIS: So if you had two things,
16 filing -- making sure that before you have a
17 complete CPG application you have filed for
18 all ANR permits, and, two, that ANR has
19 published online the estimated timeline for
20 each type of permit so that everybody is clear
21 about what the anticipated timeline would be,
22 because that's not currently available for all
23 the ANR permits, correct?

24 COMMISSIONER MARKOWITZ: That's right.

25 MS. MCGINNIS: And there are triggers

1 along the way saying this is due from ANR,
2 this is due from the developer, this is due
3 from the Public Service Board, would that
4 resolve for you the bulk of -- at least at
5 this stage the bulk of coordination problems
6 in a reasonable manner?

7 COMMISSIONER MARKOWITZ: Particularly if
8 it allows flexibility so that if the project
9 changes the timelines change, and we'll
10 retrigger timelines because I think what folks
11 want is that they want to know. They don't
12 want the uncertainty.

13 MS. SYMINGTON: Also I think they don't
14 want to have to do a full stormwater thing
15 twice. That's expensive. That's very
16 expensive.

17 MS. EASTMAN: Why, though, this takes me
18 to then -- we're just talking about this all
19 together, so coordination is the conversation,
20 to case manager which I know that the Public
21 Service Board responded and didn't like the
22 idea of that because, I don't know, they
23 thought it should be in the Department.

24 MR. JOHNSTONE: It's not quasi-judicial.

25 MS. EASTMAN: But for me, as I say, and

1 somebody has got to manage that kind of
2 process, and I know that in the REV comments
3 they had a comment about putting in place an
4 online docketing system, which I think sounds,
5 you know, great and it was available to
6 everybody. You didn't have to have Westlaw to
7 get on to at least see what was going on, and
8 I think in light of transparency that's not a
9 bad idea, but I still think that would need to
10 be somebody within the Board office who
11 manages that because you wouldn't want just
12 ANR there. You would want what else is going
13 on.

14 I mean you looked at the Health
15 Department's comments on these big projects.
16 The Health Department may be commenting or
17 doing something so you would be able to see
18 all of those things, and I still -- I
19 understand totally the judicial -- you know
20 judicial process and ex parte. I really do
21 think I do, and then I still say the courts
22 have lots of staff whose role it is to deal
23 with this kind of informational kind of issue,
24 not substantive decision making, but
25 information about process, and I think you got

1 to have somebody who has that role at the
2 Board. Maybe they have a staff person who can
3 already do it or somebody has got to do that I
4 think.

5 MR. JOHNSTONE: It gets back to the
6 notion Deb used earlier using firewalls. They
7 can do this inside. I mean ANR who is issuing
8 the permits, I don't think they still could --
9 they used to have an environmental analysis
10 division that played exactly this role sitting
11 next to the permitters, right? I don't know
12 who was there when you were there.

13 MS. EASTMAN: The whole point is I know
14 we can --

15 MS. SYMINGTON: Why can't it happen at
16 the Department?

17 MS. EASTMAN: It could, but the
18 Department is not the decision maker. They
19 are not the one who is going to hold anybody's
20 feet to the fire. The point is it's the Board
21 that's managing -- or a hearing officer or the
22 Board is managing their process. They are the
23 ones who are putting in the entry orders that
24 say thou shall do this in such and such a
25 time. That's not a Department function. It's

1 not an Agency function, and we already know
2 the Board and the Department disagree
3 sometimes on things. The Board may have a
4 position and the Department doesn't say yes.
5 So I mean -- so I do. I'm -- the Public
6 Service Board does have a process that is as
7 judicial as any quasi-judicial process can be
8 because I say even the courts do it
9 themselves. I just cannot understand why you
10 would want to not control that.

11 Now they have got a clerk currently, but
12 that's not the way they have used the clerk
13 for the past 35 or 40 years, and my experience
14 goes back to when I was first an associate at
15 Downs Rachlin. Long time ago.

16 MS. MCCARREN: There's no reason that
17 the Board can't -- the Board can do this if it
18 wanted to, and the Board can do it for all the
19 reasons, and I think it's really imperative
20 because we have no place right now for members
21 of the public, affected small towns.

22 MS. EASTMAN: Or to just ask a question.

23 MR. BODETT: I think if there's only one
24 thing we can accomplish, that would be as far
25 as local --

1 MS. MCGINNIS: I just want to throw out,
2 because I agree and everybody seems to agree
3 on this and we have had lots of support from
4 every type of other comment, on the case
5 manager thing the one issue is the cultural
6 issue of the Board. If the Board came to us,
7 which they did, and said we don't really like
8 this idea at our house, we like it at anybody
9 else's house, we just need to be sure that
10 this one person, if they are put at the Board,
11 is actually going to effect change and how do
12 we ensure that can happen.

13 MS. MCCARREN: It doesn't matter that
14 it's at the Board. What matters is that it
15 has access to all -- it has access to all the
16 filings and access to everything.

17 MS. EASTMAN: Yeah, but I think it
18 should be at the Board, and I'm not saying
19 that you're right you wouldn't get to
20 something else, but I just -- we're just
21 talking about transparency here of process.
22 We're not talking about it all interfering
23 with the substantive review or substantive
24 decision, and I simply think some --

25 MS. SYMINGTON: Who would the person

1 report to?

2 MS. EASTMAN: I believe it would be the
3 Board, but look here's the thing. I managed
4 Act 250 for years and I was the lawyer for the
5 Board and I administered the process and I
6 supervised coordinators who wrote decisions
7 for District Commissions and administered the
8 process. I guarantee you I know you can talk
9 to somebody about here's when the hearing is
10 and here's what a filing date is and here's
11 what's going on and not tell them oh I was
12 just in deliberative session with the Board
13 and I know they are going to say x.

14 MS. MCGINNIS: Jan, Chris wanted to say
15 something.

16 MR. CAMPANY: I think it would have to
17 be the Board because in some cases DPS takes a
18 specific position, and so how could you have
19 someone manage the process who has a specific
20 position, and that might be the retort to the
21 Public Service Board about you're then handing
22 over that responsibility to a party with a
23 position and that's not fair.

24 MS. EASTMAN: And I think it's important
25 that the Department takes positions and that

1 ANR takes positions.

2 COMMISSIONER MARKOWITZ: In answer to
3 the question about the cultural change, there
4 are three board members. There's going to be
5 changes over the years. If the cultural
6 change -- they are also professionals and if
7 the Legislature says yes we want a case
8 manager and puts one in place, they will man
9 up and make it work.

10 MS. EASTMAN: The other issue is,
11 though, this is an issue I had dealing with --
12 you know, this is an issue that doesn't really
13 require legislative change to do this.

14 MS. McCARREN: More effective if a woman
15 does it leaned in.

16 MS. EASTMAN: See, I'm really ready for
17 next week. I know all this week's issues.

18 MR. JOHNSTONE: It's going to be great
19 reading.

20 MS. EASTMAN: I should stay out of the
21 car. Okay. I don't think it requires a
22 legislative change.

23 MR. JOHNSTONE: Not necessarily.

24 MS. EASTMAN: It may if they didn't do
25 it, but the whole thing here too is with

1 people so concerned, and I've got legislators
2 saying we can't wait until the end of this to
3 get something done or whatever, some of these
4 things we're proposing what it requires is
5 there a position available at the PSB and
6 money, and before you get to the end of the
7 legislative session have they got the -- an
8 authorized position that's vacant that you
9 could do something like this.

10 MS. MCGINNIS: It would be helped with
11 this notion of the online docketing system
12 whereby everybody sees what the timelines are
13 for every Agency for every participant where
14 there's triggers that go off, and a case
15 manager would be assisting in changing the
16 culture by a systemic program that would help
17 them understand where the timelines are.

18 COMMISSIONER MARKOWITZ: That's actually
19 -- I think that's going to be an important
20 recommendation from us as well, but in terms
21 of administering it that's a little more
22 complicated. It's more expensive and more
23 time consuming to get to. We put an online
24 docketing system in place at the Secretary of
25 State's Office while I was there and it's --

1 MS. EASTMAN: Is it working?

2 COMMISSIONER MARKOWITZ: It's working
3 beautifully, but it was a 18-month planning
4 process and a 18-month implementation process
5 and it was expensive. Now we already have
6 that same software actually could be used
7 here, but you did see what happened with the
8 courts with their whole online system being a
9 failure.

10 So I think that's -- I think that's an
11 appropriate and important suggestion to make,
12 but unlike a case manager where they can just
13 simply make it happen this is a little bit
14 different.

15 MS. EASTMAN: What does the Board have
16 now?

17 MR. COSTER: They have a web site that's
18 incomplete.

19 MS. MARGOLIS: There's currently a
20 process they are creating what you're asking
21 for. We're not quite sure how to line up with
22 the way you're envisioning it, but there's an
23 online electronic system being developed right
24 now. I think it's going to roll out before
25 the end of the year.

1 MS. EASTMAN: They are already starting
2 on that.

3 MS. McCARREN: The cases are online.

4 MS. MCGINNIS: Chris, though, has been
5 talking about how it's very difficult to
6 access any precedent because you have to be in
7 Westlaw. It's very -- right?

8 MR. CAMPANY: Well one of the things I
9 shared was our request for reimbursement and
10 one of the Board's responses was well we
11 didn't have -- we didn't demonstrate through
12 precedent where they had made a similar
13 decision before. Well I wouldn't even begin
14 to know how to do that.

15 MS. McCARREN: Let me just say in
16 today's world the fact all of the Board's
17 decisions are not readily accessible on a web
18 site is a little mind boggling. The way that
19 Westlaw and those guys built it is they came
20 in, they actually came here and spent blah
21 blah days.

22 MS. EASTMAN: John, what we did about --
23 I'll have to find this out because we had this
24 issue for the Professional Responsibility
25 Board because our decisions weren't

1 accessible, but whatever we put them into in
2 Vermont, I don't think it's Westlaw or
3 LexisNexis that makes it necessary for you to
4 get at them. So I'm really curious about that
5 if -- I mean the Board may have been doing it
6 this way because they are dealing with it for
7 parties. We're talking about dealing with it
8 for transparency beyond parties, and I just
9 think we have to look at what may already be
10 available in Vermont as a way to take the
11 Public Service Board decisions out because we
12 had this very same issue and now you can
13 search --

14 COMMISSIONER MARKOWITZ: Through the Law
15 Library. It's where the Supreme Court
16 opinions are and Environmental Court opinions.

17 MS. EASTMAN: Then why can't the Public
18 Service Board opinions go there too?

19 COMMISSIONER MARKOWITZ: Somebody would
20 need to scan and send and the technology is
21 here, but it really means having a person and,
22 you know, it's dedicated resources to make it
23 happen.

24 MS. EASTMAN: But really there aren't
25 that many decisions and you're scanning and

1 sending and then it's there.

2 COMMISSIONER MARKOWITZ: And actually
3 there's technologies --

4 MS. McCARREN: There's a vacancy on the
5 Board. You could apply.

6 MS. EASTMAN: Oh I have a conflict.

7 MR. JOHNSTONE: I realize it's clunky to
8 use right now because it doesn't have such a
9 seamless system, but orders as recently as
10 March 7th are posted online right now that you
11 can look at.

12 MS. EASTMAN: What they are talking
13 about is it being a searchable system so you
14 --

15 MR. JOHNSTONE: I get that.

16 MS. EASTMAN: As I say we put ours into
17 the -- where the Supreme Court goes.

18 COMMISSIONER MARKOWITZ: Right.

19 MS. EASTMAN: So they are already doing
20 something though, and it might be with this
21 suggestion coming out where adjustment could
22 be made if it were necessary, or they could
23 consider these things because that's what we
24 have to think about. Our goal is that it's
25 transparent to people beyond statutory

1 parties.

2 MR. BODETT: This brings up a broader
3 point for me about the recommendations. We
4 seem to be shrinking back saying this is going
5 to cost money which is practical, and we had
6 people actually responsible for real budgets,
7 it's not remarkable, but will we get our best
8 ideas by doing that, but saying well we can't
9 do that because we don't have the money for
10 that position or this and that. We're going
11 to end up with nothing or very little if we
12 think that way.

13 MS. EASTMAN: Well I haven't shrunk back
14 from -- I don't think I've shrunk so far back.
15 I mean I think we need some more resources and
16 there are some things that I'm going to end up
17 thinking we ought to fall down on that require
18 money.

19 On the other hand, and I was having this
20 conversation with you, I'm also trying to
21 think about what's the reality here about
22 what's necessary, and then what's in my own
23 little running through my cost benefit
24 analysis as to what we really need to do or
25 what's actually doable, and I say that because

1 I mean I was responsible -- when I had Deb's
2 job we had to come up with a whole rulemaking
3 process to site a low level radioactive waste
4 facility in Vermont, and how many people even
5 in 1990 would have raised their hand and said
6 we were really going to do that, but we spent
7 a lot of resources doing that and that kind of
8 waste drives me nuts.

9 MS. SYMINGTON: I'm sort of recently
10 coming out of a process like that. So that's
11 partly where I'm coming from because I spent
12 ten months on the Thermal Energy Task Force
13 and we were asked to come up with
14 recommendations to meet the state's goals. We
15 had a discussion ahead of time so how big is
16 the bread box, and we had this conversation in
17 the context of that bread box, no come up with
18 the recommendations for how we meet the state
19 goals, and they are dead. No one is doing
20 anything, and it was about 50 people, a ton of
21 time, many of those people not paid to be in
22 the room doing that work, and I just feel like
23 we could have gotten so much more done if
24 somebody had given us a realistic there's just
25 not going to be more than x amount of money

1 and go figure out what needs -- what's the
2 most we can get done within that constraint,
3 and I think -- so I'm feeling burned by that
4 process and that's why I'm --

5 MS. EASTMAN: That's why I do think, you
6 know, Linda and I went and talked to the
7 Regional Planning Association group last week
8 about planning roles and things like that and
9 what they could do, and we said what's it
10 going to cost to do this, and I think we have
11 to have that -- we have to have that in mind
12 when we get to the end on what's possible and
13 how might we pay for it.

14 I do think, though, there are some
15 things -- I guess I'm still believing there
16 are some things that need to be addressed and
17 they just need to be addressed.

18 MR. JOHNSTONE: Let me just add the
19 constraint I've been using in my head is that
20 I think if we're going -- the things we decide
21 to recommend that cost money we ought to take
22 the responsibility to figure out how it can
23 self fund itself. There's a lot of money in
24 generation and I'm not saying I want to grab a
25 bunch of it, but if the process works better,

1 if there's better engagement, and if we get
2 better decisions, if we actually align the
3 arrows toward the CPG and legislative goals
4 and we can figure out how to do that within a
5 closed loop so we're not dragging general
6 dollars out, I think we absolutely should
7 recommend a case manager and it should not
8 come out of general funds. The system should
9 figure it out.

10 MS. McCARREN: There's nothing wrong
11 with a filing fee. If you want to get in the
12 ISO queue, it costs you big bucks to stay in
13 it.

14 COMMISSIONER MARKOWITZ: My suggestion
15 is to think about this in tiers where we --
16 different tiers, tiers of recommendation where
17 you know we have -- I don't know if it's
18 possible or if we have already and I just
19 haven't remembered seeing it, that we have
20 some estimation of what -- some estimate of
21 what different permit fees, different filing
22 fees would bring in so we have a sense of what
23 the resource is that could be available
24 through some sort of reasonable filing fee,
25 and it will be a range because there will be a

1 choice of where you want to set that filing
2 fee and there will be policy in that, and that
3 will give us a sense of what could be in that
4 self-funded bread box, but we may have other
5 ideas of things that simply should be funded.

6 I actually personally think that, you
7 know, if we could enhance the capacity of
8 regional planning commissions that would be
9 great on so many levels, but that will go
10 beyond what we can afford. So it's possible
11 to make other recommendations in here that
12 aren't self funded that maybe are just going
13 to be out there for conversation.

14 MS. EASTMAN: But there are things -- I
15 agree there are things to me that I think are
16 -- that I think are General Fund issues.
17 Okay. I think there are General Fund issues
18 and then I think there are specific issues,
19 and then I think there are -- I still think
20 there's -- I'm glad there's a bill back
21 provision because I think things that get to
22 specific detail on a specific case that I
23 don't know only happens once or twice a time
24 that's a bill back issue. That's not -- we
25 don't put that in place.

1 MS. MCGINNIS: Maybe if I could suggest
2 this afternoon when we go through the package
3 of recommendations that we staff tried to pull
4 together, we could have that lens for each
5 thing. So for each representation say this is
6 something we could do with no additional
7 funds. This is something that would probably
8 be a General Fund issue. This is something
9 that could be attributed to a filing fee and
10 this could be attributed to bill back, if we
11 could think of that in the recommendations.

12 MR. JOHNSTONE: That's great.

13 MS. MCGINNIS: And we don't know yet
14 what the envelope is. I think that's part of
15 what you were saying, Gaye. It would be nice
16 to know more or less what an envelope is now,
17 but we could at least have that intermediary
18 step.

19 MS. EASTMAN: So from this --

20 MS. SYMINGTON: We know it's not very
21 big.

22 MS. EASTMAN: So I'm getting the sense
23 from this that we're really looking more at
24 option two, the sort of changing the timing of
25 things. Perhaps getting to rebuttable

1 presumptions or more deference for permits. A
2 case manager. Some sort of more transparency,
3 and some place holding people's feet to the
4 fire. Somebody coordinating feet to fire.

5 MR. JOHNSTONE: I have one question.
6 I've been trying to think about this, how do
7 we reconcile, maybe it doesn't matter, the
8 timing, and so I do have an idea here, but
9 because one of the things we haven't talked
10 about is -- another piece we talked about
11 somewhere else in the documents, I couldn't
12 find it right at the moment, is could we
13 actually consolidate appeals down to one
14 appeal. If the timings don't sync, you can't
15 do that.

16 So if that's something we value, and I
17 don't know where we landed on that, a way to
18 do that might be to know where we want to set
19 timelines for the Board to do its work that
20 it's clear that's the time for them to do
21 their piece, but in the process of setting the
22 schedule for the docket that they would
23 complete their considerations, whatever the
24 right words are, deliberations within that
25 window. If the ANR permits are going to take

1 longer, they just don't issue a final order
2 until all permits are together. So if we want
3 to get to that value of consolidating appeals,
4 there's probably a way to do that. I'm not
5 the lawyer in the room here.

6 MS. EASTMAN: Here's the thing --

7 MR. JOHNSTONE: Neighbor doesn't matter.

8 MS. EASTMAN: I thought it was an issue
9 when I started this October 31st and now I
10 don't think anybody else thinks it's an issue
11 so I'm willing to be convinced about that,
12 because the issue for that is that the CPG
13 gets appealed to the Supreme Court. The ANR
14 permits get appealed to the Public Service
15 Board.

16 MR. JOHNSTONE: We talked about pulling
17 all those together to one.

18 MS. EASTMAN: But then I don't think you
19 do that because well then you wouldn't have
20 ANR making the decision. You would have the
21 Public Service Board making the decision
22 because so far ANR permits don't go directly
23 to the Supreme Court for review. Okay. So if
24 you consolidate them --

25 The other thing I could see, and I may

1 be wrong -- are there any applicants here?
2 There aren't any applicants here today, but I
3 could see I mean there may be issues with
4 somebody needing officially to have a CPG for
5 something else to happen and it being
6 weighted. Now -- and, Deb, I heard you say,
7 because I'm taking my leave from you, to me
8 it's not up to what I think a nice little
9 theoretical appellate route looks for permits.
10 I wouldn't have chosen this one, but you seem
11 totally okay with the fact that your permits
12 are reviewed by the Public Service Board.

13 COMMISSIONER MARKOWITZ: Well we like
14 the idea. It's sort of --

15 MS. EASTMAN: It's one decision maker.

16 COMMISSIONER MARKOWITZ: It's one
17 decision maker. We think it's much easier
18 than Environmental Court, for example, which
19 is a disaster. So I think our staff thought
20 that's worked fine and it's a decision maker
21 who is familiar with the project so they
22 really understand the context.

23 MS. EASTMAN: So I thought this was an
24 issue and I haven't heard it's really an issue
25 for anybody but me, and seeing how I don't

1 play at all --

2 MR. JOHNSTONE: What I have heard I
3 think is that the communities think it's a
4 burden to have to pay in multiple places and
5 developers think people forum shop their
6 appeals, and I don't know who the heck is
7 right.

8 MS. EASTMAN: Well there are no shopping
9 to appeal. It is all in one forum, but it's
10 right. I mean what they get is you can have
11 an ANR -- you have the CPG, you have an ANR
12 permit, you then have to have an appeal
13 process before the Board before you go to the
14 Supreme Court. So maybe they want to skip
15 that.

16 Now that I think is -- that might be
17 tough for Deb to accept that her appeals go --
18 actually it would be tough for the Supreme
19 Court to like because Deb's permits aren't in
20 a way that the Supreme Court feels comfortable
21 really dealing with them.

22 COMMISSIONER MARKOWITZ: We're working
23 internally on developing a record so that --
24 because we're thinking down the line we want
25 record review anyway, which means we would

1 have to do a better job in creating a record.
2 There's also a process, but we're not there
3 yet.

4 MS. EASTMAN: So you see to have their
5 permits go directly to the Supremes you have
6 to have a record.

7 COMMISSIONER MARKOWITZ: That's right.
8 You have to have a record that passes muster.

9 MR. JOHNSTONE: I can live with this. I
10 thought both sides have said the other side
11 plays games with us.

12 MS. EASTMAN: But I haven't seen anybody
13 pushing back on that.

14 MR. JOHNSTONE: That's fine. I'll step
15 away.

16 MS. EASTMAN: I thought this was an
17 issue going in.

18 COMMISSIONER MARKOWITZ: Is there any
19 more, Billy?

20 MR. COSTER: I think that the minimum
21 amount of appeals is desirable. I think the
22 way it works for our permits through the
23 Public Service Board is working for us, but as
24 Deb said, if there's a way we can create a
25 record for our permits and have it all go to

1 one place, that might be a better outcome in
2 the future. I just don't know if we're there
3 yet, but we can do some work.

4 MS. McCARREN: Is it a de novo appeal at
5 the Board for your permits?

6 MS. EASTMAN: Yeah, because it's a
7 different process.

8 COMMISSIONER MARKOWITZ: And that's in
9 part the problem I think.

10 MR. COSTER: This is a piece we can flag
11 and provide a little bit more info.

12 MS. EASTMAN: It's just for the number
13 of permits that the Agency deals with. You
14 just got to think about once you put a process
15 in place you're not doing it just for the --

16 MS. MCGINNIS: I think the only thing
17 I've been hearing is there's not a whole lot
18 of push for the single appeal, but there is a
19 desire to consolidate the appeals a little bit
20 more. So I think that's the only thing I've
21 heard. So it's moving in the direction of a
22 single appeal, but not --

23 MS. EASTMAN: Well, and I don't think
24 you can get to a single appeal until the
25 Agency has an on-the-record talk about how

1 much resource -- how that would take -- that's
2 a lot of change.

3 MR. JOHNSTONE: If we stay away from
4 that for now, where we're heading works. I
5 was just concerned if we were going to come
6 back later and talked about consolidating
7 appeals, we would be back to this again.

8 MS. EASTMAN: Because consolidating
9 appeals before the Board would mean
10 consolidating ANR appeals.

11 MS. MCGINNIS: Right. That's what it
12 is.

13 MS. EASTMAN: But that would mean that
14 -- and here's the thing. That's a suggestion
15 we can make. Here's my take on that, and this
16 is just a process thing that I don't think
17 requires anything other than a Board order in
18 a certain thing. It doesn't require a rule.
19 It is if there were a number of different
20 appeals on the same project of Agency permits
21 pending, they can consolidate those and have
22 one hearing process on those things that they
23 wanted to do simply by order.

24 COMMISSIONER MARKOWITZ: That's right.

25 MS. EASTMAN: That's all that would

1 require. I can remember back in the days when
2 I -- again you have different statutory
3 requirements. We were having to do three or
4 four different water quality planning
5 processes because there were three different
6 processes, and I talked to staff then, do one
7 public process, and they said we can't. Yes
8 you can. You just would have to -- there's a
9 way to make those kind of things happen just
10 through management.

11 MS. MCGINNIS: Although would it be
12 possible with the stormwater, which lasts so
13 much longer and is so much more towards the
14 end, you can't really consolidate that.

15 MR. COSTER: Just to be clear the
16 stormwater permitting is not usually time
17 consuming. It's actually in many cases one of
18 the quicker permits because it's based on a
19 manual. It's based on real technical
20 engineering pieces. It's not a long permit
21 compared to some of the other ones.

22 COMMISSIONER MARKOWITZ: Wetlands is one
23 of the permits that can be trickier, and
24 depending on the project that will change
25 because it will impact the hydrology

1 differently.

2 MS. MCGINNIS: I'm just asking can you
3 -- there's some you might not be able to
4 consolidate into a single process. That's
5 what I'm asking.

6 MR. COSTER: I don't know.

7 COMMISSIONER MARKOWITZ: We'll go back
8 and ask staff.

9 MS. EASTMAN: But that totally can be,
10 you know, depending upon how many appeals they
11 have on the same project, they can consolidate
12 process at the Public Service Board.

13 MS. MCGINNIS: Okay.

14 MR. COSTER: Before you move on from
15 this piece, if you don't mind, I would just
16 like to reinforce one piece. I know you've
17 discussed the rebuttable resumption for the
18 issues where we issue permits, but there are
19 these other environmental considerations that
20 ANR doesn't permit that are under the Board's
21 jurisdiction like wildlife habitat
22 connectivity, fragmentation, which are
23 important issues for our Agency, and we really
24 would like to see some way for our position to
25 be elevated before the Board.

1 I think Deb's spoken to this. I know
2 you're not comfortable with individual
3 witnesses getting deference over other
4 experts, but if there's a way our guidelines
5 or standards or something we base our system
6 in could be given more of a deference where
7 the burden is really on the applicant to show
8 with clear and convincing evidence otherwise,
9 that would from our perspective be a really
10 important improvement.

11 MS. McCARREN: Where I am on that I
12 think what you have presented to the Board has
13 gone through your own process and that's a
14 public open process. I support that.

15 Where I can't support you is where it
16 has not, and that would be a situation where
17 you're offering expert testimony and the Board
18 should give it a great deal of weight because
19 you are the experts, but to give a rebuttable
20 presumption for testimony, and I'm making that
21 distinction, I think that's really -- I don't
22 think it's a good precedent. I don't think
23 it's a good process.

24 COMMISSIONER MARKOWITZ: Maybe where to
25 thread the needle here is resting on some sort

1 of internal procedure or rule or guideline
2 because there is always some sort of public
3 overlay to that.

4 So to be specific there's a significant
5 issue of habitat connectivity, and so we have
6 experts that will come in and talk about
7 habitat connectivity, but if they are doing it
8 based on some written guidelines or some, you
9 know, we've got a map and guidelines, there's
10 been opportunity for some sort of public
11 discussion about it, that should get some
12 deference.

13 MS. McCARREN: For sure a rule. You
14 have rulemaking power. Your rules have to be
15 approved by the Legislature.

16 MR. JOHNSTONE: They don't have to be.

17 MS. McCARREN: That's right, they don't,
18 but --

19 MR. JOHNSTONE: It's painful.

20 MS. EASTMAN: I'm wondering does that
21 mean, Deb, that you would like -- that we
22 should be considering putting recommendations
23 in here because how to beef this up is
24 potentially to have a statutory change, a
25 statutory change that again has the

1 Legislature saying to the Board and to the
2 process that, yeah, notwithstanding that
3 there's no permit required for these kinds of
4 issues, the Agency of Natural Resources has
5 been given the authority by the Legislature to
6 deal with wildlife habitat issues, and subject
7 to them developing a process of x, y, and z,
8 then their position will have deference on
9 that issue?

10 COMMISSIONER MARKOWITZ: It can be done
11 by procedure. Couldn't it be done by the
12 Board itself adopting its own rule of
13 procedure or by statute if the Board doesn't
14 do it. So our recommendation could be either
15 way that --

16 MS. McCARREN: Where I'm concerned, and
17 maybe where I am concerned is the expert
18 witness who shows up on behalf -- it's not
19 personal to you guys -- on behalf of any
20 Agency, it could be the Health Department, and
21 that expert witness gives quote expert
22 testimony, but that testimony and the
23 conclusions in it have not been subject to any
24 public process. I cannot get there with you
25 guys on that.

1 COMMISSIONER MARKOWITZ: So let's use
2 the example then of bats. That might be a
3 better example and -- be careful of them.

4 MS. MCCARREN: I have brooms.

5 MS. EASTMAN: No brooms.

6 COMMISSIONER MARKOWITZ: So we have a
7 bat expert and we're concerned about
8 endangered species, and so the bat expert says
9 a wind project right here is going to have
10 disproportionate impact because it's near
11 hibernacular or whatever it is, and when there
12 are really maybe a couple bats will be killed,
13 but it's not significant for the -- that's
14 their professional judgment.

15 So that doesn't get deference because
16 it's going to be based on their professional
17 judgment as opposed to something that's
18 public, and I'm not sure that's as
19 problematic.

20 MR. COSTER: No, but I think areas where
21 we can establish something that's more like a
22 formal universal position, rule, guidance, for
23 instance, we have guidance on stream buffers
24 that we use for Act 250 and Section 248
25 proceedings. We can elevate that to a rule

1 that basically says what minimum buffers for
2 different water bodies should be around
3 development, and if that is just the starting
4 point --

5 COMMISSIONER MARKOWITZ: Excuse me. I'm
6 not sure we want to elevate everything to a
7 rule. So what I would ask is if we're saying
8 what it is, it's not that it's a rule. You
9 can have a procedure or guideline as long as
10 there is an opportunity for public comment
11 which I think is what you're getting at. I
12 apologize for interrupting.

13 MS. EASTMAN: We're just saying we want
14 the science to be science. You know peer
15 reviewed scientific opinions is what we want
16 to have decisions based on.

17 MR. JOHNSTONE: And within their
18 authority. It has to be within the authority
19 granted to ANR.

20 MS. McCARREN: What I'm concerned about
21 is overempowering a deranged staff member at
22 an Agency. Not your Agency.

23 COMMISSIONER MARKOWITZ: So --

24 MS. EASTMAN: Mine are gone now.

25 COMMISSIONER MARKOWITZ: So, Louise, I

1 absolutely get it because every once in a
2 while I understand that you're giving an
3 individual a lot of power.

4 MS. McCARREN: That's right.

5 COMMISSIONER MARKOWITZ: And very often
6 the science isn't clear, right, and so if you
7 had an overzealous scientist who was taking
8 the precautionary principle to the umpteenth
9 level saying well we don't know therefore my
10 judgment is don't touch a thing, right,
11 because we don't know what touching it might
12 end up doing, you're right, giving that
13 deference is too much.

14 MS. McCARREN: And it's not personal to
15 you guys. It's just kind of --

16 MS. EASTMAN: Gaye.

17 COMMISSIONER MARKOWITZ: I'm with you on
18 that actually.

19 MS. SYMINGTON: I'm remembering some
20 comments coming through recent letters asking
21 that this kind of consideration take into
22 account not just the land that is occupied by
23 the solar collectors or the wind or whatever,
24 but also the, say, other land that's been
25 conserved, the contiguity --

1 MS. EASTMAN: I can't be on this
2 Commission. There are just too many long
3 words.

4 MR. JOHNSTONE: Too late.

5 MS. SYMINGTON: -- of conserved land
6 that's part of the whole agreement. That
7 would be considered as well, not just the land
8 of the -- that's impacted by or under the
9 shadow of the solar collector, or the fact
10 because this is now a large project that land
11 is contiguous as opposed to it was going to be
12 sold in many different parcels.

13 MR. JOHNSTONE: So I think what would be
14 useful, because I'm generally amiable to this
15 within the bounds we've talked, my suggestion
16 would be if you all at ANR would come up with
17 that list of x, y, and z, what are the
18 conditions where beyond permits we can feel
19 assured enough that there's been solid public
20 process, it's within your authority, what is
21 x, y, and z for the boundary conditions, so
22 that we could then talk about that, I think
23 that would be helpful to me --

24 MR. COSTER: Sure.

25 MR. JOHNSTONE: -- if we understood what

1 those boundaries are.

2 MS. MCGINNIS: And then which one of
3 them do you feel you're so comfortable with
4 they should get deference and which ones where
5 you think that would be sort of a tier lower
6 than deference.

7 MR. COSTER: We can try. We could frame
8 how a procedure to get something --

9 MS. EASTMAN: Deference.

10 MR. COSTER: Yes.

11 MS. EASTMAN: Let's not have too many
12 tiers.

13 MR. JOHNSTONE: I don't know if we need
14 any. I don't even think it has to be about
15 forest fragmentation. I don't think we have
16 to pick topics. I think we pick the
17 conditions for this, and then -- and maybe
18 that will frame it enough, right?

19 COMMISSIONER MARKOWITZ: Right.

20 MS. EASTMAN: And then again it can
21 always be done by Board order. It could be
22 done by Board rule. Okay.

23 Well that actually leads us into the
24 next section because it's adequate
25 environmental protection, cumulative impacts

1 are in the next section, and we've got options
2 relating to mapping. Clear criteria for
3 projects if they are related to environmental
4 and cultural health issues. Designated energy
5 parks. Public Service Board to defer to ANR
6 standards. That's what we just really talked
7 about. Require Public Service Board to
8 establish clear requirements for natural
9 resource studies and assessments.

10 MS. MCGINNIS: So just to let you know
11 Billy prepared something for this.

12 MR. COSTER: These are internal notes
13 for the working group, but it might be helpful
14 here just to give some background.

15 MS. EASTMAN: Is this where we need to
16 -- also the Department of Health -- did you
17 all see the Department of Health provided us
18 with some comments the last time which I was
19 actually --

20 MR. COSTER: Just for what Linda is
21 handing out, the first section really covers
22 the conversation we just had. So no need to
23 really focus on that in the memo she just
24 handed out, and then the rest is just kind of
25 a summary of what exists and what the

1 opportunities might be for standards,
2 guidance, and monitoring.

3 MR. JOHNSTONE: So one of the questions
4 I have about 5A is a lot of it I'm trying to
5 understand how --

6 MS. McCARREN: Scott, 5A?

7 MS. EASTMAN: Of adequate environmental
8 --

9 MR. JOHNSTONE: Sorry. I wasn't looking
10 at this thing yet. The category -- trying to
11 understand how it's complimentary to the RPC
12 piece we've already talked about because
13 there's a piece of this that feels like if we
14 decided not to do the RPC thing, 5A is what we
15 would look on a statewide basis -- or some of
16 these things are what the RPC would look like.
17 So I'm not sure if they are supposed to be
18 complimentary or a choice I guess is what I'm
19 asking.

