

STATE OF VERMONT  
ENERGY GENERATING SITING POLICY COMMISSION

Deliberative Session #8

April 9, 2013 - 9 a.m.  
Giga Room, 112 State Street  
Montpelier, Vermont

Commission Members

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

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Also present:

Commissioner Chris Recchia, DPS

Secretary Deb Markowitz, ANR

Linda McGinnis

Anne Margolis

Billy Coster, ANR

Kathleen Iselin

Kim Fried

Nancy Fried

John Lewendowski

Ann Rademacher

Charlie Pughe, GMP

Sheila Grace, DPS

Gabrielle Stebbins, REV

1           CHAIRMAN EASTMAN: Okay. So this is the  
2 -- this may be the last day we have Gaye  
3 unless we try -- unless we rearrange things.  
4 So we had our last public hearings last  
5 night. Right?

6           MR. JOHNSTONE: Yup.

7           CHAIRMAN EASTMAN: So we have got all  
8 that information, and since the -- since our  
9 conversations last week in Rutland we have  
10 gotten more stuff from various, you know,  
11 various people. You know, we have had more  
12 from REV. We have another one from GMP, and  
13 some other things.

14           And so we are set for deliberating  
15 today. We have -- we are scheduled for  
16 February 16. And right now we are scheduled  
17 for, you know, to deliver something --  
18 excuse me, February. April 16.

19           MR. JOHNSTONE: This is April. You  
20 missed March.

21           CHAIRMAN EASTMAN: April 16. We have  
22 got today. We have got next week, April 16.  
23 And we held April 25 to make a report to the  
24 legislature. So I know most of us have that  
25 day scheduled. I want to throw out on the

1 table if we need to, if we think we need  
2 more time, our report isn't due until April  
3 30. And I'm willing to sit, you know, we  
4 could use April 25 to do more work after  
5 Gaye is back if we think we need to.

6 And I talked to Liz, you know, Miller  
7 last week, Linda and I did, to just see  
8 maybe we do this report in writing as  
9 opposed to a presentation depending upon  
10 what they are doing, and/or if they wanted a  
11 presentation, I'd redo my schedule. I can't  
12 leave Montpelier any later than noon on  
13 April 30th or I can't get to Michigan in  
14 time. And I was planning on going to see a  
15 more leisurely way and not leaving on  
16 Saturday, but I would delay it, and if that  
17 would help all of us have some more time  
18 together.

19 Okay. The other thing that yesterday  
20 afternoon I had a call from the scheduler  
21 for the House Committee, and they want --  
22 they would like me to come in and testify on  
23 current S30 this week or next week. I put  
24 them off until next week. I can also  
25 suggest it's so close that they just wait

1 for what we say. Currently S30 is really  
2 just the next phase of a study. I mean it's  
3 various language that establishes a joint  
4 committee of the House and Senate, and it  
5 asks the agencies and the departments to do  
6 various work around various issues. And to  
7 take our, you know, to take the work that we  
8 have done and have that influence it, and  
9 that it then, you know, and they work  
10 between now and November, also ask us or,  
11 you know, ask the Siting Commission to the  
12 extent that, you know, they want testimony  
13 from us, would find it useful kind of thing.

14 So it talks about a lot of the same  
15 things that we are talking about only, you  
16 know, take every -- says to the Department  
17 take everything we have done and work on it.  
18 It also talks about some of the things that  
19 weren't within our purview, you know, like  
20 RECs. Let's come up with what the  
21 recommendation on that should be. So before  
22 you leave today or before we leave today I  
23 just want some guidance on what you want me  
24 to try and do. Just put it off entirely and  
25 wait until the report's done, or go in

1                   sometime next week and say here's where we  
2                   are heading, and we too, you know, whatever.  
3                   Okay? So that's --

4                   MR. BODETT: Regarding the presentation  
5                   on the 25th, like if we present our  
6                   recommendations on the 25th, and then we  
7                   meet after that, what are we doing?

8                   CHAIRMAN EASTMAN: Well I don't know --  
9                   -- this is what I'm suggesting. We don't  
10                  have to present on the 25th.

11                  MR. BODETT: I see. Okay. So that's  
12                  the date that's not locked. I thought you  
13                  were talking about your testimony.

14                  CHAIRMAN EASTMAN: No. The testimony on  
15                  S30 they have asked for within the next  
16                  either this week or next week. And so I can  
17                  try and put them off and say, you know, we  
18                  are not looking at S30. But when you look  
19                  at what's really in S30, it's the next stage  
20                  of a planning thing. And I don't know what  
21                  the department's position or ANR's position  
22                  is currently on, you know, on where S30 now  
23                  stands. But that's what it is.

24                  It's sort of take this work and go the  
25                  next phases. Generally I think that's what

1 it says. And it, in addition, picks up some  
2 specificity of the things that have not been  
3 -- we have said weren't within our charge or  
4 purview and says these are other things that  
5 ought to be looked at as part of this.

6 That's all I'm saying, Tom. I was  
7 suggesting maybe we don't have to present on  
8 the 25th, and if we needed more time, I just  
9 know that we have run out of time. And  
10 people have, you know, a lot of other  
11 responsibilities.

12 But that was a day I know that everybody  
13 had reserved so -- and Gaye would be back.  
14 So it would give us one more time all  
15 together to really take a look, you know, at  
16 the full body and note that the draft  
17 recommendations are just what, 12 pages of  
18 70 or 80 that -- because Linda has got all  
19 this background stuff we have got to look at  
20 and at least sign off on and say what we  
21 think as well. That's all. I was just  
22 making a suggestion of a way to get us one  
23 more day.

24 MR. BODETT: No. I misunderstood that.  
25 That sounds good to me.

1 MS. MCGINNIS: So just so we have some  
2 conclusion on that, is everyone okay with  
3 that notion with having the 25th be another  
4 day of deliberations and then have a report  
5 go at least in written form on the 30th?  
6 And if they need it, you could go or  
7 everybody could go and present on the 29th  
8 or 30th which is a Monday and a Tuesday?

9 MR. JOHNSTONE: If we need it. I'm fine  
10 with it if that's where we land.

11 MS. MCGINNIS: Okay.

12 CHAIRMAN EASTMAN: I mean I was just --  
13 I'm willing to adjust just so if we -- you  
14 know, and if it's going to be submitted in  
15 writing, I can leave, you know, if they are  
16 not going to want to hear from us. I would  
17 like to come back at the end of the day if  
18 you guys want to give me guidance on how to  
19 deal with the House Committee, whether you  
20 just want me to say no, you don't want me to  
21 go in and say anything about, you know, S30  
22 and where it is, but it's interesting if you  
23 look at where they came out.

24 Obviously all the work that agencies and  
25 departments, I'm-- I have to say I commend

1 the staffs for being able to deal with this  
2 at the same time they have been dealing with  
3 all the same issues over at the legislature.

4 MS. MCGINNIS: Which is what Chris and  
5 Anne are probably going to have to deal with  
6 today too, more discussions on it.

7 MS. SYMINGTON: So we are setting aside  
8 the 25th. We are not setting aside another  
9 --

10 CHAIRMAN EASTMAN: I don't know how we  
11 get another -- I don't know where we find it  
12 with Scott and everybody. I mean we could  
13 try and look at that, but I know we have the  
14 25th reserved. I'm available for more time,  
15 but I know you don't get even back until the  
16 20th.

17 MS. SYMINGTON: Right.

18 CHAIRMAN EASTMAN: So I know it's tough.  
19 Okay?

20 MR. JOHNSTONE: As for the other -- I  
21 mean whenever you want to handle that. From  
22 my perspective, I think we know that there  
23 needs to be follow up. We have offered  
24 that, and I saw in your draft we offered  
25 that if they want us to do some follow up,

1 it's fine. If S30 is the pathway to create  
2 -- follow up on the details, it's fine.

3 I think there is no disrespect to any  
4 Agency or staff. We are all a bit nervous  
5 about just handing overall the follow up to  
6 the agencies and departments. I think there  
7 needs -- I'll speak for myself, I think I  
8 hear this from all you too, there needs to  
9 be some group that's taken a look at it from  
10 a broader perspective outside all the  
11 agencies is what I think. So whether it's  
12 us, whether it's S30, S30 studies.

13 CHAIRMAN EASTMAN: S30 establishes a  
14 joint committee to look at it all.

15 MR. JOHNSTONE: Right. So I think if  
16 you went in and acknowledged that we have  
17 identified that there is a need for that  
18 function, I think that's useful. My only  
19 level of nervousness is I also don't want to  
20 take the pressure off us to try to do our  
21 work. And we could use that as a total cop  
22 out frankly to be crass about it, and I  
23 don't want to do that either. I want us to,  
24 you know, I want to do the job we were asked  
25 to do.

1 But we have all acknowledged numerous  
2 times that there is going to be follow up  
3 that has to happen somewhere. And somebody  
4 has got to take a look at it. From my  
5 perspective that's where I am at, if you  
6 went in and were supportive of that kind of  
7 thing. It's not in our charge to review  
8 S30, it wasn't written when we started, but  
9 I think there is a connection clearly.

10 CHAIRMAN EASTMAN: I think now there is  
11 more of a connection.

12 (Ms. Markowitz arrived.)

13 CHAIRMAN EASTMAN: How was your trip?

14 MS. MARKOWITZ: It was nice. Got back  
15 at 1 in the morning last night. So -- but  
16 I'm ready to go.

17 MS. McCARREN: Your tan covers it.

18 CHAIRMAN EASTMAN: We are just talking  
19 about how to get done and create time  
20 because, you know, we have got Gaye today,  
21 and then we have a day next week.

22 MS. MARKOWITZ: Right.

23 CHAIRMAN EASTMAN: And I was just saying  
24 that I have had a request from the House  
25 Committee to come in and testify on the

1 current status of S30 which is really just,  
2 you know, the study or the next phase of  
3 something.

4 And then I -- and then we have -- I was  
5 suggesting that there is also the  
6 possibility of using April 25th, which is  
7 the day we had set aside to make a  
8 presentation, as more deliberation if we  
9 need it, or the final look at something, and  
10 then either go and present on the 29th or  
11 30th, or just file it in writing.

12 And I was wanting guidance especially  
13 from you and Chris, I mean when I look at  
14 the current language in S30 in the studies,  
15 a lot of it is sort of the next phase, it  
16 says that I can --

17 MS. MARKOWITZ: That's right, and move  
18 to the next.

19 CHAIRMAN EASTMAN: Take this and move to  
20 the next. And it establishes a joint  
21 committee of House and Senate members and  
22 also asks us to, you know, to stay around or  
23 stay available which is the kind of language  
24 we were putting in that we were willing to  
25 stay around, you know, stay available to

1 sort of see how the package is.