20 MS. EASTMAN: And I guess for me it is
21 when I look at option one and talk about, you
22 know, mapping exerciser that's -- well that's
23 what I think you do, this iterative process
24 between the state and the regions about
25 planning. You know it would be back and forth

1 and back and forth and so forth and so on, and
2 I think this is here not just because of that
3 for planning, but if it weren't -- well I
4 don't know if it weren't planning and it was
5 before the -- well no. This would be -- yeah,
6 this could be regions doing this or this could
7 be the state doing this and saying there were
8 no go areas.

9 When I've been thinking about planning I
10 wasn't actually thinking about no no no unless
11 it really was a -- there are things that
12 really win over.

13 COMMISSIONER MARKOWITZ: So there's a
14 conversation going on right now in the
15 Legislature about statewide planning and this
16 kind of falls into that context. My sense is
17 the bill that's looking at it isn't going to
18 go anywhere. That it was a tough lift in the
19 80's when it was proposed. It's a tougher
20 lift now.

21 We had a lot of conversations about this
22 concept last year with the energy bill and we
23 were already engaged in a mapping process. We
24 got the Biofinder and you guys saw a preview
25 of it. It's being -- it's been integrated now

1 with the Vermont Energy Atlas. We'll probably
2 have a press conference about it in the next
3 couple weeks. So you can take a look at the
4 overlays of where the resources are and where
5 the sensitive natural areas are, natural
6 communities, and so forth. It doesn't go as
7 far as this because it doesn't have historic
8 sites. It doesn't deal with any of the
9 aesthetic issues.

10 In the conversations about that mapping
11 project there was a lot of push back about
12 having it be a red light, green light, yellow
13 light. You will note Biofinder is not in
14 those colors because we didn't --

15 MS. MCGINNIS: Purple, pink.

16 COMMISSIONER MARKOWITZ: Exactly. I
17 made them change it because they weren't even
18 thinking about red light, green light. It
19 just happened green --

20 MS. EASTMAN: Of course.

21 COMMISSIONER MARKOWITZ: And so if -- if
22 it's something this Commission thinks makes
23 sense, I think we should recommend it. I'm
24 not sure it goes anywhere, but it's not to say
25 if we think it's a good idea that we shouldn't

1 recommend it.

2 MS. McCARREN: Statewide planning for
3 siting of --

4 COMMISSIONER MARKOWITZ: Generation.
5 You know, taking a look at least what to take
6 off, what to put on, did other states have
7 this, did any other states do this.

8 MS. MCGINNIS: A couple of other states
9 are using it, particularly in the midwest.
10 They have a really strong system in the
11 midwest.

12 MS. EASTMAN: Well Michigan, but it's
13 easy for Michigan. Sorry. My daughter is in
14 Michigan. You can put anything on the palm
15 because it's so industrialized and that's what
16 they have done. They have a part of Michigan
17 that they in effect to me have given up which
18 is fine. It's not here and it's there, and
19 the Great Lakes they are doing -- we're going
20 to have industrial wind in the Great Lakes or
21 they are, but what they have done is they have
22 put their green lights, you know.

23 COMMISSIONER MARKOWITZ: And the
24 practical challenge was hearing the cons, and
25 this is what we heard loud and clear. The

1 problem is once you have identified the sites
2 it changes the marketplace and it also changes
3 the focus for folks who are -- who are against
4 whatever that renewable energy is. Allows it
5 to laser their attention in. So there's
6 concern by having this system in place it will
7 mean that we're not building renewables. That
8 it will effectively make it very difficult to
9 put renewables in because it will change the
10 price of land.

11 So you have identified the six places
12 where the industrial wind will be permissible
13 and also available. Then the anti-folks go
14 and start working on those communities to say
15 no, and the landowners say wow I've got a lot
16 of money, this is worth a lot now, and so it
17 ups the price and it changes the market.

18 MR. BODETT: Don't most people --

19 COMMISSIONER MARKOWITZ: I'm not sure if
20 it's true or not, but that's the argument.

21 MR. BODETT: Aren't people aware of this
22 now? I mean landowners who have wind capable
23 lands know it and wind developers know where
24 they want to put it. It's not like we would
25 be revealing any state secrets here I wouldn't

1 think.

2 MS. EASTMAN: It's like we've been under
3 a bubble.

4 COMMISSIONER MARKOWITZ: Well that's
5 part of what the Biofinder map is about, to
6 give more information out there and sort of
7 even the playing field.

8 MS. McCARREN: What I was going to say
9 you're correct, but I also would question
10 whether or not that -- and I don't know.
11 You're correct, but my observation is what
12 really drives this is the subsidy, quote,
13 subsidies, and I don't want to argue that
14 point, but it's production tax credits, it's
15 the SPEED numbers, it's RPS standards in
16 states, it's REC sales. That's where the
17 money is I think, but I also think you're
18 right. If you had to ID these locations, I
19 think the price of the land would go up.
20 You're absolutely right.

21 MS. EASTMAN: Let me just -- because
22 you're raising this as an RPC and planning
23 issue --

24 MR. JOHNSTONE: The more I look at it
25 the more I think it's both. So it's fine.

1 MS. EASTMAN: But that's the issue for
2 me is I want to be sure, and this is why --
3 and it's ANR who is going to tell me this and
4 the Health Department is going to tell me this
5 that I want to be sure, we were asked to see
6 if the current standards that are in 248
7 provide for -- the current review standards
8 provide adequate environmental protection, if
9 there's anything else that needs to be
10 mentioned or dealt with, and so that's the
11 first thing, and I suppose in part what you're
12 telling me is what we were just talking about
13 the issue of the things we don't actually have
14 a permit process for, right, that you provide
15 testimony on. Maybe those things we were just
16 talking about, but there's nothing else that
17 you think we need to have, a new Act 250 type
18 criteria before 248. There's nothing that's
19 missing?

20 COMMISSIONER MARKOWITZ: No. The Board
21 itself recognized that habitat connectivity
22 came under its authority and we thought that
23 was really an important decision. In fact,
24 Act 250 they don't look at habitat
25 connectivity. We're going to have a separate

1 conversation about cumulative impacts. That's
2 I think the other missing link.

3 MS. EASTMAN: And we have health issues
4 and the Board always looks at health issues.

5 COMMISSIONER MARKOWITZ: That's right.

6 MR. COSTER: For instance, there's a
7 bill in the Legislature right now suggesting a
8 new criteria under 248 specifically around
9 impacts to migratory birds. So there's these
10 discrete resource impacts that fall under the
11 existing criteria that could be parsed out,
12 but as far as we're concerned we feel that 248
13 adequately addresses them in general.

14 MS. EASTMAN: So you don't think we need
15 to support that kind of legislative change
16 that's currently being proposed at those
17 specific issues because I'm going to -- we're
18 going to be asked that.

19 When we get through this and make a
20 presentation we're going to be asked well this
21 was -- somebody's proposed this. Did you
22 consider that, and so I just want to know.

23 MS. McCARREN: Well the Board has
24 already said migratory birds that's the case.

25 MS. EASTMAN: I don't mind this, but

1 because I get it, they have said it and here
2 we've got precedent, but is precedent enough
3 for us or do we want it legislatively?

4 COMMISSIONER MARKOWITZ: So it's back to
5 deference. So what we -- once we get the
6 deference language down in some way then what
7 that does is it allows us to say oh there's --
8 here's an issue that we hadn't thought of
9 before. Like frogs, we've got an issue with
10 frogs, and so our expert can go in and testify
11 about frogs, and they will be listened to or
12 not, but if frogs is really an issue, then our
13 Endangered Species Committee is going to come
14 up with something where there's a public
15 process about frogs. So when our guy goes in
16 and says hey we've got this rule about
17 development and the protection of frogs they
18 will have to listen to it.

19 MS. EASTMAN: Now I'm wondering though,
20 and this is telling me and I'm just now
21 thinking back, if we don't want some
22 recommendation for -- not to change what
23 you're doing now, to keep doing it, but to
24 actually acknowledge that legislatively. So
25 that -- I mean so the Board now looks at it

1 does that mean in ten years if the Board
2 didn't want to look at it they could undo it
3 because it's all made by -- it's not even a
4 rule. It's not even a guideline. It's just a
5 decision that they have made in a prior case.

6 MR. COSTER: I think in theory we would
7 have to reargue it. The practice has been
8 it's acted as precedent and they have had a
9 memory that goes back far enough where we've
10 been able to not have to necessarily argue
11 issues. There certainly may be some benefit
12 in adding additional post-docket criteria. I
13 don't think we've thought too much about it
14 because we don't feel it's necessary.

15 MS. EASTMAN: But I'm wondering if not
16 specific parsed out criteria, Billy, I'm not
17 just thinking about some language or one more
18 subpart in 248 that says and such other, dah
19 dah dah issues.

20 MR. JOHNSTONE: Do you mean that if in
21 the statute we added the rebuttable
22 presumption piece so they can basically raise
23 any issues --

24 MS. EASTMAN: But --

25 COMMISSIONER MARKOWITZ: That's where

1 I'm going.

2 MR. JOHNSTONE: To me that's not enough.

3 I'm hearing you.

4 MS. EASTMAN: Because that's going to
5 happen after a process. You can do it about
6 the things you know. Now with the frogs
7 you're going to have to do a little work
8 before they have --

9 COMMISSIONER MARKOWITZ: But they will
10 be an expert. I'm actually comfortable with
11 Louise's sense of it. That if we have just
12 our -- and actually spotted turtles, there's
13 articles today about spotted turtles. We've
14 got a few in central and southern Vermont, and
15 so we've got procedures about how you need to
16 develop to protect those spotted turtles, but
17 if we don't have procedures, then it hasn't
18 risen to that level that it maybe needs to
19 have that rebuttable presumption.

20 It puts the -- it requires our staff to
21 do something more so that you don't have too
22 much power in the hands of one individual
23 without any checkpoints. So I'm comfortable
24 with that.

25 MS. EASTMAN: So if I'm an applicant, do

1 I want more notice about what all these issues
2 are?

3 MS. MCGINNIS: That is the issue.

4 MS. EASTMAN: Because what I'm hearing
5 now the Agency is going to figure out --

6 COMMISSIONER MARKOWITZ: We're doing
7 that already.

8 MS. EASTMAN: I know and I think it
9 irritates some people. They are coming up and
10 here's another issue they didn't know about.

11 COMMISSIONER MARKOWITZ: Like habitat
12 connectivity.

13 MS. EASTMAN: Is there some way we want
14 to resolve that?

15 MS. MCGINNIS: Could you say if ANR has
16 guidelines that are out there for everybody to
17 understand, one of the guidelines, and it may
18 be -- if we're doing it by technology, in wind
19 it may be on noise, it may be on other things,
20 I don't know, but if there are guidelines out
21 there, let's say wildlife fragmentation, then
22 the applicant understands that's something
23 that's going to be brought up, and you have
24 either deference or rebuttable presumption,
25 whatever it is.

1 If the guidelines are not out there,
2 then basically back to the expert whose
3 opinion is listened to but could be put aside
4 if --

5 MR. JOHNSTONE: Doesn't mean they won't
6 raise it.

7 MS. EASTMAN: I got to go back and read
8 248 to see if I think there's enough.

9 COMMISSIONER MARKOWITZ: So basically
10 there's language in 248 that's broad enough
11 for us to raise any issue that impacts the
12 environment that we think --

13 MR. JOHNSTONE: Adding more zip doesn't
14 cover anything because the people will still
15 be surprised by that. So if we add something
16 when somebody says this, I'm raising this
17 under other, the applicants are still
18 surprised.

19 MS. EASTMAN: This deals with ANR. What
20 deals with the Health Department?

21 MS. MCGINNIS: Again the same -- I mean
22 if we're using this same procedure, you would
23 say to the Health Department if you have the
24 scientific evidence that allows you to put
25 guidelines forth then -- but they have to come

1 up with that first.

2 MS. EASTMAN: I heard you say crazy.

3 MR. CAMPANY: When there's a
4 transportation concern.

5 MS. EASTMAN: Go ahead. Again I'm just
6 thinking we were asked to look at this, what
7 do we do. The Health Department has now
8 suggested some stuff, but it's really broad
9 and I think they need to do some work.

10 MS. MCGINNIS: I think that's -- we've
11 come to the conclusion of they do need to do
12 some work prior to being able to have the role
13 of either deference or rebuttable presumption.
14 You need to actually make sure everybody
15 understands what you're doing it on so you
16 need to put the guidelines forth, and if it's
17 by technology, then there will be some
18 technologies that will have -- I mean Billy
19 has nicely laid out on the second page some of
20 the potential issues that may come up in
21 different technologies.

22 If you look at the second page of
23 Billy's thing under wind, there are different
24 elements under which we don't yet have -- we
25 have precedent on some, but we don't

1 necessarily have guidelines on all of them,
2 and so if we have enough national standards,
3 scientific evidence, all that sort of stuff to
4 come up with guidelines, then at least what
5 I'm hearing from you is you would then have
6 them be under rebuttable presumption or under
7 deference.

8 MS. EASTMAN: So for guidelines what's
9 our public process for guidelines, Deb and
10 Billy, before we establish something as a
11 guideline in the State of Vermont?

12 COMMISSIONER MARKOWITZ: Well it depends
13 on the program, but we could look at Billy and
14 I will find out.

15 MR. JOHNSTONE: I want to know what the
16 x, y, and z are because they could have
17 varying levels of public involvement, some of
18 which we would say really allows for a product
19 that we can trust and some which would -- with
20 negative attached just isn't hefty enough.

21 MS. EASTMAN: The point for me, if
22 you're going to do guidelines, have a process
23 to get it all out then as opposed to getting
24 it out before an application because the point
25 was it is supposed to fix something.

1 COMMISSIONER MARKOWITZ: Two things
2 about guidelines that make me comfortable with
3 that. One is that our guidelines are all
4 public record and are publicly available, and
5 so that there's an opportunity for the public
6 to see them in advance and to argue with them,
7 be prepared to argue with them; and then the
8 second is they are internally vetted, and so
9 there's no -- that's created without an
10 internal process to make sure there's internal
11 peer review. So that addresses Louise's
12 concern of the super empowered staff member
13 who --

14 MR. BODETT: Deranged staff member.

15 COMMISSIONER MARKOWITZ: She said
16 deranged, but I would say super empowered.

17 MS. EASTMAN: In a small state like ours
18 you can have one bad expert. You can have --

19 COMMISSIONER MARKOWITZ: Or you can have
20 an expert who actually, I don't know, lives in
21 the town and hates the project and is not
22 somehow being biased, whatever it is.

23 MS. MCGINNIS: As part -- when you're
24 doing the write-up is it possible for you to
25 write up also what is the process by which we

1 establish something as guidelines? What does
2 it mean?

3 COMMISSIONER MARKOWITZ: Yes. We'll
4 give you some input about that, and the goal I
5 think is to have at least the internal peer
6 review and to have it be publicly available.
7 You know rules have an actual public process
8 that's involved in the legislative approval
9 process. Procedures have a public process
10 without the legislative process. They have
11 procedures, actually a guideline, that is sort
12 of -- before it becomes a rule sort of
13 guideline and operation.

14 MR. JOHNSTONE: So if we get this right,
15 one of the things I think that could be
16 helpful, and it also plays exactly the
17 opposite of what I'm going to say so I'm
18 realizing it might be one of those 60/40
19 questions, one of the criticisms we have heard
20 about the ANR process with developers from
21 neighbors of projects is that you get
22 approached really early before the public
23 notice and you get co-opted into the project.

24 If on the back end there's that publicly
25 available screening of the issue in the

1 guidelines we are using, these are the ones
2 that are actually the basis of our decision
3 and people can see that you used those and
4 nothing untoward happened, you had some of the
5 more open access to information earlier, you
6 address some of that.

7 People could also say well the public
8 doesn't bother with ANR guidelines because who
9 the heck has time to follow every guideline in
10 the State of Vermont. So all the decisions
11 are being cooked through the process. I can
12 play that either way. I understand that. I
13 think people are far more in the former than
14 the latter.

15 MEMBER OF THE PUBLIC: Is it okay if I
16 just make a quick comment? About halfway down
17 the page, Billy --

18 MR. JOHNSTONE: Page what?

19 PUBLIC MEMBER: I guess it would be page
20 two halfway down and it mentions the
21 difference between audible noise and low
22 frequency noise.

23 What I would like to just -- to just
24 insert here is that not only is there a
25 difference between the two, but there's a

1 difference in how they are tested for, and
2 there's a certain kind of filters that are
3 required to test for infrasound and low
4 frequency noise and I'm not sure that that's
5 ever done, and it's just a really important
6 distinction. It's a C filter or a Z filter
7 are required to even pick up infrasound.

8 MS. EASTMAN: So should you add --
9 though for me the issue is if noise is a
10 health impact, then I mean the Department of
11 Health has now presented some information
12 about what role they might wish to play. So
13 on that, you know, we got to have health
14 involved as well.

15 MS. MCGINNIS: And I think that's where
16 Billy says under public safety that could be
17 health should explore guidance related to
18 sound, noise health impacts, all that sort of
19 thing. They do -- they said they want a role
20 so they should take on the role of health.

21 MR. CAMPANY: Sorry. I didn't mean for
22 you to hear our whisper back here.

23 MS. EASTMAN: Just whisper loud enough
24 so I pay attention.

25 MR. CAMPANY: What I was whispering with

1 Jim about is VTrans is having internal
2 conversations about developing additional
3 standards and that they should pursue an Act
4 250. For something specifically, I would say
5 for biomass you may want to reach out to
6 VTrans about especially truck traffic, load
7 capacity.

8 MS. EASTMAN: Yeah. When you're
9 bringing the resource into something. That's
10 true.

11 MR. CAMPANY: That was all.

12 MR. JOHNSTONE: Great.

13 MR. CAMPANY: And they probably already
14 have that for other types of commercial or
15 industrial development.

16 MS. EASTMAN: So this -- well I think it
17 looks to me we have really talked about one
18 and two, and four.

19 MR. JOHNSTONE: What did we decide on
20 that? The question I have about one is it's
21 written in a way that makes you feel really
22 good about it. A mapping exercise.

23 What we're really talking about is
24 statewide zoning for energy sited generation.
25 That's what that says if we're going to do the

1 green light, red light. So that could be
2 reinterpreted to provide positive information
3 to the process. A mapping exercise is helpful
4 that way.

5 If the intention is to get to the go/no
6 go zones, if you will, then it's something
7 bigger than the sum of its parts and I would
8 rather understand which one we mean.

9 MR. BODETT: Can the map be, again like
10 the difference between planning and zoning, I
11 always wish our town plan would have been
12 written in pastel chalk so we could have
13 blurred all the boundaries because it's a
14 plan, but people see their piece of property
15 on one or the other side of a zone line and
16 everything went kapooey.

17 So I'm wondering if a resource map like
18 that where it was so generalized where one
19 area would fade into another, it was say
20 aspirational or instructional rather than --

21 MS. EASTMAN: Well that's why I go back
22 to what we talked about last time. For me
23 when we were talking about the relationship
24 what we might want from the next round of
25 Department, you know, DPS planning some more

1 specificity in that as to some more scenarios,
2 some more something about what are we
3 expecting to do in Vermont, and get that
4 guidance from the state level and then work
5 through the regional planning commissions to
6 actually do this, and so I don't know if I
7 want to say it would be a mapping exercise. I
8 don't want it to say a mapping exercise. That
9 sounds like it's for the sake of doing an
10 exercise.

11 For me it's the fact that you have --
12 the Agency has their new Biofinder. There's
13 more information that other agencies have that
14 could go in that can be provided, and you can
15 start to see, you know, where the resources --
16 where are the areas that are, as I say, so
17 black there's enough there or so not.

18 COMMISSIONER MARKOWITZ: The way we
19 articulate Biofinder is this gives developers
20 an idea where it might be more challenging to
21 develop because they will have more --

22 MS. EASTMAN: People are going to be
23 talking about it.

24 COMMISSIONER MARKOWITZ: There's more
25 hurdles to jump over.

1 MR. JOHNSTONE: When you take Biofinder
2 and lay over the ISO maps about where are
3 skinny wires and where aren't they, you begin
4 to nudge people in the right directions.

5 MR. BODETT: To not map is like
6 pretending we don't know what we know and so
7 why wouldn't we put this on a map.

8 MS. SYMINGTON: I thought one of the
9 inputs into this whole process was that let's
10 not delude ourselves into thinking we can do
11 these maps down to the parcel. They are going
12 to provide -- they are going to maybe give you
13 some heads up as to questions you should be
14 asking and things you should be looking for,
15 but within an area there can be very different
16 parcels.

17 COMMISSIONER MARKOWITZ: So I wonder if
18 we've already done something and we need to
19 give it some time to see if it's doing the
20 trick, and it may be that at some point you
21 want the Energy Atlas folks to come in to show
22 what -- how the Energy Atlas works with
23 Biofinder overlaid into it because I suspect
24 that the tool that we have is going to get us
25 pretty far down the road of where we want to

1 go with mapping without getting it to the red
2 light/green light issue. It may have that
3 same effect of giving -- putting information
4 into the public conversation and help spur
5 better siting.

6 MR. JOHNSTONE: And I'll just say I've
7 always kind of thought it was a good idea to
8 end up with a red light/green light map, but I
9 got to say I don't think there's the will to
10 do it in the state.

11 MR. BODETT: Like Deb said, why say red
12 light/green light if it will have the same
13 effect.

14 MR. JOHNSTONE: I just wanted to say I
15 don't think -- I have always thought it would
16 be much better to do the planning and set the
17 policy without active projects in front of us
18 and know where we want to accomplish what, but
19 I think that is not very likely to happen.

20 MS. SYMINGTON: The one place I don't
21 feel like Biofinder is providing the guidance
22 that does seem to matter is on aesthetics.
23 The viewshed from the Long Trail, the viewshed
24 from, you know -- I think there's some -- you
25 know this question of aesthetics that is so

1 subjective. I don't think there's a way that
2 anyone is going to, say, resolve the fact that
3 I think wind turbines are beautiful and
4 someone else doesn't. You know I much prefer
5 looking at a wind turbine than a ski area or a
6 silo, but that's not what -- we're never going
7 to resolve those differences, but the issue of
8 the viewshed and the public investment that's
9 been made in these statewide trails I think is
10 something -- those are some pieces I think
11 that somebody can do some work around the
12 cumulative.

13 MS. EASTMAN: That is the cumulative
14 impact issue, which I think gets us back to
15 planning earlier for some of those things and
16 putting all these things together. Now --

17 MS. SYMINGTON: I guess I was trying to
18 make a distinction between all these. I'm
19 generally agreeing with what Scott is saying.
20 I think we have the Biofinder and let's use
21 that now, but I don't know that that -- the
22 one place I feel like that's not getting at is
23 the viewshed issue.

24 COMMISSIONER MARKOWITZ: Why don't we
25 make a recommendation that they look at

1 whether or not it's possible to add that
2 layer. Now we were really happy it wasn't us
3 that's in charge of that because it's so
4 tough, but that's not to say it's not a worthy
5 recommendation.

6 MS. SYMINGTON: I wouldn't be one to
7 recommend that turns into a red light that you
8 can see it from -- I think it's the cumulative
9 issue.

10 MR. BODETT: See it from what; a
11 highway, a community?

12 COMMISSIONER MARKOWITZ: Or the Long
13 Trail.

14 MR. JOHNSTONE: This is about personal
15 opinion.

16 MS. McCARREN: We heard opinions on just
17 extremes at UVM and other places.

18 MS. EASTMAN: So would it be worthwhile
19 just, I don't know, if at the next meeting on
20 March 20th if we want to see how much we've
21 already got by looking jointly at the
22 Biofinder and the Energy Atlas and seeing how
23 much information is already there?

24 MS. MCGINNIS: There's also a very new
25 tool that's out called the Energy Zone Map for

1 the northeast that Ed McNamara has just seen
2 which is an incredibly useful tool, and he's
3 happy to have that demonstrated to us. It
4 will be available a little bit later, probably
5 in early April, but just to let you know there
6 are other tools that are out there.

7 One thing I just wanted to suggest on
8 this mapping exercise what I had heard from
9 all of you earlier, and I want to make sure
10 I'm hearing it correctly, is that this doesn't
11 necessarily have to be the red light/green
12 light, but that these are essential tools. If
13 we're going to ask the regional planning
14 commissions to actually carry out the work of
15 beginning to say this is where we would like
16 to place energy, renewable energy in our
17 regions, this is where maybe we don't want to
18 place it in our regions, these are essential
19 tools and Biofinder alone isn't going to be
20 sufficient. You're going to have to have the
21 VELCO maps and there's a lot of tools, and
22 this is just one of many tools and it's not
23 mapping. It's planning.

24 MS. EASTMAN: But what it really would
25 be, and I guess it's worth it to me because

1 this has been something I've been struggling
2 with, okay, this issue of how far away are we
3 from goals to really having some guidance on
4 where things might go. Okay. This is an
5 issue about timing. This is an issue about
6 how many more resources do we need, you know,
7 how much does the big box need to be.

8 This is what I heard last week, what
9 resources are already available and things
10 like that, and we have all day. I wouldn't
11 mind taking a little bit of time to just sort
12 of take a place and overlay these things and
13 see what it looks like. See how much all this
14 information provides us so that we know what
15 we're talking about when we're saying --
16 making a recommendation. So we know we don't
17 have viewsheds, but is that the only thing we
18 don't have.

19 MS. SYMINGTON: We also don't know what
20 the future is. If Bill Stenger creates what
21 he's talking about creating, that's a very
22 different -- that is going to completely
23 change the whole scenario of the --

24 MS. MCGINNIS: Demand for electricity in
25 the north.

1 MS. EASTMAN: Well some things are shut
2 down so he's replacing some things.

3 MS. SYMINGTON: All I mean nobody is
4 going to be able to predict.

5 MS. EASTMAN: But we can see with a --
6 we already know --

7 COMMISSIONER MARKOWITZ: It would be
8 good to see the Energy Atlas and -- because
9 the Energy Atlas there was -- we looked at
10 doing a VELCO overlay, but there's actually
11 some barriers to that under Homeland Security
12 where you can't actually show where power
13 lines are and that kind of infrastructure.
14 You can do some other things that will give
15 you the information that you need, but it may
16 be worthwhile to have them come in and do a
17 demonstration. So it's not us. It's the
18 Energy Atlas. They have taken our Biofinder
19 data, integrated it into the tool that was
20 designed for renewable energy developers.

21 MS. EASTMAN: So if we had the Energy
22 Atlas and asked Ed if he could get whatever
23 ISO is doing, and I know you can't overlay
24 anything, but having the big gross map not of
25 the transmission lines themselves but of where

1 transmission capacity already is --

2 COMMISSIONER MARKOWITZ: There's a tool
3 and they are looking to overlay.

4 MS. EASTMAN: Just to overlay the big
5 picture.

6 MS. SYMINGTON: You have some hands
7 behind you.

8 MR. COSTER: I was just going to comment
9 when you're talking about the various resource
10 maps that may be available to support the
11 planning, you know I think those are probably
12 all great tools, but a lot of them are based
13 on subjective assumptions, and Biofinder is a
14 great tool, but even when we had the
15 presentation on Biofinder, when I have looked
16 at it the fact that there isn't a red or
17 purple zone doesn't necessarily mean that
18 there's not a critical resource there.

19 So I think that the planning really has
20 to delve a lot deeper than those maps. I
21 think they are good general guidance, but I
22 think it really has to be backed up by a more
23 comprehensive planning process.

24 MR. JOHNSTONE: I agree.

25 PUBLIC MEMBER: And then maybe to break

1 away from the red light/green/light yellow
2 light and have other terms like least
3 appropriate, most appropriate, something in
4 between with provide adequate mitigation.

5 MR. COSTER: Just one other. The
6 Biofinder considers regional connectivity
7 patterns for wildlife, but it doesn't call
8 those out specifically. So an area might be a
9 critical link between large blocks of habitat,
10 but it might not rank high necessarily in the
11 Biofinder. So that might be another piece
12 that we can provide more information on.

13 MS. EASTMAN: That's the kind of thing
14 when I say this, and I don't think we're going
15 to get statewide mapping, that's going to be
16 yellow, green, and red, but that's what I
17 mean. I know you have got -- you would have
18 the Energy Atlas or the Biofinder. That
19 doesn't mean you still don't need as part of a
20 planning process deeper conversation between
21 ANR or the Department of Public Service about
22 what the real issues are and what it might
23 look like as you roll it out.

24 COMMISSIONER MARKOWITZ: That's right.

25 MS. EASTMAN: And I didn't read -- I

1 guess there's a piece on why Act 200 didn't
2 work. Somebody wrote something on why Act 200
3 didn't work and I'm anxious to read that
4 because --

5 COMMISSIONER MARKOWITZ: I think it
6 worked, you know, in large part.

7 MS. EASTMAN: But anyway --

8 MS. MARGOLIS: It was a ACCD piece they
9 wrote. It was a debrief on how it rolled out
10 and people's -- participants' opinions on what
11 worked and didn't and why.

12 MS. EASTMAN: That's something. I was
13 of Counsel at the Department of Housing and
14 Community Affairs. There was a legal position
15 created as part of Act 200 and I got it.

16 MR. JOHNSTONE: Purposely developed
17 ANR's strategic plan that was Act 200
18 compliant and purposely sent it to the Council
19 of Commissions which didn't exist any more to
20 make them not know what to do with it. It was
21 kind of fun.

22 MS. EASTMAN: I know. Okay. Where --
23 where does that leave us with? We're still
24 wanting something, but it's not a mapping
25 exercise. There's more criteria from ANR

1 working in this way.

2 MS. SYMINGTON: And whatever it turns
3 out to be we need to not have it be
4 determinative. We need to have it recognized
5 it's going to have limitations both because of
6 not being able to know the future and because
7 of we don't go deep. It's not granular enough
8 so we can't have it turn into fixed
9 guidelines.

10 MS. EASTMAN: But it's more than we
11 have. Generation parks, energy generation
12 parks. I mean I think that's --

13 MR. JOHNSTONE: In the toolbox, but I
14 don't get why we necessarily recommend it.

15 COMMISSIONER MARKOWITZ: I don't think
16 it's --

17 MR. BODETT: Seems like something out of
18 a RPC.

19 MS. EASTMAN: Might elect to then say --
20 or a town energy plan might propose or
21 something. Okay. And we've talked about the
22 deference issue, and option 5 is establishing
23 clearer requirements for natural resource
24 studies. So this has got to be all that.

25 MR. JOHNSTONE: What do we mean by this?

1 MS. EASTMAN: I think this is people
2 raising issues about prestudies that are
3 necessary for certain permits before they can
4 be issued by ANR.

5 MR. COSTER: Well this goes back to kind
6 of an older piece that we provided you all
7 where we asked the developers on large
8 projects to do a certain amount of study prior
9 to application, but that's just one party
10 asking a Petitioner to do that. The Board
11 doesn't officially require that sort of
12 environmental due diligence before someone
13 files. If they don't do it, we can go to the
14 prehearing conference and say that application
15 is incomplete. They haven't done the work we
16 wanted, but it postpones that conversation.

17 The thought here is the Board would
18 basically enforce or adopt our predevelopment
19 requirements so it was a condition of the CPG
20 process.

21 MR. JOHNSTONE: Can I comment on that?
22 What I would like to understand about that is
23 are you thinking that you can do that in
24 advance in a published way so that developers
25 and the Board know what they are requiring or

1 is it still every case by every case?

2 MR. COSTER: No. We are actually
3 operating under draft guidelines that spell
4 out what needs to be done for wind.

5 MS. EASTMAN: So it's still
6 case-by-case?

7 MR. COSTER: Well that's for all -- it's
8 for technology.

9 MR. JOHNSTONE: As long as there was a
10 set of guidelines; all wind are going to have
11 to do this prework, all hydro is going to do
12 this prework, I could live with that. I was
13 wanting to understand if it was amorphous.

14 MS. EASTMAN: So this is just another
15 thing that we're doing a case-by-case if it's
16 ordered by the Board or if they agree to do it
17 because you've asked them to.

18 COMMISSIONER MARKOWITZ: What it does is
19 it formalizes it so that applicants and
20 interested parties know what's expected right
21 in front.

22 PUBLIC MEMBER: Would that be all the
23 interested parties all have access to all of
24 that?

25 COMMISSIONER MARKOWITZ: All of our

1 guidelines there's access to. So you'll know
2 what's required for a pre -- if you're going
3 to site wind, you know, that there's going to
4 have to be a bear study, a bear habitat study.
5 You know they are going to have to take over
6 the hydrology, whatever.

7 So there was one wind case where the
8 applicant refused to do the bear study. You
9 know, hello, that was a problem, but -- and it
10 wasted a lot of people's time and energy and
11 money, and it would have been much easier if
12 there was simply some requirement that upfront
13 you have to do these things.

14 MR. COSTER: I think this is just part
15 of that dynamic you have seen a lot with the
16 Board where they say well DPS can require
17 this, ANR can require this, we don't have to
18 do it, and I think our response has been well
19 this is your permit. So we'll really rather
20 you require the applicants to make sure this
21 work is done before they apply.

22 COMMISSIONER MARKOWITZ: Because we
23 don't have the bear permit -- bear habitat
24 permit. It's a criteria.

25 MS. EASTMAN: This goes back to the

1 things you are asked to review that you don't
2 have permits for.

3 MS. SYMINGTON: That's where the
4 reputation ANR develops, you think you have
5 everything they asked for and they ask for one
6 more thing.

7 MS. EASTMAN: If everybody knows this is
8 what's required because you need it --

9 COMMISSIONER MARKOWITZ: That's the
10 point.

11 MR. CAMPANY: I think one of the things
12 we heard, we had a Section 248 training that
13 Billy came to it and DPS came to it, and Billy
14 made the comment sometimes we're working two
15 years ahead of an application. The way town
16 officials who were at that meeting heard that
17 was ANR is kind of greasing the skids of the
18 applicant, and so that there may be some
19 things, as you think about this in your own
20 process, at what point do you reach out to the
21 towns and saying there is no application, but
22 we're already working with an applicant, and
23 so they are involved earlier on because the
24 way that came across -- because I mean
25 oftentimes as a RPC we kind of got your back

1 saying yeah please listen to them, but the
2 towns weren't necessarily hearing it as they
3 were advocating for the public good. They
4 were hearing it as they are advocating for the
5 applicant.

6 MR. COSTER: I've refined that part of
7 the presentation since then.

8 COMMISSIONER MARKOWITZ: As a practical
9 matter it's just about this. It's really
10 we're working with them to make sure they do a
11 bear study that is going to be acceptable to
12 us at the end so that they are not wasting
13 time and money and doing the wrong thing.

14 MS. EASTMAN: Which is why, again, this
15 might also just help with the transparency
16 issue. Everybody could really understand.

17 MR. CAMPANY: And I used that example
18 during the meeting.

19 MR. COSTER: I think what we said we're
20 pretty committed to try to certainly be
21 transparent and to give notice to communities
22 when we're starting to engage in a meaningful
23 way to give people a heads up. We always
24 encourage the applicant to do that, but I
25 think it's appropriate for us to do that as

1 well.

2 MR. CAMPANY: That's not complaining.

3 COMMISSIONER MARKOWITZ: No. We know
4 it's an observation.

5 MS. EASTMAN: Anne's not here right now
6 too, but I think some of this may come down
7 also to a conversation about the role of the
8 Public Service Department and their community
9 outreach because they have got a couple of
10 roles and this just may relate to how much
11 they get out in advance on behalf of
12 everybody.

13 MS. MCGINNIS: So everybody agrees on
14 the option five?

15 MR. JOHNSTONE: As long as it's
16 tightened up as we've talked about because I
17 could read this to say it's okay to surprise
18 people which is not what anybody --

19 MS. MCGINNIS: This says require the
20 Board to establish clear requirements for
21 natural resource studies and assessments that
22 must occur during the prefiling or scoping
23 phase.

24 MR. JOHNSTONE: As long as that means
25 what we've been talking about I'm okay.

1 MS. EASTMAN: That means it's ANR coming
2 up to say this is what we need to do and
3 asking the Board to formalize it.

4 MR. COSTER: We'll develop like a
5 technology specific checklist or procedure for
6 what needs to happen.

7 MS. EASTMAN: So we do that around
8 criteria that are kept over with you guys
9 pretty much and we do this around studies that
10 you're going to be responsible for
11 supervising, but they have got to happen
12 before.

13 MR. COSTER: The Board gives it the
14 weight they only can give to it.

15 MS. EASTMAN: Okay. So then that leads
16 us to cumulative impact, and we've got two
17 things here. We have option one, incorporate
18 cumulative impact.

19 Option two limits on number of
20 renewables per region or county.

21 MS. MCGINNIS: This was written prior to
22 the presentations on cumulative impacts. So
23 you may all have, based on that presentation,
24 other things to add to this.

25 MS. EASTMAN: And I don't think that is

1 a cumulative impact issue, but because I'm
2 looking at option one I want to say this now
3 and see where we are sort of on this issue,
4 maybe I should wait, but for me the issue here
5 is currently the PSB when they get an
6 application is reviewing a single project,
7 right? Okay.

8 So I have two things about that. Yes, I
9 have a potential of cumulative impacts; i.e.
10 if it were all in the same viewshed and how
11 much is too much and how do we get at that.
12 So it's either we get at that in one of two
13 ways I think.

14 We get at that by we've done planning
15 and we've said here's how much we want or not
16 want or whatever, or, secondly, yes, we say
17 that within the viewshed they have to -- if a
18 second project goes in or whatever to a
19 viewshed, then you have to look at the impacts
20 around the viewshed, and I bet that they can
21 do that by order not just by -- I don't think
22 you need a statutory change to actually do
23 that.

24 I mean they look at lots of impacts.
25 After the Hydro-Quebec case we were looking at

1 lots of things.

2 MS. McCARREN: I was just thinking. I
3 don't think there's a complete inconsistency
4 between the Board taking on project-by-project
5 and cumulative impacts. You can say you've
6 got to consider cumulative impacts. What that
7 does give is a huge benefit to the first
8 project.

9 MS. EASTMAN: Right, which is why though
10 I didn't get why not on the other side, but
11 something I want to be sure that there's
12 enough, at least I'm feeling this, enough
13 statutory provision in what 248 does is I want
14 the first project to be the most efficient
15 project, that the technology is the best
16 technology can be.

17 I'm thinking about the biomass ones,
18 Deb, where -- I mean where I not only want it
19 to be that the electric generation piece is
20 the best it can be, I want the whole project
21 to be the best it can be so that we're not
22 losing 25 megawatts a year of heat or
23 something, and -- or so that you're getting at
24 all the issues of we're doing the right thing
25 for the forest for the resource.

1 So that's a concern I have. Is the
2 language in 248 good at that right now? So
3 it's not that I don't want them, but I don't
4 want the first in just because they are first
5 in. I want it to have been --

6 MS. SYMINGTON: How in the world are you
7 going to do that without having -- this is
8 where the issue of the scenarios comes in.
9 The question is how do you get -- how do you
10 get here without first saying this is where
11 we're going as a state.

12 MS. EASTMAN: For me this isn't such a
13 scenario. I think this is a case-by-case
14 issue. It's just that you want it to be, you
15 know, the best. So if we're going to use the
16 resource, have a biomass facility, we're going
17 to use the resources that we have for that.
18 Don't we want it used as efficiently as
19 possible?

20 MS. SYMINGTON: Sure. So you probably
21 -- but in the context of a renewable energy,
22 thermal electric, and transportation, you
23 probably -- the conclusion I believe you come
24 to is you build us a couple of electric uses
25 for biomass and you're cutting off any -- your

1 real options on the thermal side.

2 MS. EASTMAN: But that's why -- I guess
3 what I'm saying is I don't know if you want it
4 just to be energy.

5 MR. JOHNSTONE: You want CHP and not
6 straight electric. That's what you're asking
7 for as a matter of policy.

8 MS. EASTMAN: Well or are we being nuts?
9 Are we losing something? That's all I'm
10 trying to push here is getting to the best.

11 COMMISSIONER MARKOWITZ: So,
12 particularly on the biomass, I thought about
13 this a lot trying to figure out is there a way
14 to get to cumulative impacts. I thought about
15 this with wind too as well.

16 MS. MCGINNIS: A way to get to?

17 COMMISSIONER MARKOWITZ: Cumulative
18 impact analysis, and I don't know that given
19 our market based system that, you know, a
20 developer comes in with a project, we consider
21 the project, you know, on a case-by-case basis
22 that there's a way to do it, and I don't think
23 we're changing our market based system.

24 I don't think that goes beyond what this
25 Commission is about, but it's also I think not

1 realistic. So given that, though, I think the
2 best we can ask for, and I think we ought to
3 do this, is emphasize the need for the Board
4 to take into account cumulative impacts, and
5 then the Board will figure out what that means
6 on a case-by-case basis.

7 MS. MCGINNIS: They currently have that.

8 COMMISSIONER MARKOWITZ: They do, but in
9 our report we can emphasize its importance.

10 MS. EASTMAN: Well especially like we
11 were saying the viewshed issue. For me,
12 though, it's more because I'll just say this.
13 I'm cruising by the precision valley when I'm
14 coming home from Albany, because I lived in
15 lived in Springfield for a year a long time
16 ago --

17 COMMISSIONER MARKOWITZ: You have lived
18 everywhere.

19 MS. EASTMAN: I've lived in close to all
20 the counties. I was commenting to my spouse
21 about this well, you know, Massachusetts has a
22 statute relative to biomass that's pretty
23 specific about what it has to meet and I don't
24 know. I don't know that statute. I'm really
25 wondering, though, do we need to have -- maybe

1 we just need to say we need a statute that's
2 just more specific. I'm not saying don't do
3 it, but if we're only -- you know I want to
4 have --

5 MS. SYMINGTON: That has an efficiency
6 standard.

7 COMMISSIONER MARKOWITZ: Maybe we want
8 to talk about -- in a cumulative impact
9 statement by this Commission we should call
10 out what we want to be considered as part of
11 that including greenhouse gases, including
12 aesthetics, and just call out in a more
13 specific way, forest fragmentation.

14 MS. EASTMAN: For me, I'm just talking
15 about this issue, it isn't just about
16 cumulative impacts? This is any project has
17 got to be the best it can be.

18 MR. COSTER: I want to add that this was
19 hotly debated in the Legislature last year as
20 part of the energy bill and there was language
21 in that had a similar efficiency standard for
22 biomass and it was taken out. So this has
23 kind of been through the ringer, this issue of
24 requiring a significant level of heat
25 application for electric bill.

1 MS. EASTMAN: Okay, but what if they got
2 my frustration -- as I say I knew nothing, I
3 knew nothing, and I come out of this saying I
4 want them all. I want to have renewables, but
5 I want them to be the best technology and I
6 want that to mean I want them to be efficient.
7 I don't want to be building -- if I've got one
8 plant being built, I don't want to lose
9 something that -- I don't want to miss the
10 opportunity to use something because the
11 resource will be gone because it's more
12 efficient. It really -- again I can't get
13 over being there. 25 megawatts of heat is
14 going up and has been for however many years.

15 MS. McCARREN: You know what that is?
16 It's, come on, team, that is a local political
17 issue.

18 MS. EASTMAN: I understand, but here's
19 my point, but it's not a local political
20 issue. Just that's how we're dealing with it.
21 What it is, is a statewide issue because
22 that's our resource. Okay. Then if they can
23 do that, you're right, then every local gets
24 to control everything.

25 So for me that's 25 megawatts of heat

1 that is more than a local issue. It relates
2 to our whole thing, and then we ought to look
3 at that.

4 MS. SYMINGTON: For every four they take
5 out of the forest and we don't have to do
6 that. They are throwing away three pieces of
7 wood for every four pieces of wood they take
8 out of the forest.

9 MS. McCARREN: What I'm saying -- I'm
10 trying to put this in perspective. There were
11 many -- you know this better than I do. There
12 were many iterations of efforts to try and use
13 the waste heat.

14 MS. EASTMAN: I was there and I totally
15 get it's an argument locally and an argument
16 whatever, but that's because we've left it
17 local and we haven't seen wait a minute this
18 is a piece of the state's -- this is a piece
19 of our energy.

20 MS. McCARREN: You can't have a biomass
21 project unless you have a plan to efficiently
22 utilize the waste heat.

23 COMMISSIONER MARKOWITZ: That's right.
24 That would be the policy.

25 MS. EASTMAN: That's what I come to is

1 that ought -- we shouldn't be wasting
2 anything.

3 MR. JOHNSTONE: Of course.

4 MR. SULLIVAN: In our experience in our
5 region where we had a biomass plant, just
6 talking about the 248 process in general, our
7 commission, our energy committee was
8 absolutely perplexed by the fact no one was
9 talking about energy when they are talking
10 about this plant. They are talking about
11 impacts which is good, but nobody was talking
12 about energy.

13 They say isn't this supposed to be an
14 energy permitting process and so it was
15 absolutely maddening. It was the kind of
16 project that, you know, no rational developer
17 would pursue without a subsidy either. So I
18 mean that public piece of it obfuscates the
19 decision making process and the private entity
20 too. So it further muddies the picture. So
21 that really argues for some significant
22 consideration of that efficiency issue in the
23 process.

24 MS. SYMINGTON: There's also I believe,
25 I'll get this wrong and you can correct me,

1 but if you are setting up a biomass plant and
2 you're using the resource most effectively --
3 efficiently, that's a heat plant. That is not
4 covered under the CPG process. That's covered
5 under Act 250. It's only when you're
6 generating electricity which is the least
7 efficient.

8 MS. MCGINNIS: Is that the case?

9 COMMISSIONER MARKOWITZ: District heat
10 is something else.

11 MR. HAND: That is correct. If it's
12 thermal, that's Act 250.

13 MR. SULLIVAN: In the case in our region
14 that became a bit of a legal issue, an
15 jurisdictional issue too, and it wasn't a
16 space heating application, but it was another
17 application of using the heat for another
18 industrial process, and it's like who has
19 jurisdiction over that. Since they are an
20 integrated facility can it all be under 248 or
21 do you have to split half of the project off
22 and go under 250?

23 MS. SYMINGTON: To get the efficiency up
24 you're going to be adding heat and then you
25 bring in another jurisdiction.

1 MS. EASTMAN: So what's the answer to
2 that because I want the efficiency up.
3 Seriously. I want the efficiency to be good,
4 and if that means everything goes over for a
5 plant like that, seriously.

6 MR. COSTER: Just to play devil's
7 advocate for Chris who is not here, what he
8 would say all energy generation has similar
9 inefficiencies and that an electric load
10 biomass facility at 25 percent is comparable
11 to any other source.

12 MS. EASTMAN: Can I say that's a cop
13 out.

14 MS. SYMINGTON: That's not using --
15 that's not taking into account the limited
16 wood resource. We have a forest we're trying
17 to manage.

18 COMMISSIONER MARKOWITZ: You can be mad
19 at Chris about that.

20 MS. EASTMAN: My point is I want -- for
21 whatever technology we have, I want it to be
22 the most efficient use of the resource.

23 MS. McCARREN: All right. So then why
24 don't you -- why don't we have a straw out
25 here. Say we're going to recommend that there

1 be legislative changes to require that the
2 most efficient use of the fuel source for
3 electricity generation. I mean that's not the
4 right words, but I hear what you're saying. I
5 don't disagree, or that it has the most
6 efficient technology.

7 MS. MCGINNIS: And give biomass as a
8 specific example because I think that's the
9 most --

10 MS. MCCARREN: Well for years and years
11 it was illegal to use natural gas to produce
12 electricity because it was perceived as a
13 non-efficient use of gas, and that gas was
14 much more efficiently used in both process and
15 home heating. It wasn't until like recent
16 times that you could actually produce
17 electricity with gas, natural gas.

18 MR. JOHNSTONE: I still think it's a
19 mistake to use natural gas for that, but
20 that's a different topic.

21 MS. MCCARREN: It's not really a
22 different topic.

23 MS. EASTMAN: And my point is yes so 25
24 percent is fine, but if we can get more,
25 shouldn't we be getting more. I mean if

1 you're permitting something at ANR, forget
2 what, it has to be the best available
3 technology at the time, and we reissue permits
4 to try to improve technology all the time,
5 don't we?

6 COMMISSIONER MARKOWITZ: So the
7 practical challenge, of course, is that the
8 Board is seeing what's coming into it and so
9 it's not seeing the opportunity cost. It's
10 harder to take into account the opportunity
11 cost, and which is applicable in particular
12 for biomass because there's only so much wood
13 resource to go around. That's the challenge.

14 MR. JOHNSTONE: This may be a fuel
15 source utilization question as a way to frame
16 it because if we get to just best technology,
17 best efficiency use, say don't ever put a
18 panel on somebody's home because it's not as
19 efficient as building a farm or any of the
20 small scale wind, and that's not what you're
21 saying.

22 MS. EASTMAN: No.

23 MR. JOHNSTONE: So it may be what you're
24 getting at is more it's about fuel source
25 utilization. So if you have the opportunity

1 to use -- out of one fuel source to get both
2 heating and electricity, then that should be
3 the policy. That may not be quite the right
4 words.

5 MS. McCARREN: I agree with both of you
6 on the issue. The question is what do we do
7 about it here? Do we make a recommendation,
8 248 change, right?

9 MR. JOHNSTONE: I think that's great.

10 MS. SYMINGTON: 248 change.

11 MS. McCARREN: To require -- again I'm
12 not sure I'm right on this, but the straw I'll
13 throw out here is that the overall efficiency
14 of the fuel based on technology is maximized.
15 That's not the right words.

16 MS. SYMINGTON: Maximize relative to
17 what? Maximize relating to generating
18 electricity?

19 MS. MCGINNIS: That's the thing.

20 MS. EASTMAN: No. I want it maximized
21 to use. It's not maximized to generation.

22 MR. JOHNSTONE: Total energy standard.

23 COMMISSIONER MARKOWITZ: So maybe
24 maximize based on a total energy standard. We
25 have to come up with the right words.

1 MR. HAND: If you head in that
2 direction, you might recommend moving
3 jurisdiction with the thermal to one of the
4 same place. So what happened in Pownal is it
5 got divided between 248 and 250. You might
6 combine --

7 MS. EASTMAN: And where -- if we had to
8 put it in one place, where would we put it?

9 COMMISSIONER MARKOWITZ: I think with
10 248 because it's where we're considering all
11 of these other pieces.

12 MS. EASTMAN: I think it ought to be in
13 one place because I want to encourage it. So
14 it's going to discourage it if it has to have
15 two permit processes.

16 MS. SYMINGTON: That's what it has now.
17 That's why you don't see heat.

18 MS. EASTMAN: We're seeing less than I
19 would like. Yes.

20 MR. LEWANDOWSKI: I'm listening to the
21 conversation hearing you talking about
22 efficiency per fuel. Okay. Let's consider
23 wind as a fuel. You're worried about the
24 thermal efficiency from a biomass plant that
25 can put out power when it's needed, and when

1 it is needed you can use. Your complaint is
2 you need to use the other heat that's being
3 lost, whereas, there must be some lower limit
4 on this.

5 I mean if you talk about the wind,
6 Sheffield in the third quarter of last year
7 had 13.2 percent. How low can they go before
8 you say well that's as efficient as it's going
9 to get. Do you get down to two percent so you
10 will destroy a good portion of the state just
11 because well that's the best they can get is
12 two percent so that's good, and it's like
13 let's think about how many trees you took down
14 for that one for starters, but I mean there's
15 got to be a low limit here.

16 MS. EASTMAN: So we want -- I mean we
17 got a straw out here to do a little work on.
18 Okay.

19 Now the cumulative impact issue, though,
20 if we don't do planning, we still need to have
21 something that says they actually look at some
22 of these issues.

23 MS. McCARREN: My straw on this one is
24 that, and I'm not sure I'm correct, I have to
25 think about this some more, that if you could

1 put in Section 248 that the Board will
2 consider the cumulative effect, now what's
3 that for? Is that for aesthetics?

4 MR. JOHNSTONE: Forest fragmentation.

5 COMMISSIONER MARKOWITZ: Yes.

6 MS. MCCARREN: Viewshed, you could put
7 that in there and I don't think that is
8 inconsistent with the case-by-case process.

9 COMMISSIONER MARKOWITZ: That's right.
10 I think that's the best we can get.

11 MS. MCGINNIS: I'm just trying to see
12 how it's any different than what currently
13 exists.

14 COMMISSIONER MARKOWITZ: It calls it out
15 and requires an analysis.

16 MS. SYMINGTON: I just don't see for
17 aesthetics how you can do it case-by-case. It
18 seems to me that's the one -- that's why I
19 brought it up in the context of planning
20 because it seems to me you will never get
21 agreement on the case-by-case. People just
22 don't see the same thing when they look at the
23 same object. They just don't. So how do you
24 call that -- doesn't that come down -- in
25 order to really address it don't you have to

1 do that in advance in some way?

2 MS. EASTMAN: I think you do, but if we
3 don't have it, who knows if we don't have it,
4 and you put one facility in and it gets -- you
5 know. Well I mean they can do it -- they can
6 do it even in the first one. They can say we
7 have to consider the whole viewshed and so how
8 much might we have. I mean --

9 MS. MCGINNIS: That comes back to saying
10 pretty strongly if you're going to go the
11 cumulative impact route, it makes sense to do
12 it upfront to some degree on the planning so
13 on a project-by-project basis you don't have
14 that much work to do.

15 MS. EASTMAN: I totally agree, but we
16 don't have planning right now. Okay. What we
17 currently have is here's where I get into the
18 -- if I can't get what I want, what can I
19 possibly get that would have any benefit at
20 all, but if we don't have planning, and we
21 have what we have now, is there anything else
22 we need to be telling them to look at, and I
23 think we need to tell them to look at those
24 things, and I think they could definitely, if
25 there's already an industrial wind farm in a

1 viewshed, how many more are going to go in
2 there kind of things. Shouldn't you have to
3 look at it.

4 MS. McCARREN: Well, you know, this is
5 -- cumulative effect is in essence done in
6 interconnection and effect on grid, right,
7 because every time you get a proposed plant
8 its effect on everything else is measured.

9 MR. JOHNSTONE: Not on the view and
10 we're calling out where it's not.

11 MS. McCARREN: I totally agree with you.
12 I just was noodling here that in fact this
13 concept of where you stand in the queue is
14 absolutely done every single day on the
15 electrical effect.

16 MS. EASTMAN: How do I get influence
17 over the queue. That's what I want.

18 MS. SYMINGTON: Another question is what
19 happens if you don't do all this. What's the
20 cumulative impact of not reaching our goals?
21 What's the cumulative impact of changing
22 climate? How could you weigh the other part
23 of this in the picture?

24 MR. JOHNSTONE: So the knotty one here I
25 think is the viewshed one and I don't know

1 what the right process is. I wonder if the
2 forest fragmentation, if the recommendation
3 should be somewhere between rulemaking and
4 publicly processed guidance that actually ANR
5 should develop. If we're going towards
6 deference, that they should deal with forest
7 fragmentation as a recommendation, whether
8 they think they should create a permit,
9 whether they think they should just do rules,
10 whether it should be publicly processed
11 guidance so -- because frankly that's where
12 the expertise is. Not at the Board.

13 MS. EASTMAN: Well -- and you're used to
14 arguing about well this happens these other
15 things, you know.

16 COMMISSIONER MARKOWITZ: Right, and
17 that's part of why we negotiate conservation
18 zones is to offset some of the impact.

19 MR. JOHNSTONE: I don't know if you guys
20 would want that or if you would rather have it
21 at the Board, but it strikes me frankly it's a
22 better place to put that one and then it
23 leaves us really with viewsheds.

24 MS. EASTMAN: But we do the same thing
25 around viewsheds. Do you have conservation

1 easements regarding viewsheds?

2 COMMISSIONER MARKOWITZ: There probably
3 are.

4 MR. JOHNSTONE: I don't think ANR would
5 say they are the aesthetic police.

6 COMMISSIONER MARKOWITZ: They are not.

7 MS. EASTMAN: But the Department could
8 do that.

9 MR. JOHNSTONE: The Department could. I
10 was wondering rather than just say gee we wish
11 the Board could take this on, maybe if you
12 want to be more proactive about it we should
13 pick who should take it on.

14 MS. EASTMAN: If we think it's an issue
15 and we don't have a plan for what do we do if
16 it's not planned for --

17 MR. JOHNSTONE: Assign the cumulative
18 impact issues to the two departments or
19 agencies as their jurisdiction that they
20 should develop the right level of oversight
21 for.

22 MS. SYMINGTON: It needs to be done
23 within the context of meeting the state's
24 energy goals.

25 MR. JOHNSTONE: Exactly.

1 MS. EASTMAN: That's why the Department
2 of Public Service --

3 COMMISSIONER MARKOWITZ: That's the
4 Department's job. I think we would provide a
5 great service by articulating that. So
6 looking at cumulative impact and calling out
7 what we think ought to be considered
8 including, you know, the impact, how it's
9 impacting in a positive way achieving our
10 energy goals.

11 MS. McCARREN: Here's why I think
12 there's a problem in that, okay, and here's
13 how it goes and I'm not sure I'm right on
14 this.

15 My theory is that when the state energy
16 plan was adopted its full effect on the issues
17 that we're talking about was unknown.

18 COMMISSIONER MARKOWITZ: That's right.

19 MS. McCARREN: And probably unknowable
20 at that time, and that's what Asa's testimony
21 to us really was about, and so if you kind of
22 reengineer it and you say -- now you say okay
23 we can withstand all of these cumulative
24 effects so long as they support this energy
25 policy or carry it out, I think it in some

1 ways kind of flips it over because I think --
2 again, I just think that the reality of what
3 that energy plan really means to people was
4 unknowable -- from these issues was probably
5 unknowable at the time, and so I think, you
6 know, that's my concern.

7 MS. SYMINGTON: So is impact of not
8 achieving these goals. There's no way of
9 being able to map out the impact you know that
10 a changed climate is going to have. So if
11 it's the only representation we have of that
12 future, good.

13 MS. EASTMAN: And so for me it's that --
14 and maybe again this becomes part of the next
15 iteration of the Department's plan more goes
16 into that than went into the last one because
17 we're saying we need more specificity, we need
18 more scenarios, we need more. Okay. This is
19 what it really takes to do it, and that, you
20 know, this issue of aesthetics is one that's
21 got -- and even if it's only that, I'm just
22 saying if we never got to regional planning
23 and we only had a reiteration of the
24 Department plan there's going to be something
25 in there well here's how we think we're going

1 to do it and we think we can do it and still
2 protect the Long Trail and the cultural
3 resources or not, and if we can't do it
4 without protecting them, then here's our case
5 for why it's important, but we have to have
6 that conversation.

7 MS. MCGINNIS: Which is why I'm trying
8 to come out on the specifics of the
9 recommendation. I want to make sure I'm
10 hearing what you're saying.

11 Are we saying that cumulative impact
12 needs to be taken into consideration in the
13 planning phase in terms of what the Department
14 is going to be doing? Okay. So the
15 Department needs to say what are the key
16 elements that we need to look at within
17 cumulative, and some of what we're suggesting,
18 what I'm hearing, is forest fragmentation, is
19 positive effect on energy goals, and
20 aesthetics. Are those the three general ones
21 that we're thinking about?

22 MS. MCCARREN: Viewshed is part of the
23 settings.

24 MR. JOHNSTONE: I think they are one and
25 the same.

1 MS. EASTMAN: And there may be potential
2 health -- there may be potential health
3 issues.

4 MR. SULLIVAN: And because I was going
5 to comment on the same thing about the
6 importance of considering these issues at both
7 the planning and the project development
8 phases, and I like that Jan brings up
9 efficiency quite a bit because that's my
10 thing, you know, but I think that's such a
11 critical thing to consider when you're talking
12 about thresholds and a statewide renewable
13 standard and goals because if you're not
14 directing these projects to the most efficient
15 places, then -- and you're trying to meet
16 those goals, then you're going to need more,
17 you know, and then you're going to have more
18 impacts on forest fragmentation and more
19 impacts on viewsheds.

20 So it's really critical to make sure
21 these things are done properly.

22 MR. JOHNSTONE: Just to reiterate what
23 she said, I think both the planning and the
24 standard setting on the back side.

25 MS. MCGINNIS: Absolutely. That I

1 understand.

2 MS. EASTMAN: Yes.

3 PUBLIC MEMBER: I know that the
4 Department has dealt with the aesthetics and
5 they have done the one that presented experts,
6 but back in the East Mountain case it was the
7 Agency that dealt with public investment on
8 the Champion lands.

9 MS. EASTMAN: Because it's statewide.

10 PUBLIC MEMBER: I mean I think public
11 investment needs to be within this overview
12 and I don't know which place it belongs.

13 MS. EASTMAN: It depends on what it is.
14 If it is state-owned land or state-owned
15 property, it's ANR.

16 MR. JOHNSTONE: Maybe both in that case
17 because there's both an owner's representative
18 role, which is what Deb would have to do, and
19 then there's the broader state policy that I
20 think would have to come to bear in that case
21 I think. I may be wrong.

22 MS. EASTMAN: So again we got a little
23 further on this.

24 MS. MCGINNIS: Okay. So let's move on
25 to --

1 MS. EASTMAN: We're now on monitoring
2 impact because I'm skipping over limits on the
3 number of regional projects per region or
4 county. I mean that would -- if we get into a
5 planning process --

6 MR. JOHNSTONE: I also don't think the
7 resources track artificial geopolitical lines.
8 I think absolutely this should not be -- where
9 everybody lives shouldn't have any -- and I
10 live in Chittenden County. We need more
11 there.

12 MS. McCARREN: Every town should have so
13 many dairy farms whether it works or not.

14 MS. EASTMAN: Right. So our next issue
15 is monitoring impacts and that's six. Then we
16 have generic siting guidelines, but are we
17 leaving that? That's generic versus specific.
18 You talked about guidelines, so monitoring
19 impact.

20 What we have here, and Billy talked
21 about these issues as well, right, Billy?

22 MR. COSTER: Again these are just really
23 some sketch notes, but basically from our
24 perspective we do a good job monitoring the
25 permits that the Agency issues; stormwater,

1 wetlands, whatnot.

2 The CPG itself there isn't a good
3 infrastructure for monitoring the impacts
4 related to that permit. DPS has done more of
5 that work recently. They are taking
6 complaints. They are vetting them. They are
7 doing all that on behalf of the Board.

8 The real question I think is when
9 monitoring is necessary who does it. Right
10 now the applicant pays for it, but they are
11 hiring the monitors for sound, for instance.
12 One recommendation might be that the applicant
13 still pays for the services, but that the
14 Board or the Department actually hire and
15 supervise the monitors.

16 MS. MCCARREN: So, Billy, I think is it
17 true that filing a report is sufficient?
18 That's something the Board would do. You need
19 to give us reports. You need -- you think it
20 should go beyond that.

21 MS. EASTMAN: Let me interject now.
22 Right now the monitoring generally is relating
23 to noise -- it's really relating to issues
24 that generally relate to ANR.

25 MR. COSTER: We don't deal with noise.

1 COMMISSIONER MARKOWITZ: Blasting which
2 was a big issue.

3 MS. EASTMAN: Maybe we ought to deal
4 with blasting separately.

5 MS. SYMINGTON: Isn't there a tiering
6 assumption here?

7 MS. EASTMAN: Oh yeah. Yeah. My --
8 what I'm -- we've run into this before. My
9 concern is here's where I might come down on
10 the side of the Board that I'm not sure the
11 Board is the place that should do -- that
12 should review the monitoring and compliance.
13 I'm not sure they have the expertise to do
14 that on most of these issues, right, but what
15 they have done is issue a decision and they
16 have relied upon other people for the
17 technical stuff.

18 So it is -- to me it's almost like I'm
19 -- with monitoring you want monitoring and
20 compliance. Things may need to be reviewed by
21 ANR or things may need to be reviewed by the
22 Department depending upon what the issues are.

23 MR. COSTER: And I should clarify for
24 things like bird and bat mortality, which
25 falls under the CPG, the Agency does manage

1 that monitoring activity.

2 MS. EASTMAN: So are you managing their
3 studies? Because this is what I'm hearing
4 from people. People get concerned. I agree
5 that if something is required for a permit,
6 then the permit holder should pay the cost.
7 The issue is do they hire them themselves or
8 do they pay and you hire them?

9 MR. COSTER: And currently they hire and
10 we supervise, develop the methodology, quality
11 control the work of the consultant that is
12 hired and managed by the applicant.

13 MS. EASTMAN: So is that not working?
14 Are they not hiring the best people?

15 MR. COSTER: I think for the most part
16 for the bird and bat studies that I have seen
17 it is working. I think other people have
18 different opinions about that, but for those
19 specific tasks it seems to be working. The
20 folks are responsible, objective, and the work
21 seems to be getting done, but there's a
22 perception issue, and others, as you can hear,
23 don't agree that necessarily that's happening
24 appropriately.

25 MS. EASTMAN: I know, but the whole

1 point is for me we also have to be reasonable
2 here about what we can take on as a state and
3 what's a reasonable thing to do. I mean I
4 believe that we've got to have monitoring and
5 compliance when it's necessary, and I think
6 that's going to be determined generally permit
7 by permit or CPG by CPG, and then in the case
8 -- I don't want to add a whole new capacity at
9 ANR that requires that you know how to go out
10 and hire consultants and this that and the
11 other thing. We'll have the Attorney
12 General's Office having to review tons of
13 stuff and get in trouble.

14 MR. COSTER: Where I don't think it's
15 working as well is around noise monitoring. I
16 have heard that has not been as successful.

17 COMMISSIONER MARKOWITZ: Let's move from
18 wind for a second and talk about monitoring
19 impact with biomass.

20 PUBLIC MEMBER: I guess I just feel like
21 who chooses the expert or who chooses the
22 people that are going to do the test, I mean I
23 guess that shouldn't be in the developer's
24 hands because they are probably going to have
25 their own people who say everything is

1 wonderful and it may not be, and as the public
2 I don't feel comfortable when the developer's
3 hiring and paying and choosing the people that
4 are going to take care of us.

5 MS. GRACE: To the extent this might be
6 helpful, Jan, my understanding, and I wasn't
7 on this particular docket, is that this is
8 something that the Public Service Board can
9 request. As part of their order they can ask
10 for a compliance filing that will show noise
11 monitoring by an independent expert that has
12 -- they decide, and so people who are parties
13 can try to --

14 MS. EASTMAN: Influence who that is.

15 MS. GRACE: Influence who that is, and
16 my understanding is that recently there has
17 been, and I don't know which case it's on, but
18 there was an independent expert that was
19 agreed upon by all parties.

20 MS. EASTMAN: Okay. So I -- we could
21 have that done as part of each CPG.

22 MS. GRACE: Correct.

23 MS. EASTMAN: You could determine who
24 was going to be handling the compliance issues
25 and the monitoring issues and then it can be

1 supervised, not necessarily by the Board staff
2 because they may not have the technical
3 expertise to do that, but by either DPS or
4 ANR.

5 MS. GRACE: Right, and if there's a
6 compliance filing and they are not in
7 compliance, then the Board can open a
8 proceeding.

9 MS. EASTMAN: Yes.

10 MR. JOHNSTONE: So this is kind of the
11 monitoring at the really big macro level and I
12 don't know where it fits into here, but one of
13 the things we have heard a lot from the public
14 I think, at least I think I have heard a lot,
15 is the issue of the same people who wish the
16 project weren't there feeling like it's their
17 job to monitor the project because nobody else
18 is, and I don't know how we deal with that.

19 It feels like an incredibly undue burden
20 if you didn't want it and now you're the only
21 person left standing to keep track of whether
22 or not things were done according to permit.
23 That feels pretty onerous.

24 MS. EASTMAN: Do we go out and monitor
25 at all general permits? We don't have -- ANR,

1 do you go out and does staff go out for any
2 project, not just for generation?

3 COMMISSIONER MARKOWITZ: Yes.

4 Absolutely. So if we have a ski area that's
5 adding lifts, we have our stormwater folks go
6 in to make sure they are doing things right
7 all the time. I mean, you know, so there's
8 constantly monitoring happening on any
9 project.

10 MR. COSTER: There's definitely
11 construction -- there's not a person who's a
12 monitor who is on site everyday during all
13 business hours. Spot checks.

14 COMMISSIONER MARKOWITZ: If there's a
15 rain storm, they will go up. Where we don't
16 have monitoring in -- as a regular way
17 somebody has decided to build and there's
18 mitigation to protect wetlands, for example.
19 They are not -- it's different than a
20 construction stormwater monitoring where they
21 are up during the course of construction to
22 make sure it's working well. I think they
23 will do a check to make sure it's held and
24 appropriate and the work was done correctly,
25 but they may not necessarily come back a year

1 later to see.

2 Now with the CPGs very often there's
3 reports that happen, but in an ordinary ski
4 area, for example, although they do find when
5 -- they won't necessarily come up unless they
6 think there's something going wrong.

7 MS. MCGINNIS: There's two other issues
8 I wanted to be sure we reached on this, and
9 it's with respect to the concerns that were
10 raised. So I'm just going to go through the
11 concerns.