2 Interestingly enough, one concern I  
3 have, and I don't know where this comes out,  
4 but I know, and it comes up, Gaye, with some  
5 of the things you said, what do we do or  
6 questions about what do we do in the  
7 interim, and I believe that this is a  
8 package, you know, for me, if we do X then Y  
9 happens. If you didn't do X I might want  
10 something else, so it's all in a package,  
11 but for me also there are some things that I  
12 think could make a difference that you can  
13 do that are, I don't know, it's like the low  
14 hanging fruit, that you can do earlier. And  
15 why do you wait until November 13th if there  
16 seems to be a consensus around an issue that  
17 might be helpful or more transparent.

18 And so that's the only thing that --  
19 that's the kind of thing I would also say to  
20 a House Committee, that depending upon what  
21 really comes out of here, there may be some  
22 things that why are you waiting to start  
23 rulemaking or to change a procedure or to do  
24 something, if it's, you know, if the  
25 departments who have to implement things,

1 agencies who have to implement things thinks  
2 it's a good idea why are you waiting another  
3 six months. So -- and I don't know exactly  
4 what those are. But you know, okay? So --

5 MS. MCGINNIS: I think Gaye's  
6 suggestion, and we might want to think about  
7 it all the way through, is should there be  
8 some kind of -- and I don't know how  
9 possible it is -- but I would love your  
10 feedback on it, to have a time line in the  
11 annex saying these are the things that we  
12 think could be done sooner than later, and  
13 these are the things that we anticipate are  
14 going to take a lot longer time. And then  
15 give some indication as to what the  
16 Commission feels is necessary to do during  
17 that period. So is that more or less what  
18 you were trying to get at?

19 So it might be useful to have that as a  
20 filter as we go through the discussions  
21 today, if there are things that you all  
22 think could be done quickly and should be  
23 done quickly, then those are the types of  
24 things we could be putting into that.

25 MS. McCARREN: Well isn't -- the fault

1 line is going between whether legislation is  
2 required or whether the Agency or Agencies  
3 can implement things by rulemaking or just  
4 by action.

5 CHAIRMAN EASTMAN: Or just by action.

6 There maybe be some things --

7 MS. MARKOWITZ: Like a case manager.

8 MS. MCGINNIS: Exactly.

9 MS. MARKOWITZ: You know, if the Agency  
10 -- if the Board chooses they could just make  
11 that happen. There is budget issues, but --

12 CHAIRMAN EASTMAN: Yeah, there is  
13 budget, and is there a position, or can that  
14 be created between now and, you know,  
15 between now and the time you go home and,  
16 you know, the budget bill kind of thing.

17 MS. MARKOWITZ: Could. You know, the  
18 answer is yes, it could, if there was a way.

19 CHAIRMAN EASTMAN: And that's the kind  
20 of think I'm thinking about some of these  
21 things, you know, what can you get done.

22 MS. SYMINGTON: The other thing that I  
23 didn't put in my comments is we have heard a  
24 lot in Rutland and then again last night  
25 about setbacks. And that's an example of --

1 you know, I don't understand really what  
2 this bigger document is and when we will see  
3 it. But --

4 MS. MCGINNIS: I can send it to you  
5 today. It's in very draft form.

6 MS. SYMINGTON: I have to feel  
7 comfortable saying ANR DPS go do your thing  
8 and that's enough.

9 CHAIRMAN EASTMAN: But I don't think we  
10 have the information to decide -- I mean I  
11 can say there ought to be setbacks. But I  
12 don't know exactly what it is. And I think  
13 from what I understand, especially about  
14 wind, is I think it matters what the terrain  
15 is, and where things are located, where the  
16 impacts are. And so you know, I'm not --

17 MS. MCGINNIS: We had an update on  
18 setbacks yesterday. We had a brief  
19 discussion, and --

20 MS. SYMINGTON: Who is we?

21 MS. MCGINNIS: Internally with the staff  
22 that works on this. So Chris and Sheila and  
23 Anne and Billy, and Chris was feeling  
24 comfortable with setting the categories of  
25 setbacks, different kinds of categories.

1           Blasting has certain setbacks, wind has  
2           certain setbacks, they are slightly  
3           different. So setting the categories  
4           relatively early. And I think although it  
5           still needs further discussion in the  
6           Department, that they would be able to over  
7           the next, you know, we have these three  
8           categories now of when guidelines could be  
9           put up. There is those that need to be  
10          updated that currently exist, there is the  
11          ones that Billy did a great, it's in one of  
12          the annexes, he did a great sort of laying  
13          out of the -- of the kind -- different  
14          kinds.

15                 The second one is new ones that can be  
16                 developed over the next 12 to 18 months.  
17                 And the third category is ones in which  
18                 there isn't enough information yet available  
19                 nationally to be able to determine what  
20                 guidelines would be. Setbacks would fall in  
21                 that category. We think that's what the  
22                 Department is trying to figure out right  
23                 now. Setbacks could be determined, it won't  
24                 be something that would be immediate. They  
25                 have to look at what guidelines -- are there

1 other states that have begun to develop  
2 guidelines on setbacks. So it's looking for  
3 the available information that's out there  
4 and saying what makes sense for Vermont to  
5 determine whether it needs to continue on a  
6 case-by-case basis or whether you can have  
7 certain guidelines that are there.

8 That's the type of thing where we can't  
9 say right now in the report setbacks must be  
10 X, Y or Z because those people who are  
11 experts in the area need to go out and look  
12 at what are best practices all across the  
13 country on determining setbacks, but it  
14 would fall in that second category is what  
15 at least I got out of the discussions  
16 yesterday.

17 CHAIRMAN EASTMAN: And I really -- I  
18 mean I had hoped at the beginning of this,  
19 you know, that when we came out we actually  
20 had something that was very useful for  
21 somebody. And that then it could get handed  
22 off for, you know, legislative or rulemaking  
23 action or whatever. Okay? And I'm not  
24 saying I'm backing off, I'm not. But I  
25 think there are things that we don't have

1 the time to get to that I wish we could get  
2 to. Or the information isn't here yet, or  
3 it's got to be done by somebody else.

4 My issue or question is to Deb, and to  
5 -- it will be to Chris, I mean I don't know  
6 your positions on this S30, and you're the  
7 ones who -- I mean I'm not involved in it.  
8 I would be walking out the door. And if you  
9 think that's a tool that will be useful or a  
10 process that's going to be useful, or not,  
11 and some guidance on that.

12 MS. MARKOWITZ: I think our position  
13 with respect to, you know, the further study  
14 --

15 CHAIRMAN EASTMAN: Joint committee.

16 MS. MARKOWITZ: The joint committee, we  
17 think that's perfect. You know, that that  
18 makes sense. That that's a natural next  
19 step anyway from the work this Commission is  
20 doing. You know, the Commission is going to  
21 come up with a whole bunch of proposals. We  
22 are already. And then something has got to  
23 happen to it. And the administration acting  
24 alone isn't going to be able to move much  
25 forward if you don't have the legislature

1 deeply involved.

2 CHAIRMAN EASTMAN: The thing I liked  
3 about it was at least some of the things  
4 that people have raised that I think affect  
5 these issues but weren't within our charge  
6 are being discussed there. And so maybe  
7 with the next phase it not only gets these  
8 kind of things, but then you -- the state  
9 will come up with what are we going to do  
10 about RECs, what are we going to do about an  
11 R -- these kind of things, so it's not left  
12 hanging. So for me when I looked at that I  
13 thought that was positive.

14 MS. MARKOWITZ: I would say that's the  
15 opportunity for us to remind the legislature  
16 of the limit to the charge. That, you know,  
17 we heard a lot of the questions about these  
18 other issues. And we are not addressing  
19 them because they are not our charge. Not  
20 that we don't think they are worth  
21 addressing further.

22 CHAIRMAN EASTMAN: Yeah, and my issue or  
23 one of my issues from Rutland especially is,  
24 and I don't know about, you know, this code  
25 of conduct, you know, stuff, but I had some

1 experience dealing with out-of-state  
2 companies coming in to lease properties back  
3 in the -- what was it, was it -- it was  
4 '80s, late '70s early '80s, where we were  
5 going to drill for gas in Vermont, and the  
6 whole western part of the state, big  
7 companies came in and bought up leases.  
8 Remember that?

9 So I actually when Columbia Gas  
10 Transmission Company came in I represented  
11 them to get the first gas load, and they  
12 left pretty quickly because our rocks are so  
13 hard it's just too expensive, the drill bits  
14 went by the by. I had concerns then about  
15 the practices of, you know, leasing, and so  
16 when I hear some of the stories, I hear  
17 about what goes on in advance of things,  
18 that that's not in our charge. And I don't  
19 know if there is anything --

20 MS. MCGINNIS: Sheila has been dealing  
21 with this.

22 MS. GRACE: I don't want to interrupt  
23 your train of thought here. I do feel like  
24 I should just mention as far as the  
25 Department coming up with guidelines is

1 concerned I think I need -- I feel like I  
2 should mention that we have no particular  
3 authority to come up with guidelines and  
4 have them followed. We are a party to -- in  
5 front of the Board. And so we can come up  
6 with guidelines, and to the extent that, you  
7 know, we try to have a lot of stakeholder  
8 input, and we try to make sure that everyone  
9 is on board with the guidelines that we set,  
10 you know, hopefully the Public Service Board  
11 will listen to us.

12 But I just want to make sure that this  
13 body understands that we are a party, we are  
14 not somebody who is able to come up with  
15 guidelines that have to be followed.

16 MS. McCARREN: Don't you have rulemaking  
17 power?

18 MS. GRACE: We get to ask the Board to  
19 make rules.

20 MS. McCARREN: You don't have  
21 independent rulemaking power.

22 CHAIRMAN EASTMAN: That's something that  
23 maybe we should consider as a  
24 recommendation. I guess for me the kinds of  
25 things we are talking about, you know, the

1 Department right now being responsible for,  
2 maybe it would even come out as a follow-up,  
3 you know, you're statutorily required to do  
4 the plan on behalf of the state.

5 MS. GRACE: Right.

6 CHAIRMAN EASTMAN: I'm wondering if  
7 there doesn't need to be some additional  
8 legislative authority for the Department to  
9 do other things that promote the  
10 implementation of that plan without making  
11 them a regulatory body.