12 Monitoring of the impact is strong for
13 certain aspects of the project like bird and
14 bat impact; weak and non-existent impact for
15 others like blasting which you mentioned. So
16 within the recommendations was to assign
17 responsibility for blasting and monitoring and
18 make sure that gets covered, and then the last
19 line there's little or no oversight of these
20 findings by the agencies which may or may not
21 be true. It's just one of the concerns that
22 was brought up for clearly delineated
23 consequences if the impact is greater than
24 what had been agreed. Now I don't know --

25 COMMISSIONER MARKOWITZ: So in the

1 context of the Agency that's not true where
2 we'll do an enforcement, you know, if they are
3 not compliant, and so there's always some sort
4 of followup, but that's only with respect to
5 what's under our jurisdiction.

6 MS. MCGINNIS: And so the things you
7 think are falling through the cracks would be
8 what?

9 MS. EASTMAN: Noise.

10 COMMISSIONER MARKOWITZ: And blasting.

11 MS. MCGINNIS: Noise and blasting.

12 MR. JOHNSTONE: And blasting, just so I
13 understand the context, I think that the
14 context of blasting that we're talking about
15 here is not the natural resource utilization,
16 but the noise and debris and cracking of
17 buildings. It's -- I think that's what we're
18 talking about.

19 COMMISSIONER MARKOWITZ: That's right.

20 MR. COSTER: Property impacts can be --

21 COMMISSIONER MARKOWITZ: Just so you
22 know that's actually true with blasting in
23 other contexts. So we're dealing with that.

24 MR. BODETT: Act 250, we were just
25 required to do blast monitoring for an Act 250

1 on the gravel pit. We have to set out
2 monitors and we have to do a preblast
3 inspection of homes within a certain area and
4 the Public Service Board does not do that.

5 MS. EASTMAN: But who is then going to
6 then monitor that for Act 250 because there is
7 no permit for it. So it's part of that permit
8 so who -- and they don't have the staff,
9 right?

10 MR. BODETT: Well it comes up for review
11 I think the first time three years and then
12 every five years after. So I think it's
13 reviewed then by the District Environmental
14 Commission.

15 MS. EASTMAN: But you, the town, are
16 required to do it?

17 MR. BODETT: We are as the applicant,
18 yes.

19 COMMISSIONER MARKOWITZ: So the
20 applicant has to keep it monitored under the
21 context of Act 250.

22 MR. BODETT: Or they can pull your
23 permit. That's a pretty steep cost.

24 COMMISSIONER MARKOWITZ: So my
25 experience -- my only direct experience with

1 this related to Moretown Landfill where there
2 was blasting. Neighbors complained that it
3 was cracking foundations and things, and so
4 what they did is they went into the Act 250
5 Commission and asked them to reopen the docket
6 to take a look at it which they did.

7 MS. MCGINNIS: What would you say would
8 be the most efficient sort of way forward on
9 this? Would it be to give noise and blasting
10 to ANR?

11 COMMISSIONER MARKOWITZ: No. I think it
12 needs to be the Public Service Department.

13 MS. MCGINNIS: Both of those?

14 COMMISSIONER MARKOWITZ: Yes.

15 MS. MARGOLIS: I don't know what our
16 position -- we might say that it needs to --
17 we got involved with Public Safety there and
18 there was an issue of Public Safety that we
19 didn't have any experience with on a recent
20 case.

21 MR. JOHNSTONE: There is a lot of -- I
22 haven't had to deal with this for 15 years so
23 my brain may be false on this, I don't think
24 so, but there's plenty of I think best
25 practices and standards around blasting of

1 properties within x distance.

2 MS. EASTMAN: Well the Agency of
3 Transportation must have those things.

4 MR. JOHNSTONE: So it seems like the
5 standards could be put in place relatively
6 easy. Then it's a question of monitoring.

7 COMMISSIONER MARKOWITZ: The standards
8 are there. So in the CPG they are applying
9 the standards. The question is who is
10 monitoring it. So they are just taking the
11 book. There's a book of standards and they
12 are saying okay here's the book. You follow
13 the standards and you're good to go, and so
14 the problem, though, is when things don't go
15 according to what you expect.

16 MS. MCGINNIS: And that's the
17 consequences and oversight.

18 COMMISSIONER MARKOWITZ: And that was my
19 experience with Moretown Landfill. Moretown
20 Landfill was following the standards, but it
21 was resulting in consequences that weren't
22 contemplated in that book, and so it went to
23 Act 250 to say okay do you have to then do
24 something a little different than the
25 standards. Do you have to, for example,

1 compensate people for the cracked foundation
2 or whatever was cracked. And so the question
3 is ultimately it's the Public Service Board
4 who we want to make that -- to actually make
5 that formal finding, but has to be able to --

6 MR. JOHNSTONE: Somebody raised AOT does
7 this all the time. When they are doing a
8 project they have pretty continuous oversight
9 on site so if a neighbor walks out and says I
10 have a crack in my foundation, VTrans employee
11 walks over and takes a picture and compares it
12 against what was there.

13 MS. EASTMAN: Every project has a state
14 employee that's overseeing it and handling all
15 the complaints as they come in.

16 MR. JOHNSTONE: Just a real different
17 model than what we're dealing with, with
18 energy.

19 MS. MARGOLIS: There's a couple things.
20 So the monitoring has to be related to the
21 standard, and I think you know in the
22 particular case where Billy and I were
23 involved in looking at (A) it was -- there was
24 a setback issue. So the setbacks were not
25 there to protect necessarily a piece of

1 neighboring property. The project was very
2 close to a neighboring property and the impact
3 was -- the impacts were there was no expertise
4 necessarily within state government to monitor
5 those impacts. We're not flyrock experts.

6 MS. EASTMAN: But AOT is.

7 MS. MARGOLIS: Eventually Public Safety
8 was brought in and they are the ones who have
9 the safety codes and they were the ones who
10 eventually made a -- they provided some
11 evidence to the Board which ultimately did
12 open an investigation.

13 MR. JOHNSTONE: A lot of times VTrans
14 does -- I think VTrans does more of this in
15 the practical day-to-day. On the safety side
16 it's more did they violate VOSHA.

17 MR. COSTER: There's a federal fire
18 safety code that effectively governs blasting
19 which Public Safety enforces, but it's really
20 specific to the containment and management of
21 explosives.

22 Where the Board could provide more
23 guidance is around the procedural; when do you
24 give people notice, what hours can you blast,
25 what sort of setback when you're designing a

1 project are necessary to prevent property
2 damage. It's those sorts of things that have
3 been dealt with kind of on a case-by-case
4 basis not thoroughly, and then when it comes
5 time for construction they haven't been
6 thought through. They raised issues with
7 abutters and it was on them to complain and
8 compel action.

9 So then a recommendation you can have as
10 part of any major like a tier three project,
11 in addition to a decommissioning plan there's
12 a blasting plan, if necessary, that really
13 spells out all these things upfront.

14 MS. MARGOLIS: There is a blasting plan
15 right now, but it's not particularly
16 comprehensive at all.

17 MR. COSTER: We're going to follow the
18 code and submit these forms, whereas, I think
19 it needs to be more procedural.

20 MR. CAMPANY: So why is that cost
21 externalized to the state?

22 MR. COSTER: I would say it should be on
23 the applicant, and typically I don't think it
24 would be a problem for the applicant as long
25 as they know what the expectations are. It's

1 not that complicated to say how you're going
2 to do this stuff.

3 MS. EASTMAN: I would almost say, and
4 again if you had a -- I mean depending upon
5 tier three projects, but if you had a really
6 significant situation it's almost like if I
7 were the Public Service Board I would be
8 calling and begging AOT to loan them a staff
9 person for the period of construction to be on
10 site and to do this and you bill it back or
11 you do something. So there's somebody who
12 actually knows.

13 I mean I've just been going through the
14 construction of Route 2 in Danville and
15 listening to what does it really take to
16 manage a process like that which really does
17 interfere, and there's somebody there all the
18 time because there can be media concerns and
19 things happen on the spot, you know, like you
20 blast and you found something not expected so
21 now what do you do, and somebody has to be
22 their oversight to fix it right then.

23 COMMISSIONER MARKOWITZ: And there's
24 good contractors around the state who do it
25 all the time and then there's some bad ones

1 and then --

2 MR. COSTER: Just the issue with the
3 case Anne and I worked on the setback that was
4 approved by the Board encroached on an
5 abutter's property who was unrelated to the
6 development. So basically it said you
7 landowner can't have access to your property
8 while this blasting is occurring.

9 MS. MARGOLIS: No compensation
10 necessary.

11 MR. COSTER: So it's that level of kind
12 of planning and process that needs to be
13 addressed in the proceeding.

14 MS. EASTMAN: Well this is interesting
15 too because depending upon if a project had
16 lots of construction related issues it's
17 almost like if I were the Public Service Board
18 I would want to know who the contractor was
19 going to be? Who is going to be responsible?
20 What is their experience? Again that's what
21 AOT gets into when they are giving any
22 contracts for work that's going on in
23 communities.

24 Just I mean I know not all of them are
25 like that, but something big --

1 MS. MCGINNIS: This relates, though, to
2 standards that we're looking at. Setback
3 standards, is that something that we need to
4 be a little bit more explicit about, setback
5 standards getting more out there, having more
6 proactive approach to setback standards? I
7 don't know. I just want to throw that out.

8 MS. EASTMAN: I don't know. It could be
9 or it really just could be -- I mean we should
10 have learned some things from the recent --
11 from recent projects and that, whoa, depending
12 on what the project is you got to really think
13 through what of all the potential impacts and
14 be sure you're covering it. There are
15 different issues for construction than there
16 are for monitoring afterwards.

17 MR. JOHNSTONE: And particularly if
18 we're overlaying even temporarily impacts onto
19 other people's property, that's either a
20 taking or it's a temporary lease. It's hard
21 to imagine that you could order someone to
22 give up their land.

23 MS. MCGINNIS: So I guess I'm trying to
24 figure out what we would recommend based on
25 the lessons learned so far, and this case is a

1 particularly good one in regards to setback
2 standards or mitigation, what would we be
3 recommending.

4 MR. COSTER: I think in this context you
5 should have site control over all the lands
6 impacted for the construction and operation of
7 the project. That could be just a minimum
8 standard that the Board expects.

9 COMMISSIONER MARKOWITZ: And that will
10 be part of the checklist that we want to do
11 for the pre-application checklist.

12 MR. BODETT: That information we had
13 from Denmark they have the shadow zone. They
14 are very specific about where these wind
15 turbines --

16 MS. MCGINNIS: I guess that's more where
17 I'm going.

18 MR. BODETT: Flicker and noise as well,
19 and the blasting I think the monitoring of
20 that is quite a bit easier because it's a
21 finite period of time that goes on, but noise
22 is something that goes on for the life of
23 these projects and it's going to be complaint
24 driven like any other noise issue like jake
25 brakes on trucks. There are zones where they

1 are not allowed, but it's pretty much up to
2 the neighbors to report it and then somebody
3 has to come out and actually catch them, and I
4 can't think of a better system unless you're
5 going to have a microphone there all the time
6 with a camera attached to it how do you do it,
7 but the noise on the wind turbines is
8 definitely been -- we've heard about it over
9 and over with the public comment we have had.

10 There's been issues in Europe where they
11 have a lot of this to varying degrees. It
12 seems one of those things, again, seems very
13 subjective because hearing them is one thing.
14 Whether it bothers you or not seems to be
15 where the real impact comes in, and that
16 varies incredibly based on a community's
17 acceptance of the project.

18 So who would be in charge of the noise
19 complaint? Is it a health thing because it
20 seems like that's where the actual impact of
21 this is, is well I hear the noise, it annoys
22 me, the annoyance is stressing me out, and the
23 stress is making me ill. I think that's sort
24 of the thread and it seems like that should --
25 that points to the Department of Health.

1 MS. EASTMAN: But here's a thing. It's
2 -- some of our options here we're establishing
3 a 1-880 number for noise or ombudsman position
4 responding to local concerns, and I don't
5 disagree that noise may be helpful, but where
6 do we put the monitoring of things? Do we put
7 it over there initially? I'm sorry. Put it
8 at DPS?

9 COMMISSIONER MARKOWITZ: It should be at
10 DPS.

11 MS. EASTMAN: It should be at DPS so
12 people have one number to call. They don't
13 have to remember --

14 MS. SYMINGTON: But the monitoring is
15 going to be science based, not purely based on
16 whether people are complaining.

17 MS. EASTMAN: But people need to have a
18 place to call if there's an issue, and then
19 for me when you get in a specific project the
20 Board's going to prescribe monitoring, and
21 maybe hopefully the Board and everybody, the
22 parties, can agree to who is going to do that
23 monitoring.

24 My take would be that the applicant or
25 the permit holder then has to pay for it, and

1 I think then some of the monitoring issues,
2 though generally some will go to ANR, some
3 will go to DPS depending what the issue is,
4 and then there will be -- if there are issues,
5 then you enforce, if it's for a specific
6 permit or if we have to go to the Public
7 Service Board.

8 COMMISSIONER MARKOWITZ: And that's not
9 unusual. So, again, using Moretown Landfill
10 the neighbors were complaining of nuisance
11 odors, and so what the Agency did is require
12 the landfill owners to hire an expert that we
13 agreed to who is an odor expert. There's an
14 800 number that goes to this odor expert and
15 they are -- at each complaint they show up
16 within 24 hours or whatever hours it is and
17 they verify the complaint or not, and then it
18 gets reported to us, and depending on what the
19 finding is we have some level of enforcement
20 that happens to resolve the problem.

21 So it's not unusual to have systems, and
22 that's the kind of system -- I think this is
23 an issue because these are new projects and
24 the Public Service Department didn't have a
25 robust system for responding, which I assume

1 you have since developed.

2 MS. MARGOLIS: We have -- right now
3 people call the CAPI, Consumer Assistance
4 Protection Division, here and they keep a log
5 and there's noise monitoring that's in the
6 Board orders that is -- we review those
7 reports, but I do think there's a connection
8 to what the Board's standards are for noise
9 and what they are looking at. I mean we can
10 really only monitor and enforce and look at
11 what the limits are within the Board's order.
12 So I think that's the big question here is are
13 those the right standards.

14 MS. EASTMAN: Yes.

15 PUBLIC MEMBER: Again just very briefly
16 so that to really support people framing the
17 sound thing about wind turbines, when you hear
18 it discussed wind noise from wind turbines is
19 heard by your ear. Infrasound is not audible.
20 It's not heard. It's felt. It's a wave
21 impulse of some kind and I just want everybody
22 to remember that. People don't actually hear
23 it. They feel it, or maybe they don't feel
24 it. That's the other scary thing. They just
25 get sick.

1 MS. EASTMAN: Okay. So relative to
2 these things, these options that we've got
3 here, I mean it says create a funding source
4 for option one. I'm still saying the funding
5 source, if monitoring is required by a
6 project, it's part of that.

7 I agree with assigning responsibility
8 specifically for any issues that we have.
9 That's what we've been talking about, noise or
10 whatever, designating compliance staff.

11 MS. MCGINNIS: Sorry. For that one just
12 to make sure on the monitoring of blasting and
13 noise what we're saying is that it already has
14 been assigned to DPS. Is there anything more
15 that we should do?

16 MS. EASTMAN: Yes. I'm going to get to
17 the fact that when we get to designated
18 compliance I mean I could see that project
19 specific there may be times, you know, like
20 with certain issues like blasting, for
21 instance, specifically when you really would
22 want to have somebody that's on site during
23 construction being sure things are going the
24 way they are supposed to go, right, and,
25 again, and if I were us, if I were on the

1 Board, I would try to find somebody that I
2 believed in state government understood this
3 issue and get him or her assigned to that
4 issue and bill it back.

5 MR. JOHNSTONE: That would be a bill
6 back too.

7 MS. EASTMAN: Kind of thing. Compliance
8 staff for each project. I think it's the
9 issue of compliance with each permit and there
10 are difference issues so that should be
11 happening. Right? I don't know what else to
12 say about that. I mean ANR has got to deal
13 with their permits and whatever the CPG puts
14 in place for what they think compliance is
15 necessary, and I do think that's a
16 project-by-project issue.

17 MR. JOHNSTONE: I think this is an issue
18 where everybody has had the tools and we just
19 haven't used them as robustly as we should
20 because we have bill back, and we can do
21 compliance if we choose to and we have chosen
22 not to at the level vigorous enough for the
23 new world that's dropped on us with merchant
24 plants and all of these applications that have
25 dropped. I don't mean to be critical. It's

1 just where it is.

2 MR. COSTER: Just, if you don't mind, I
3 think that gets to Anne's point also that
4 really the monitoring can only go as far as
5 what the Board requires. So you may want to
6 get some recommendations to make sure they are
7 looking broad enough.

8 MS. EASTMAN: And then this issue about
9 I think option four and five really just
10 relates to how the Department of Public
11 Service puts stuff in place for community
12 concerns and for complaints or for ANR does
13 for their permits.

14 PUBLIC MEMBER: I was going to bring up
15 what Deb said earlier. There are a lot of
16 areas where there aren't permits.

17 MS. EASTMAN: That's what we're saying
18 is up here for issues that are currently
19 falling through the cracks be sure we have
20 those assigned to somebody.

21 MS. MCGINNIS: The only two -- we only
22 talked about two, noise and blasting.

23 COMMISSIONER MARKOWITZ: Noise and
24 blasting because ours we do take care of.

25 MS. MCGINNIS: Are there any others?

1 MS. EASTMAN: I don't know. There could
2 be generic health.

3 MR. BODETT: Dust and that is for like a
4 bio plant.

5 COMMISSIONER MARKOWITZ: Well it's air
6 quality. It would come under us.

7 MS. EASTMAN: So option six was creating
8 an online map of all energy generation
9 projects.

10 COMMISSIONER MARKOWITZ: And that's
11 something I believe the Department is looking
12 into anyway mapping what's existing.

13 MS. MCGINNIS: What came out of this,
14 Jim Matteau is one of the people who was
15 talking about this earlier on, and he brought
16 it up again in a recent conversation. He
17 thought that it would be useful for two
18 purposes; one to relieve the concerns of
19 people about what's really under consideration
20 and what people say is under consideration so
21 that people understand what is genuinely a
22 project that's under consideration. So
23 looking forward, but also looking back
24 understand what projects have been denied, and
25 he would even add those projects that have

1 come and have withdrawn themselves from the
2 process to show that there's actually --
3 because a lot of the concerns have been
4 everything that comes before the Board gets
5 passed as if it's sort of a rubber stamp sort
6 of thing, when in fact his concern was that
7 people need to know that there's a lot of
8 projects that self select out because the
9 standards are just too high. There are other
10 projects that are denied that we're not even
11 aware of, and to have some kind of record that
12 people can know what's been out there both
13 historically and going forward. It was Jim's
14 point.

15 MR. BODETT: I think that's a great idea
16 for this case worker's web site we're talking
17 about, ombudsman type.

18 MS. EASTMAN: Either there or at the
19 Department of Public Service. I don't know
20 how much effort that is. Can't be that hard.

21 MS. MARGOLIS: We have to think about
22 it. I think it's translating a list of what's
23 operational and do a map, but then the ongoing
24 keeping it up with what's approved and under
25 consideration and that's a different question

1 and requires some GIS capabilities.

2 MR. JOHNSTONE: One of the things that's
3 all been true in state government is so the
4 question of a nice thing to let people know
5 what's going on versus doing compliance. In
6 our resource constrained world I think is why
7 you find web sites are always lagging behind.
8 So I mean I love the idea. I don't mean to
9 throw water on this, but in a resource
10 constrained world this is the kind of stuff
11 that always falls off the table.

12 MR. BODETT: Yeah. I've got a web site
13 I can't keep current myself. It's just my
14 stuff. It's a beast that is never satisfied.

15 MS. EASTMAN: Yes.

16 MR. FRIED: Just quickly. I think from
17 the public's standpoint that we don't always
18 distinguish between when there's an
19 application submitted and years of work that's
20 being done prior to the actual submittal by
21 the developer, and again -- and again I've
22 been told with our experience in the Northeast
23 Kingdom there's no application so don't worry
24 about what's going on. Yet we have situations
25 with our merchant developers where they are

1 actually negotiating kilowatt dollars to towns
2 without having any of those, either no
3 permits, or no application for a permit, but
4 there's all of this activity going on
5 including like people would call trespassing
6 on their property because consulting groups
7 have been hired and there's consulting people
8 running around the countryside.

9 Of course when you inquire it's
10 confidential information. The developer
11 doesn't have to provide it. If it's actually
12 a docket but there's no permit issue, then
13 it's litigation. So there's certain
14 information that you can't get even if you
15 want to get, and yet if I walk across the road
16 here and I talk to some of our legislators,
17 they say what are you worried about. There's
18 nothing going on in your neighborhood.
19 There's no applications having been filed
20 which, you know, technically is true, but,
21 boy, the level of activity that's going on,
22 including negotiating contracts, is in our
23 neighborhoods.

24 MR. JOHNSTONE: I'm just curious, Billy,
25 I would have asked Deb but she left, I'm just

1 trying to think of a pathway for folks not to
2 put you guys in the middle of it all, but when
3 people approach the Agency I don't think you
4 have an exemption that for something like this
5 where if you are undertaking dialogue with the
6 developer, prospective developer, for some
7 natural resource permitting around a
8 generation, you can't protect that.

9 MR. COSTER: No. We have disclosed it.
10 What we haven't done is proactively gone to
11 communities and say we're having these
12 conversations, which I think we're willing to
13 do.

14 MR. JOHNSTONE: Would be better to do
15 that. Today I don't think they try to connect
16 you.

17 MS. EASTMAN: Here's the issue and we've
18 talked about it a little bit earlier today.
19 Maybe I talked about it with just Tom when we
20 were talking, and I don't know what we can do
21 about that and how -- or whatever, right.

22 If we come up with that great little
23 docket system where we can have it public as
24 soon as somebody's applied for an ANR permit
25 and put it on, I understand that, and that's

1 the concern that I have. We talked about it
2 at the last meeting that, you know, if there's
3 a plant that ISO is never going to approve,
4 why are they going around talking and doing
5 all of this stuff and upsetting communities
6 and individuals, and I don't know how we stop
7 that because --

8 MS. MCCARREN: It's a prior notification
9 rule, right, that I don't think this is that
10 strange where if you're contemplating a plant,
11 you have to give the town, pick your number
12 and I don't know where that right number is,
13 and then the town could interact with the
14 developer and say hey part of this is we want
15 to know what you're doing all the time.

16 PUBLIC MEMBER: Is it legal for a
17 developer to go to a town and offer a contract
18 with an actual money amount before there's any
19 permits?

20 MS. EASTMAN: Sure it is. Sure it is.
21 Here's the thing. Your select body operates
22 for you in the absence. So how you -- I don't
23 mean to express frustration, but I get it. I
24 live in a small town too, but your Selectboard
25 shouldn't be doing any of this stuff behind

1 the scenes or whatever Selectboard, but that's
2 the point. Yes. Here's the thing. It is --
3 it is a free market and that's the concern.
4 Anybody can go. Somebody can come to me and
5 talk about using my land for anything and I
6 don't have to tell anybody until I want to,
7 right.

8 So my concern is it's both getting you
9 all notice, getting everybody notice, but it's
10 also, I do believe, and I know you have to --
11 you can't believe that because you're living
12 right, that there are things currently being
13 discussed in this state that are never going
14 to happen, and it sort of frosts me because
15 it's causing a lot more hurt than it should,
16 and that's what I wish we could get --

17 MR. FRIED: I know Billy had 10
18 recommendations for the siting group and one
19 of them was raise the issue of when we start
20 looking -- when the state starts getting
21 involved with the developer. I mean there's
22 no notice. There's never been a notice for
23 this project for a wind installation, still
24 we're waiting for the met tower, but it would
25 have been great if we had known about any

1 studies. The community should be involved.

2 MS. EASTMAN: So we can get more
3 transparent about that. It will help and not
4 to -- but we're after noon and I wanted to get
5 through these last two things so we can move
6 on to --

7 So the last things we had here were the
8 funding source for eventual decommissioning,
9 and the Public Service Board is now requiring
10 decommissioning and I think that's a
11 case-by-case basis of what each project
12 requires to decommission.

13 MS. GRACE: Public Service Board
14 requires it when it's over one megawatt.

15 MR. JOHNSTONE: The question I think
16 what's written in here should it be lower
17 because of the solar farms as I read this; is
18 that right?

19 MS. SYMINGTON: Isn't there a question
20 also whether it's returning it to stable --

21 MS. EASTMAN: Land original condition.
22 It's not really realistic.

23 MR. BODETT: Especially wind turbines on
24 ag land. Huge slabs. I saw somewhere where
25 they are considering if they excavated 12

1 inches below the ground, that's what they have
2 to do, 12 inches below the ground.

3 MR. JOHNSTONE: They don't actually take
4 out the foundations. They just hide them.

5 MR. BODETT: So what is reclaimed?

6 MS. McCARREN: It should be -- the
7 policy should be that for all projects there's
8 a decommissioning plan and then --

9 MS. EASTMAN: Right, for all projects.

10 MS. McCARREN: And funded.

11 MS. GRACE: So I think the rub there is
12 a little bit the way that the Public Service
13 Board has required decommissioning plans up to
14 this point is that it needs to be a letter of
15 credit, which small time developers tell me
16 are very, very costly to get because they have
17 to put up that extra money right upfront, and
18 so what I've been doing in my cases that are
19 smaller is just trying to make sure that
20 there's some sort of an assurance. Like the
21 last case I had that was a small solar under
22 one megawatt I just made sure that within the
23 lease with the landlord, this is in an
24 industrial park, that there was something
25 within the lease that said it had to be -- all

1 of the solar panels had to be removed.

2 So I don't know that you want to do
3 that. I just raise that as something that
4 small developers really worry about.

5 MS. McCARREN: Requiring a plan would
6 provide them maximum amount of flexibility
7 because what you just described could be the
8 plan.

9 MR. BODETT: I wonder if there's a way
10 to piecemeal -- I hate to keep going back to
11 this gravel pit, but it's such a current
12 example of almost everything we're talking
13 about is we had the same issue as a town. We
14 couldn't put up the \$85,000 that we needed for
15 the reclamation, so the way we worked it out
16 is a small bit of every yard of gravel that
17 leaves that gravel pit has to be held in
18 escrow with the town until it reaches this
19 \$80,000. It will take about 10 years to reach
20 that. The pit's going to be there for 30. So
21 well before we have to reclaim it this fund
22 will be there and it's almost -- it's a
23 painless way to fund it. So is there a way to
24 do a per megawatt --

25 MS. MCGINNIS: That's what's suggested

1 here, decommissioning and land reclamation
2 funds can be established by a small per
3 megawatt surcharge held by the state in
4 escrow.

5 MS. GRACE: Per year as they get more
6 money.

7 MR. BODETT: That way the small
8 developers don't have to put up the \$60,000
9 line of credit and it's guaranteed.

10 MS. EASTMAN: So we have plan or
11 something like that that's flexible for the
12 small projects.

13 MR. LEWANDOWSKI: How do they determine
14 -- I think the process for how they determine
15 how much should be brought in --

16 MS. EASTMAN: Well this is -- we're
17 talking about small projects here of how much
18 time and effort does it take to take off the
19 solar panel -- this is below one megawatt.

20 MS. MCGINNIS: Everything above one
21 megawatt already has a decommissioning plan in
22 place.

23 MS. EASTMAN: And just like we heard
24 testimony remember back about how they figure
25 out what it would take in a certain place to

1 reclaim wind, they do this all the time. So
2 we're thinking about being flexible for these
3 people.

4 MS. McCARREN: Just require a plan then.

5 MS. EASTMAN: And this is a great
6 suggestion what you guys put in here.

7 Generic siting guidelines. Have we
8 talked ABOUT this enough or do we need to talk
9 about this more, Billy?

10 MR. COSTER: I think we've talked about
11 it. Before your next time we could spell out
12 specifically what we think could be developed,
13 but I think you at least talked through the
14 concepts.

15 MS. McCARREN: To Gaye and your point
16 making sure in a biomass the waste heat is
17 efficiently used, you can actually do that in
18 a siting guideline. That would be another
19 place you can put it.

20 MS. EASTMAN: I just want efficiency.

21 MS. SYMINGTON: I have another question.
22 I don't know where they come up. Secretary of
23 Agriculture raised some issues about digesters
24 and having the CPG apply just not to the
25 manure management part of the facility, but

1 only to the part that has to do with
2 generation, and they are just miscellaneous
3 things that have come in from others and I
4 don't know when we get to those.

5 MS. MARGOLIS: That one is moving in the
6 Legislature right now too. So there's a
7 parallel conversation that may supplant --

8 MS. EASTMAN: Can we take a break now
9 and hold those? We've been through these
10 options. We've got this draft, three page of
11 what a package might start to look like. I
12 know we have more to add from this
13 conversation and questions, and then let's
14 just remember to pick up all these
15 miscellaneous things, and it may end up being
16 that we do have here's what we've learned and
17 so we think it should be this, this, and this
18 about this miscellaneous thing so we've
19 covered everything that people have raised for
20 us.

21 So it's 12:15. So do we need 45 minutes
22 or an hour? Get back at 1.

23 (Luncheon recess.)

24 MS. EASTMAN: So let's start again.
25 Linda, do we have enough?

1 MS. MCGINNIS: Yes. I just gave
2 everybody copies who was sitting here. So is
3 there anything left over from this morning or
4 do we want to start on sort of the second
5 piece of today?

6 MS. SYMINGTON: At some point we'll get
7 just a list of miscellaneous stuff?

8 MS. EASTMAN: Yeah. I really think I
9 agree with that. There will be miscellaneous
10 things like the methane stuff or like there
11 might be a piece of legislation that is going
12 to be so close we ought to say something about
13 that. So let's parking lot that, the
14 miscellaneous stuff.

15 MS. MCGINNIS: Ag stuff, yes, it's on
16 the back of this two-pager. We have sort of
17 addressed Department of Health and Ag
18 Department recommendations.

19 MS. SYMINGTON: I would have really
20 appreciated if the Secretary of Ag was asked
21 to define a farm.

22 MR. BODETT: That's one of those you'd
23 know it if you saw it.

24 MS. SYMINGTON: I would like to see if
25 we took him up on it and he did.

1 MR. JOHNSTONE: I don't want to go
2 there. I don't have that key on this
3 keyboard.

4 MS. SYMINGTON: Public lands, another
5 issue.

6 MS. EASTMAN: Public lands. You mean
7 the policies of public lands, the policies
8 about the use of public lands? What's the
9 current policy and -- because I know we had
10 that from you too.

11 MS. MCGINNIS: That's on the back of
12 this too.

13 MS. EASTMAN: She's so good. So here's
14 what we have in front of us which I saw a week
15 ago when we met. I saw it a week ago. I had
16 this before we went down to the meeting, at
17 least the first draft.

18 So after the most recent meeting,
19 whatever day it was, one week in February or
20 March.

21 MS. MCGINNIS: February.

22 MS. EASTMAN: After the February meeting
23 and we talked a little bit about what the plan
24 -- or a few of us mentioned what we thought
25 maybe the presentation might look like and we

1 talked about doing it not in response to each
2 issue we have been asked to address, but more
3 what a process might look like. Linda is
4 trying to take what we talked about that day
5 and where she thought there was consensus and
6 put it into that sort of format, all right,
7 and then what she's done since then is as we
8 got the information from the Health Department
9 stuff is in here.

10 So we got the paper from the Health
11 Department, the paper from Ag. She's tried to
12 put things in a different format for us to
13 look at, and I know we just got through the
14 options, but we don't have a lot of time left.
15 So we thought this afternoon it might behoove
16 us to just go through this and it might start
17 to answer some of our questions. The options
18 mention lots of new stuff, but some things go
19 by the by or whatever.

20 The other thing is the issue of a fee in
21 here.

22 MS. MCGINNIS: Filing fee?

23 MS. EASTMAN: Yes.

24 MS. MCGINNIS: Yes. Filing fee is in
25 here. Intervenor.

1 MS. EASTMAN: Scott has a really good
2 idea I think that I want us to talk about when
3 we get there, Scott.

4 MR. JOHNSTONE: Okay.

5 MS. EASTMAN: Which will make some
6 people nervous.

7 MS. McCARREN: Looking at me?

8 MS. EASTMAN: No.

9 MR. JOHNSTONE: She might love it too.

10 MS. EASTMAN: She -- she might like
11 this. So let's just tackle this and then what
12 Linda has, of course, questions on the back.
13 Things that haven't been fleshed out yet or
14 answered, and so should we go through the
15 questions first or this first? Go through
16 this. All right. And what she did is she put
17 it --

18 MR. JOHNSTONE: Context of the
19 Comprehensive Energy Plan and then the context
20 of what we were asked to do, and then came up
21 with what some draft recommendations might
22 look like. So do you want to just look at it
23 for a minute?

24 MS. MCGINNIS: Just so you know it's
25 small font and wide margins because I was

1 trying to capture as much as possible in three
2 pages. So every word is really important.

3 Okay. Every word.

4 MR. JOHNSTONE: Wow, no pressure.

5 MS. EASTMAN: Actually some other things
6 we talked about this morning go to some of
7 these issues which is good. I mean I think.
8 So let's go through this and see where we are.

9 MS. SYMINGTON: I definitely haven't
10 read it.

11 MS. EASTMAN: We're going to go through
12 it.

13 MS. MCGINNIS: I think it's worth going
14 through point by point by point just to see if
15 there's agreement on them please.

16 MR. BODETT: Every word. Right.

17 MR. JOHNSTONE: We got the focus here.

18 MS. SYMINGTON: We have already said no
19 to some of this this morning.

20 MR. JOHNSTONE: Great. That will
21 shorten the document.

22 MS. EASTMAN: And some of these
23 questions we've addressed and maybe answered
24 and some we haven't gotten to yet.

25 MS. MCCARREN: First I want to say,

1 Linda, as usual what a great job.

2 MR. BODETT: Here here.

3 MS. MCGINNIS: Thank you. It's also all
4 the staff who helped fill it in.

5 MR. JOHNSTONE: You all feel the love.

6 MS. EASTMAN: Well at least for me
7 what's worked, but I needed to have all those
8 options because I need to think about
9 everything everybody has said. Now this gives
10 us a different framework to sort of look at
11 some of the same issues and get more clarity,
12 and then it still gives us time to talk about
13 okay what have we missed, what haven't we
14 addressed, and be sure we bring all of those
15 things up the next time just to check them off
16 our list whether we think it's pertinent or
17 not before we go out.

18 So start with draft recommendation one.
19 So the first thing would be the Public Service
20 Department. This is in effect redoing the
21 state plan and we called it a road map, not an
22 --

23 MR. JOHNSTONE: Not redoing. Developing
24 the next level of detail.

25 MS. EASTMAN: Or it's a piece. It will

1 become more detailed.

2 MS. MCGINNIS: Just so you know Chris
3 has had a chance to look through all this and
4 this is here with Chris's blessing.

5 MR. JOHNSTONE: That matters. Thank
6 you.

7 MS. EASTMAN: So what about the very
8 first recommendation, is that something we
9 think needs to happen?

10 MS. MCCARREN: Well I have a concern.
11 Yes, I have a concern and the concern is I
12 understand the current legislation, somebody
13 correct me if I'm wrong, to meet -- we can
14 meet the renewable goals by -- you don't have
15 to have in-state generation. You can buy
16 out-of-state generation, right? I just want
17 to make sure I have my head screwed on here,
18 and can you buy RECs to meet it as well? I
19 don't know about that, but you can basically
20 --

21 MS. SYMINGTON: We don't buy RECs
22 because we don't have a RPS.

23 MS. MCCARREN: That's right.

24 PUBLIC MEMBER: We sell RECs.

25 MS. MCCARREN: That's right, but, for

1 instance, for the State of Vermont to meet its
2 electricity -- its goals here how does this
3 work? A utility would buy an interest in
4 let's say, I'm making this up, a wind farm
5 located in upstate New York somewhere.

6 MS. EASTMAN: Gas Bay.

7 MR. JOHNSTONE: It doesn't have to be an
8 interest. It can be an energy supply
9 contract.

10 MS. MCGINNIS: I talked to GMP
11 yesterday, for example, about what we don't
12 have with Vermont Yankee. A portion of it is
13 coming from New Hampshire nuclear, a portion
14 of it is coming from just buying power off the
15 grid. We have no idea actually where that
16 power comes from. It buys the power off the
17 grid, and then the other is buying a portion
18 from wind. So that's what's currently
19 replacing Vermont Yankee.

20 MS. MCCARREN: So what --

21 MR. JOHNSTONE: You know how much comes
22 from each source. When you buy on the spot,
23 you know this better than I --

24 MS. MCCARREN: If you're just buying it
25 in the market, after the fact you can probably

1 figure out what you got, but it can be
2 anything. You're right.

3 MR. JOHNSTONE: I don't think the plan
4 necessarily would argue that you couldn't meet
5 the state's goals by buying RECs by the way.
6 It would be a terrible way to get there from
7 here.

8 MS. McCARREN: I am concerned that this
9 -- and I'm not sure that I agree that a
10 certain amount of renewables needs -- or
11 clean, whatever, we're kind of using those
12 terms interchangeably, needs to be designated
13 as constructing in-state -- constructed
14 in-state. I think that's a mistake because it
15 may not be the most efficient and it may not
16 be the least environmentally damaging. I
17 think it needs to be left open as how you meet
18 --

19 MS. SYMINGTON: All this is trying to do
20 is get us to the plan so we can visualize more
21 in a more realistic way what do we need to
22 plan for. We're not saying we need to
23 establish x percentages is generated by
24 in-state renewables versus out of state. All
25 we're saying is show us some scenarios to

1 reach the state goal so that we can begin to
2 plan.

3 MR. JOHNSTONE: So what I would say, the
4 way I read this, is that as part of that next
5 -- scroll down to CEP -- is that the DPS will
6 determine if we do -- how much, if any, we
7 should develop in-state.

8 MS. McCARREN: I don't agree with that.
9 That's a terrible mistake. I think -- I heard
10 what Asa said and I thought that was very
11 interesting. He said if you're going to get
12 -- if you're going to get 14 percent --

13 MS. McGINNIS: 5.

14 MS. McCARREN: It's going to mean this
15 many facilities. It's going to mean this much
16 wind. I thought that was very informative,
17 but I don't think that you -- I mean I just
18 think it's really silly.

19 COMMISSIONER MARKOWITZ: I wonder if
20 that's sort of outside the scope of what we're
21 doing here. Maybe I'm wrong, but in the
22 context of the energy plan and the
23 legislation, the basis for the energy plan
24 there was a decision made that we were going
25 to contribute to renewable energy generation

1 with in-state renewables, and so, I don't
2 know, I haven't gone back to look at our
3 charge, but it may be that that issue is for a
4 different group to decide.

5 MS. McCARREN: And you know I think --
6 and I wish Asa was here because he could
7 answer this question, maybe Billy can, what
8 really drove the in-state construction boom
9 was not the energy plan, it was the SPEED
10 program.

11 COMMISSIONER MARKOWITZ: Yes, but in
12 part we went back to expand the SPEED program
13 because of the energy plan. So in the energy
14 bill when we expanded the SPEED program it was
15 in the context of meeting the goals for
16 in-state renewables.

17 So my experience, being part of those
18 conversations, is that there was a feeling
19 that there was -- that Vermont had an
20 obligation, perhaps a moral obligation, to do
21 our part, and so if we disagree with that and
22 think there might be a better way, I think
23 that's a discussion to have in the State
24 House. I'm not sure it is within our charge.

25 MS. McCARREN: I'm coming from what do

1 the statutes as currently written and the
2 energy plan as currently written what do they
3 prescribe, and other than the SPEED program is
4 driving -- it drove the first 50 megawatts.

5 COMMISSIONER MARKOWITZ: That's right.

6 MS. McCARREN: And it's going to drive
7 these other through prices, but what I was
8 trying to establish was there's no statutory
9 requirement that we meet energy renewable
10 goals by building in-state.

11 COMMISSIONER MARKOWITZ: Why don't we
12 make that a question. There may not be a
13 statutory -- I agree that the statutory
14 implementation is in the context of the SPEED
15 program. So the question is whether or not
16 there's a policy statement or an aspirational
17 statement in the legislation.

18 MS. McCARREN: Relative to the SPEED
19 program.

20 COMMISSIONER MARKOWITZ: No. Relative
21 to in-state and the energy plan. Maybe
22 there's something also in the energy plan.

23 MS. McCARREN: Here's the point. All
24 I'm trying to do is say given the current
25 status of the statutes and the energy plan it

1 would seem to me -- I would not feel
2 comfortable saying let's now take another step
3 and prescribe a certain amount that has to be
4 constructed in state, if my understanding is
5 correct there is no such prescription at this
6 point.

7 We clearly have the SPEED program which
8 is driving that through another vehicle which
9 is money.

10 COMMISSIONER MARKOWITZ: So let's find
11 out if that's true or not. Let's find out
12 what the facts are because I frankly am
13 remembering a conversation which may or may
14 not have ended up being -- may not have been
15 reflective ultimately in statement of policy
16 objectives or in the energy plan. So let's --

17 MS. McCARREN: I was really interested
18 in this issue and I could be just wrong.

19 COMMISSIONER MARKOWITZ: We'll find out.

20 MR. JOHNSTONE: I see it a little
21 differently in that I don't see how we create
22 a process where we can empower the RPCs on a
23 system that works statewide and regionally if
24 we don't have the -- give guidance as to what
25 the boundary conditions are, or I don't know

1 how we get there.

2 MS. EASTMAN: And for me it's the same
3 kind of thing. It's the relationship between
4 the Department of Public Service, the Agency
5 of Natural Resources and the RPCs. I mean the
6 same thing. I mean Deb's got responsibilities
7 relative to habitat management that are not
8 totally specific, but then she comes up and
9 says this is what it really takes to meet that
10 goal, and they have got to give guidance to
11 the RPCs about what needs to happen relative
12 to that.

13 So I don't know if it's going to be zero
14 percent or a hundred percent of in or out, but
15 I think it's not the RPC's responsibility.
16 It's the State of Vermont's responsibility
17 through whatever process to give some guidance
18 as to what might it look like, and I think it
19 is. There may be different scenarios that
20 they propose, and as I understand it in the
21 current plan there's some glimpse of possible
22 thinking about that, but not a lot of
23 specificity.

24 MS. MCGINNIS: Billy has found --

25 MR. COSTER: Sorry to bring it down to

1 the facts. So Act 170, which was last year's
2 energy bill, it starts off with the renewable
3 energy goals, and it says that in order to
4 promote the state's energy policy established
5 in Section 202, says a number of things, and
6 one of the things it says is providing support
7 incentives to locate renewable energy plans of
8 small and moderate size in a manner that
9 distributes across the state's electric grid.
10 Locating such plans in areas that will provide
11 benefit to the operation and management of the
12 grid through reducing line loss and blah blah
13 blah. So that's kind of related to SPEED.
14 It's saying to incentivise it.

15 MS. McCARREN: Whose job is it to create
16 those incentives?

17 MR. COSTER: It doesn't say
18 specifically, and then it says promoting the
19 inclusion in Vermont's electric supply
20 portfolio of renewable energy plans that are
21 diverse in plant capacity and type of
22 renewable energy technology. So it implies
23 that we need to have some in-state generation
24 at small and moderate scale.

25 MS. MCGINNIS: And part of the concern,

1 Louise, just to give a little background at
2 least from what I was hearing from various
3 discussions, is that there's a lot of worry in
4 Vermont right now that to meet the 90 percent
5 it's going to cover every ridgeline, it's
6 going to cover every farm field, it's going to
7 be gigantic because to get to 90 percent is
8 gigantic, but if the state were to say
9 actually no our aspirations are not 90 percent
10 in-state, the bulk of that 90 percent is
11 actually going to be purchased out of state,
12 the reality is that, but to say --

13 MS. McCARREN: You have gone from no
14 obligation to creating an obligation and
15 that's my concern. Right now -- and I totally
16 get people's concern and I mean I got that,
17 but unless I'm wrong there's no current
18 obligation for any specific amount to be
19 constructed in-state. So by -- almost by --
20 you are almost creating that obligation.

21 MS. EASTMAN: I see it the other way.
22 My concern is -- and I see it from every
23 single thing that's being proposed in all
24 these conversations all over Vermont about all
25 the things that's going to happen when, as I

1 say, I really don't believe based upon what
2 I've learned in the most recent from November
3 1st or October 31st to now that you'll --
4 these things are going to happen, and so we're
5 having -- we're having community conversations
6 or preconversations that are just upsetting
7 and stressful and not getting anywhere, and I
8 guess I really believe, as I've said, I
9 strongly believe that you shouldn't be doing
10 this just application by application; i.e.
11 somebody else who wants to put something here
12 because there are incentives federally,
13 whatever, to do it should be the one
14 determining things.

15 I think we should determine our own
16 future to the extent we can, and so it means
17 that I think we do need to have something
18 between that statement that Billy's just read
19 and just an application, and for me the way --
20 the only way to get there is to think some of
21 it about planning, getting some piece of
22 evidence where there's conversation, and I
23 don't see how you do that without more
24 direction, if I were the RPCs, without a
25 little more direction because right now what

1 are we planning towards, and of course it's
2 not going to be exact.

3 I mean this is why planning you do it
4 every three to five years because things
5 change.

6 MS. SYMINGTON: Well we also could
7 create different scenarios. The Gund
8 Institute at UVM, as I understand it, is
9 developing a model now. They have a Ph.D.
10 person spending the summer refining the model
11 feeding in a baseline scenario then feeding
12 in, you know, other scenarios that would meet
13 the state goals and using that, not to say
14 here's the plan, here's how we will achieve
15 this 90 percent by 2030, but to say this is
16 what it might look like. Now can we talk
17 about this? Is this too much of something?
18 Is this too little of something else? Okay.
19 Then let's make an adjustment and run that
20 through the model and see what that costs and
21 looks like, but that kind of process could
22 then inform that kind of plan.

23 MS. McCARREN: I don't have any problem
24 with that kind of process. That's not what it
25 says here and I don't agree we should imply a

1 certain amount should come from in-state
2 because I think we've added on --

3 MS. SYMINGTON: How are we going to get
4 the RPCs --

5 MS. McCARREN: I don't agree the RPCs
6 should be doing this anyway.

7 MS. EASTMAN: You don't think they
8 should be doing the planning?

9 MS. McCARREN: No or controlling -- let
10 me put it this way, okay, and I don't know
11 enough about how the RPCs interaction with the
12 towns in terms of planning.

13 MS. MARGOLIS: Just to clarify the SPEED
14 goals are for in-state resources.

15 MS. McCARREN: Yes. They are only --

16 MS. MARGOLIS: And that goes up to the
17 75 percent by 2032 and that's just for
18 electric resources. What's not spelled out in
19 the statute is the 90 percent of all energy
20 resources by 2050. So there is some
21 obligation for in-state.

22 MS. McCARREN: It's driven by -- it's
23 appropriate. It's being driven by a policy
24 decision to pay what the -- the SPEED amounts
25 for renewables in-state, right?

1 MS. MARGOLIS: And that's being even
2 reformed right now from being a fixed rate to
3 being -- that rate actually being a cap and a
4 bidding process set for lower prices.

5 And just the other thing I want to
6 mention, none of this has to do with outside
7 of the state's renewable energy goals the fact
8 that a developer could come in and site a
9 plant not having anything to do with Vermont's
10 policy goals and sell it out --

11 MS. EASTMAN: And sell it some place
12 else.

13 COMMISSIONER MARKOWITZ: In answer to
14 your question about the RPCs, there's
15 representatives from towns on the RPCs. So
16 when they develop their regional plan the idea
17 is that it's got local interest and it
18 reflects the local interest in the context of
19 the regional interests.

20 MR. SULLIVAN: In point of fact the
21 regional planning commissions are created by
22 the municipalities. They are who we are. I
23 mean we are created by them. We work for
24 them. You know we have other obligations too.

25 MS. McCARREN: Can a town not

1 participate?

2 MR. SULLIVAN: A town can not
3 participate in the regional planning process,
4 yes. I mean they are in the regional planning
5 area, but if they don't opt to participate --

6 MS. McCARREN: If they don't show up --
7 okay.

8 MS. EASTMAN: So relative to the first
9 issue we've got one person that -- I mean I
10 believe that the PSD needs to give more
11 guidance if we go to regional planning or
12 should.

13 MS. MARGOLIS: Asa is working on some
14 scenarios, but they are just picking a number
15 out of the air in terms of in versus out of
16 state proportion.

17 MS. EASTMAN: I think this is one for us
18 just -- okay. Do we leave this here?

19 COMMISSIONER MARKOWITZ: One of the
20 virtues of having a set of goals, in-state
21 goals, is it answers the question that I hear
22 from my staff and I hear from members of the
23 public well how do we know when we have
24 enough? How much is too much?

25 And so when we're taking a look at the

1 cumulative impacts it influences sort of that
2 conversation. You know, if we know that the
3 carrying capacity for biomass in our state are
4 two plants, then we're going to review the two
5 plants differently. If we know that carrying
6 -- the goal is to achieve a certain amount
7 in-state, like that's -- if we decide that's
8 the goal, somebody is going to decide that's
9 the goal, now who is deciding what that number
10 is what we're doing in-state.

11 In that context, you know, how do we
12 know if we've done enough of solar, wind, or
13 hydro, whatever. So that's -- there's virtue
14 in that you know. I think it will -- it will
15 be important to have a sense of it, and so
16 then the question is --

17 MS. McCARREN: I'm raising a process
18 question and I'm obviously not being
19 articulate about it.

20 What we're doing is we are saying --
21 we're changing the existing -- we're
22 recommending that we basically change the
23 existing statutory structure by having the
24 Department say how much should be in-state.

25 COMMISSIONER MARKOWITZ: It's an

1 estimated share. So it's not --

2 MS. EASTMAN: Well I guess for me the
3 Department has the next step role as part of
4 their planning process, and so this is -- the
5 Legislature set something up in goals,
6 somebody has to plan for this, and I expect --
7 I got to tell you I expect the Department in
8 conversations with utilities in Vermont
9 already have an idea of what they think they
10 are trying to do in-state.

11 MR. JOHNSTONE: To me it's about adding
12 benchmarks and milestones along the path to
13 the CEP, which is really not there, and
14 helping that next increment which is I think
15 appropriately the DPS's role in this process,
16 but I hear you.

17 MS. MCGINNIS: And SPEED already does
18 set that up. It already has been -- right?

19 MS. MARGOLIS: It's one piece of the
20 bigger puzzle of the 90 percent. So the SPEED
21 just addresses electricity sales.

22 MS. MCGINNIS: That's all we're looking
23 at.

24 MS. MARGOLIS: CEP addresses total
25 energy goals.

1 MR. COSTER: That's generated in
2 Vermont. Okay. The targeted amounts of total
3 renewable energy established shall be 55
4 percent of each retail electricity provider's
5 annual electricity sales.

6 MS. MARGOLIS: It's the one that goes up
7 to 75 percent by 2032.

8 MR. COSTER: So this is within the SPEED
9 target and goals. It says a target amount of
10 total renewable energy established by this
11 subsection shall be 55 percent of each retail
12 electricity provider's annual electric sales
13 during the year beginning January 1, 2017,
14 increasing by an additional four percent each
15 third January 1 thereafter until reaching 75
16 percent on or after January 1, 2032.

17 MS. EASTMAN: So is that statutory?

18 MR. COSTER: Yes.

19 MR. JOHNSTONE: 75 percent in-state by
20 2032.

21 MS. McCARREN: Does it require that the
22 generation be in-state?

23 MR. COSTER: It's in the context of the
24 SPEED program which is only administered
25 in-state.

1 COMMISSIONER MARKOWITZ: Okay. So we do
2 have a standard then. So the question is we
3 want to actualize it. Well we also want to
4 know -- so what we're asking from the
5 Department is to say okay well let's say how
6 much of wind, how much of hydro, what's our
7 carrying capacity.

8 MS. MARGOLIS: And then there's the
9 question of the delta between that goal and
10 then the 90 percent to all energy resources;
11 transportation, heating, and electricity by
12 2050 given anticipations of changing
13 circumstances and demands on electricity.

14 MR. JOHNSTONE: So that honestly if
15 electricity is not at a hundred percent, you
16 can't get to 90 all fuels, all energy, just
17 realistically speaking.

18 MS. EASTMAN: If it's going to be more,
19 it's just going to be higher numbers.

20 MS. MCGINNIS: But it doesn't
21 necessarily have to be in-state.

22 MS. MCCARREN: So this is irrelevant
23 because it's already been done.

24 MS. EASTMAN: We need to know what the
25 number is. I don't know what that amount is

1 based upon that. I have to have information
2 from the utility company to figure out what
3 that goal is. That's what I mean. That's the
4 kind of thing wouldn't the PSB be providing
5 that information to --

6 MR. JOHNSTONE: 2032 is a long ways off.

7 MS. McCARREN: You think that now.

8 MR. JOHNSTONE: Well I get that from
9 that perspective, but if you're going to get
10 to a really big number, getting from here to
11 there requires us to take three to five-year
12 increments and set targets or you'll never get
13 there.

14 MR. COSTER: Where are we with the 2017
15 goal 55 percent?

16 MS. MARGOLIS: We're on track to meet
17 that goal.

18 MR. JOHNSTONE: That's great.

19 MS. EASTMAN: So I still believe the
20 Department's got a role to set some guidance.

21 MS. McCARREN: Maybe they are already
22 doing it in the context of administering the
23 SPEED program. Give us the numbers. Maybe
24 the Department is already doing this.

25 MS. MARGOLIS: We have the numbers where

1 we are in-state and the Board has to report on
2 that to the Legislature periodically, and they
3 just did a report and it shows where we are in
4 terms of our 2017.

5 MR. JOHNSTONE: I thought Billy said 55
6 percent in 2017. That's what threw me. So
7 I'm sorry. I may have misheard.

8 MS. MARGOLIS: You're correct. We're
9 actually -- for our electric generation
10 resources, not just in-state, but for all of
11 our electricity we are on track to meet --
12 we're actually at like 50 something percent.

13 MR. JOHNSTONE: I thought he was saying
14 55 was for in-state generation. So sorry.
15 Thank you.

16 MS. McCARREN: Billy, you're looking at
17 Act 170 if I want to look this up?

18 MR. COSTER: Yes.

19 MS. McCARREN: Thanks.

20 MS. EASTMAN: Okay. So -- so right now
21 we're keeping this if it fits with the
22 statute. We'll check.

23 MS. McCARREN: Then this should say the
24 Department should carry out its obligations
25 under the current statutes with respect to the

1 planning for in-state renewable requirements.

2 COMMISSIONER MARKOWITZ: And then have a
3 subsection a determine in-state share, might
4 be in-state electric generation by technology
5 because that's I think what we're looking for.

6 MS. EASTMAN: Or we can just say provide
7 guidance to the RPCs about the information
8 they already have. Is that where you are? If
9 they have it. Who needs to have it? If we're
10 going to go with then having actually some
11 site planning done through the RPCs, then
12 you've got to give them some guidance.

13 MS. SYMINGTON: If we're going to take
14 all this away, I don't see how -- it seems to
15 me the whole infrastructure under what we've
16 been talking about falls apart.

17 MR. JOHNSTONE: If we're going to have a
18 strong planning theme, then the state --
19 because we're part of a state which is part of
20 a regional forum and that's how energy works,
21 electricity at least. There's got to be some
22 boundaries to the box for the planning to
23 happen, and I think the DPS has got to do it,
24 and we haven't even gotten to the question on
25 the back page of this, which I probably won't

1 like, which is who gets it approved, the RPC
2 plans, at the back end to make sure they
3 actually did the job.

4 MR. SULLIVAN: I think that's the
5 regional commissions.

6 MR. JOHNSTONE: I actually think it's
7 probably the DPS, which frankly -- so there's
8 a place to appeal to which would be the Board.
9 If we're really going to put a planning
10 infrastructure in place, to be thoughtful
11 about this, I think the Department has to play
12 the central role and then have it enacted
13 regionally.

14 MS. McCARREN: Let me try my question
15 again. I just need to reserve on this one
16 because, Billy, I need to research that.

17 MR. COSTER: And I think Anne and I --
18 I'm reading something different than she's
19 saying. So it would be great for the
20 Department maybe to say what the statutory
21 obligations are for in-state generation.

22 MS. McCARREN: If there are existing
23 statutory obligations for in-state generation,
24 then I totally support the fact that the
25 Department should be planning for those on a

1 sequential basis, and that I completely
2 support. So it may be my misunderstanding or
3 lack of knowledge about what the statute said.
4 I was not aware, other than the SPEED program
5 which basically is a carrot.

6 MR. JOHNSTONE: And I get it you want it
7 to come out of statute, and to me the fact
8 we've adopted such a huge goal for 2050 in the
9 CEP, which is not statute it is administrative
10 policy, and we've got to figure out how to
11 bridge that.

12 MR. BODETT: Wouldn't a plan just be a
13 broad stroke, as you were describing the
14 scenario, that this professor is putting us
15 through? Here's what it would look like if we
16 did all this in-state. Here's what it would
17 look like if we did 10 percent in the state.

18 It's like our little town has a big
19 commercial/industrial zone and there's no
20 industry there, but it's zoned for it, you
21 know, in case industry ever decided to be
22 there, and that's why I would see this on a
23 planning level, if there was ever going to be
24 energy development, this is where it would be.
25 It doesn't mean that it would be, but we

1 should be prepared for that. Isn't that all
2 we're doing?

3 MS. SYMINGTON: I thought we were trying
4 to give a bigger voice to the Regional
5 Planning Commission, but to do that -- but for
6 me the only way I'm comfortable with that is
7 if it's not this veto, this constant no, no,
8 no, as opposed to saying we get -- here's the
9 planning we've done in the context of the
10 whole state. We think this is what makes the
11 most sense for our region and what we're
12 willing to accept and encourage, and in that
13 context we think this proposal is
14 inappropriate or appropriate.

15 MS. EASTMAN: For me planning, even at
16 the regional level, is another place for
17 communities to play, and it's the place for
18 communities and individuals to play very
19 early, okay. That's for me one thing.

20 I also want to get at and -- to the
21 extent we can, as Jim said and as Tom said,
22 put things in the most appropriate place that
23 we can find them to put, and have that made in
24 the context of other issues that are of
25 concern to all of us and other state policies.

1 So for me it's also a place for the
2 public and municipalities to play in that
3 process. They already play on other things so
4 --

5 MR. SULLIVAN: I think from my
6 perspective in the Regional Planning
7 Commission and kind of going through the
8 question of how the municipalities fit in, you
9 know, I think that you had a discussion this
10 morning about the town planning and zoning and
11 how that works, and I really agree with all
12 the problems and issues if you put too much at
13 that level, and so you kind of go to the next
14 level as saying okay if municipalities don't
15 have like a zoning or a planning veto over a
16 project, then how do you consider -- how are
17 their plans considered, and I think they have
18 the kind of plans they have now that provide
19 guidance as they do now, but by creating a
20 more robust regional planning process that
21 looks at those, like Tom said, generally
22 appropriate areas for future development and
23 overlays that with a lot of specific policies
24 about how things should be developed if they
25 do happen there, it really encourages the

1 municipalities to participate very actively in
2 the regional planning process in developing
3 that plan because if that plan is going to --
4 can be looked to as a primary document, then
5 they are going to have a very strong vested
6 interest in actively participating in the
7 regional planning process.

8 MS. MCGINNIS: I think too if we could
9 focus on what the ultimate goal is and how all
10 of this can facilitate the ultimate goal, at
11 least what I heard what you were all saying in
12 agreement to for the most part, Louise maybe
13 not entirely, is that you want to incentivise
14 those projects that are community led, that
15 the town agrees upon, that the region agrees
16 upon, incent those in a certain -- in whatever
17 way we can find to do that.

18 For those projects that are more complex
19 and larger and cause more problems, we need to
20 have stricter and more required public
21 engagement elements in place, and that may be
22 a larger -- and we'll get to that in the
23 tiers, but the only way you can get to
24 understanding what towns want to be part of
25 the process and regions who want to do

1 something and have them have a say is to say
2 what the order of magnitude is of the
3 expectation, and it's that order of magnitude
4 discussion that if you're going to put -- and
5 you may not agree to put it in the hands of
6 the Regional Planning Commissions to say what
7 can we do in our region, you have to have a
8 general sense of the order of magnitude, and I
9 think that's what this is trying to get at;
10 and in order to reach the ultimate goal of
11 incentivising those projects that we all tend
12 to agree are the best ones which are community
13 led and there's agreement in the community
14 that they would rather have the solar field
15 here or there or they would rather have, you
16 know, as Tom is suggesting in a comment
17 earlier, efficiency gains which may have the
18 equivalent of renewable energy, that if you
19 can sort of look at this that way, but the
20 town would have more say if in fact you have
21 an order of magnitude envelope in which you're
22 working, it's sort of a reverse logic, and
23 we're starting at the state level, which I
24 know you're uncomfortable on that, but I think
25 the whole logic is to try to incent those type

1 of projects that we know will have more
2 success because they are community led.

3 I don't know. That's at least what I
4 had understood from what I had been hearing
5 from the discussion.

6 MR. JOHNSTONE: And it's worth pointing
7 out, I think it is at least, for the last
8 couple decades the state's policy Act 200 is
9 actually what Louise is arguing it's
10 grassroots up.

11 The difference in this case is that
12 we're part of a regional system and that's
13 where I flip the model. I'm always the person
14 yapping about Act 200 and I do think it was a
15 right way forward, but as opposed to most --
16 it advocated that regional plans have to be
17 consistent with town plans, state plans have
18 to be consistent with regional plans, and this
19 is -- kind of the inverse of this is because
20 you can't have energy islands. The system
21 doesn't work that way.

22 MS. EASTMAN: But even with respect to
23 Act 200 planning doesn't mean that the issues
24 that we had decided as a statewide
25 significance did not have to be addressed

1 locally. I mean I went out -- we had no plans
2 about that. I had to go out and say -- you
3 know I went out and talked to communities. I
4 said well how do we do this and there's -- the
5 state hasn't told us where they are because
6 you weren't back then, it was so long ago, and
7 I said well who hunts here around the table.
8 I literally said that and hands go up. Well I
9 bet you know where they are and you start from
10 there.

11 So even with that when we said it's
12 local up, issues of statewide significance are
13 supposed to provide the technical expertise
14 and the guidance to the community as to what
15 was in their town and needed to happen and
16 then they could plan around that, but that's
17 what I was having to go out, and I got to be
18 the one to go out and say -- both respond to
19 oh my god they didn't think they could do it
20 and, two, I know you can do it and here's some
21 things you have to include kind of thing.
22 Well I don't want to stop conversation.

23 MR. BODETT: I want to ask one little
24 note about the RPC. What about we have the
25 issue of one town putting up a big project

1 that affects the neighboring town. We can
2 have the same thing at the regional level
3 where a project may end up on the border of a
4 region, and the suggestion that RPCs have
5 automatic formal party status where is the
6 boundary of that status going to be at?

7 MS. EASTMAN: We had that on siting
8 issues because that's what they asked for it
9 on. When we talked about it they hadn't
10 asked, but what they wanted to have party
11 status on were things that related to siting,
12 and I found it very helpful.

13 MR. JOHNSTONE: He's asking a different
14 question. What happens on the boundaries?
15 What happens now when you don't agree?

16 MR. SULLIVAN: We always agree. I think
17 in general if there's an issue like that two
18 regions basically meet and discuss it. If it
19 were black and white, one region is dead set
20 against something and the other one is
21 absolutely for it and it's right on the
22 boundary, I guess I would go to another level
23 then.

24 MS. EASTMAN: Probably comes back up to
25 the Department.

1 MR. JOHNSTONE: But I think he's asking
2 in siting now you got an application so it's
3 clear that the home base RPC gets formal party
4 status. Does the one within the viewshed? I
5 think that's what you're asking.

6 MR. BODETT: Exactly.

7 MS. EASTMAN: I seriously think the one
8 within the viewshed, maybe it's not automatic,
9 but it's intervenor status.

10 MR. BODETT: Maybe these are the issues
11 that get worked out with the planning part of
12 it where if that's one of the sites, that is
13 in the plan.

14 MS. EASTMAN: Because especially --

15 MR. BODETT: Discussion will come up
16 before there's an application.

17 MS. EASTMAN: Especially if we're going
18 to say what we talked about this morning
19 relative to viewshed and impacts we want that
20 looked at. So you're going to have to work
21 that out.

22 MS. McCARREN: Intervenor status is nice
23 and I don't have any problems with that.
24 That's not where the action is. The action is
25 what is the weight that must be given to the

1 plan. That's where the action is, and, you
2 know, so that's what's really important, and
3 right now the 248 says the Board will consider
4 the plans, but I think what we've heard from a
5 lot of people is they are unhappy with the
6 level of the Board's consideration.

7 So the issue on the table is whether
8 there should be more than consideration and
9 whether or not -- and that's why I keep going
10 back to the town. Now your town, right, has
11 zoned industrial/commercial. So if a solar
12 project showed up and it's an industrial size
13 solar project, you can say there you go,
14 right, and that would be controlling.

15 MS. EASTMAN: Well I believe if we went
16 through -- I'm in favor if we had a planning
17 process that did have guidance going down,
18 they planned this proviso, you can't say no to
19 everything, but you can plan for where it
20 goes, then I think the regional plan could
21 win.

22 MR. JOHNSTONE: It should have standing.

23 MS. EASTMAN: I'm happy to have it say
24 the project should be in conformance with the
25 regional plan.

1 MR. BODETT: Right.

2 MR. SULLIVAN: I think you have to
3 remember you're dealing with two situations,
4 the now and the then. The plans are at a
5 different level now than hopefully they would
6 be after they were really developed with all
7 these guidelines and goals and everything.

8 COMMISSIONER MARKOWITZ: And the
9 transition is that it would only apply if you
10 have done this work, and otherwise it wouldn't
11 which is great.

12 MS. MCCARREN: Okay. Let me just put
13 something else out here. Are you -- is this
14 implying that even a region will be given or
15 even a town will be given an allotment of how
16 much energy they have to produce --
17 electricity they have to produce?

18 MS. EASTMAN: I don't know exactly how
19 it would come out. I mean I don't think it's
20 by town. I don't think we would ever go by
21 town, but as I say we gave an allotment on
22 affordable housing in effect in the 1990's to
23 every region, and so I don't know if this is
24 an allotment issue.

25 I think it's a planning iterative

1 process between the state and the regions
2 because, as Chris says, you know, Windham is
3 done because they have Yankee. Now we're not
4 using any of Yankee so maybe Windham is not
5 done.

6 MR. SULLIVAN: I think the problem when
7 you're dealing with renewable energy
8 generation too is that the location is so
9 dependent on the availability of the resource,
10 and those resources aren't uniformly
11 distributed around the state. So I think it
12 has to be an iterative process.

13 MS. McCARREN: That was part of what I
14 was going to say because I think the
15 cornerstone for me is let's take actions that
16 produce the most economically efficient
17 generation with the least environmental
18 negative effect. That's the cornerstone for
19 me.

20 MR. SULLIVAN: If you said Bennington
21 County had to have 10 megawatts of
22 hydroelectric generation, you would have big
23 problems.

24 COMMISSIONER MARKOWITZ: I was going to
25 use that as an example actually.

1 MS. McCARREN: What's wrong with the
2 Vernon dam.

3 MS. EASTMAN: That's not Bennington.

4 MS. McCARREN: Wrong side of the state.

5 MS. EASTMAN: For me that's what
6 planning is. It's an iterative process. I
7 guess I'm not willing to assume we can't
8 accomplish the goal yet. I guess I disagree
9 with you only on one thing, it's that, and I
10 -- and if you and I were just having a
11 conversation and I was saying what my belief
12 was, you know, the economics might come into
13 it more, but for me it's the fact that we've
14 got these goals for renewables. Sorry. I
15 believe there are goals for renewables and now
16 I want the most effective, efficient
17 renewables in the best places that I can get
18 them, not just willy nilly, okay, and you have
19 heard my spiel about let's be sure we do the
20 right biomass and that kind of stuff.

21 So -- and that's why I think we need
22 some of this, but I don't think it's a five
23 percent here or ten percent there because also
24 if it's that, then the Kingdom is done, you
25 know. I don't have any more -- I don't know.

1 PUBLIC MEMBER: Well the other thing to
2 go along with that Burlington would be covered
3 with solar panels and wind turbines off shore.
4 They are the biggest energy generator there
5 is.

6 MS. EASTMAN: So I don't think that's
7 the way we do it, and I guess I don't have all
8 the details on this, but we already plan, and
9 I know -- here's the thing. The state
10 incentivizes prisons and work camps by paying
11 people to take them or something, and that's
12 in effect what is sometimes happening here
13 with big projects. Somebody is being paid to
14 take it, but it still tries to fit in with
15 some sort of location and siting issues.