12 MS. SYMINGTON: I would like to follow  
13 the trail of what Linda was saying around --  
14 just to pick on setbacks. There are other  
15 issues. But I'm just going to pick on  
16 setbacks.

17 So I agree I would be very uncomfortable  
18 coming to a decision about setbacks now or  
19 three meetings from now. I mean clearly  
20 there is a lot that has to be understood  
21 before you could do that. But I still don't  
22 understand who is going to come up with  
23 those. You know, so the staff is going to  
24 do a bunch of listening, but is there  
25 anybody that -- how does that become

1 guidelines or rules? Is there some -- is  
2 that just a staff process? Will the  
3 legislature weigh in on that or, and you  
4 know, how do we get from, you know, this  
5 vague place we are in now through a process  
6 of studies to there being some real  
7 guidelines that someone beyond just the  
8 staff of the agencies, the relevant  
9 agencies, has a voice in.

10 MR. BODETT: Right. If I can just add  
11 to that, if we do that, or whoever does  
12 that, what about all of the other  
13 technologies? What about particulates,  
14 emissions from biomass, or setbacks from gas  
15 pipelines, and I mean --

16 MS. MARKOWITZ: There is pieces that we  
17 do like particulates, for example. You  
18 know, and a lot of those pieces with the  
19 biomass.

20 MR. BODETT: It seems like setbacks for  
21 wind would fall into that category, doesn't  
22 it?

23 MS. MARKOWITZ: Well maybe. Maybe it's  
24 the Health Department. Because maybe the  
25 argument is it's a public health issue.

1 MS. MCGINNIS: Well it's interesting  
2 because in some states it falls within ANR's  
3 jurisdiction. And in some states it falls  
4 in something akin to the Department. And in  
5 some states it falls in Department of  
6 Health. And so it is -- it's an important  
7 issue to raise because you need to know how  
8 -- you can come up with guidelines, but if  
9 there is nobody there who can actually look  
10 at compliance or look at updating them or  
11 whatever it is, or making them real, then  
12 maybe that's something we need to think  
13 about.

14 CHAIRMAN EASTMAN: Well somebody has to  
15 be authorized to do it by the legislature,  
16 okay? The legislature is the authorizing  
17 authority.

18 So the thing is, generally in  
19 rulemaking, rulemaking has a public process.  
20 Okay. Where I mean it's required to have a  
21 public process, and rulemaking also has a  
22 little bit of legislative process, right,  
23 because ultimately you have to go over there  
24 and it has to be within X, Y and Z. Not  
25 specifically, but that works.

1           With guidelines I think there should  
2 still be a public process, but it's not --  
3 there's not -- usually with guidelines  
4 you're not going over to the legislature.

5           MS. MARKOWITZ: Right.

6           MS. SYMINGTON: What's the difference  
7 between a guideline and a rule?

8           CHAIRMAN EASTMAN: A rule requires -- a  
9 rule does require real process and  
10 legislative input and the legislature says,  
11 yup, that fits what we are doing. Much  
12 harder to change.

13          MS. MARKOWITZ: It has to go to the  
14 rules committee.

15          MS. SYMINGTON: I understand the process  
16 difference. I want to understand the  
17 practical difference.

18          CHAIRMAN EASTMAN: The practical  
19 difference -- more standing but with  
20 guidelines it's easier to change them and to  
21 keep them updated. So you want a guideline  
22 if it's something new is going to be  
23 happening every year. And you want to be  
24 able to quickly address it and get, you  
25 know, take good information and be able to

1 change things.

2 MS. MARKOWITZ: So my staff would rather  
3 have rules because they get deference in the  
4 legal process. And that's because, you  
5 know, there is a long-standing rule of  
6 judicial review that allows the -- that  
7 gives deference to the Agency of  
8 jurisdiction over its own rules.

9 And you know, what they mean and how  
10 they get applied and all that. Where my  
11 staff wants to use guidelines instead of  
12 rules is where -- when the science is still  
13 evolving, or they just don't have enough  
14 information. And that's where guidelines  
15 makes it. Setbacks, it may be that setbacks  
16 really, you know, are the right kind of  
17 issue for a rule, although it may be it's so  
18 site-specific, you know, because that's the  
19 other piece that they talk about is in some  
20 cases it's just really site-specific.

21 So you know, when they are looking at  
22 some of the wildlife habitat issues, for  
23 example, it's just very site-specific.  
24 You've got to be able to see the particular  
25 location and what the ecosystem is, and the

1 kind of trees, and you know, what the path  
2 of migration are, so it's hard to develop a  
3 general rule because -- so maybe that's true  
4 with setbacks as well.

5 But for the big issues my guess is it  
6 will end up -- rulemaking will end up being  
7 an appropriate way to go.

8 MR. JOHNSTONE: I do think for setbacks  
9 that rules is the right level. I think the  
10 extra process, the ability for the public to  
11 weigh in so clearly, is important. Even if  
12 it is simply that there is a rule around  
13 minimum and there could be guidance about  
14 the conditions under which minimum is not  
15 enough.

16 So that could be -- there could be a  
17 complementary set of rules and guidance  
18 around this topic. But I would think for at  
19 least the minimum it ought to rise to the  
20 level of rule. And then because things are  
21 still evolving you could -- there could be a  
22 role for guidance beyond minimum is the way  
23 I would think about it.

24 MS. MARKOWITZ: And so then if the issue  
25 is if the reason why we are having setbacks

1 is because of health concerns, then the  
2 Health Department probably already has  
3 jurisdiction, they probably already have  
4 legal authority to do that. We could follow  
5 up.

6 If it's aesthetics, then it's the  
7 Department. And I don't know what your  
8 rulemaking authority is.

9 MS. GRACE: Well I think what we would  
10 want to do if we were contemplating  
11 something like this is ask the Board to open  
12 a docket to look into a rulemaking.

13 MR. JOHNSTONE: And I'm sure there are  
14 many people who want us to look at setbacks  
15 for aesthetic reasons. I haven't really  
16 heard that articulated. The articulation  
17 has been almost exclusively, I won't say  
18 nobody has said it, because I don't  
19 remember, but I don't recall anybody arguing  
20 the setbacks on aesthetic grounds. I've  
21 heard person after person after person argue  
22 it on the basis of health, which to your  
23 point I would be shocked if the Department  
24 of Health didn't think they already had the  
25 authority to do that if they saw health

1 issues.

2 MS. SYMINGTON: Could I just -- I'm  
3 sorry. Could you just describe again, say  
4 more slowly, the Board could open a docket  
5 relative to this setback. What does that  
6 process involve?

7 MS. McCAREN: It's to create a rule.  
8 Right? So for the Board to create a rule  
9 they have to have -- open a docket based on  
10 a petition from somebody and create the  
11 rule.

12 MS. GRACE: They could choose on their  
13 own. So the Public Service Board could  
14 decide they want to open a docket.

15 MS. SYMINGTON: That could be our  
16 recommendation.

17 CHAIRMAN EASTMAN: Right. Here's the  
18 interesting thing about doing that to me.  
19 It now helps me think about so what happens  
20 in the interim, you know, before these  
21 things get done and you're reviewing things.  
22 Well I think what happens the more that you  
23 -- if you're actually working on rules,  
24 right, or working on legislation, and you've  
25 got a pending case, I mean I would be

1 arguing this is where we are going, so this  
2 should be, you know, the standard of review.  
3 And/or if the Board has opened a docket and  
4 is considering rulemaking, then I bet they  
5 are going to be thinking in any case they  
6 might get, you know, what should really be  
7 happening, you know, in this case.

8 So it could at least link, you know,  
9 what may be in place six months from now or  
10 a year from now to something, you know, to  
11 something that's going on now. So you know,  
12 the answer to that question about how does  
13 this work. We already know from the last  
14 conversations we had that Chris and the  
15 Chair of the Board spoke about the issue of  
16 case manager and opening up, you know, the  
17 Hearing Officer, so there has already been,  
18 you know, some movement there. So some of  
19 these things can be practical changes too  
20 that just happen.

21 So but I do think -- and here's the  
22 thing, I'm going to say that I don't need to  
23 know whether the public -- the Department of  
24 Public Health has it or the Department of  
25 Public Service has the right authority. I

1 need to say in here this needs to happen,  
2 this needs to happen, and this needs to  
3 happen, and somebody has to be authorized,  
4 if they are not already authorized, okay, to  
5 do rulemaking around this issue. They need  
6 it.

7 And I'm going to say that I do  
8 understand the Public Service Board opening  
9 a docket, but I also understand in this  
10 situation in the past few years, there have  
11 been times where the Department of Public  
12 Service has taken positions on behalf of  
13 something and the Board hasn't agreed. So  
14 it still may be that we want to recommend  
15 that around the issues of, you know,  
16 setbacks or aesthetics or, you know, those  
17 standard kinds of things that we want the  
18 Department to be authorized to do their own  
19 rulemaking around this that then applies to  
20 siting issues.

21 MS. SYMINGTON: So I don't understand  
22 that difference. So when they open a  
23 docket, they will take testimony from the  
24 Department and from experts and from --

25 CHAIRMAN EASTMAN: Public.

1 MS. SYMINGTON: Department of Health and  
2 ANR and the public. And then they can put  
3 in a rule and that guides. And/or you're  
4 suggesting the Department could establish a  
5 rule, and when they do that, does their rule  
6 trump the process of PSB?

7 CHAIRMAN EASTMAN: If the legislature  
8 says that the authority for doing the  
9 rulemaking around this issue is with the  
10 Department, and that applies to the process,  
11 yes. And so it's just who do you want to be  
12 the ultimate, you know, the ultimate  
13 decision maker, a process managed by the  
14 Department? Or a process managed by the  
15 Board?

16 MS. SYMINGTON: And are those the only  
17 two options, or can there be rulemaking by  
18 ANR or the Department of Health that trumps  
19 the Public Service Board?

20 CHAIRMAN EASTMAN: ANR and the  
21 Department of Health are the people who have  
22 purview over things. They are the ones to  
23 do it.

24 MS. SYMINGTON: When they set a rule it  
25 trumps the Public Service Board? Or it's

1 considered with deference?

2 MS. MARKOWITZ: It's deference. It  
3 would be the same as ANR, because they are,  
4 you know, it's a -- it's another  
5 administrative agency.

6 MS. SYMINGTON: So it would be  
7 considered the same as one of your permits.  
8 It would be considered, but not trumped.