16 MR. BODETT: That's a note I had. Is
17 there some sort of REC that could go to a
18 town?

19 MR. JOHNSTONE: Post community -- same
20 thing happens with landfills.

21 MR. BODETT: They can keep, sell, apply
22 for efficiency grants or whatever, some value
23 to them.

24 MS. EASTMAN: So understanding Louise's
25 --

1 MS. McCARREN: I've not given up on
2 this.

3 MS. EASTMAN: It's still on here.

4 MR. JOHNSTONE: One thing I would just
5 raise in F under 2, since we've been talking
6 about 1 and 2 we've been talking about formal
7 party status and I think I agree with that,
8 but we've also been here talking about the
9 level of weight that the plan itself carries
10 at the end.

11 MS. EASTMAN: And I think it should have
12 more weight.

13 MR. JOHNSTONE: And I do too if you're
14 going to put a planning process in place.
15 That has always been, at least in my head, is
16 the goal. This way to me if a RPC was really
17 thinking about the right way to do it, I don't
18 think we ought to prescribe it.

19 Part of what put me on this path frankly
20 was Annette's presentation around the right
21 way to engage communities around this work.
22 Great thing for the RPCs to do, get the towns
23 fired up, have all those conversations, figure
24 out what's acceptable in the region. They can
25 do it town by town or for their whole region.

1 I don't care how they do it, but within the
2 parameters that we can't all just say no as a
3 state. If everybody says no, the lights won't
4 stay on. Then it ought to matter at the end,
5 when it goes to the end, whatever their
6 parameters this is a place where you can do
7 solar, this is a place where you can do
8 biomass. Whatever it is gets signed off so we
9 have an integrated whole, then that plan ought
10 to actually matter a lot in the proceeding.

11 MS. EASTMAN: I'm willing to say that.
12 Maybe not everybody is, but I'm willing after
13 this kind of process that I'm envisioning that
14 it has to be in compliance with the regional
15 plan.

16 MR. BODETT: And then where do the town
17 plans come into play?

18 MS. EASTMAN: I'm not saying it has to
19 be in compliance with the town plan. I
20 haven't gotten that far. I mean my hope is
21 towns play at all, but I'm concerned about
22 that because I don't see how you --

23 MR. BODETT: I don't see how they could
24 live in disagreement. There are no regional
25 lands. It's all town plans. So wherever the

1 regional plan says, but the regions are good
2 at this.

3 MR. JOHNSTONE: But the regions are good
4 at that. Sometimes they have their dust-ups,
5 like every RPC has had a dust-up with the town
6 here and town there, but by and large they do
7 knit together that the plans roll up into
8 their regional plan in a way that's thoughtful
9 and reasonable. It's not there's never a
10 dust-up, but from at least my experience with
11 them, I think they do a decent job of getting
12 them together in my experience.

13 MR. SULLIVAN: You're right and the
14 process usually works pretty well. I mean in
15 our case maybe the big regional planning, town
16 planning knitting together processes are land
17 use plans, and over the years I mean I guess
18 some regions have gotten different levels than
19 others, but by and large if you are to put our
20 regional land use plan next to a stitched
21 together map of town land use plans, they
22 would be match up remarkably well. They
23 really would.

24 There's a couple spots where the lines
25 are offset where we wish they weren't. That's

1 true. Those types of issues have to be dealt
2 with, but I think we would be in the same kind
3 of a situation here. It's a little different
4 and maybe a little bit more complicated in
5 some ways, but I think the process would be
6 similar.

7 MS. McCARREN: I'm at a more granular
8 level than you guys are, but I'll make this
9 really clear. I do not support vetoes. I
10 support -- what I support is that if a town
11 has thoroughly considered locational issues
12 that that is controlling, and if they haven't,
13 if they have chosen not to do that, then I
14 don't think they have any right to -- I think
15 I am supporting the concept of thoughtful land
16 use planning. I am supporting that.

17 MR. JOHNSTONE: She wasn't in the room
18 so go ahead.

19 PUBLIC MEMBER: I don't mean to take up
20 time, but multiple times I've heard Governor
21 Shumlin say if a town doesn't want it we're
22 not going to shove it down their throat, but
23 yet I hear you guys saying a town does not
24 have the right to say no. So are you not
25 agreeing?

1 COMMISSIONER MARKOWITZ: We're not
2 agreeing.

3 MS. EASTMAN: I don't agree with that.

4 PUBLIC MEMBER: So there's no local
5 control?

6 MS. EASTMAN: To the extent, as I say,
7 they participate in planning and regional
8 planning, and then there may be other ways to
9 do things, but right now I'm not saying that I
10 think that a local -- you can say no to -- if
11 we plan for it.

12 PUBLIC MEMBER: The fear is too many
13 towns will say no, but doesn't that in itself
14 tell you something?

15 COMMISSIONER MARKOWITZ: Well we would
16 never have a solid waste facility. We would
17 never have a generation substation or prison.
18 So this is not an unusual way of dealing with
19 public infrastructure.

20 MR. SULLIVAN: I think you need to look
21 at the way things are now and basically those
22 -- the local control has been written out in
23 the statute right now. I mean municipalities
24 don't really have any direct control over
25 this. Their plans are considered in the

1 process, but they can't zone things out. They
2 can't veto things, and so I think that, you
3 know, there's this in between level that some
4 places in the planning and zoning law have
5 where, you know, you have to allow facilities
6 somewhere in your town.

7 I don't know if that really works very
8 well in this situation either, but as I said I
9 think probably the logical progression from
10 that is to encourage and incentivise all these
11 municipalities to work together in the
12 regional context.

13 MS. EASTMAN: Which is why for me doing
14 something this early with planning and
15 actually having some more direction about how
16 much do we really need, you know, I think
17 might help because I think there will be some
18 things that some municipalities want to have
19 happen and there will be others that, you
20 know, don't want anything at all, but I don't
21 see anybody not wanting anything at all.
22 Solar and things like that.

23 MS. MCGINNIS: I think that's what I was
24 going to say. A town could say no to one
25 thing if they have an alternative. That's

1 what we're talking about. That's the theory
2 of what we're talking about or, for example,
3 in Charlotte's case if it was going to be
4 better in a different location, right, if
5 people could come to agreement that a solar
6 field is better in a different location and
7 the town says that and identifies it, then
8 that should take precedence.

9 MS. EASTMAN: So here's the thing. To
10 the extent a town really participates in a
11 regional planning process and says those kind
12 of things as part of the regional planning
13 process, then what the town wanted -- what the
14 town wants will be what the regional plan is.

15 MS. McCARREN: I think just to go back
16 what is really fundamentally different here
17 than 15 years ago is that renewables are
18 geographically disbursed, right?

19 MR. JOHNSTONE: Right.

20 MS. McCARREN: And I hate to use this
21 term, the paradigm has really changed from the
22 notion of a central station where it's really
23 going to be for the benefit of everyone and
24 that's in the public good or a transmission
25 line, and again we're not dealing with

1 transmission. I think that's part of the
2 reason.

3 So that is what's driving my thinking
4 and I think what is causing a lot of the
5 angst, and I need to get a little more real
6 about the fact we're going to be past it, is
7 that the first 50 megawatts of the SPEED
8 program require that the developer have the
9 land and the developer cannot change without
10 losing her place in the queue. That has
11 driven a lot of really bad, in my view,
12 personal view, bad decisions.

13 We're going to be beyond that, but I
14 still think that -- I still think the town
15 having fully considered all of this, what
16 their planning and zoning is, should control.
17 All right. We don't agree. Let's move on.

18 MS. EASTMAN: The point is for me I
19 don't agree with that. I think, though, that
20 the town can play the regional planning
21 process and get -- and probably, I don't know,
22 maybe I'm wrong, I bet nine times out of ten
23 everything will be hunky dory. There will be
24 ten percent of the time when there's lots of
25 conversation between the town and the region.

1 Here's the thing. How town planning
2 actually happens is with the regions helping
3 them do it and staff it. So it's not like
4 those guys that are staffing the regional
5 planning process don't know what is going on
6 in the communities because they are the only
7 staff support.

8 MS. McCARREN: How about it has to be
9 consistent with both town and regional plans.

10 MS. SYMINGTON: You don't want a
11 regional plan.

12 MS. McCARREN: I'm trying to make a
13 compromise.

14 MS. EASTMAN: I'm not there yet, but I
15 guess I am still, and this is interesting for
16 me, but I am still hopeful -- I'm still
17 hopeful if there were more transparency about
18 what's actually necessary, there would be less
19 angst and we actually could get some things
20 done and accomplished.

21 MR. JOHNSTONE: So to build some context
22 at least in the way my little head works
23 around this, the other piece of the equation
24 in my head to this isn't on the table flopping
25 around yet that makes the whole work for me.

1 So you're doing the planning process. You
2 have the RPCs going. The Department is giving
3 them good advice and we're trying to build to
4 the CEP which is what we've been charged with
5 doing here.

6 So how does that potentially all work if
7 some towns don't want certain types of
8 generation? One is they will want some and
9 across the regions we can blend it out and
10 make it work, but frankly for me the way that
11 -- the other piece is what's the package of
12 incentives to actually encourage the towns
13 that want to go forward to do it such that a
14 town that wants industrial wind gets
15 incentivised to do it and the town that
16 doesn't, doesn't feel the pressure through
17 this planning process that they must accept it
18 because there's another town that actually
19 decided they would rather have a really low
20 municipal tax bill more than other issues, and
21 it's the combinations of the carrots with the
22 planning -- with the sticks with the planning
23 process, and some of the rules you got to live
24 by with the incentives, the carrots that bring
25 it all together and actually get the towns to

1 opt in, but feed it back -- even that feeds
2 back through an appropriate planning process
3 that makes the whole system steady.

4 There's got to be some -- I hate to say
5 it because I'm not a big stick person, but
6 there's got to be some sticks to make sure the
7 whole system run or we don't have an energy
8 system.

9 MR. BODETT: It really puts the onus on
10 the regional planners.

11 MS. McCARREN: You wouldn't have such
12 vastly distributed renewables if you were
13 serious about that problem because they are
14 going to be extremely hard to manage from an
15 operating perspective. So if that's what
16 you're worried about, then you wouldn't have
17 this. I'm sorry. I interrupted you.

18 MR. BODETT: No. I was just speaking to
19 your previous point about in conforming to
20 both local and regional plans, and that would
21 work if these lines lined up, as Jim pointed
22 out, or they mostly do, but they would have to
23 entirely, then it wouldn't be a problem to
24 consider both to give both local and regional
25 plan standing because they would agree.

1 MR. SULLIVAN: And I can just picture
2 the scenario, you know, in our region where
3 the planning process -- I got it. In fact I
4 do. There, there, there, but I can certainly
5 see a situation where town A from a regional
6 planning process using all the inputs from the
7 Department and the Agency and everyone else
8 it's obvious that that town has the best site
9 by far for technology A and they absolutely
10 don't want it, you know, and then it becomes a
11 very difficult conversation at a regional
12 level to try to determine, you know, what's
13 more important, what values, what --

14 MS. McCARREN: Okay, but this has to be
15 candled up against the fact that maybe region
16 A, maybe that town doesn't want it, but
17 there's maybe some place in Vermont there's a
18 really good site. Okay

19 MR. SULLIVAN: Right.

20 MS. EASTMAN: And, again, that's the
21 iterative process of going back and forth and
22 why you don't say every region has to have x
23 amount of x technology because, as I say, some
24 technologies are going to fit better in
25 certain regions, and the same thing with

1 certain towns, and that's a siting issue which
2 is a planning issue.

3 MS. McCARREN: The notion of public good
4 which has guided Public Service Board 248
5 decisions since the Queen City Tap case has
6 worked very well and served the state well in
7 the model in the past in the environment that
8 worked, except for large generation stations
9 which we may see one ever and we may not,
10 right, and transmission I wonder if that is
11 still the controlling -- that's my point.

12 MS. EASTMAN: I get it because the issue
13 is for me too is what should be the standard
14 -- well it's interesting. Sheffield as part
15 of the Certificate of Public Good, the
16 Sheffield site everything sold to an in-state
17 utility, right, and the Lowell site is in
18 effect owned by an in-state utility, but
19 that's what I think too. What if a merchant
20 plant comes in or a merchant operator comes in
21 and just wants to build something and it's not
22 going to go in Vermont, does -- would the
23 Public Service Board say well that doesn't
24 meet Vermont's public good or is the public
25 good a bigger public good? I mean I don't

1 know the answer to that question.

2 MS. McCARREN: Transmission facilities,
3 generating stations are routinely sited
4 throughout New England to meet New England.

5 MS. EASTMAN: New England.

6 MS. McCARREN: That's right, and states
7 don't say I don't want this here.

8 MS. EASTMAN: Because we're not
9 generating all of our own power.

10 MS. McCARREN: Salem Harbor is going to
11 be repowered with gas. What you're hearing
12 from me is this notion that Vermont has to
13 produce its own electricity is misguided
14 because it may not be our -- it may not be
15 where we have economic advantage.

16 MR. JOHNSTONE: Depends on how you
17 determine economic, you know. If part of the
18 charge here is if we're having to do this in
19 response to climate change, then we have to
20 figure out that economic value too.

21 MS. McCARREN: Absolutely. If the goal
22 is to -- if the goal here is to reduce
23 greenhouse gases, then the issue for the
24 policy makers, and we're not them, is what is
25 the least cost, right, least cost

1 conservation, and most environmental.

2 MR. JOHNSTONE: Sign me up. I love it.
3 I'm with you.

4 MS. EASTMAN: This is why I'm still into
5 really good efficiency. The other question,
6 though, for this issue which we talked about
7 this morning so how much does this cost, and
8 how do we propose to pay for it if we went to
9 regional planning. I mean we're only on item,
10 one or two, sort of a combination, but we
11 talked about that this morning wanting to know
12 whoops what are we doing, is it practical, can
13 it happen?

14 COMMISSIONER MARKOWITZ: Well it would
15 be interesting to hear just how -- how much
16 you do anyway in terms of the energy plan and
17 would there be incremental cost associated
18 with becoming more granular in your approach,
19 and then it would be interesting to think
20 about whether or not there's resources
21 existing for the Public Service Department to
22 help give you the data you need to do that.

23 MR. JOHNSTONE: I was trying to have you
24 speak from the average RPC if you can.

25 MS. McCARREN: How many RPCs are there?

1 MR. SULLIVAN: 11. Well some regional
2 planning commissions have dedicated energy
3 plans like we do and some don't. Everyone has
4 an energy element in their regional plan.
5 Even our energy element -- our energy plan is
6 -- I think it's a good plan, but it doesn't go
7 toward the siting issues really except in a
8 fairly general policy way.

9 So for an average regional planning
10 commission probably all of us would probably
11 fit in that category that we would really all
12 have to ramp up considerably. I think that
13 given there's 11 regional commissions and
14 we're all looking at the same types of things
15 and drawing on the same types of resources,
16 there's some real economies of scale or
17 sharing of resources that could go on that
18 could make it a little bit easier for
19 everyone, but there's still managing the town
20 process. From our perspective that's probably
21 going to be the real time consuming part.

22 MR. JOHNSTONE: It's worth knowing, and
23 I think we used at least one example in past
24 meetings, but this sort of drive to figure out
25 how RPCs can play a more thoughtful role has

1 been done time after time after time with the
2 state. So we're not plowing new ground here.
3 So transportation planning, emergency
4 planning, and over time has brought them in to
5 be really big players in water quality.
6 There's probably six more that I'm not
7 thinking of off the top of my head. This idea
8 -- and frankly every time it helps they don't
9 have the resource. You know their plans
10 aren't quite where they ought to be for what
11 they are being asked to do, and we have had to
12 figure out how to let them beef up their
13 capability to really step in to the fact
14 there's so little timing in so many ways.

15 MS. McCARREN: I think all throughout
16 this straw that the developers need to pony up
17 money for the planning process through whether
18 it's an application fee, probably an
19 application fee.

20 MS. EASTMAN: Or franchise fee.

21 MS. McCARREN: Well, you know, isn't
22 that an interesting idea.

23 MR. JOHNSTONE: That's where I would go
24 to be honest. I think not all of them pay it.

25 MS. EASTMAN: In effect all of our

1 in-state utilities are paying that, right?

2 MR. BODETT: Can you explain to me how
3 that would work?

4 MS. EASTMAN: Right now the utilities,
5 distribution companies, are paying a tax.
6 We're paying it. Is it two and a half
7 percent?

8 MS. McCARREN: I forget what the number
9 is. It's a gross receipts tax.

10 MS. EASTMAN: The goal is to support the
11 --

12 MS. McCARREN: The Department and Board
13 and that money does not flow through the
14 General Fund. Just so for those two agencies
15 are separately funded.

16 MR. JOHNSTONE: So if you applied it to
17 generation, because the problem I have with
18 all the permit fee for this and permit fee for
19 that is the Department and the Board have got
20 to figure out how to create staffing
21 capability in the Agency, and they are
22 dependent on more applications coming in to be
23 able to have the capability to review it.

24 That's a really crazy system for a core
25 capability, and the idea of using a franchise

1 fee model as the way both to deal with that,
2 maybe the RPC thing, create a pool for some of
3 the incentives to get the kind of behavior we
4 want out of the system.

5 MS. McCARREN: Just trying to think.
6 The utilities pay a gross receipts tax which
7 is a tax on their -- trying to remember this,
8 a tax on their revenues. So, yeah, you could
9 do that.

10 MS. MCGINNIS: What I liked about it
11 it's an annual -- it's a predictable annual
12 fund as opposed to a filing fee. You can
13 never predict how many are going to come up in
14 a given year.

15 MS. SYMINGTON: Don't they pay a
16 production tax?

17 MR. BODETT: Filing fees can then be
18 reimbursed.

19 MS. EASTMAN: They are paying a
20 community to be there, but they are not paying
21 for process and for planning.

22 MR. JOHNSTONE: I would go so far, it
23 probably violates all sorts of interstate
24 commerce clauses, but I would even say that I
25 think you could even set it in a differential

1 way where the community type projects pay a
2 lower generation fee than the merchants that
3 are just feeding the grid, and so when you
4 start thinking about how do you want to incent
5 the type of project you really want in
6 Vermont, a project that actually has community
7 support, meets the other criteria we want,
8 pays a lower rate than one that is just
9 speculative and wants to just feed the grid.

10 MS. EASTMAN: And guess what. If you
11 can't do it to regulate that, you can do what
12 we did with the statewide property tax, and so
13 what you do everybody is paying it, then
14 there's a fund that's created to pay back the
15 community project so they in effect didn't pay
16 it. That's what we did with statewide
17 property taxes.

18 MS. GRACE: I think there would be
19 concerns.

20 MR. JOHNSTONE: I know there would and I
21 think we have good lawyers that can deal with
22 that, right, Sheila? And you don't have to go
23 that far to create differential rates.

24 MS. EASTMAN: The point is it's as close
25 as we can get to the gross receipts tax that

1 other people are already paying, and if you
2 talk about the fact the planning and the
3 monitoring and things are more ongoing costs,
4 they are not just a project related, it's a
5 way to be sure that we can do all those things
6 that we talked about this morning and have the
7 resources to cover it.

8 MR. JOHNSTONE: And then you don't have
9 to be -- that's why I came at this from
10 earlier this morning. You don't have to start
11 looking for General Fund money if this sort of
12 idea works. You can design it such that, you
13 know, the carrying costs for planning and
14 monitoring and the process and frankly even an
15 incentive pool, whether you fund that through
16 CEDF or some other mechanism, you can actually
17 structure the same in a way that's internally
18 consistent and doesn't draw on resources that
19 are in competition over there.

20 MS. McCARREN: They already do that with
21 the gas tax.

22 MR. JOHNSTONE: Sure.

23 COMMISSIONER MARKOWITZ: So I -- the
24 question is whether or not the Department
25 could model some scenarios of what that fee

1 would look like or what the options are so
2 that we could have a sense because ultimately
3 the ratepayer pays it, right, or it comes out
4 somewhere. So it's not an infinite amount of
5 money. So that way we would answer your
6 question about what kind of pool might we be
7 talking about.

8 MS. GRACE: If it's a franchise fee and
9 it's on generation, the ratepayers aren't
10 really paying it because of the market.

11 COMMISSIONER MARKOWITZ: That's right.

12 MS. GRACE: We would be discriminating
13 against people in-state instead of out of
14 state. It's reverse.

15 COMMISSIONER MARKOWITZ: It would be
16 interesting to just have some scenario
17 options. You could have a sense of really how
18 much money are we talking about. It may not
19 be enough to do everything we wanted to do,
20 which yes we would need to be more focused.

21 MR. BODETT: Would this be a tax on
22 existing plants?

23 COMMISSIONER MARKOWITZ: That could be
24 one of the scenarios.

25 MS. SYMINGTON: We do pay a generation

1 tax of some kind, a state generation tax of
2 some kind to the Ed fund. They do. They pay
3 to the Ed fund. Doesn't mean they can't pay
4 another one.

5 MS. EASTMAN: So they are paying to the
6 Ed fund, but they are not paying for what it
7 costs to do the project.

8 MS. McCARREN: Doesn't VPEX have all
9 those numbers?

10 MR. JOHNSTONE: Probably.

11 COMMISSIONER MARKOWITZ: And we can do
12 more than one thing. We can have a filing fee
13 because certainly if somebody wants to build
14 something, there should be a filing fee and
15 then look at this franchise.

16 MS. EASTMAN: The franchise fee might
17 then be smaller, but to me the franchise fee I
18 would -- I would want to cover the cost of
19 planning with it. I would want to cover
20 monitoring and compliance.

21 COMMISSIONER MARKOWITZ: But a filing
22 fee might be covering the cost of the Board
23 and ANR and intervenor funding.

24 MS. McCARREN: We can't call it a
25 franchise fee. Call it gross receipts or

1 whatever.

2 MR. BODETT: If you put something like
3 that in, then maybe you could call it a
4 reclamation or decommissioning fund is a
5 similar sort --

6 MS. EASTMAN: Right now the big plants
7 the decommissioning they are getting -- you
8 know they are supposed to be funding it.

9 MR. BODETT: Funding it over time based
10 on output, then it lowers the threshold of
11 developing smaller projects considerably,
12 which one of the things we have heard from
13 some of the developers is how hard it is to do
14 this stuff in Vermont. So if we're going to
15 keep it hard to do this stuff in Vermont, it
16 sounds like we're not going to make it a whole
17 lot easier, one of the way to incentivise it
18 is to make it cheaper to get in. So make the
19 buy-in cheaper, but they have got the same
20 amount of hurdles to cross.

21 MS. EASTMAN: Well I'm still hoping that
22 our tier issue means some things get easier.

23 COMMISSIONER MARKOWITZ: Right. That's
24 the goal.

25 MS. EASTMAN: I'm still hoping that some

1 of these things, you know, some of these small
2 solars with community support.

3 MR. JOHNSTONE: I would also argue if we
4 do the planning stuff right, then on the back
5 end things should be easier. It should be
6 easier on the communities because there's
7 certainty coming into the process. If no is a
8 no and where yes might be possible and it's
9 easier for the folks coming through because
10 (A) they have some guidance from the region,
11 and (B) they should be smart enough to engage
12 the community instead of just running through
13 them.

14 MS. EASTMAN: And what we heard from
15 VELCO to have them say they saved tens of
16 thousands, if not hundreds of thousands, of
17 dollars by doing the planning for the
18 transmission as opposed to waiting. I mean
19 that's what they said is their testimony. I'm
20 going to ask that we take a break for like 10
21 minutes, nine minutes.

22 (Recess.)

23 MS. EASTMAN: So we'll start up again
24 and we are going to finish at four. So I
25 think we should -- we've gotten some insight

1 where we are as a group on one and two, and
2 we've got some insight that it will cost
3 something to do planning, and we've thrown out
4 the idea there may be some sources of funding
5 that we might find for either annual sources
6 or application sources, but let's move on to
7 item three and get a sense of where we are,
8 and this is the idea of the PSB already
9 operates as sort of a tier system for electric
10 generation siting, and this is a proposal to
11 continue that but to reduce it to three tiers,
12 and also raises, you know, some of the
13 megawatt issues.

14 The small ones used to be or are
15 currently I think 150.

16 MS. McCARREN: Isn't the problem with
17 that, that 150 was set in order to constrain
18 the cost of the program because net metering
19 that output is -- they are paid at some rate
20 above the retail price I think, and so in
21 order to limit the -- now you could still do
22 both. You could still have the 150, right,
23 for the money and the higher amount for
24 siting.

25 MS. MCGINNIS: That's what I think the

1 idea is.

2 MS. EASTMAN: And I will tell you that
3 the 500 kW, I mean as we're talking about
4 these things they are also being discussed in
5 various bills at the Legislature and that's
6 what the Legislature -- the Senate bill I
7 think has 500 kW. Move that up so that
8 captures more of those small things from a
9 siting perspective.

10 MS. McCARREN: It's a money issue on the
11 net metering and I'm fine with that. (J) is
12 the more interesting issue because it has a
13 history, it has precedent, and its origins
14 were for inside the fence kind of things, and
15 there's nothing wrong with changing that,
16 right? It's okay to change it, but I think we
17 have to kind of do a little work there because
18 its original purpose was right so, you know, I
19 want to --

20 MR. COSTER: Transmission related.

21 MS. McCARREN: Well it's inside a
22 substation or I want to put a new generator,
23 black start generator, whatever.

24 MS. McGINNIS: It was for more quick and
25 dirty things, but there's also the simplified

1 procedures as well.

2 MS. McCARREN: I guess what I'm saying
3 (J) is already controversial for other reasons
4 and maybe we don't want to attach that baggage
5 to this, but I like -- I support the concept.

6 MR. JOHNSTONE: I would say 15 seems a
7 little too high to me on that and I have no
8 rational basis for that.

9 MS. EASTMAN: On the standard basis?

10 MR. JOHNSTONE: I'm thinking if you
11 think about substantive projects that are of
12 recent mind, you know, Georgia's 10, I think
13 if I recall, and I don't know 15 seems --

14 MS. McCARREN: 50?

15 MR. JOHNSTONE: Yeah, that clearly goes
16 into large and I'm not quite sure where the
17 number ought to be, but it feels a little high
18 to me, but --

19 MS. EASTMAN: What we're saying about
20 this, the one between 500 kW and 15 megawatts
21 is that in part things can move one way or
22 another. That if it's really simple and
23 because it meets certain standards, it can go
24 down and be a simple process.

25 If it's got issues that people are

1 raising, then it moves up kind of thing and so
2 it's a place to catch -- it's a starting
3 point, and then there's some review process
4 that says it can be easy or it can be hard.

5 MR. JOHNSTONE: I don't know I agree
6 with that by the way. I think if the
7 standards for where you fit are fungible, then
8 we'll have massive wars about -- with all
9 sides arguing how to play the game. So I get
10 nervous. I read that. I get nervous about
11 that. I would rather figure out what are the
12 standards and then figure out instead within
13 those how can you get a more speedy process if
14 you meet say, for instance, our community
15 energy standard.

16 So if you fit the criteria that we were
17 created for the sort of things we're wanting
18 to incent, how do you make that happen quicker
19 within the tiers. If the tiers are fungible,
20 I just think we'll have battles constantly
21 about that because every developer will be
22 saying I should be moving up the chain and the
23 Board will have these really long nasty
24 proceedings about how to move or not move the
25 project. I like it in concept. It seems

1 elegant. I think it will be very messy.

2 MS. EASTMAN: I want to be as
3 predictable as we can be.

4 MR. JOHNSTONE: I don't mean to throw
5 water on it. It just seems like it's a place
6 to have a battle.

7 MS. McCARREN: Unintended consequences.

8 MR. JOHNSTONE: I could be wrong. I
9 liked it in concept until I started thinking
10 about it.

11 MS. EASTMAN: For me under tier two we
12 were trying to increase public notice to
13 affected towns in some way in this one. I'm
14 not so sure about providing intervenor
15 funding. I don't know where I am when we
16 really need intervenor funding.

17 MS. McCARREN: Well I tell you if we
18 move the locus of decision making to the
19 regional planning, and I'm still not
20 completely with you on that, you know my
21 thoughts there, and you fund the plan then you
22 don't need funding, and I don't support
23 intervenor funding generally as a general
24 concept.

25 MS. EASTMAN: For me if we do

1 appropriate planning and get people able to
2 play there and do it well, then you need less
3 of that.

4 MS. McCARREN: If we're going to vest
5 the regional planners with this obligation,
6 they need the resources to do it.

7 MS. EASTMAN: And then for me it's not
8 an intervenor funding issue for issues here,
9 you know, if the RPCs are a party if there's
10 an issue they need and they don't have the
11 resources, then it's more like a bill back.
12 If it's a substantive issue somebody else
13 isn't covering, then it's handled through a
14 bill back.

15 MS. SYMINGTON: Is intervenor funding a
16 generic term here? We talked about having
17 people have access to approved experts as
18 opposed to having dollars.

19 MS. EASTMAN: I think -- last meeting I
20 thought we moved away from that and more that
21 if we were doing anything we were going to
22 funding, but we hadn't determined if we were
23 doing the funding.

24 For me I'm with Louise on this.
25 Depending upon what you do upfront, you know,

1 affects whether I think you need it and where
2 you need it and when you need it.

3 MS. SYMINGTON: And whether intervenor
4 funding comes with a match?

5 MS. EASTMAN: Yes.

6 MR. BODETT: It would have to in my view
7 to keep it from being abused.

8 COMMISSIONER MARKOWITZ: Right.

9 MS. EASTMAN: And my problem is that
10 this is where I get from projects 500 kW to 15
11 megawatts I'm not sure I want any intervenor
12 funding at all. I mean where I'm concerned
13 about those things is when it's really big and
14 I really don't want anybody to have to deal
15 with -- I'm serious -- intervenor funding.

16 COMMISSIONER MARKOWITZ: For a small
17 project.

18 MS. EASTMAN: For a small project. I
19 just think that makes things harder and I
20 think we shouldn't be making things harder and
21 more complicated if they really aren't causing
22 concern.

23 MS. McCARREN: What we have all agreed
24 on I think is that we think that there needs
25 to be better local participation, right, and

1 better clarity and ease of transparency. I
2 think we're all kind of on the same page on
3 that, right? So if you can fix that problem
4 and you can fix the problem of individuals
5 engaging earlier in the process, it really
6 reduces the need for intervenor funding.

7 MS. EASTMAN: I'm starting to look at it
8 like this: If you have done X, then you don't
9 need whatever. I think we're all here. We
10 just don't know where exactly it happens.

11 MS. McCARREN: My experience with
12 intervenor funding it really has huge
13 unintended consequences, all right, and a lot
14 of it are sometimes control issues. They are
15 issues of -- it has unintended consequences
16 and it has not worked very well. A lot of
17 places do it so obviously a lot of places
18 disagree with me, but I'm not a supporter of
19 it.

20 COMMISSIONER MARKOWITZ: Which is part
21 of the reason why the option to have a stable
22 of experts was put out there, and it may be
23 that we might come around and revisit that
24 idea.

25 MS. McCARREN: In this state -- we're

1 kind of unusual in this state because we have
2 the Department of Public Service, which is not
3 always -- a lot of states don't have that
4 split. They are charged with representing the
5 public. They are carrying out the political
6 duty that they have. So that's where the
7 public pressure will come in.

8 MR. JOHNSTONE: Yes and no. I'm sorry.
9 Again, I think the Department views their role
10 as the public at large, not at the town level
11 necessarily, but I think that's how they view
12 it and it's a meaningful role. It is
13 important since we have an energy system that
14 the public at large is represented and that's
15 a role that they play, but it's different than
16 some of the different levels of public.

17 COMMISSIONER MARKOWITZ: Back to this
18 idea of public good. There is sometimes a
19 public good which is different than what the
20 local interest might be. So it's important to
21 keep the Public Service Department's role in
22 thinking about what the general public good
23 is, and at the same time there's tremendous
24 value in having the local community's voice
25 heard in a meaningful way, and so that's --

1 MR. SULLIVAN: I think the Public
2 Service Department's role was probably
3 originally defined in the context of an
4 earlier age when you were dealing with a big
5 project that did affect the whole state, and
6 now we're dealing with lots and lots of
7 smaller projects that have more local impacts.

8 MS. MCGINNIS: I want to make sure I
9 understand where we come out basically on tier
10 two because I think that's the most
11 complicated one.

12 What I was hearing Scott say is that it
13 was -- maybe it went up too high. Part of the
14 reason that the intervenor funding was put in
15 there is that if you have something of a size
16 of Georgia Mountain and a town needs to have
17 an ability or a region needs to have an
18 ability, I understand that if they have
19 planned, then they have already gotten a lot
20 of the issues out of the way, but that they
21 may need to tap into something to deal with
22 the larger project.

23 I completely understand that on a 500
24 kilowatt project that probably won't be
25 necessary, but I need to understand what

1 you're coming -- if you are in agreement on
2 what we should do with the tier two, if it
3 makes sense to have it 500 kilowatts to 15
4 megawatts, or if you're thinking about
5 dividing it in half or bringing the top down
6 or I just want to be more specific.

7 MR. JOHNSTONE: I can live with it. It
8 feels a little high to me, but I would take
9 intervenor funding out of that personally
10 anyway.

11 MS. McCARREN: Me too, and maybe we
12 should just leave the 15 in and see what kind
13 of feedback we get.

14 MS. MCGINNIS: Okay.

15 MS. EASTMAN: And can I say too and I'm
16 sorry, Linda, maybe -- see and I was in on
17 some conversation about this and Scott and I
18 had the same concerns about, you know, when
19 you're proposing something which I do like
20 theoretically of, okay, moves up or down
21 depending upon a checklist of oh it's in
22 conformance with the regional plan, it's in
23 conformance with the local, whatever. It
24 moves down it doesn't have so much review
25 because everybody has said yes, but the

1 problem is for me of course is every time you
2 have a decision point that means it's a time
3 for decision point, which means argument and
4 potential then appeal and even slowing things
5 down more, and so I don't know.

6 MS. MCGINNIS: I'm trying to think. I
7 see that point, but I'm also trying to get at
8 the incentive discussion you were having
9 earlier and how to reflect that in here.

10 The way the incentives were reflected
11 was in that second bullet, the proposed
12 screening criteria. This is where you say
13 consistency with regional plans. Community
14 led projects. You're incenting them to move
15 down to tier one or down to tier two if they
16 are in conformance with what communities want.
17 So that's how we were trying to sort of shape
18 the way too incent things that you want to
19 have happen. So I'm just trying to figure out
20 if we don't go with the screening criteria.