9 MS. MARKOWITZ: No. It would be like a  
10 rule, one of our rules. So if we -- for  
11 example, we have rules around how you deal  
12 with stormwater, and there was a case that  
13 just came down that challenged our  
14 stormwater permits in Kingdom Wind and that  
15 the court said there is deference to our  
16 permits. You know, they filed the permits.  
17 It's based on a rule. Right? And, you  
18 know, there is a big burden to show that the  
19 rule is wrong and will result in damage to  
20 the environment.

21 So that's the same thing with any rule  
22 from any Agency, that it shifts the burden  
23 of proof to the person who is opposing it.

24 MR. JOHNSTONE: Unless LCAR doesn't  
25 agree, in which case the burden shifts back

1 to the Agency. The agencies can proceed,  
2 the executive branch can proceed even if  
3 LCAR says no. But --

4 CHAIRMAN EASTMAN: For you guys, LCAR is  
5 the legislative rules committee.

6 MR. JOHNSTONE: So in that case if the  
7 administration was to go forward with the  
8 rule and put it in place, if LCAR objects,  
9 the same deference does not get offered to  
10 the rule. They can still do it, but it  
11 loses the deference; is that right?

12 MS. MARKOWITZ: Yes, but as a practical  
13 matter I'm only aware of one such rule in my  
14 Agency -- it's history.

15 MR. JOHNSTONE: Maybe I did that one.

16 MS. MARKOWITZ: It could be. It has to  
17 do with ATVs, things like that.

18 MR. JOHNSTONE: Maybe they did more than  
19 one.

20 MS. McCARREN: Okay. Just to pick up on  
21 what you're saying and what Gaye has been  
22 saying, absent rulemaking, we are developing  
23 a list of issues which we have heard both  
24 from the public hearing and we have heard  
25 from others that are important in this

1 process.

2 And in the absence of a Board's rule or  
3 a legislative change, we would urge the  
4 Board to listen, to implement as it goes  
5 forth. We have some specific requests for  
6 them like the Web site, like the case  
7 manager, like the tiers, which I do think  
8 would require a rule change, but then we  
9 have some things that we want to say to them  
10 that are -- what we have heard is that  
11 health is becoming more and more important.  
12 We urge you, the Board, not only are we  
13 going to ask the Health Department to do  
14 something, but we urge you, Board, because  
15 you already have jurisdiction over that in  
16 248, to pay attention to it.

17 We have heard about setbacks. We think  
18 that is -- we are -- our conclusion as a  
19 group, I don't know whether we are going to  
20 get there, is that setbacks are very  
21 important, and we urge you to pay attention  
22 to those. I mean these are kind of short  
23 run things.

24 CHAIRMAN EASTMAN: But those are the way  
25 to try and get some influence between now

1 and the time actually something happens.

2 MS. McCARREN: That's what I'm saying.  
3 So I'm saying one of the things we do, this  
4 is just a proposal, is we say -- we make  
5 these strong short-term recommendations to  
6 the Board. And I think, Gaye, you might  
7 have had another one as well in there. But  
8 these fall under the category of things we  
9 think you ought to do right now. And then  
10 we have things that we think you ought to  
11 consider by rulemaking, and then we have a  
12 list of things that will require legislative  
13 change because they can't be done under the  
14 current -- nobody has jurisdiction to do  
15 them.

16 MS. SYMINGTON: And there may be some  
17 things that we say not to the Board but to  
18 the Department, like the Department would be  
19 this dynamic modeling issue. You know, take  
20 this Comprehensive Energy Plan and make it  
21 more real.

22 MS. MCGINNIS: But that would be under  
23 the category -- I want to make sure because  
24 I've got make sure I'm going to write it  
25 correctly, that would be under the first

1 category of implementation, right? She  
2 divided it into three categories.

3 And we can speak to the Board and  
4 relevant agencies. The first category is  
5 what can you implement now without  
6 rulemaking or legislative change, to make  
7 sure I'm understanding. That would include  
8 what we are asking the departments to do,  
9 including developing the road map, doing the  
10 scenario planning.

11 Number two, the things to pay attention  
12 to as regards rulemaking. What's confusing  
13 to me in this discussion is where we direct,  
14 for example, setbacks is a great example.  
15 Do we direct the Board to open a docket or  
16 do we direct the Department of Health or the  
17 Department of Public Service to begin  
18 developing guidelines, or do we ask all  
19 three of them to do it simultaneously?

20 MS. McCARREN: One thing, if we do the  
21 three-part model, one of the things we would  
22 say to the Board and to the Department is in  
23 any project that is coming forth now, please  
24 pay particular attention to necessary  
25 setbacks. This would be our recommendation.

1           CHAIRMAN EASTMAN:  So she is saying we  
2           are going to do two things.  Yes, we are  
3           going to either -- we are going to figure  
4           out, or if we can't figure it out, if we  
5           don't know who has the proper authority, we  
6           are going to let the agencies or the  
7           Department sit down together and determine  
8           who's got the responsibility to do it, and  
9           you know, around where do we need more  
10          rules.  Where do we need more guidance,  
11          right?

12                 And yeah, and why I think Sheila is  
13                 raising the Board is they don't currently  
14                 have rulemaking authority.  So there is that  
15                 to me question about do you keep the  
16                 rulemaking authority at the Board with the  
17                 Department asking, you know, to open, you  
18                 know, for rulemaking, or do we give the  
19                 Department some -- or do we ask the  
20                 legislature to give the Department some of  
21                 their own rulemaking.

22                 What Louise is suggesting, which I think  
23                 is a really good idea to respond in part to  
24                 the issue of what do we do in the interim,  
25                 is some of these issues are currently just

1 part of the decision-making process  
2 currently. And we are saying without any --  
3 we are just going to push back a little bit  
4 and say you've really got to take these  
5 things seriously. And so until you get  
6 either rules or guidance or whatever, it's  
7 still going to be a case-by-case process.

8 MS. McCARREN: Let's take setbacks.  
9 Right now the Board clearly has statutory  
10 jurisdiction when siting a project to  
11 determine appropriate setbacks. Okay. So  
12 we don't have a statutory problem. I don't  
13 believe they have rules.

14 MR. JOHNSTONE: The Department of Health  
15 does too, I think.

16 MS. McCARREN: Okay.

17 MR. JOHNSTONE: If it's health related.

18 MS. SYMINGTON: The Department of Health  
19 has a rule or the authority to speak up?

20 MR. JOHNSTONE: Has the authority. We  
21 should check, but I can't imagine they don't  
22 have the authority to establish a rule  
23 around setbacks that are health related on  
24 this topic.

25 MS. MARKOWITZ: Right.

1 MS. McCARREN: Okay. So these would be  
2 things that we would -- setback, we urge the  
3 Board. We have heard over and over again  
4 how important setbacks are to a good project  
5 and the community. We urge you, Board, to  
6 pay close attention to that. Now -- because  
7 you have jurisdiction right now.

8 Next question, middle thing. Who would  
9 have rulemaking jurisdiction over setbacks?  
10 And I don't know the answer to that. But  
11 some Agency probably does.

12 MS. McGINNIS: So pay attention and  
13 assign rulemaking. Figure out rules.

14 MS. McCARREN: Well so on my middle  
15 column would be rulemaking question mark.  
16 So if setback's the issue, who would make  
17 the rules? Would it be ANR?

18 CHAIRMAN EASTMAN: Well again it depends  
19 upon what the issue is.

20 MS. McCARREN: Fair enough.

21 CHAIRMAN EASTMAN: Setback is the  
22 generic thing. Is it an issue around noise,  
23 is it an issue around viewshed, an issue  
24 around --

25 MS. MARKOWITZ: We already have setbacks

1 related to wetlands and water quality.

2 MR. JOHNSTONE: These are environmental  
3 concerns. We haven't heard -- Deb has the  
4 authority if she believes there is an issue  
5 relative to environmental concerns, to  
6 establish setbacks, we haven't heard that in  
7 this case.

8 MS. MARKOWITZ: We have that, and we  
9 apply it.

10 MR. JOHNSTONE: In other cases.  
11 Relative to wind siting we have not heard  
12 that. So I would say right now you wouldn't  
13 be thinking you would be doing setback rules  
14 for wind, for example.

15 MS. MARKOWITZ: No, no. We do setback  
16 rules for wind, but we don't do it because  
17 of health concerns.

18 MR. JOHNSTONE: That's what I'm saying.

19 MS. MARKOWITZ: We don't do it because  
20 of aesthetic concerns. We only do it  
21 because of environmental concerns.

22 MS. GRACE: As far as the Department is  
23 concerned the Department can go to the Board  
24 and say, hey, we want you to implement  
25 these. The Board gets to make the decision.

1 We do have some rulemaking authority for  
2 things, but whether or not the Board would  
3 actually listen to us.

4 So I think what Jan was saying earlier  
5 is if you wanted the Board to have to listen  
6 to us, we would need a legislative change to  
7 enforce that. But as of today, the  
8 Department could go to the Board and say we  
9 want you to open a rulemaking, Board, and  
10 you know, Board listen to everything  
11 everyone needs to say in order to come up  
12 with what those rules would be around  
13 setbacks.

14 MS. SYMINGTON: So I thought I  
15 understood, and then I just got confused.  
16 Sorry.

17 MS. GRACE: Okay.

18 MS. SYMINGTON: I heard you say that you  
19 actually do have rulemaking.

20 MS. GRACE: We have rulemaking over  
21 certain things. I'm just trying to parse  
22 that wording that we don't want to just  
23 assign rulemaking to the Department.  
24 Because the Department does have rulemaking  
25 authority. We have rules regarding certain

1 things.

2 But what we need is for the Public  
3 Service Board to have to listen to us.

4 MS. SYMINGTON: Well that's the part I  
5 don't understand.

6 MS. GRACE: It would be a legislative  
7 change just like --

8 MS. SYMINGTON: So you have rulemaking  
9 authority, but your rules -- the PSB doesn't  
10 have to listen to. That I thought I had  
11 heard earlier that if you had rulemaking --  
12 if you did have rulemaking authority, then  
13 the Public Service Board would have to give  
14 you deference.

15 MS. GRACE: So I think what we need is  
16 the legislature to actually give us  
17 authority to make rules regarding this  
18 particular issue, and for the Public Service  
19 Board to have to listen to them. So the  
20 legislature has given us authority to make  
21 rules regarding things like commercial  
22 building codes, and so those are rules that  
23 people have to abide by. So we need the  
24 legislature to actually give us a rulemaking  
25 authority listened to by the Board.

1 MS. McCARREN: And the Agency cannot  
2 make a rule unless it has statutory  
3 jurisdiction over the subject matter. So  
4 that's big picture. And the Department  
5 statutory authority is specified. It's very  
6 specific.