21 MR. JOHNSTONE: I think you need a
22 bucket list next to it. I don't think you
23 necessarily need -- I think the tiers ought to
24 stand as the process, and then the question is
25 what are we doing to encourage the type of

1 outcomes, which I think we've all said are
2 kind of community supported initiatives, and
3 what does that look like, and I don't know
4 what they are all are, but it could be
5 everything from either a differential, what
6 did you call it, excise fee, it's not a
7 franchise fee, gross receipts. To get that
8 behavior.

9 It could be obvious support through the
10 RPC. I even thought, because I've struggled
11 with the intervenor thing myself, the biggest
12 reason I wanted to find a way to support
13 intervenor is for all these small towns that
14 don't have any dollars to even know what's
15 going on with the project, what if part of the
16 bucket list is hey community projects you're
17 going to have a town supporting you and on the
18 other side the Board can decide to use bill
19 back in ways deemed appropriate because you
20 stuffed it down the town's throat and the cost
21 of the town to play is actually part of the
22 project cost.

23 MS. EASTMAN: Which is what Annette
24 proposed to us. You either have, you know --
25 and what we did here is a process.

1 MR. JOHNSTONE: Which is to get the
2 community style you would say hey in that path
3 there's no intervenor funding, there is no
4 intervenor funding, but on the other side
5 whether it's in whole or in match or what the
6 formula is some piece of a town's cost for a
7 developer that just isn't working with the
8 town and is working through a town.

9 MS. McCARREN: If I were to support
10 intervenor funding, it would be to give it to
11 a town because that's consistent with my town
12 centered view of the world.

13 MR. JOHNSTONE: And I wouldn't call it
14 intervenor funding that way because I feel
15 it's not necessarily intervenor.

16 MS. MCGINNIS: It's the preapplication
17 phase.

18 MS. EASTMAN: That also is bothering me,
19 the preapplication phase. Intervenor funding
20 for the preapplication phase is bothering me.

21 MS. MCGINNIS: Basically what they are
22 talking about it's that concern that was being
23 brought up by towns that when we're being
24 thrown this notice that we don't have any time
25 to put anything in place. We need some

1 resource to help us to be able to react.

2 MS. EASTMAN: That's not how this reads
3 to me. I mean this reads that you're giving
4 them money for prior to the application and
5 here I thought we were talking about --

6 MS. MCGINNIS: It is prior to the
7 application and that's what it is. It's prior
8 to the application. This is what they were
9 asking and this is what I thought I heard you
10 guys talking about.

11 MS. EASTMAN: No, because I thought we
12 were giving them more notice. We're trying to
13 give more notice to towns. Longer notice.

14 MR. COSTER: I think the idea is if
15 there's going to be this public engagement
16 process of 150 days for --

17 MS. EASTMAN: We're not there yet.
18 That's tier three. We're on tier two.

19 MR. JOHNSTONE: So --

20 MR. COSTER: That's where that money
21 could come in handy if they have to engage.

22 MS. EASTMAN: Well I think tier three
23 what we're talking about is requiring a public
24 engagement process that is managed by the
25 Department that does, you know, the town's

1 involved and everything, but they are managing
2 it and then people get to play.

3 COMMISSIONER MARKOWITZ: Can I get back
4 to --

5 MS. EASTMAN: You're participating.
6 There's a public engagement process, an extra
7 public engagement process and --

8 COMMISSIONER MARKOWITZ: Can I bring
9 this back to a couple of issues that I have
10 heard that it would be great if we had
11 decision points on just so we can move because
12 I heard -- I've heard over time some consensus
13 about the idea of intervenor funding, and it
14 seems to me the consensus is that if there's
15 funding it's for municipalities, RPCs, and if
16 that's the consensus, then I agree it makes
17 sense to change the name from intervenor
18 funding to municipal and regional support or
19 something else because the intervenor funding
20 concept is really quite broader than that.
21 Then we moderate expectation the --

22 MS. McCARREN: I would put it this way.
23 If we are going to vest towns and regional
24 planning commissions with a lot of decision
25 making and important work, they have to be

1 resourced and I support that.

2 MS. EASTMAN: But that goes back to the
3 first thing.

4 COMMISSIONER MARKOWITZ: This isn't
5 planning. This is playing.

6 MS. EASTMAN: So I agree they have got
7 to be resourced to do planning and what's
8 before us, and I don't know exactly how the
9 tiers work and I know I'm not going -- but the
10 tiers -- we had three tiers proposed and in
11 one tier, the highest tier, meaning the bigger
12 projects, we were proposing an even -- an
13 additional public engagement process that
14 happens 150 days prior to even an application
15 being filed so that something can go on in
16 that community or in the region around that
17 project that people, concerned citizens, can
18 participate in.

19 COMMISSIONER MARKOWITZ: So can I then
20 -- in terms of the tiers I think that when we
21 do this we should be doing it from what we
22 think makes sense as opposed to thinking about
23 a particular project here or there, and so
24 having three tiers that are based on size I
25 believe is an appropriate threshold, and I

1 just want to come back to the question about
2 the moving up and down with the threshold. I
3 actually think I'm for that because that's the
4 way we incentivise community based projects,
5 and I'm not concerned about the extra time
6 because the applicant can always choose not to
7 appeal.

8 You see the intervenors, the neighbors,
9 the town are always going to want more
10 process, and at some point there will be this
11 cost benefit that the applicant will say okay
12 will it be faster for me to fight it and get
13 the lower process or faster for me to just say
14 okay we'll do the more robust process. So
15 either way it's sort of a win.

16 MS. EASTMAN: Well that was -- the
17 effort was to incent people, you know, to do
18 things so you can have a much faster process.

19 MS. MCGINNIS: Tier one is the only
20 non-contested process. It's important to
21 notice the difference between tier one and
22 tier two and tier three.

23 Tier one is an application form. It's
24 very simple, and so what we're trying to get
25 at is if you have a community based project,

1 let's say a two megawatt something, and the
2 community supports it and everybody is in
3 agreement, why not allow them to go through
4 the application process, right?

5 COMMISSIONER MARKOWITZ: Right.

6 MS. MCGINNIS: A non-contested process,
7 allow them that possibility, that incentive to
8 go there.

9 MS. EASTMAN: And can I say for Louise,
10 and you see I would put in here in that case
11 that it would be in conformance with the local
12 plan as well, and it gets to go down to the
13 application point because that's not a win.
14 That's an -- if the town -- if the town has
15 said that this is where we want it, if the
16 town has said put it here, okay, so for me it
17 was -- I mean I can see incenting something in
18 there just for how it gets reviewed. If the
19 town doesn't want it, then we got to give an
20 opportunity for the town to fight about it.

21 COMMISSIONER MARKOWITZ: This is how we
22 can incorporate some of Chuck's concerns about
23 agriculture projects. So if it conforms with
24 the accepted agricultural practices or
25 whatever they have set in standards, then it

1 gets to be here, but if it gets so big that
2 really it's taking lots of off-site manure --

3 MS. McCARREN: Your standard rooftop
4 solar is.

5 MS. MCGINNIS: The 2.2 megawatts was the
6 one we saw in South Burlington.

7 MR. BODETT: So about five acres.

8 MS. McCARREN: One of those trackers is,
9 what, 500 kilowatts?

10 MR. JOHNSTONE: I don't know.

11 MR. SULLIVAN: One of those trackers is
12 probably 20, 25 of those.

13 MR. JOHNSTONE: Reasonable sized
14 project. So I don't think we're saying
15 anything all that different, Deb. For me what
16 I'm trying to figure out --

17 COMMISSIONER MARKOWITZ: I was trying to
18 say what you were saying but differently.

19 MS. McCARREN: If we say it enough
20 different ways --

21 MR. JOHNSTONE: Rather than move between
22 the tiers what I've been trying to figure out
23 is how do you create clarity of which tier
24 you're in so you don't have to fight about the
25 tier but create slider bars within the tier.

1 So it may be that -- because I keep
2 thinking if we define exactly what a community
3 project is and therefore everything else is
4 not, then in tier two it could be that it's up
5 to 15 for a community project and it can be as
6 low as five.

7 MS. EASTMAN: So for me the problem with
8 that is -- that is how much time do we have to
9 go define a community project and what does
10 that do. There's so many things that I don't
11 know about, you know, and that I'm just not
12 that creative and I don't want to preclude
13 good things.

14 COMMISSIONER MARKOWITZ: But can't we
15 make recommendations here that get fleshed out
16 when it becomes legislation. So, you know, we
17 don't have all the time in the world.

18 MS. EASTMAN: Or, as I said, again I'm
19 not sure the tiers require legislative change.
20 I think this is rulemaking.

21 COMMISSIONER MARKOWITZ: That's right.
22 So we can ask the Department and the Board.

23 MS. EASTMAN: I think this is
24 rulemaking. So for everybody who says you
25 have to wait a whole long time I don't think

1 you necessarily do.

2 COMMISSIONER MARKOWITZ: It could be a
3 rulemaking. So the idea is that we can
4 provide some sidebars, but then suggest that
5 within those sidebars the Department -- the
6 Board as it's creating its own rules will
7 become more specific because they will know
8 their own precedent.

9 MR. JOHNSTONE: And the idea of the
10 sliders, just to further that a bit more, when
11 you start thinking if you incent or disincent,
12 if we ask the Board to figure out what is a
13 community project, it's everything from maybe
14 the slider is 45 days to 120 based on whether
15 you're a community project or not and the
16 decision time is four months to a year.

17 When you start talking opportunity costs
18 it's going to -- if meeting the community
19 standard is a significantly shorter time
20 because the inference is people are with you,
21 there's a real fiscal benefit to going into
22 even communities and you can start -- you can
23 think about how you create these incentives
24 throughout if we can figure out the slider
25 bars appropriately.

1 MS. MCGINNIS: Just so I can write
2 examples of a slider bar I want to make sure
3 I'm understanding what you're saying. Is
4 that, for example, in tier two we keep it at
5 500 kW to 50 megawatts, but within that we say
6 if you are a community project, a community
7 led project, and that has to be defined, then
8 you don't have to give 60 days notice. You
9 give much less, or it won't be six months
10 total it will be four months total.

11 MR. JOHNSTONE: You can even take longer
12 if you're not a community. It can expand
13 either way.

14 MS. MCGINNIS: I wanted to make sure I
15 was understanding the parameters of sliders.

16 MS. MCCARREN: I have a point here.
17 Putting time specific things on decisions has
18 sometimes back fired and it may not be a
19 really good idea. The Board has nine months
20 in which to make a rate decision, but there's
21 a provision that says if you don't make it in
22 nine months, right, and it's retroactive. So
23 there's a kind of an incentive thing in there.

24 I am not a big fan of those closed time
25 frames because I think they are going to cause

1 a lot of big problems. We talked about this
2 before. You could require a scheduling order
3 with a time specific conclusion date. I'm
4 concerned about it.

5 MS. EASTMAN: I understand and I'm with
6 you on that because I understand how easy it
7 is to just go the other way.

8 MS. McCARREN: How easy it is for an
9 applicant to basically finesse that and jam
10 the Board.

11 MS. EASTMAN: But how easy it is for
12 something else not to go on the applicant to
13 just have to -- for somebody to say well it's
14 just not complete or it's just not whatever.

15 Here's my concern and I don't know how
16 else to address it though. It is that I
17 really think that we have to hold people --
18 once there is a complete application and
19 people do all this stuff, then the bodies that
20 are making decisions; ANR, you know, the
21 Board, their feet should be held to the fire
22 too.

23 MS. McCARREN: I agree with that.

24 MS. EASTMAN: Because there's got to be
25 something here. Right now we're proposing

1 that there's more notice to communities, more
2 opportunity to play. Well then there's got to
3 be -- once we're then in it there's got to be
4 okay let's move this along everybody.

5 We're also trying to get fewer things to
6 be complicated for them to move along. So in
7 effect a cause, you know, they have less --
8 fewer complicated matters that require fully
9 to save some time.

10 MS. MCGINNIS: And just in terms of part
11 of the charge is we're to look at other states
12 and every other state has timelines for that,
13 and in part, it doesn't mean they're right,
14 but in talking with them, which we spent hours
15 and hours talking with them, they did find it
16 was helpful, and they said there are many
17 times you do extend and -- but you have to
18 show really good reason to extend and it keeps
19 everybody sort of aware.

20 MR. COSTER: Can I just interject? All
21 those other states are dealing with much
22 larger projects.

23 MS. MCGINNIS: We're only talking about
24 the tier three.

25 MR. COSTER: Still many of those are

1 lower than what we deal with right now. How
2 it works all the parties negotiate a schedule
3 before the Board, and I think what we heard
4 even from applicants was that it wasn't
5 necessarily the end time it was the beginning
6 phase of getting off the ground.

7 MS. EASTMAN: I have heard consistently
8 from applicants that we have to hold
9 everybody's feet to the fire and that
10 currently the process isn't -- it's like that
11 is an issue of -- I have heard clearly about
12 public participation and trying to put more
13 time, more opportunities in for that, but on
14 the other hand I also want to assess okay but
15 once you have anything now let's at least get
16 it done and not let it languish.

17 So if you can do that, and I don't
18 disagree you can potentially do that with a
19 scheduling order, but again my concern about
20 that is -- and maybe it isn't, but it's the
21 transparency of the process. It's letting
22 people know there's some expectations.

23 MS. McCARREN: We can do a scheduling
24 order.

25 MS. EASTMAN: But then the scheduling

1 order is done by all the parties and we're
2 going to have lots of people out there who are
3 interested in the project who aren't parties.

4 MS. McCARREN: Scheduling orders don't
5 have to be done by parties. A lot of times
6 there's a scheduling hearing, right, listen to
7 everybody and then the hearing examiner or the
8 Board issues a scheduling order. I don't have
9 any really terrible -- I'm sorry. I'm not
10 totally offended by a time thing. I just
11 think it can have some unintended consequences
12 and there has to be an out of some kind.

13 MR. JOHNSTONE: Let me also add along
14 those lines I don't object to what's on the
15 paper here necessarily. My curiosity was
16 could we actually -- if we thought harder
17 about it with this idea of sliders, could we
18 actually build more incentives in to get the
19 behavior we want. The projects we want, if we
20 figured out a different way to address it, but
21 if it's too complicated and we end up right
22 where we are, there's nothing in this
23 inherently other than some of the intervenor
24 stuff that I just can't live with. So I
25 didn't raise it to object to this.

1 MS. EASTMAN: I want to try to get
2 through everything on here in the next 55
3 minutes.

4 MR. BODETT: Can I just make one more
5 point? We kind of moved off the intervenor
6 funding thing, but we were talking earlier
7 about having -- if the RPCs do the planning,
8 have them have party status. That if the
9 intervenor funding, or whatever we have to
10 call that, was only available through the
11 regional planning commissions, then it would
12 incentivise the towns to work with the
13 planning commissions and make their plans
14 agree, and so those kind of local fights, if
15 you will, wouldn't take place before the
16 Public Service Board. They would be worked
17 out in advance.

18 MS. MCGINNIS: So in this tier three I
19 just need to know if on that fourth bullet,
20 provide intervenor funding, and we may call it
21 something else then, provide regional support
22 funding for the preapplication phase, do you
23 want to keep that or do you not want to keep
24 that? And then bill back for the application
25 phase for whatever their role may need to be,

1 if they have to come and testify and all that
2 kind of thing.

3 MS. EASTMAN: Here's my concern with how
4 we have this. For tier three we really are
5 talking about an additional public process
6 that starts 150 days before.

7 MS. MCGINNIS: Before the 90 days.

8 MS. EASTMAN: That's way out. So that
9 means -- but this is what mostly people are
10 doing. This is why I was asking when I went
11 to places what are you actually doing when
12 you're doing a project, and some of them say
13 we are already talking to communities.

14 So what this would be, would be a
15 community led facilitator process in effect
16 led by somebody retained by the Department of
17 Public Service as currently proposed. So I
18 don't know that's preapplication. I don't
19 know what then funding is needed
20 preapplication. People will -- the funding is
21 going in effect to the Department to pay for
22 that process, and then I do get into the --
23 afterwards if out of that you come up with --
24 and there are legitimate -- I guess I'm
25 wondering if there are legitimate issues where

1 -- that come out of all that that are
2 unresolved and a town is still unhappy and
3 wants to participate in the actual
4 application, I may think then is it right to
5 provide them with some financial resources to
6 actually play in the actual process.

7 MS. SYMINGTON: A single town.

8 MS. EASTMAN: I'm not there. I think
9 the region needs potentially -- yeah, the
10 region, both plans, but it has to play. So
11 the region is going to need support to
12 actually participate. They are going to be --
13 they are a party to the process and there is
14 work involved with that because a lot of
15 things happen with negotiating memorandums and
16 whatever. So there's work in that. So they
17 are going to need to be resourced for that.

18 MS. MCGINNIS: That was the bill back
19 for the application fees. That's what I was
20 talking about here, and I just want to make
21 sure you guys are -- because I'm not sure what
22 you would like to have. I want to make sure
23 you're okay with either one or the other.

24 MS. EASTMAN: I guess I think this is
25 really confusing and we're going to have to be

1 more precise as to what we mean preapplication
2 versus application. To me I don't know what's
3 happening preapplication. I think we're going
4 to have to spell it out if we get to this
5 point and say we want the RPCs to be resourced
6 to participate in the actual case, but also to
7 be resourced in any process that's going on
8 with ANR relative to memorandums or whatever,
9 and some of those things are going to be
10 preapplication and some of those are going to
11 be post application.

12 MS. McCARREN: I need to noodle this
13 quite a bit. I'm not sure I actually get it
14 or can sign off on it just yet.

15 MS. MCGINNIS: Let me explain what I
16 meant by it so you can be clear. At least
17 what I meant from what I had heard from ANR
18 and what I heard in your discussions is that
19 in the preapplication phase, particularly on
20 the larger projects, and I was hearing it from
21 Chris and Jim as well, that there are a number
22 of things that a Regional Planning Commission
23 in negotiating with a developer needs to be
24 prepared to confront the developer with or to
25 argue against the developer in the

1 preapplication phase. There are studies that
2 are being done. There are things that are
3 being said. The towns are saying wait. So
4 it's a way to fund them on a -- it's not a
5 huge amount that's being proposed right there,
6 350 per megawatt is not all that much, right?

7 MR. JOHNSTONE: Not worth the effort.

8 MS. MCGINNIS: It was just put out there
9 as a potential. We could go up or down on
10 that, but it's to try to respond to that need
11 in the preapplication phase at least that we
12 we're hearing of work that needs to be done
13 prior to actually getting the application into
14 the process. Once it's in the process, then
15 they have to pay to play and that's sort of
16 they have to provide the testimony and all
17 that kind of thing.

18 So that's a separate one and that's the
19 bill back for the application phase. That's
20 what I was trying to get at, and it may be you
21 don't believe they need anything.

22 MS. EASTMAN: The other thing bill back
23 is currently used, I believe, mainly for
24 experts. It's not used to cover attorneys and
25 so forth and so on. So it wouldn't be bill

1 back anyway if you thought that you -- I just
2 got -- or we have to expand or suggest they
3 expand bill back.

4 MS. MCGINNIS: Well the few times the
5 regional planning commissions have tried for
6 bill back they have been refused more than
7 they have been accepted.

8 MS. EASTMAN: They have been refused to
9 cover their own time which I disagree to the
10 decision relative to what happened the last
11 time but I won't go there, but you -- they may
12 have had bill back for experts in certain
13 cases, but it's their own time and it's an
14 attorney their own time. They are not going
15 to get -- and an attorney potentially they are
16 not going to get. I mean a bill back is
17 usually used for experts.

18 MS. MCCARREN: Can I reserve on this
19 one? I would like to think it through.

20 MS. MCGINNIS: Sure and I can send you,
21 if you want, I drafted two case studies on
22 what New York does that clarifies how they
23 have separated it out from the preapplication
24 and the intervenor. So I can send you that
25 too.

1 MS. McCARREN: I want to make one
2 nitpick too. You had a PSB hearing in the
3 host town. Traditionally PSB has its
4 technical hearings in Montpelier, but it
5 always holds public hearings.

6 MS. EASTMAN: And what some people
7 believe that at least one technical hearing or
8 something ought to be held in the town where
9 people can get access to what it is, and I
10 don't know, but I think that's the issue here.
11 It's like Act 250, right? The Environmental
12 Board has its hearings not necessarily in the
13 town, and so I guess I wouldn't say that a
14 technical hearing, depending upon the size of
15 the town there might not be place for a
16 technical hearing, but --

17 MS. MCGINNIS: Public Service Board
18 holds a technical hearing in a host town if a
19 place is available.

20 MS. EASTMAN: I think there was an
21 effort here. Yes, the public hearings are out
22 there, but the technical hearings are always
23 here in Montpelier.

24 MS. McCARREN: Not always, but generally
25 speaking you would have -- you might have one

1 or two technical hearings in a town, but
2 because of all the resources are here you
3 would want -- your staff is here, et cetera,
4 most technical hearings are held here in
5 Montpelier.

6 MS. MCGINNIS: I guess we had heard from
7 several sources that they would like to have
8 to ensure that at least one of the technical
9 hearings would be in the town, the host town.

10 MS. EASTMAN: And I don't know. I guess
11 for me if we do all of these -- if we do some
12 of these other things and if there's the
13 docket where people can see what's going on,
14 again I'm less concerned about that, about
15 having a technical hearing out in the town.
16 Just for me it's how the package ends up, and
17 if we get enough transparency, normally people
18 can understand what's going on.

19 MS. GRACE: Well I guess just to the
20 extent this is helpful in Massachusetts when
21 we used to have our public hearing, which was
22 really the first hearings that would be held
23 in the town, but the developer or the
24 Petitioner would give a lot more detail than
25 they tend to do right now, but as far as the

1 technical hearing is concerned at that point
2 in time, as Louise said, you have the Board
3 sits here, the staff sits here, the Department
4 sits here, ANR is here, the parties are just
5 the only people that would be coming, and I
6 think JoAnn agrees.

7 MS. McCARREN: We are all veterans of
8 ending public hearings in places three hours
9 from home too many nights in a row.

10 MS. EASTMAN: Maybe we don't have to
11 have anything in here, but I want to go back
12 to your days when I was there and I was a
13 little girl working at Downs Rachlin doing
14 cable cases, and remember back then when it
15 was before Hearing Officer -- Hearing Officers
16 on small cases frequently were out in the
17 local area.

18 So I guess the thing here is that on
19 these big cases and they are complicated, tons
20 of staff that you would have to put out there
21 without resources, whereas, counterintuitively
22 it's the small ones that it's easier when it's
23 a Hearing Officer out on the road and that's
24 the way it actually happened.

25 MS. MCGINNIS: So we take it off.

1 MS. McCARREN: I think the Board is
2 pretty receptive --

3 MS. MCGINNIS: Tier three bullet two.

4 MS. McCARREN: I think the Board is also
5 pretty receptive to requests to have hearings
6 in communities.

7 MR. JOHNSTONE: I also think there's a
8 language problem with the way the Board frames
9 what the meeting is. I think part of the
10 challenge that we have heard about from the
11 public is it comes out of the language because
12 when you say it's a hearing, then the public
13 rightfully shows up assuming that a hearing
14 means that it's on the record and it's going
15 to matter, and I'm not suggesting that I
16 actually think -- I don't think the public
17 wants to get cross examined. I think they
18 want to be able to say what's on their mind.
19 I may be wrong about that.

20 So I don't think they really want and
21 intend to subject themselves to be on the
22 record in the way on the record means, but I
23 think that means it's not a hearing. I think
24 it's an input session, and if you were just
25 more intellectually honest what it is and what

1 it isn't, I'm not suggesting that will make
2 everything be happy and rosy, but it will at
3 least be more apparent what the meeting is.

4 MS. EASTMAN: And, again, if we go with
5 a proposal that there is some sort of -- on
6 bigger projects that an additional public
7 process, that the DPS hired somebody to
8 facilitate, this may -- again you get more
9 information earlier, they might have some
10 ability to influence, no we want it to go here
11 or can you paint it blue instead of black.

12 MR. JOHNSTONE: I'm with you.

13 MS. EASTMAN: Okay. Enough on that.
14 And we have already talked -- on the next page
15 we have the case manager issue. We talked
16 about that earlier, and then we have this idea
17 of a filing fee or --

18 MS. McCARREN: I want to reserve on that
19 one because I have to think that through.

20 MR. JOHNSTONE: I am cognizant too on
21 the filing fee, I think it was REV that raised
22 so you can only be so many fees coming from so
23 many directions before things don't work. In
24 part I don't agree with them because these
25 projects are a hundred million dollar projects

1 often. So in part doth protest too much, and
2 in part there's something about simplicity.
3 If we decided to go with a franchise fee or
4 whatever we have to call it, then some of
5 these others don't all have to be in play.

6 So there's a bit of solving the puzzle
7 in an elegant way, but I also don't think
8 there has to be one. So I think there's some
9 art in the middle there that I think we've got
10 to find.

11 MS. EASTMAN: And I think for me
12 thinking about what we're -- what I think
13 should be covered, I think we're asking for,
14 and maybe it's three things we're asking for,
15 to me I think you do need -- you need some way
16 to support all the planning and all of those
17 issues, and I think that's got to be somehow
18 an annual fee because that's not done project
19 by project. I think then at least for those
20 merchant plants that aren't paying a two and a
21 half percent tax to support the current
22 Department and Board.

23 MR. JOHNSTONE: Even if they are paying
24 for education.

25 MS. EASTMAN: Even if they are paying

1 for education. I think they should pay for
2 this. Then there may be bill back things, at
3 least that there will be special things
4 case-by-case. So I can see it running in like
5 those three kinds of ways.

6 MR. JOHNSTONE: I agree.

7 MS. EASTMAN: But --

8 MR. JOHNSTONE: I get the death by a
9 thousand cuts.

10 MS. MCGINNIS: And then they will also
11 bring up there's a monitoring -- the
12 decommissioning fund that they have to do too.
13 So it's just to make sure --

14 MS. EASTMAN: And to me that is the
15 price of doing business and you're never going
16 to get me to disagree to think that they are
17 not going to pay for a decommissioning.

18 MS. MCCARREN: Excuse me. If you're
19 getting 33 cents a kilowatthour in the SPEED
20 program, you're probably just fine. Thank
21 you.

22 MR. JOHNSTONE: Exactly. Projects are
23 big enough and there's enough money in them
24 that frankly with this new world order of all
25 these projects that now are falling all over

1 us part of what's we're grappling with there
2 haven't been the resources to corral it, but
3 there's plenty of money being paid on the
4 other side.

5 MS. McCARREN: When I can sell my REC
6 for 54 dollars a kw -- megawatt. Sorry.

7 MS. EASTMAN: Do you agree there ought
8 to be -- I don't know how much -- I'm taking
9 from what we said earlier thinking about what
10 are the additional costs. To me right now --
11 so far right now we've talked about the
12 process of what the regional planning
13 commissions might have to do. We're talking
14 about in tier one there's a potential public
15 engagement process, and we're talking so far,
16 I only have one staff person, a potential case
17 manager except new staff person, but I'm
18 talking about a merchant plant that isn't
19 currently paying anything to support the staff
20 that are -- distribution utilities are, that
21 they should be treated the same as the
22 distribution utility so far I think we've
23 said. So I don't think so far we've gone
24 totally nuts yet.

25 MR. SULLIVAN: When you're talking about

1 the revenue side of it and what the developer
2 is reaping from these things, you also have to
3 remember the nature of these facilities. Like
4 I look at a couple of solar projects in our
5 region and you look at the actual output of
6 these things and they look like this. Right.
7 They are generating revenue from May through
8 September basically. The rest of the year is
9 minimal.

10 MS. McCARREN: They are getting
11 production tax credits and they have sold the
12 RECs.

13 MR. SULLIVAN: They are getting that end
14 of it. Absolutely. Yeah.

15 MS. EASTMAN: We've got 41 minutes. Not
16 that I'm counting. Okay. So under some of
17 these things we talked about this morning, RPC
18 and town energy mapping we talked about.

19 MS. MCGINNIS: Basically just so you
20 understand why I did four and five this way,
21 as Louise said earlier, the two main things I
22 think we are really trying to focus on is
23 (one) increased public participation where we
24 really need it, and, (two), increased
25 efficiency in the siting process. So that's

1 what basically four is trying to summarize,
2 all of the things we're doing that will
3 contribute to increasing the role for public
4 participation, and five is trying to summarize
5 all the things we're trying to do to increase
6 transparency and efficiency, and some of those
7 cross over, but it was just to make sure we're
8 saying specifically how we're trying to
9 address those two things.

10 MS. EASTMAN: So for me under 4A it's
11 just we were only going to do automatic party
12 status for RPCs around siting issues just to
13 clarify.

14 MS. McCARREN: I would go with towns I
15 tell you because it's not determinative and
16 the Board -- I would be stunned if the Board
17 turned down a town.

18 MS. EASTMAN: This is why I would leave
19 it that the town could request it because I'm
20 really concerned that there's sometimes when
21 the Board really wants everybody to play, and
22 I think it could be overwhelming for a town
23 that actually didn't want to. I'm not saying
24 that a town --

25 MS. McCARREN: The fact that you get

1 automatic party status doesn't mean you have
2 to play at all. It just means you cannot be
3 challenged on getting party status.

4 MS. GRACE: I was just saying it doesn't
5 -- I was agreeing. ANR has to be involved
6 because of the language of the statute for
7 ANR, but as far as other --

8 MS. EASTMAN: Let's think about this,
9 but let's be very careful how we draft that
10 language because I'm actually on the town side
11 about this concerned about burdening a
12 community that does not wish to be burdened
13 and doesn't need to be.

14 MS. McCARREN: What I had in mind is
15 that your -- you have the right to have party
16 status in a proceeding if you choose.

17 MS. SYMINGTON: I feel this is bogging
18 the system down.

19 MS. EASTMAN: They get intervenor status
20 easily right now.

21 MS. SYMINGTON: What's the problem?

22 MS. GRACE: I don't necessarily think
23 there is a problem. I think they do get
24 intervenor status very easily. All I was just
25 going to add is at FERC, for example, we can

1 do a notice of intervention as the Department
2 as opposed to other folks who have to do a
3 motion to intervene. So that's just -- I
4 throw that out as a compromise if you want to
5 think about that.

6 MS. McCARREN: What it means is that the
7 Board doesn't have to rule on the request to
8 intervene.

9 COMMISSIONER MARKOWITZ: So there's a
10 right to intervene in there. Just taking
11 advantage of that right.

12 MS. MCGINNIS: So automatic formal party
13 status for regional planning commissions and
14 right to intervene for towns.

15 MS. EASTMAN: I'm not there yet. I'm
16 not there yet. I'm not sure we need to say
17 that. I think we're fine on this actually.
18 It's what happens when they get there, and for
19 me just saying they have that right and not
20 giving them any capacity to do it doesn't help
21 anything. Be brief because I really --

22 MR. FIELD: Just recent experience, and
23 of course this is 246/248, we were granted
24 under certain parameters by the Public Service
25 Board to be an intervenor, our town, but we

1 had to fight for it because the developer
2 argued against it. So for one reason or
3 another, but it took several legal documents
4 to get there. We did get there, but I agree
5 that you can participate at different levels.

6 I mean at the lowest level it's
7 receiving all the orders which I think has a
8 lot of value itself just a town being able --
9 being on the distribution list. Even if they
10 are not lining up experts or attorneys to
11 argue, they are being directly informed and
12 have the context within that docket.

13 MS. EASTMAN: Okay. I look at this and
14 I think we talked about everything this
15 morning except down to G.

16 MR. JOHNSTONE: Did we have any
17 testimony that this really would work?

18 MS. EASTMAN: Or that we need it or we
19 can't currently order it? I don't know why
20 we're doing this one. Mediation and
21 settlement judge. Did we mean to add that in
22 here?

23 MS. GRACE: Well I think staff actually
24 did have a more recent conversation about
25 this, and you know sometimes I think it would

1 be helpful, but the majority of the time,
2 especially in cases where ANR and the
3 Department are involved, we actually are able
4 to do that on our own.

5 MS. EASTMAN: So were you suggesting
6 that you think you want -- do you think there
7 needs to be specific authority for the Board
8 to order mediation?

9 MS. MCGINNIS: The way New York defines
10 it is that make sure that all issues that
11 really aren't a big deal are mediated and
12 figured out before you come to us so you don't
13 waste our time. Basically that was New York's
14 way.

15 MS. MCCARREN: From my experience having
16 been on the receiving end of settlement judge
17 requirements at FERC and when I was doing a
18 lot of work in New York, they don't save any
19 time. They shift it off from the commission,
20 but the issue, the fundamental issue is really
21 a good one which is how do you clear the
22 underbrush of issues that are not really
23 contested.

24 MS. EASTMAN: So you're really only
25 having hearings about contested issues.

1 MS. GRACE: It's hard to know. If a
2 good Petitioner is doing his due diligence,
3 he's going to be attempting to do all that,
4 and if it's gotten to the point --

5 MS. EASTMAN: I'm wondering. So the
6 issue for me is because I'm always -- I would
7 be a proponent of having a reference to
8 mediation, not necessarily to a settlement
9 judge, but to reference to mediation, to have
10 the Board to have the authority, if they
11 didn't already have it, and if you think they
12 need specific authority, Sheila, maybe this is
13 what I want you to look at, because did we not
14 -- a number of years ago did we -- did the
15 Legislature specifically put mediation into
16 Act 250?

17 MS. McCARREN: How can you order people
18 to mediate?

19 MS. EASTMAN: Well if people aren't even
20 talking to each other, you can make them
21 angry. Judges do it all the time.

22 COMMISSIONER MARKOWITZ: They do that in
23 family court and it may not work, but they
24 have to try.

25 MS. GRACE: In Massachusetts and as far

1 as water cases are concerned the Department
2 does have like actually a settlement judge
3 that actually goes off and attempts to settle,
4 and they find it very effective. They do this
5 China walled off because it's hard as a staff.
6 We're talking this back and forth. We weren't
7 really convinced that in the majority of cases
8 it was necessary, but maybe we want to think
9 of something like giving them -- the Board the
10 ability to do that and maybe people can
11 request it.

12 MS. McCARREN: I can remember when I was
13 Chair of the Public Service Board more than
14 once saying to -- in a hearing room look I'm
15 leaving now and you guys need to work through
16 this and I'm going to come back in two hours
17 or something, but I don't know if that helps.

18 MS. GRACE: I think it's interesting too
19 when I was a Hearing Officer in Massachusetts
20 I would say that you guys need to talk about
21 this, and New Hampshire certainly said they
22 would do something. What happens if you put a
23 fence up here? Wouldn't that make that
24 better?