7 MR. JOHNSTONE: Right. And so this is  
8 the one piece of this that gets really  
9 confusing because it is the one piece while  
10 we can find our way to most of the issues we  
11 have been talking about on setbacks, the one  
12 piece that we will have to decide is do we  
13 want to increase rulemaking authority for  
14 the Department.

15 On the one hand that seems very elegant  
16 and simple and solve a lot of problems. On  
17 the other hand, there is a lot of -- I think  
18 it's a complicated web of why they don't  
19 have it on certain issues. And it's because  
20 they are representing the public, though I  
21 don't know that the public believes they  
22 represent them, the broader public. And so  
23 the idea that they would be able to set the  
24 rule and represent in front of the Board,  
25 the public, is why I suspect, though I don't

1 know, that there was a division made where  
2 the Public Service Board does the rules on  
3 these issues, and the Department's role  
4 representing the public is to raise issues  
5 of the public in the proceedings.

6 And I don't know that, but it feels to  
7 me like I want to better understand if there  
8 was a logic to the makeup before I would  
9 want to be recommending increasing  
10 rulemaking authority for the Department.  
11 Not that I don't love and trust the  
12 Department. It has nothing to do with it.

13 MS. SYMINGTON: So just and do you think  
14 that by the time we are done that our goal  
15 would be to say, hey, somebody needs  
16 rulemaking authority on setbacks, or do you  
17 think that we are aiming to instead say we  
18 recommended the Public Service Board open a  
19 docket to establish rules on setbacks and  
20 make that choice ourselves between those two  
21 options; the DPS or the Public Service  
22 Board.

23 I'm just looking for -- I'm sorry to  
24 drag us through this. It's really helpful  
25 for me to understand where are we headed.

1 And you have a hand behind you.

2 CHAIRMAN EASTMAN: Okay, Charlie, then  
3 I'm going to --

4 MR. PUGHE: Just a fact.

5 CHAIRMAN EASTMAN: Fact I like.

6 MR. PUGHE: There are setbacks required  
7 in the Kingdom project per our 248 that are  
8 not with ANR. There are setbacks that the  
9 Public Service Board took during testimony  
10 and established during that as well on  
11 Georgia. So they are doing that just --

12 CHAIRMAN EASTMAN: Case-by-case, right?

13 MR. PUGHE: Case-by-case based on  
14 recommendations by various people. Just a  
15 fact for you to have.

16 MS. McCARREN: Taking that, what that  
17 would mean --

18 CHAIRMAN EASTMAN: The issue is do we --

19 MS. McCARREN: The Board has the current  
20 jurisdiction to determine setbacks. So we  
21 urge the Board to give increased  
22 consideration to setbacks based on what we  
23 have heard. Okay.

24 MS. SYMINGTON: They would do that now.  
25 That's in the implement now.

1 MS. McCARREN: Three things. Do that  
2 now. We have heard a lot about health,  
3 Board, please pay much more attention to  
4 health in your proceedings. Middle column,  
5 rulemaking required question mark. And then  
6 who. And then the last column would be must  
7 have legislative change. And what that kind  
8 of tees up is also a time line because we  
9 were concerned about the time lines. I just  
10 made this up.

11 MR. JOHNSTONE: In this case just to  
12 follow through where I would fall is, yeah,  
13 we tell them to pay more attention to it  
14 now, and I would say that personally I think  
15 we need rulemaking --

16 MS. McCARREN: Okay.

17 MR. JOHNSTONE: -- to establish a  
18 setback. And frankly I don't care if it's  
19 the Board or the Department of Health. I  
20 think it would be easier to do it through  
21 the Board and the Department of Health  
22 should way in heavily or the Department of  
23 Health can do their own setbacks. What we  
24 need is a setback requirement with the force  
25 of at least a rule. And I don't think it

1 requires any statutory change to accomplish  
2 that.

3 MS. McCARREN: I wouldn't know.

4 MR. JOHNSTONE: For instance, on your  
5 three buckets, that's where I end.

6 MS. SYMINGTON: And when the Public  
7 Service Board establishes a rule that's  
8 through a docket?

9 MR. JOHNSTONE: Yes.

10 MS. SYMINGTON: And that's this process  
11 that involves testimony.

12 MR. JOHNSTONE: And then it's not  
13 case-by-case precedential. You know coming  
14 in what the rules are.

15 MS. SYMINGTON: And that doesn't go  
16 through LCAR.

17 MS. McCARREN: Yes it does.

18 CHAIRMAN EASTMAN: The public?

19 MS. McCARREN: The rule.

20 MS. SYMINGTON: The Public Service  
21 Board's docket.

22 MS. MARKOWITZ: That's a good question.  
23 I think it doesn't because it's really what  
24 they are doing is they are creating  
25 precedent for themselves.

1 MS. GRACE: If they open a docket. They  
2 can actually have it -- this is my  
3 understanding now, so I'm like 98 percent  
4 sure of this. If they open a docket, the  
5 docket can have a final order, and so the  
6 final order will govern as a final order of  
7 the Board which is their precedent. If they  
8 had made a rule it would go into a different  
9 process.

10 (Mr. Recchia arrived.)

11 CHAIRMAN EASTMAN: And they have the  
12 authority to do.

13 MS. GRACE: I think opening the docket  
14 is quite appropriate.

15 MS. McCARREN: Sometimes you open just  
16 -- sometimes you quote, open a docket, and  
17 you call it a rulemaking docket. And the  
18 significance of that is the ex-parte rules  
19 don't apply because it's a legislative not a  
20 judicial activity.

21 MS. SYMINGTON: And the ex-parte rules  
22 -- I'm sorry not to be a lawyer. But what  
23 does that mean when the ex-parte rules don't  
24 apply?

25 MS. McCARREN: It means you can talk to

1 anybody. You can call up Jim Volz and tell  
2 him what you're thinking. It doesn't  
3 matter, any advocate, any person. Okay. I  
4 think we are just talking past each other.

5 CHAIRMAN EASTMAN: I think we are  
6 talking past each other, and I believe that  
7 on these things we are talking about a  
8 docket, but I think we have to consider that  
9 we may want general rulemaking by the Board.  
10 And they have --

11 MS. McCAREN: They have that authority.

12 CHAIRMAN EASTMAN: They have that  
13 rulemaking authority to do this.

14 I'm now trying to look at actually if  
15 the Department of Health has the kind of  
16 rulemaking authority we would have them --  
17 they would need -- and I'm not sure they do.

18 MR. JOHNSTONE: Really?

19 CHAIRMAN EASTMAN: Well it's interesting  
20 to figure out what do they generally have  
21 rulemaking authority around. But I'm  
22 wondering if what we are talking about is  
23 siting issues, we again don't want that  
24 rulemaking authority done by -- you know,  
25 have the Board do it. It's that the

1 Department is going to be providing all of  
2 the information and doing all the studies.  
3 And then being the party to take a place in  
4 it. But we may actually -- you see it's --  
5 because it's -- because the Board is the one  
6 that's going to be making the determinations  
7 over things we may want the rules there,  
8 they are interpreting the rules.

9 MS. MCGINNIS: Chris, we are talking  
10 about -- excuse me to interrupt -- this is  
11 part of the discussion of the Department, we  
12 were talking about setbacks right now.

13 MR. RECCHIA: Thanks.

14 MS. MCGINNIS: And what to do with  
15 setbacks which is a model for a number of  
16 other touchy issues too that we may end up  
17 having to look at. But setbacks is the one  
18 right now.

19 MS. SYMINGTON: We are using setbacks as  
20 the straw dog for our conversation.

21 MS. MCGINNIS: Exactly.

22 MS. SYMINGTON: About how we might break  
23 down some of our recommendations. Some of  
24 our recommendations will be we think you can  
25 do this now. Then the second set could be

1 we think there is rulemaking that needs to  
2 be done. And if we make that recommendation  
3 then we need to make a recommendation about  
4 who would do that rulemaking, or is it  
5 through a docket. I'm saying all this to  
6 see if I'm right.

7 And then the third category is that we  
8 would need -- that this is something that  
9 needs legislative change. And something  
10 might be in all three categories. And  
11 something might be only --

12 MR. RECCHIA: Components.

13 MS. SYMINGTON: -- only in one.

14 CHAIRMAN EASTMAN: And then there is a  
15 fourth category of you can just do this  
16 right now.

17 MR. RECCHIA: That was the first  
18 category.

19 MS. McCARREN: First category.

20 MS. MCGINNIS: Yours is pay attention is  
21 the same as implement now?

22 MS. McCARREN: Yeah. Sorry I introduced  
23 some language that's caused confusion. Take  
24 out attention. Well --

25 MS. SYMINGTON: One of the

1 recommendations for implement now is pay  
2 more attention to health issues now.

3 MS. McCARREN: Yeah, pay attention to  
4 them now.

5 MS. SYMINGTON: You can do that now.  
6 Nobody has to give you a rule to do that.  
7 Just please do it.

8 MS. McCARREN: And this is the  
9 hypothetical conclusion, we have concluded  
10 that setbacks are of great importance to the  
11 public and possibly to health. I don't know  
12 how we want to raise that, please Board,  
13 take extra care in the short run until you  
14 make a rule.

15 MS. SYMINGTON: Right.

16 MS. McCARREN: Whatever the timing is.

17 MS. MCGINNIS: So we are not just --  
18 want to make sure I'm putting it in the  
19 right way. So in a recommendation you're  
20 asking the Board to open a docket -- a  
21 rulemaking docket or you're just saying pay  
22 attention or --

23 MS. McCARREN: Or both.

24 CHAIRMAN EASTMAN: It's both.

25 MS. MCGINNIS: I just wanted to make

1 sure.

2 MS. SYMINGTON: Except we haven't gotten  
3 to the place we are asking them to open the  
4 docket yet. We have said we want you now to  
5 pay attention, more attention than it seems  
6 like you're paying now. And two, we think  
7 there needs to be rulemaking. But we are  
8 not sure whether -- I'm not sure whether  
9 it's through a docket to the Public Service  
10 Board or whether it's the Department of  
11 Health establishing a rule.

12 CHAIRMAN EASTMAN: Or it's --

13 MR. JOHNSTONE: Or both.

14 CHAIRMAN EASTMAN: Or the Board  
15 establishing a rule. Because the Board can  
16 do it through a docket or they can do it  
17 through general rulemaking authority.

18 MR. JOHNSTONE: I don't mind staying at  
19 a higher level and saying rulemaking is  
20 required to resolve the setbacks. And  
21 frankly the agencies can duke it out, just  
22 so long as we get setbacks at a level of  
23 rule, personally -- maybe you care. I don't  
24 care if it's a Board docket or the  
25 Department of Health.