25 MS. EASTMAN: This is what I did when I

1 was Executive Officer of the Environmental
2 Board of Act 250 cases. Prehearing
3 conferences were what are the real issues here
4 and it was serious. I said no we're only
5 going to talk about the things that actually
6 require testimony before the Board, and I
7 would say I'm going to have the Board send it
8 back to the District Commission if you can't
9 agree or come back. We massaged it a lot.

10 MS. GRACE: But this might be cultural
11 again. This Public Service Board seems to
12 take their position as being kind of a
13 judiciary very seriously and don't want to
14 step out of that role.

15 MS. EASTMAN: Judges do it all the time.

16 MS. GRACE: I agree, but I think for
17 some reason or another --

18 MR. JOHNSTONE: I guess the other thing
19 for me it has struck me that early on in these
20 processes not all the public participants feel
21 like they get far enough. Projects do change.
22 You see that happen. By the time we get to
23 where you would use a mediator what I think
24 I've experienced by learning about the cases
25 that have come -- that we have heard a lot

1 about here the parties are pretty galvanized
2 and the developer isn't moving any more and
3 the public isn't moving any more, and so
4 what's the purpose of mediation at that point.

5 MS. GRACE: That is what New York said
6 to us. New York has this in place and they
7 said their staff claims they don't think it's
8 very effective, and I have always been a fan
9 of arbitration and mediation.

10 MR. JOHNSTONE: I like it in theory, but
11 I don't see what it adds personally.

12 MS. EASTMAN: So I don't know. I don't
13 even know if we need an authorization and I'm
14 not --

15 MS. MCGINNIS: So take it out?

16 MS. EASTMAN: Yes unless Sheila comes
17 back and tells me she thinks we ought to
18 authorize it. Again, we're hoping these other
19 suggestions help move things along.

20 Then the last thing we talked a little
21 bit about intervenor funder bill back. We
22 haven't come to terms yet, but we've talked
23 about it.

24 So the next one the transparency issues.
25 Again --

1 MS. MCGINNIS: Number five.

2 MS. EASTMAN: Again, the case manager we
3 talked about above.

4 MS. MCCARREN: I support that idea.

5 MS. EASTMAN: And the guidelines and
6 checklists we talked about doing that. Here's
7 the thing. You said establish statutory
8 timelines if consequence is not met. We had
9 some push back on timelines and we didn't even
10 talk about them being statutory last time.

11 MS. MCCARREN: I want to think about
12 this a little bit, but I'm wondering if maybe
13 the compromise here is that the Board creates
14 rules with respect to timelines. Leave it up
15 to the Board to do that. Require that they
16 just made it up. Sorry.

17 MS. EASTMAN: I actually think the tier,
18 again, as I say I think the tier work can be
19 done by rule. 248(j) is a statutory --

20 MS. GRACE: It is.

21 MS. EASTMAN: But there's nothing --

22 MR. JOHNSTONE: Statutes, can you think
23 about that, if this thing is a rulemaking or a
24 statutory issue?

25 MS. EASTMAN: I just think about how

1 much the Board does by rule relative to how
2 they operate because I don't know the answer
3 to that.

4 MS. MCGINNIS: And this is not just for
5 the Board. It's also for ANR.

6 MS. EASTMAN: Right.

7 MR. JOHNSTONE: Didn't we get rid of F.

8 MS. MCGINNIS: Yes. If contemporaneous
9 permitting, then consolidate ANR appeals.

10 MR. JOHNSTONE: We said earlier that
11 doesn't work.

12 MS. EASTMAN: Here's the thing. We
13 wouldn't statutorily consolidate them. It's
14 just by chance if you know three ANR permits
15 are there at one time, the Board could
16 consolidate them just as a matter of practice,
17 and so I don't think you change anything.

18 MR. JOHNSTONE: But earlier -- so I saw
19 this linked to D because we're using the same
20 words, and I thought this F was about the ANR
21 permits and the CPG permit and they go
22 different places, and we said earlier don't
23 think that works.

24 MS. EASTMAN: What we said is right.
25 What we said is because -- because --

1 COMMISSIONER MARKOWITZ: Then we ended
2 up being okay with it.

3 MS. EASTMAN: You weren't okay with one
4 appeal because it would be to the Supremes and
5 you don't have on the record ability yet.

6 COMMISSIONER MARKOWITZ: That's right.

7 MS. EASTMAN: It's not one appeal.

8 MS. MCGINNIS: No. I know we're not at
9 one appeal and replaced it with consolidating
10 ANR appeals where possible.

11 MS. EASTMAN: That's just going to be
12 advisory.

13 MS. MCGINNIS: That's not statutory.

14 MR. JOHNSTONE: That's not a very firm
15 recommendation.

16 MS. MCGINNIS: I'm happy to take it out.
17 I'm happy to take out any of them.

18 MS. EASTMAN: So that sort of does five,
19 after what we talked about this morning gives
20 us more.

21 MS. MCGINNIS: I see it basically all
22 the same except Sheila has to look at point C,
23 and I'm changing slightly the wording on F.
24 That's all I see different than what's
25 currently there. The contemporaneous

1 permitting it's basically that was the
2 concurrent permitting which I think we all
3 ended up agreeing on.

4 MS. EASTMAN: I guess it's language.
5 What I thought I was going to get from Billy
6 is here's what the timing might look like,
7 right, and yes we want -- we want -- you want
8 -- by the time the CPG application is filed
9 you want to know that everything else was
10 filed or in the works.

11 MR. COSTER: Right, E, but to me that's
12 not the same as contemporaneous.

13 MS. EASTMAN: Because some things may
14 have been filed earlier.

15 MR. COSTER: They may track separately.

16 MR. JOHNSTONE: And on E we cracked the
17 door beyond permits, but ANR has to come back
18 with language of definition.

19 MS. McCARREN: And I would put a period
20 after except because I'm not sure I know what,
21 and not reopen if the application's not
22 changed, I'm not sure I know what that means.

23 MR. JOHNSTONE: But minimally we opened
24 the door to go beyond permits this morning.

25 MS. McCARREN: With some discussion.

1 MS. EASTMAN: Here's the thing. We're
2 talking about due diligence. Somebody can
3 provide testimony that you screwed up
4 something horribly and now it's open.

5 MR. JOHNSTONE: Sure. Then it's been
6 rebutted if they are right. Of course --

7 MR. COSTER: That's fine.

8 MR. JOHNSTONE: It's not that their word
9 is the final word. If somebody finds out that
10 they said there's no fragmentation of the
11 forest and somebody comes in and shows
12 pictures that there is --

13 MS. McCARREN: Are we talking about
14 permits?

15 MS. EASTMAN: And the other things we
16 talked about. The things that they don't
17 currently have permits on, but if they come up
18 with guidance, take a position.

19 MR. JOHNSTONE: They were going to come
20 back with a definition of that. Remember they
21 said they would come back with the x, y, and
22 z.

23 MS. McCARREN: Okay.

24 MS. EASTMAN: So does that mean we can
25 move on to six? For me this is something we

1 talked about this morning, right? Billy, this
2 goes to a lot of the guidelines and we talked
3 about the health issue, you know, how do they
4 do this. I think they talked about that
5 briefly this morning.

6 MS. McCARREN: I really support this
7 idea of siting guidelines from the ANR. I
8 think this is -- really would go a long way.

9 MS. EASTMAN: So I said this morning,
10 under A and B this morning, and the kind of
11 conversation we had and the issues we thought
12 could be covered.

13 MR. COSTER: I just wanted to disclose
14 that I think our technical staff are very
15 interested in this. For some of these things
16 it's going to be really difficult to come up
17 with general guidance for projects that are so
18 granular. So we can look at this and we can
19 do our best, but we're not going to be able to
20 give you guidance for every possible project.

21 MS. MCGINNIS: But I think by
22 technology, you could come up with a couple of
23 things by technology that would provide
24 greater transparency.

25 MR. COSTER: Certainly.

1 MS. EASTMAN: As you learn they get
2 adjusted.

3 MR. JOHNSTONE: This one is evolution
4 not revolution. That's all.

5 COMMISSIONER MARKOWITZ: That's one of
6 the reasons why, when we're talking about
7 things, guidance as opposed to rules because
8 guidance allows us more flexibility and
9 adjustments as we learn more.

10 MS. EASTMAN: And then seven how I was
11 -- what I was saying to Linda I think, and
12 maybe this is what it said, but how I
13 envisioned what might happen is that the
14 monitoring and compliance issues, right,
15 either as part of the Board order in a
16 Certificate of Public Good, the Board's going
17 to order monitoring and compliance, and
18 hopefully as part of that process if a special
19 expert is required, then the parties agree to
20 who that might be, right, then the work will
21 be paid for by the person who has the CPG, but
22 it will be overseen by either ANR if that's
23 appropriate or the Department of Public
24 Service if that's appropriate.

25 Now if it comes up as part of a

1 memorandum of agreement over whatever you're
2 doing relative to these things, hopefully the
3 parties agree on one meaning. We want to be
4 sure that we protect that the consultant is
5 appropriate and a good one and hasn't screwed
6 up and is the best we can get, but the
7 applicant should be paying.

8 MR. JOHNSTONE: Totally agree.

9 PUBLIC MEMBER: So if there's monitoring
10 and they're supposed to comply, what happens
11 if they don't? What are the consequences and
12 shouldn't the developers know what the
13 consequence is going to be?

14 MS. McCARREN: Well they could be -- the
15 Board has the ability to require compliance.
16 That is they order them to comply, and if they
17 don't comply, they can fine them.

18 PUBLIC MEMBER: They can't like shut
19 them down?

20 COMMISSIONER MARKOWITZ: Well they have
21 a whole range already in their statute, tools
22 in their toolbox.

23 MS. EASTMAN: And the thing is some of
24 these things, as I may -- may be ANR issues
25 where they can have enforcement and fine or

1 shut down depending upon what it is. I mean
2 again we talked this morning about things
3 broader than what we currently have on seven.
4 We talked about things like blasting, and so I
5 think those things should be integrated if we
6 sort of came to consensus.

7 MR. JOHNSTONE: A good example, though,
8 when people are talking about the type of
9 public information, a lot of the public don't
10 know what the Board's capability is to both
11 enforce and then what the consequence is, and
12 so the public information about that is useful
13 so people have a way to know. I bet you that
14 realm of possibility is not on any web site.
15 It's buried in some statute or rule or
16 procedure and who would ever find that.

17 MS. EASTMAN: And hopefully even the
18 issue of thinking about all these issues that
19 really weren't assigned to any Agency like
20 noise or health or blasting, if we get those
21 things specified and assigned in every permit
22 so that people know where you go and somebody
23 is there --

24 PUBLIC MEMBER: When you talk about the
25 health review would there be a hearing on

1 that?

2 MS. EASTMAN: Well here's the thing. I
3 think this goes also two ways. The Department
4 of Health sent in some information and in the
5 first instance they have got to do -- they
6 probably need to do some work about figuring
7 out whether this might be peer reviewed stuff.
8 Of course as soon as it gets into a case, then
9 any issues they are going to provide testimony
10 on would be part of the hearing. Okay.

11 So I don't know what their process in
12 between would be, but we asked for them to
13 provide us what they thought they needed to
14 do.

15 PUBLIC MEMBER: I wondered if there
16 would be any public discourse on what the
17 standard would be.

18 MS. EASTMAN: What we're suggesting is
19 peer reviewed literature and coming up with
20 something to actually propose. I expect this
21 would be one of those things the first time
22 out that they actually had an issue and went
23 to a hearing you would get standards again set
24 via the actual decision.

25 MR. JOHNSTONE: I think that's right.

1 MS. EASTMAN: So that gets us to that.
2 We had one question about the Department of
3 Health, you know, review process, if that
4 would have any public process to it under 6A,
5 and I just said that I don't know if it would
6 in the first instance, but of course the first
7 time they are providing testimony in a case
8 that's certainly going to be subject to
9 hearing.

10 MS. MCGINNIS: I also think much along
11 the lines of what Deb described how ANR comes
12 up with guidelines that the Department of
13 Health first needs to do the homework and
14 that's a fair amount of work. They do the
15 homework. They come up with what they think
16 are reasonable guidelines. If at that stage
17 they may decide to have a public discussion
18 about what those guidelines are, which is how
19 at least I understood Deb, right, that you do
20 it with the ANR guidelines. So I would apply
21 the same standards to the Department of
22 Health.

23 MS. EASTMAN: In fact, I can see it
24 happening in one of two ways. It is the
25 Department of Health could actually propose

1 rulemaking before the Public Service Board to
2 say this is what we would like to have as the
3 standard and then that's a public process, or
4 they wait and they see the first case and it
5 comes in as part of a case and then it becomes
6 a standard set by decision, but at some point
7 it will have to be subject to that kind of
8 scrutiny.

9 PUBLIC MEMBER: We're using very old
10 studies.

11 MS. EASTMAN: So it's got to be subject
12 at some point, and you can do it in a couple
13 ways I think. Okay. But we think they ought
14 to do it.

15 So the last page for questions. Some of
16 these things I think we resolved.

17 MS. MCGINNIS: I do think on these three
18 main points that I put up at the top were ones
19 that had -- still had a lot of discussion
20 around them, and the RECs RPS one I need to
21 know if you as a commission want to have an
22 estimate on that because I think there was
23 general agreement, but I'm not sure to the
24 effect that the commission supports the notion
25 that we should be moving to a RPS to be more

1 accurate in what the statements are in terms
2 of what clean energy and emissions are
3 achieving.

4 MS. McCARREN: I think there's a huge
5 policy problem because, right, and I'm just
6 saying what everyone knows. You can sell your
7 RECs out of state to someone who is then
8 allowed to pollute. You are not getting the
9 greenhouse gas reductions that you think you
10 were, and I think -- I'm not sure we need to
11 say go to a RPS, but I think we need to unmask
12 that in a report and say that that creates
13 financial distortions that need to be
14 addressed or it undercuts policy.

15 COMMISSIONER MARKOWITZ: I'm comfortable
16 saying let's go for a RPS.

17 MS. EASTMAN: Supporting the Public
18 Service Board because that's their position.

19 COMMISSIONER MARKOWITZ: Yes, and
20 provide the context, though, as you described
21 it.

22 MS. McCARREN: I don't know if there's
23 another solution is what I'm thinking.

24 MS. SYMINGTON: This does not feel like
25 our purview. I feel very uncomfortable. I

1 think we should go to a RPS, but I'm just an
2 opinionated person who listens to the radio
3 and yells back at it. I don't feel just
4 because I sit on this commission and I've been
5 sort of next to this topic that I should -- as
6 part of the commission I'm in a position to
7 voice -- to give this recommendation. It
8 feels out of our purview. We didn't really
9 take testimony on this on both sides and
10 really fully understand it.

11 MS. McCARREN: Here's the logic I think.

12 MS. SYMINGTON: I get --

13 MS. McCARREN: I say okay, right, we're
14 doing this because the state wants to reduce
15 greenhouse gases and therefore the state has
16 these renewable standards that they want to
17 get done. That's why we're here. But if it
18 turns out there's this flaw in it --

19 MS. SYMINGTON: Our charge is siting all
20 generation facilities.

21 MS. McCARREN: Siting problem has been
22 increased. The siting burden has been
23 increased by the ability to sell the RECs.

24 COMMISSIONER MARKOWITZ: So maybe Louise
25 is right that we should identify the issue and

1 recommend that there be a conversation about
2 what the solution is.

3 MS. EASTMAN: Well there are
4 conversations.

5 COMMISSIONER MARKOWITZ: Yeah, but they
6 are talking about it across the street.

7 MS. MCGINNIS: Which is the RPS.

8 COMMISSIONER MARKOWITZ: It creates
9 siting pressure and distorts the system. So I
10 think it's appropriate to name it, and I think
11 I agree hearing Gaye maybe we don't want to
12 say there's one particular solution we're
13 recommending.

14 MS. EASTMAN: This isn't the only issue
15 that creates siting complications, okay. This
16 isn't the only one. We have lots of federal
17 issues that create. So for me it is once I go
18 to this one oh well that does this or this,
19 but then the next one does this or this. It's
20 like I got to understand the whole jumble
21 because, again, not that I wouldn't like the
22 whole jumble fixed. That's what I learned out
23 of this, but I don't think we're -- you know.

24 MR. JOHNSTONE: I won't get into all the
25 details about whether -- addressing greenhouse

1 gas with this or not, but a different possible
2 path forward which gets at some of this and
3 may be a way that's within our purview and you
4 may still not think so, would be for us to not
5 even address the RPS necessarily, but do note
6 that if you sell RECs it doesn't count as
7 renewable energy in Vermont.

8 PUBLIC MEMBER: Where those RECs go is
9 still part of the same planet.

10 MR. JOHNSTONE: Because they get to
11 count the renewable credits at that point, not
12 us. So if you build a renewable project and
13 you sell the RECs, it's not adding to our
14 state goal.

15 MS. EASTMAN: But is Vermont -- are we
16 adding it to you're state goal? Yeah, we are.
17 McNeil. McNeil is selling, but then they are
18 buying something else.

19 COMMISSIONER MARKOWITZ: They are buying
20 smaller RECs back. So they are adding to our
21 goal, but at a smaller level.

22 MS. EASTMAN: How do we count them,
23 though, for the Department?

24 COMMISSIONER MARKOWITZ: At the lower
25 amount.

1 MS. EASTMAN: Okay.

2 MS. McCARREN: Maybe I'm just plain
3 wrong on this.

4 MS. EASTMAN: Because that's it. Let's
5 just -- okay.

6 MR. JOHNSTONE: Maybe it's already done.
7 I'll be quiet, but I think in the public
8 discourse -- that's part of what I'm saying is
9 in the public discourse the projects are sold
10 as renewable.

11 MS. EASTMAN: And maybe we should have a
12 statement, though, that explains what our
13 policy is, and in Vermont what's happening is
14 we get it that when you sell the RECs it's not
15 whatever renewable and here's what happens in
16 Vermont.

17 MR. COSTER: Just part of the issue is
18 generally, especially the merchant plants
19 don't know where they are selling the power
20 when they are in the application phase. So
21 they don't know if they are going to be
22 selling it to Green Mountain Power. They
23 don't know if they are selling it to out of
24 state. So that piece isn't clear often at the
25 time a project is proposed.

1 MS. EASTMAN: Proposed, but it's like
2 Sheffield was. Sheffield was required to sell
3 within state.

4 PUBLIC MEMBER: Back to page one. Right
5 up on the first goal, legislative reduction in
6 greenhouse gases 75 percent by 2050. We have
7 to reduce the greenhouse gases.

8 MS. EASTMAN: So maybe we should find
9 out what we're actually doing so we've got
10 that clear.

11 MS. MCGINNIS: Can you tell us now what
12 we are doing just so we have --

13 MS. MARGOLIS: I'm sending you guys, and
14 I'll give it to everyone else or I'll post it
15 online. I'm trying -- there's a lot of
16 different sort of goals and what's counted
17 within those goals and how it's defined, it's
18 not like a simple explanation. So that's what
19 I've been doing.

20 MR. JOHNSTONE: We could spend two
21 months talking about whether RECs or any kind
22 of cap and trade system actually contributes
23 positively or is a net nothing. Frankly
24 there's two theories and both logic models
25 hold together.

1 MS. EASTMAN: We've been talking to this
2 since I was Secretary relative to
3 transportation.

4 MR. JOHNSTONE: Good luck making that
5 clear.

6 MS. EASTMAN: So address Health
7 Department and Ag Department recommendations.
8 I agree with Gaye that if we haven't -- if
9 there's something else from health and ag that
10 we haven't done, those leftovers.

11 MS. MCGINNIS: I don't know what we need
12 to say about the Ag.

13 MS. SYMINGTON: The Ag was manure -- the
14 manure moving piece shouldn't count as under
15 the purview of the Public Service Board. It
16 should be the generation -- the piece of it
17 that becomes generating electricity if I
18 understood it right, and then there was
19 something about spreading the cost of
20 electrical and integration among ratepayer
21 base. Is that a siting issue?

22 MS. EASTMAN: What it is it's the
23 connection cost I think is what he was talking
24 about there. He talked about that when he
25 testified in front of us that the cost of

1 connecting these things up is borne by the
2 developer in effect. So that means the farmer
3 and that's preventing some things from
4 happening because it's so expensive, and so I
5 think he would like us or somebody to consider
6 as a policy issue that if you really want to
7 encourage the methane digesters and that you
8 want to address greenhouse gases, you might
9 want to address the methane digesters. So
10 don't we then want to have that connection
11 charge not paid by the Ag guy but by the
12 ratepayer. So --

13 MS. SYMINGTON: That's a siting issue?

14 MS. EASTMAN: Well because it relates to
15 does it encourage people to actually site
16 them. It's an incentive question.

17 MS. McCARREN: Also where the developer
18 chooses to site a facility is going to
19 absolutely determine the cost of the
20 interconnection.

21 MR. BODETT: There should be some
22 participation because of that.

23 MS. EASTMAN: If we're talking about our
24 farms are -- where our farms are and if we
25 want to really encourage the methane digester

1 issue on Ag, which I'm a proponent of that
2 because I think that really gets at greenhouse
3 gases, I have no idea of the consequence of
4 what I'm talking about in terms of what would
5 be spread over the ratepayers, but I don't
6 object to having the ratepayers pay that cost
7 as opposed to a small farmer if that's going
8 to make or break that project pattern.

9 MR. BODETT: I don't know anything about
10 these. Are they all like small individual
11 farm scale things or is it something that many
12 farms --

13 MS. EASTMAN: No. You do it farm by
14 farm.

15 MR. BODETT: Okay. I thought maybe six
16 farms could be the best farm.

17 MR. COSTER: They can certainly be
18 scaled where they are bringing in stuff from
19 the farmers around.

20 MS. SYMINGTON: That's what he was also
21 talking about.

22 MR. JOHNSTONE: I'll also talk to Chuck
23 because I think he and I are both on the Board
24 of VLITE, which is the holder of the VELCO
25 public shares, and frankly it's a great place

1 to try to achieve multiple public benefits,
2 and if there's an Ag energy, you know, coming
3 together it's --

4 MS. MCGINNIS: And water protection.

5 MR. JOHNSTONE: It's a great place to
6 have that conversation.

7 MS. EASTMAN: And that is the kind of
8 thing that would be great -- that is an issue
9 to support I think.

10 MR. JOHNSTONE: Yes, and I don't know
11 what the majority vote would be of that group,
12 but they have got a million dollars a year to
13 figure out what to do.

14 MS. EASTMAN: Maybe you're saying use
15 some of that money to source to support --

16 MR. JOHNSTONE: Between Chuck and I it's
17 two-sevenths of the vote.

18 MS. EASTMAN: And we only need majority,
19 two more.

20 MR. JOHNSTONE: Just saying.

21 MS. EASTMAN: How do we make something
22 like that happen and I'm for that to encourage
23 it.

24 MS. SYMINGTON: The other issue I think
25 had to do with under the issue Billy is

1 raising, if they are bringing in the manure
2 from the neighboring farms and they begin --
3 they reach the point where the revenue from
4 electricity exceeds the revenue from farm
5 products is it still a farm.

6 MS. EASTMAN: And can I say this to you
7 now as I live in a small town, and then of
8 course we've got one family who is farming
9 three or four different farms because that's
10 how it's happening. So things are passing,
11 but can't you just imagine everybody who we're
12 now moving the manure from site to site and
13 how far we're moving it and what are the
14 consequences of that.

15 MR. COSTER: That's what the Public
16 Service Board's issue has been around that,
17 the substrate management and the
18 transportation impacts on natural resources,
19 all these other things. So the Department and
20 ANR are trying to work on a fix to that right
21 now outside of this process. So we can maybe
22 give you an update in writing as to where that
23 is before next time.

24 MS. EASTMAN: Because I do wish we could
25 have more of those because I do think it would

1 address -- and I would like to encourage and
2 incentivise those things, find ways to do it.
3 I can see the pros and cons of, sorry,
4 transporting manure beyond down the field to
5 spread it.

6 MR. COSTER: It's not just manure. It's
7 food wastes and other organic substrates which
8 they are interested in bringing in.

9 MS. SYMINGTON: And you have farms going
10 to taking the methane and using it for
11 vehicles instead. So at what point is that no
12 longer under --

13 MS. EASTMAN: But we have that same
14 issue you're saying if they use part of it for
15 one and part of it for another just like we're
16 talking about for biomass. So there they were
17 saying leave it all with the Public Service
18 Board and so we might have to do -- have Billy
19 look at that. Well you only want one process?
20 I think if you have got one facility, I think
21 you only want one process. Pick one.

22 MS. MCGINNIS: This might go into a
23 broader discussion that, Scott, you were
24 bringing up on what do we want to incent and
25 how, and so if we can have a few really solid

1 examples, and one may be farm methane how do
2 you incent it. One way to incent it is to pay
3 for the transmission or the connection cost,
4 but there are other things if you all around
5 the table can think of this whole incentive
6 idea of making sure that we have some concrete
7 examples of incenting the things we want to
8 have happen beyond what we're currently
9 talking about.

10 MS. EASTMAN: Okay. And then we have
11 the third highlight board membership, separate
12 siting board, and I raised again today, and
13 Tom had raised having a siting board or
14 different makeup for the top tier, and I don't
15 think we have -- I think we're at one board
16 the way it is.

17 MS. McCARREN: My straw is keep it the
18 way it is, but I'm open to some authority for
19 very large projects adding like the ANR and
20 maybe someone else, but I got to think that
21 through.

22 MR. JOHNSTONE: I think the compelling
23 argument I hear people raise is -- the
24 compelling argument is the culture stuff, but
25 frankly I think let's just take that on within

1 the system. People get reappointed. People
2 can influence. I just think trying to figure
3 out on a catch is as catch can adding a bunch
4 of additional folks figuring out the
5 quasi-judicial process and take the black
6 robes on and off I think will create as much
7 new confusion as what we saw.

8 If there is a cultural issue that needs
9 to get fixed, then let's just take that on.
10 My bias is just to be much more direct about
11 it, but maybe that's too simplistic. I'm
12 happy to acknowledge that maybe sometimes
13 direct doesn't get you where you want to go.

14 MS. McCARREN: What we don't know is how
15 badly the Board Members have gotten about the
16 ex parte rules, so --

17 COMMISSIONER MARKOWITZ: In terms of
18 administering it internally I'm not concerned
19 about the firewall and so forth. That's done
20 routinely.

21 The question is do we need to do
22 something different? Is there a need to do
23 something different than the status quo? So I
24 say if we're shifting from the status quo, we
25 have to have a real reason for it. I think we

1 can probably get to the ANR concerns by
2 changing the -- by creating a rebuttable
3 presumption around our issues. I think we
4 should still have more conversation about
5 whether or not there are things that can be
6 done that gives the locals more voice at the
7 table because I think that's the reason why we
8 would have somebody from --

9 MS. EASTMAN: And that's why we move --
10 we do more things tier one or two. We're only
11 talking about the big one and then we've got
12 -- and we propose new processes I think too,
13 though, the issue about the siting board is
14 really to keep everybody's feet to the fire
15 once the process starts, and that means
16 keeping ANR on track and keeping anybody else
17 who is playing on track.

18 COMMISSIONER MARKOWITZ: So if we're
19 doing it just for tier three, then -- and I
20 also find it kind of interesting everyone else
21 has this board that's got these kind of
22 representatives.

23 MS. EASTMAN: But in Massachusetts it's
24 a hundred megawatts.

25 COMMISSIONER MARKOWITZ: Well so then in

1 our case it would be tier three, right, which
2 is --

3 MS. EASTMAN: 15.

4 MR. JOHNSTONE: Which they call really
5 small projects. So that's the question.

6 MS. McCARREN: I'm not seeing a
7 compelling reason to change it, but I'm not
8 foreclosing.

9 MR. JOHNSTONE: I'm with you.

10 COMMISSIONER MARKOWITZ: I guess I'm
11 there too. My gut says I don't see compelling
12 reasons to change it, but for me the jury is
13 still out on the local piece, and it could be
14 that I'm coming in and out of our conversation
15 a little bit because I have to get some things
16 out during the day. I apologize. So I may
17 have missed some critical piece about local
18 participation.

19 MS. EASTMAN: But the thing I like on
20 the local, and we can go back to it, it's that
21 issue in tier two where if we also have a
22 local plan, I mean meaning you get special
23 treatment if you're going to play with the way
24 the town wanted to play --

25 COMMISSIONER MARKOWITZ: And it could be

1 in tier three what we're doing is we're
2 providing some support for municipalities to
3 play, and that's really what even the playing
4 field is by having funding so that they can
5 have a meaningful voice at the table. That
6 might be what the offset is.

7 MR. JOHNSTONE: Same way rebuttable
8 resumption kind of works for our ANR issues.

9 MS. MCGINNIS: There are a lot of other
10 questions obviously, but there's one in
11 particular that came up that I would like to
12 hear what you had to say on, and that's the
13 public lands issue.

14 MS. EASTMAN: So the -- maybe I'm wrong.
15 Did I see that the state land -- the Agency
16 state lands policy currently says no wind
17 anywhere?

18 COMMISSIONER MARKOWITZ: No. We can
19 have -- there's like -- for example, there's a
20 small turbine up at Burke Mountain. So -- but
21 what we do say is that it limits it to small
22 and -- but there are opportunities. Like if
23 there was -- so the reality is that most
24 ridgelines on state land you could not put
25 wind on because there are deed restrictions or

1 the purpose restricts the use. I say most.
2 It's because I don't know every single site,
3 but I don't believe that there's a ridgeline
4 site beyond our ski areas.

5 MS. MCGINNIS: It wasn't just wind. It
6 was -- and some have said it, I don't know
7 what the current status is, public lands are
8 excluded for the most part from energy siting.

9 COMMISSIONER MARKOWITZ: That's true
10 because most of the public lands are held for
11 a particular purpose and that's wildlife
12 management area, or that by the nature of the
13 funding for that land excludes other uses.

14 MR. JOHNSTONE: But not all.

15 COMMISSIONER MARKOWITZ: So there's lots
16 and lots of public land like parks or like you
17 know former garages that --

18 MR. JOHNSTONE: The point is I can't
19 imagine state parks wouldn't want to put
20 trackers on.

21 COMMISSIONER MARKOWITZ: We have
22 trackers all over the place.

23 MS. EASTMAN: We have a goal and it
24 would seem -- and I'm not disagreeing if it's
25 something you can't do because of deed

1 restrictions or something like that, but I
2 also happen to know that in the old days when
3 we got land we sometimes got people's crap
4 land. Not their best. They were giving it to
5 us and so --

6 COMMISSIONER MARKOWITZ: Those aren't
7 restricted.

8 MS. EASTMAN: So I don't want to
9 preclude. I just don't --

10 COMMISSIONER MARKOWITZ: There is no
11 policy that precludes it.

12 MR. JOHNSTONE: I wouldn't do a
13 preclusion.

14 MS. MCGINNIS: She was worried there was
15 an exclusion.

16 MS. EASTMAN: I don't want a preclusion.

17 COMMISSIONER MARKOWITZ: Part of the
18 confusion there's been legislation proposed
19 that would create an all out ban. We've
20 testified that's not necessary. That we
21 already have a policy in place that by rule
22 allows us to take a reasonable approach.

23 MS. EASTMAN: And then I need to ask you
24 this. In the old days, in my days which is
25 the old days, when I wanted -- when we wanted

1 to lease public lands for a certain amount of
2 time we had to have legislative approval at
3 least from the Institutions Committees. Is
4 that still true?

5 COMMISSIONER MARKOWITZ: Let's see.
6 Have we done new leases? We have
7 telecommunications leases and that's in the
8 context of existing legislation. I don't
9 know.

10 MS. EASTMAN: Because that's all I was
11 saying is that for me if it's still the same
12 way, like you have got leases for the ski
13 areas that were approved by the Legislature.

14 COMMISSIONER MARKOWITZ: So what happens
15 is they -- so a new lease for major land, yes,
16 but lease renewals, I don't know that we have
17 any fresh leases since I've been there. So I
18 frankly don't know. I would assume nothing
19 has changed however.

20 MR. JOHNSTONE: It's also true even over
21 time as the definition of working landscape
22 and other definitions change that even some of
23 the restrictions and deed restrictions can be
24 interpreted differently over the decades. I'm
25 not saying I have heard anybody --

1 COMMISSIONER MARKOWITZ: Not in terms of
2 wildlife management. Not mountaintop wind.

3 MR. JOHNSTONE: Not mountaintop wind.
4 That's not what I'm thinking, but there's even
5 some of that that can be talked about.

6 MS. EASTMAN: I just think there's a lot
7 of places for solar, maybe public buildings
8 and things like that.

9 COMMISSIONER MARKOWITZ: Absolutely.

10 MS. EASTMAN: So it's after four.
11 Anything else?

12 MS. SYMINGTON: Will this working piece
13 of ours be put up on the web?

14 MS. EASTMAN: It will get revised and
15 put up on the web.

16 MS. SYMINGTON: So folks that have put
17 input into the options paper can also comment.

18 MS. EASTMAN: Don't you think. I think
19 the draft gets revised and then --

20 MS. MCGINNIS: I can draft it in the
21 next two days and then we can put it up on the
22 web, but hopefully -- do you want to be able
23 to look at the revisions I've made because
24 there's a lot said today. I want to make sure
25 it's captured, but I'm happy to do the

1 revisions as I understood them.

2 MS. McCARREN: I would put the draft up
3 too.

4 MR. JOHNSTONE: Put up the draft put up
5 however you change it and people understand
6 until we talk about it it's a draft. People
7 have been very good about that so far.
8 There's been no problem with transparency that
9 I have seen.

10 MR. BODETT: We get another one of these
11 before the public hearings?

12 MS. EASTMAN: We're going to have
13 another one before the 20th. We come back on
14 the 20th to talk again.

15 MS. MCGINNIS: And for the public
16 hearing it would probably be more fleshed out
17 as a beginning.

18 MS. EASTMAN: And on the 20th I would
19 like to see some of that energy plan.

20 (Whereupon, the proceeding was
21 adjourned at 4:05 p.m.)

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C E R T I F I C A T E

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I, JoAnn Q. Carson, do hereby certify that I recorded by stenographic means the Fifth Deliberative Session re: Energy Generation Siting Commission, held at the Giga Conference Room of the Public Service Department, 112 State Street, Montpelier, Vermont, on March 12, 2013, beginning at 9 a.m.

I further certify that the foregoing testimony was taken by me stenographically and thereafter reduced to typewriting, and the foregoing 331 pages are a transcript of the stenograph notes taken by me of the evidence and the proceedings, to the best of my ability.

I further certify that I am not related to any of the parties thereto or their Counsel, and I am in no way interested in the outcome of said cause.

Dated at Burlington, Vermont, this 18th day of March, 2013.

JoAnn Q. Carson
Registered Merit Reporter
Certified Real Time Reporter