1 MS. SYMINGTON: The only reason I care  
2 is if somebody had the authority to make  
3 rules without public input. But if  
4 rulemaking by definition, whether it's  
5 through LCAR or a docket or whatever  
6 involves a process of expert testimony and  
7 public input --

8 MR. JOHNSTONE: Yes.

9 MS. SYMINGTON: Then I'm fine not being  
10 specific.

11 MR. JOHNSTONE: I believe that's the  
12 case.

13 MS. McCARREN: Yes, it is.

14 MR. BODETT: And wouldn't the paying  
15 more attention for that interim period  
16 inform the rulemaking process?

17 MS. McCARREN: Yes.

18 MR. BODETT: If they are paying more  
19 attention, they are going to put more weight  
20 on expert testimony I would expect. And  
21 what kind of rule they end up making about  
22 it would be informed by them sort of trying  
23 it out.

24 MS. McCARREN: And the paying more  
25 attention would also apply to the

1 Department.

2 MR. RECCHIA: Absolutely.

3 CHAIRMAN EASTMAN: I don't disagree with  
4 any of this. Other than to say I'm looking  
5 at Sheila. I'm looking at Sheila to say I'm  
6 concerned that a docket is not the kind of  
7 public rulemaking process that other  
8 agencies use.

9 MS. GRACE: Actually it is.

10 CHAIRMAN EASTMAN: It is now.

11 MS. GRACE: Yeah. When they open a  
12 docket they actually do -- they have opened  
13 dockets. They invite everybody, they listen  
14 to everybody, it's absolutely open. And I  
15 think it actually does have the advantage of  
16 being a little bit faster.

17 MS. McCARREN: Well it's not a contested  
18 case. So the Rules of Evidence don't apply,  
19 the ex-parte rules don't apply. The Board  
20 can listen to everybody and anybody.

21 MS. MCGINNIS: Sorry, but I'm hearing  
22 two things. I'm hearing we will ask the  
23 Board to open a docket, and I'm also hearing  
24 that no, we stay at a higher level and let  
25 everybody figure it out. Say setbacks is

1 important, rulemaking needs to be done,  
2 agencies figure it out. Which are we  
3 deciding?

4 MR. RECCHIA: I would for saying use the  
5 pay attention and ask the Department and the  
6 Board to evaluate whether it is appropriate  
7 and necessary to or helpful to open a non-  
8 contested docket for the Board or to do  
9 other forms of rulemaking or guidance to  
10 implement these concepts.

11 MS. SYMINGTON: I would give -- I would  
12 like to be more prescriptive than that.

13 MR. RECCHIA: Okay.

14 MS. SYMINGTON: In that I would like to  
15 tell you I think there is -- needs to be  
16 rulemaking. I'm not asking you to have an  
17 opinion about whether there should be  
18 rulemaking. I just don't know whose  
19 rulemaking, and I don't think that in only  
20 two more meetings I'm likely to have enough  
21 information about it.

22 MR. RECCHIA: I think it's the Board  
23 that does the rulemaking, okay? Just to be  
24 clear. We have done two rules in the --  
25 correct me if I am wrong, in the Department,

1 and they have both been at legislative  
2 direction. So we can do rules, but that's  
3 not our normal practice.

4 MR. JOHNSTONE: And the question for me  
5 isn't whether it's you or the Board. It's  
6 the Department of Health or the Board.

7 CHAIRMAN EASTMAN: Or ANR and the Board.

8 MR. JOHNSTONE: Or ANR if they have a  
9 reason.

10 MR. RECCHIA: We know they do rules.

11 CHAIRMAN EASTMAN: However, here's -- I  
12 want to just -- and Sheila, I want to check  
13 my understanding, okay, and Deb you listen  
14 too, because you're better at this than I am  
15 now. If it is a Board rule the Board has to  
16 apply it.

17 MR. RECCHIA: Correct.

18 CHAIRMAN EASTMAN: If it's an ANR rule  
19 or once we get through it, it's an ANR rule  
20 or the Department of Health rule, it gets  
21 deference.

22 MS. MARKOWITZ: Well the Board still has  
23 to apply it, so it's the degree of deference  
24 that requires them to apply it. There would  
25 be -- like the Board could change their mind

1 on their own docket. It's just a big leap  
2 to get there. So it's not so different.

3 CHAIRMAN EASTMAN: Because I'm not sure  
4 that the Department of Health has --

5 MR. JOHNSTONE: The authority.

6 CHAIRMAN EASTMAN: Yeah, to rule make on  
7 this. Because you have authority to rule  
8 make when you actually have something you  
9 can do with it.

10 And so this issue is all before the  
11 Public Service Board if you're talking about  
12 the implications, you know, the health  
13 implications from noise from siting --

14 MS. MARKOWITZ: So we don't need to know  
15 that. Our recommendations don't have to  
16 know that level of detail. Because  
17 essentially we are saying, hey, you guys  
18 figure it out who's got this. We want  
19 whoever has got authority to do something  
20 about this.

21 MS. MCGINNIS: So agencies figure it  
22 out. We think setbacks are at the level of  
23 rulemaking, we ask the relevant agencies,  
24 which probably will include the Department,  
25 Department of Health, and the Board.

1 CHAIRMAN EASTMAN: And ANR.

2 MS. MCGINNIS: To decide and well on  
3 setbacks --

4 CHAIRMAN EASTMAN: ANR.

5 MS. MCGINNIS: ANR too. Okay. So the  
6 relevant agencies to decide who would have  
7 rulemaking authority on that. Is that where  
8 we are at?

9 MS. SYMINGTON: Well they all have  
10 rulemaking authority.

11 MS. MCGINNIS: No, on this issue. On  
12 setbacks I'm saying. That's the problem.  
13 Nobody right now -- that's the problem.  
14 Nobody has authority.

15 MR. RECCHIA: If you wanted to be  
16 specific on that, I would recommend you  
17 assign it to the Board.

18 MS. GRACE: I agree.

19 MR. RECCHIA: Thank God.

20 MS. MCGINNIS: I just wanted to know  
21 where we are going.

22 MS. GRACE: I'm just thinking for Linda,  
23 who I know is struggling with this language,  
24 I think you do something along the lines of  
25 we recommend that the Board open a docket to

1 establish setbacks. And --

2 MS. MCGINNIS: Which is what I started  
3 out with and there was lots of no's on that.

4 CHAIRMAN EASTMAN: We were still just --

5 MS. MCCARREN: This is all premised on  
6 the belief that the Board has the  
7 jurisdiction on setbacks, which I believe it  
8 does. But that's --

9 MS. GRACE: I agree.

10 MR. JOHNSTONE: They are doing it  
11 case-by-case now, so they clearly think they  
12 have jurisdiction.

13 CHAIRMAN EASTMAN: And I think they have  
14 it. They have got the generic issues around  
15 health issues, noise issues, and all of  
16 that, so then they have got the authority to  
17 make decisions regarding it.

18 MS. GRACE: If they don't open a docket,  
19 Chris can. Chris can ask the Board to open  
20 a docket on it.

21 MR. RECCHIA: Which I'm this close to  
22 doing.

23 CHAIRMAN EASTMAN: Okay. I was thinking  
24 about something, and it's flown out of my  
25 head.

1 MS. MCGINNIS: Do we want this -- just  
2 out of curiosity, do we want this to be a  
3 whole separate recommendation because we  
4 think that setbacks are important enough to  
5 have it be a separate recommendation, or  
6 does this fall under the category of looking  
7 at the guidelines, this annex, appendix --  
8 not annex, appendix four. (Speaking in  
9 French.)

10 MS. SYMINGTON: I understood what she  
11 said better than I understand all you.

12 CHAIRMAN EASTMAN: You're going to see  
13 that some of these things may not just fit  
14 under recommendations that we already have.  
15 It's how we want it done.

16 When you say ensure adequate, remember  
17 last night they want to ensure adequate  
18 environmental health and whatever  
19 protection, you know, you're going to --  
20 you're going to say --

21 MS. MCGINNIS: That's what I'm asking.  
22 This appendix four that Billy put together  
23 is one that the Department is going to add  
24 the things that we thought were within the  
25 jurisdiction of the Department. But we can

1 just say these are other categories that we  
2 feel are important to have guidelines  
3 developed.

4 MR. JOHNSTONE: I don't think it goes  
5 there. I think it goes in the main body  
6 under ensure adequate environmental and  
7 other. Because I think we should name  
8 health, not other.

9 MS. MCGINNIS: That's what I'm asking.

10 MR. JOHNSTONE: That's where I think it  
11 fits in that 17 to 21.

12 MS. MCGINNIS: Do I specify setbacks  
13 separately from everything else? Because  
14 there are many, many others that we are  
15 talking about.

16 MR. JOHNSTONE: No. What I am saying  
17 is, I think it's 22 in that section.

18 MS. MCCARREN: Yeah.

19 MR. JOHNSTONE: Based on the  
20 conversation we have had, that it's item 22  
21 on -- in that section. That's just my  
22 voice. But --

23 MS. MCCARREN: What I was trying to do  
24 here was provide a framework for thinking  
25 about this long, growing list of issues that

1 we have got right. So that's all.

2 CHAIRMAN EASTMAN: And I think there may  
3 be other things that we want a docket for.  
4 I mean this is just the first thing we have  
5 talked about. There may be other things.  
6 What I -- one of the things and it doesn't  
7 go to, it may not go to the specific  
8 recommendations, it may go to something that  
9 we have to have in the introduction. What  
10 I've noticed from the public hearings are  
11 that when we don't say something because we  
12 didn't propose to change it, people think we  
13 have taken something out of the process, and  
14 you know like, no roles for towns. That  
15 isn't at all -- and today we are going to go  
16 back to talking about an even bigger role  
17 for towns, but we never had taken anything  
18 out.

19 So I know I'm a little concerned, and I  
20 think when I get to looking at -- reading  
21 the whole full thing, it may be as I read  
22 that I have to think about how to be sure  
23 people understand that, you know, no, we are  
24 not going to repeat all of 248 and what's,  
25 you know, currently required. If -- we are

1 either going to say specifically change  
2 something, take it out --

3 MS. MCGINNIS: Or it stays as it is.

4 CHAIRMAN EASTMAN: -- or add something,  
5 or it's still there somehow. Because I just  
6 think that, of course, it's, you know,  
7 people are reading it, and they haven't read  
8 the whole full body maybe of 248. They are  
9 only reading this so --

10 MS. SYMINGTON: I think there may be  
11 some issues, and I think the towns' role may  
12 be one of those, where it's worth --

13 CHAIRMAN EASTMAN: Talking.

14 MS. SYMINGTON: -- articulating what it  
15 is, even if it's keeping it.

16 CHAIRMAN EASTMAN: Stays the same. Well  
17 and that's what I said to Linda when we had  
18 the -- and we did -- she changed that first  
19 bullet because at one point we were only  
20 talking about RPCs. We hadn't said anything  
21 about towns.

22 So I just think when we get to it,  
23 that's another way to read this, how is it  
24 going to come across to somebody. Have we  
25 added more confusion when we didn't need to.

1           Okay. So I know we want to move on, but  
2           you weren't here, I want to say one thing in  
3           front of you to get your guidance. I have  
4           been asked by the House Committee to come  
5           and testify on current S30 either this week  
6           or next week. I need to -- and S30 is now  
7           just the next phase, the joint committee  
8           with all kinds of things. And so I just  
9           wanted some guidance, especially from you  
10          guys, from you the Commissioner, and Deb the  
11          Secretary, you know what your positions are.  
12          If you wanted me to try and get out of it  
13          altogether. Do you want me to try and save  
14          it. If you want me to not go at all. I  
15          mean --

16                 MR. RECCHIA: So my testimony before  
17                 them was this; that they should hold it as  
18                 the vehicle by which any statutory changes  
19                 that this Commission recommends can be  
20                 evaluated and incorporated for next January,  
21                 and that we do not need it now.

22                 There is a bunch -- plenty of work that  
23                 I can do to try and pay attention to the  
24                 different areas that have been raised here  
25                 without the study requirements that are

1 specified in there.

2 MS. SYMINGTON: But like one of the  
3 things we could implement now is a case  
4 manager. That would take -- wouldn't that  
5 take a budget line item or something?

6 MR. RECCHIA: All I'm saying is what I  
7 testified to at the moment. Because there  
8 is too many moving pieces. You know, I've  
9 got other bills in the Senate that are  
10 proposing an Oversight Commission and a  
11 variety of other things that are going on.  
12 My testimony is; stop. Wait for this  
13 Commission. This came over from the Senate,  
14 and it is a vehicle by which changes can be  
15 made, therefore by next spring, and that's  
16 plenty of time based on where we are with  
17 things before the Public Service Board,  
18 i.e., nothing before the Public Service  
19 Board in terms of a wind project  
20 application. And if one came in tomorrow,  
21 it would take longer than that to process.

22 So we are suggesting that they just hold  
23 that, and that they not pass something now.

24 CHAIRMAN EASTMAN: So you don't want a  
25 joint committee that's looking over your

1 shoulder.

2 MR. RECCHIA: There is a joint committee  
3 -- there is an existing joint Energy  
4 Committee now. The Senate thing is a  
5 different animal, and no, I don't need that.

6 CHAIRMAN EASTMAN: Okay.

7 MS. MCGINNIS: So the wording that we  
8 have --

9 MR. RECCHIA: Can I just -- one more  
10 thought.

11 MS. MCGINNIS: Sorry.

12 MR. RECCHIA: If they pass S30 and do  
13 the study in some form, they will do it, but  
14 they are going to have to have another  
15 vehicle next year that gets both bodies in  
16 one session, because we will have some  
17 statutory changes recommended as a result of  
18 this process.

19 MS. MCGINNIS: So I want to make sure  
20 that this -- because I think this reflects  
21 what you just said. We have said; in order  
22 to assure expeditious completion of the  
23 recommendations, the Commission advocates  
24 that the current processes under Section 248  
25 remain in place until rulemaking and

1 statutes are in place related to these  
2 recommendations. And recommends moving  
3 quickly to implement the rest.

4 CHAIRMAN EASTMAN: Except, I think there  
5 are some things, -- in looking at this now,  
6 I think there are some things that don't  
7 require rulemaking.

8 MS. MCGINNIS: And that's this.

9 CHAIRMAN EASTMAN: Right. I want to be  
10 sure that's not the first thing people read.  
11 Because they think we are not asking for  
12 anything to change. And I'm saying as we  
13 have intelligence, even if there is not a  
14 rule, it can be the basis for presentation  
15 or testimony in a docket.

16 MS. MCGINNIS: My question on that --  
17 sorry -- is just that on the implement now,  
18 because I think that is really important  
19 language to put in, if this is Gaye's  
20 question, if they have budgetary  
21 implications such as starting the case  
22 manager, does that have to wait for a  
23 different cycle or can it --

24 MS. MCCARREN: The Board can -- probably  
25 has the resources to do it, and in any event

1 could bill it back.

2 MS. MCGINNIS: Okay.

3 MS. McCARREN: All right. And they  
4 could do the same thing if they had to with  
5 the Web site, though that might be a little  
6 more controversial.

7 MR. RECCHIA: What they might not have  
8 is the actual position. But that would be  
9 something again legislatively that or  
10 administratively maybe they could get -- you  
11 could make a recommendation in here that the  
12 administration provides priority from the  
13 pool of a position to do this work.

14 CHAIRMAN EASTMAN: Would you write that  
15 down? Because that's important. Because  
16 what they need is they need the position.

17 MS. McCARREN: They need the position  
18 more than they need the money.

19 CHAIRMAN EASTMAN: They can find the  
20 money. They need the position.

21 MR. RECCHIA: And then just to modify  
22 your sentence, Linda, about keeping the 248  
23 -- existing 248 process in place. I think  
24 that it is, but I think you should say keep  
25 the structure but make these administrative

1 changes that you can make --

2 CHAIRMAN EASTMAN: As soon as possible.

3 MR. RECCHIA: -- as soon as possible.

4 And so that should be one sentence. 248  
5 but, as opposed, and that will help.

6 CHAIRMAN EASTMAN: And I'm going to let  
7 you say things, and then I've got to tell  
8 you that we have got to talk -- and we get  
9 very little time. And we have got to come  
10 to some consensus.

11 So give me your comments, and then I'm  
12 going to be rude to you.

13 MS. MARKOWITZ: Jan, you can leave  
14 public comments to the end also.

15 CHAIRMAN EASTMAN: I know. I want to  
16 get beyond things and have it done.

17 MS. FRIED: I just wanted to say in  
18 today's paper it says "LED reveals  
19 preliminary agreement with wind developer."  
20 In the meeting with Ferdinand they said they  
21 didn't need to wait for the met tower  
22 application, they were going to file an  
23 application right away. So I think this is  
24 happening.

25 MR. RECCHIA: Okay. Let me be clear

1 about this because I don't want people to  
2 misunderstand. I think there are projects  
3 out there, and I think applications will be  
4 filed. They will not be processed before  
5 the end of next session. They cannot --  
6 before the next legislative session. They  
7 just cannot get through that process.

8 MR. JOHNSTONE: That fast you're talking  
9 about.

10 MR. RECCHIA: That fast.

11 MS. FRIED: Lowell was done in months.

12 MR. RECCHIA: No.

13 MS. FRIED: I'm nervous --

14 CHAIRMAN EASTMAN: We note your  
15 concerns. We know the concerns, we have  
16 heard, okay. Now we have got to -- I mean  
17 I'm just concerned that we are not going to  
18 get enough work done, and I've only got Gaye  
19 today, so I've got to get to us doing some  
20 work.

21 MS. RADEMACHER: Maybe at some point, I  
22 guess I'd like an explanation why Mr.  
23 Recchia is against S30 and Deb Markowitz 20  
24 minutes before he came in said she thought  
25 it was a good vehicle.

1 CHAIRMAN EASTMAN: They have different  
2 opinions about who's got to do what. Okay?

3 MR. RECCHIA: I just want to say I'm not  
4 against S30 at this point. I think the  
5 concept of it is fine. I think the point is  
6 in the legislative process if there are any  
7 legislative changes that this Commission  
8 makes, you need a vehicle by which to  
9 implement those. S30 is a good vehicle  
10 which could start in January and be done by  
11 the end of the session in May of next year.  
12 If you pass S30 in its current form, we have  
13 got to start doing all this work, it's fine.

14 A lot of it is redundant with what the  
15 Commission is doing. If there are any  
16 statutory changes proposed as a result of  
17 this Commission's work, then you need a new  
18 bill, and the new bill will have to go  
19 through both bodies instead of just one.

20 MS. MARKOWITZ: My explanation is that  
21 was a much more elegant approach.

22 MS. RADEMACHER: To save time basically.

23 MR. RECCHIA: Yes, to have a bill passed

24 --

25 CHAIRMAN EASTMAN: That's my concern

1 about this S30 study. If there are things  
2 we can do now, why are we waiting until  
3 November for somebody to do it? Okay. So  
4 just know --

5 MR. RECCHIA: We won't be.

6 CHAIRMAN EASTMAN: We hear your  
7 concerns.

8 MS. RADEMACHER: We all care. Okay?

9 CHAIRMAN EASTMAN: We are actually  
10 really trying to read it carefully and  
11 figure out how do we get it done in a timely  
12 fashion. I too am concerned, and I have one  
13 more thing to say to you just to clarify.  
14 And what's -- and Sheila, this is another --  
15 sorry it's another legal issue, but it is  
16 the issue of what rules or, you know, what  
17 statutes apply at the time somebody, you  
18 know --

19 MR. RECCHIA: Right. Whether there is  
20 vested rights in the application when it's  
21 made.

22 MS. McCARREN: Well the legislature --  
23 the legislature can specifically address  
24 that and have it comply to -- the  
25 legislature can address that issue.

1 MS. MCGINNIS: The retroactive  
2 application?

3 MS. MCCARREN: It's not retroactive. I  
4 wouldn't use that term.

5 MS. MCGINNIS: Okay.

6 MS. MCCARREN: But the legislature can  
7 making its decision -- can say that it  
8 applies to all existing applications in the  
9 pipeline.

10 CHAIRMAN EASTMAN: And we clearly are  
11 trying to push back, the issues we are most  
12 concerned about that would be rulemaking  
13 that might take six months. We are saying  
14 pay attention now, and most of those things  
15 currently are case-by-case so the Board  
16 could be using that standard.

17 MS. SYMINGTON: One little modification  
18 is -- that I would add is that with using  
19 S30, given that it would need to just go  
20 through one House and then to Conference  
21 Committee, it doesn't have to wait until May  
22 to pass.

23 MR. RECCHIA: Correct.

24 MS. SYMINGTON: That could be done by  
25 February.

1 MR. RECCHIA: Correct. What Louise just  
2 said in terms of applying to everybody  
3 that's in the pipeline, you would want to do  
4 it sooner rather than later. And that's why  
5 -- that's why I am suggesting that vehicle  
6 be held.

7 MS. MCGINNIS: This fall.

8 CHAIRMAN EASTMAN: Okay. Well I mean  
9 that's actual progress.

10 We talked about me -- the issue for me  
11 is what are we doing in the interim here and  
12 pushing back a little bit is worthwhile.

13 Okay. So how -- where do we want to  
14 start from today? There are some things  
15 that do we want to go back to the planning  
16 issue, the tier issue, and then move on to  
17 new things?

18 MR. JOHNSTONE: Yeah. I would really  
19 like to knock off the planning thing. We  
20 have got to grapple with that.

21 MR. BODETT: That's the nub of it.

22 MR. JOHNSTONE: I don't know where we  
23 are on that so -- to be honest.

24 MR. RECCHIA: So is everyone using this  
25 version?

1 (Ms. McCarren holding a document.)

2 MR. JOHNSTONE: I know you are, Louise.  
3 I don't know where we are.

4 MS. SYMINGTON: Louise, it would help me  
5 to know when you hold that up are you saying  
6 this is my position, take it or leave it, or  
7 are you holding it up to say, you know, what  
8 I think and I'm looking for common ground.  
9 Because I sometimes feel it's -- like you're  
10 saying it's this way, and you know, we are  
11 just not going to agree, or this is where we  
12 are coming --

13 MS. MCCARREN: I didn't want to have to  
14 once more recite my views and bore you all  
15 with them. I am open, but I'm open to ways  
16 to get at this, but I am even more convinced  
17 after listening to the public hearings and  
18 really thinking about this, that the role of  
19 the town in land use planning is very  
20 critical.

21 Now how we structure that, right, how  
22 that gets structured, but to me that is  
23 critical. And because this is -- this is  
24 not about electrical energy, it is about  
25 land use planning.

1 MS. SYMINGTON: It's about both; isn't  
2 it?

3 MS. McCARREN: See I really don't think  
4 so, that's why you and I don't agree, and  
5 it's fine. So with that said, I want to  
6 make sure that towns go through the  
7 thoughtful planning, their voice -- I would  
8 say controlling, but I want that voice, and  
9 the notion that towns can't have vetoes, I'm  
10 not saying that. I'm just saying, you know,  
11 because there is -- this is a different  
12 world than, you know, building a Yankee or a  
13 thousand megawatt gas-fired plant. It's a  
14 different world.

15 And therefore, and also, I'll be a  
16 little more radical. I think if towns say  
17 -- and I can't imagine that they would  
18 because most towns, thoughtful towns are  
19 going to say, look, we have got all this  
20 great space over here for solar, whatever,  
21 if towns don't want to do that, they are  
22 telling you something. Right? They are  
23 speaking their voices. And I think those  
24 need to be heard.

25 Now that flies in the face of, right, of

1 a lot of experience in the state, about not  
2 getting certain things done because towns  
3 don't want to do it. So I understand that.

4 MR. BODETT: And I just want to, you  
5 know, sort of as the town rep on the  
6 Commission --

7 MS. McCAREN: Speak.

8 MR. BODETT: You know, I think it needs  
9 to be framed in terms of like some of the  
10 other things that are statutorily mandated  
11 for towns to put in their zoning and  
12 planning. There is -- towns have rights in  
13 land use planning obviously, lots of rights.  
14 They have responsibilities as well.

15 And I think that's how this needs to be  
16 framed, is that this Comprehensive Energy  
17 Plan is a responsibility that towns have to  
18 take on in some form. Now this idea of  
19 being able to veto it as I think we have all  
20 seen, you know, nobody is going to -- that  
21 will be the end of it. So people's town  
22 plans have to allow for the Comprehensive  
23 Energy Plan. And this -- that's a huge  
24 subject.

25 And that's a Commission all on it's own,

1 I think. But I think that that's really  
2 what has to happen first here. Because  
3 otherwise it's just going to stay this  
4 project-by-project-by-project thing. And  
5 this idea of not being able to put in,  
6 directly or indirectly, inhibits, like okay,  
7 so say Dummerston has decided, well, we  
8 don't want any wind, but we can't say no to  
9 wind, so we will put a 50-foot height limit  
10 on any structures. That's indirectly  
11 banning wind.

12 But we could come up with the same thing  
13 with solar. You know, if you look at --  
14 what was the thing, Georgia Mountain is four  
15 wind towers, but it would take 80 acres of  
16 solar panels to equivalent that, so imagine  
17 somebody clearing a hillside and putting in  
18 80 or 100 acres of solar panels where it  
19 used to be green forest. And these are the  
20 kind of things that if they are discussed at  
21 the local level, having just went through  
22 rewriting our Town Plan, that's where it  
23 needs to happen. Because people are going  
24 to say, you know, the Miller Hill over  
25 there, nobody is going to see it over there.

1 If you put it on the Scott farm it's going  
2 to ruin everything on Kipling Road.

3 Those are where those discussions would  
4 better take place as long as they know they  
5 had to put it somewhere. I think towns will  
6 figure it out, I really do. Wind will  
7 probably be a tougher nut than others, but  
8 wind isn't appropriate everywhere. So I  
9 think those areas are going to be kind of  
10 limited.

11 MR. JOHNSTONE: I would -- I think there  
12 is a way that we can define this. And I  
13 think it's around this notion of defining  
14 what substantial is. And I think that's  
15 where we ought to start. And part of the  
16 reason I think that -- part of the reason  
17 I'm not comfortable going further than that,  
18 which is more than towns have now, so again  
19 back to level setting, that would be an  
20 enhancement, not a retraction of authority,  
21 is that we have a lot of towns actually also  
22 arguing that, which gets to the regionality  
23 and statewide nature of this work, we have a  
24 lot of towns arguing that their position  
25 ought to rule in their neighboring town.

1 And that argues that it's around the region  
2 and the state, not a town-by-town choice.  
3 But they don't want their opinion to only  
4 carry in their town. They want to be  
5 protected by a neighboring town who might be  
6 in favor of a solution.

7 And so I think when you get to the veto  
8 how far does it extend? Because some of the  
9 towns want their veto to extend beyond their  
10 borders. So it gets challenging. But the  
11 notion of substantial, and the ways that we  
12 were talking about -- and I would love to  
13 hear the update you said you had from the  
14 League about what they meant by that.

15 MS. McCARREN: Thank you.

16 MR. JOHNSTONE: But for me making sure  
17 that the Town Plan, and I would probably say  
18 since we are having a hard time getting  
19 anyone to agree that anybody should be able  
20 to show conformance with the state goal, it  
21 may be that we apply the same standards to  
22 the Regional Plan, that neither of them  
23 actually get deference. That they both get  
24 substantial, or neither of them get  
25 dispositive I think is the legal term. I'm

1                   sorry. I'm trying to learn how to be an  
2                   attorney here. But they both get what we  
3                   define as substantial might be the pathway  
4                   to this to give both the regional voice and  
5                   the town voice more voice than they have now  
6                   in the process, but not a guarantee.

7                   CHAIRMAN EASTMAN: I did talk to --

8                   MS. McCARREN: Let me just -- I don't  
9                   disagree very much with what each of you  
10                  have said. Here's the other piece that I  
11                  can't support, because I don't understand  
12                  it. And that is that somehow the compre --  
13                  that plans would get a subsequent review for  
14                  their conformance with the Comprehensive  
15                  Energy Plan. Not only don't I understand  
16                  what that means, with all due respect to  
17                  Chris, you are empowering a political agency  
18                  to do something with no legis -- without  
19                  legislation.

20                 MR. RECCHIA: I have an answer for that.

21                 MS. McCARREN: Darn.

22                 MR. RECCHIA: I do. No, I mean I think  
23                  a positive direction which is I am willing  
24                  to let the Board decide -- the Board knows  
25                  what the Comprehensive Energy Plan is.

1 That's in evidence. It should be.

2 MS. McCARREN: We hope.

3 MR. RECCHIA: We hope. We can let the  
4 Board decide that, if that really is the  
5 sticking point. Recognize that will take  
6 more time and there won't be kind of this  
7 comprehensive assessment of regional plans  
8 relative to the Comprehensive Energy Plan,  
9 or maybe I weigh in as a party, right? We  
10 weigh in as a party.

11 We still need to do that work. So maybe  
12 the compromise here, that I could find a  
13 path forward for, is if you still would let  
14 all these regional plans be developed on a  
15 similar time frame, and they come to us for  
16 assessment, I just need to know so that when  
17 I go to the Board I have a position that our  
18 Department can take relative to whether we  
19 think it is or isn't. But let the Board  
20 decide that piece. Does that work for you?

21 MS. McCARREN: Not completely. But I  
22 had proposed --

23 MR. RECCHIA: I'm not trying to get you  
24 completely. Just trying to get close.

25 MS. McCARREN: I'm trying to be

1 reasonable. I know, and I'm trying to be  
2 reasonable. I know you guys don't agree  
3 with me.

4 My theory always was that it would be up  
5 to the Board to make the decision as to  
6 whether or not the project conformed to the  
7 Town or Regional Plan.

8 MR. RECCHIA: That's what I'm thinking.

9 MS. McCARREN: I don't think we are  
10 thinking the same. I'm thinking on a  
11 project-by-project basis.

12 MR. RECCHIA: Same here.

13 MS. McCARREN: Town comes in. Here's my  
14 plan. Region comes in, here's my plan.  
15 People say -- raise their hand and they say  
16 this project is not in conformance with the  
17 plan. Well the Board makes that decision  
18 based on the evidence.

19 MR. RECCHIA: So I want to say --

20 MS. GRACE: I'm just concerned what  
21 Louise is saying is whether it's in  
22 conformance with the Town Plan. What you're  
23 saying is whether it's in conformance with  
24 the CEP.

25 MS. MCGINNIS: Exactly. That's the

1 crux.

2 MR. JOHNSTONE: And Louise is  
3 dispositive in that way because if it isn't,  
4 then the Board should rule against the  
5 project.

6 MS. McCARREN: Well the statute already  
7 says that it has to be in conformance with  
8 the Comprehensive Electric Plan --

9 MR. RECCHIA: Right.

10 MS. McCARREN: -- not Energy Plan,  
11 right?

12 MR. RECCHIA: So one statute change.

13 MS. McCARREN: So the legislature has  
14 already spoken about that. But that's --  
15 with all due respect, that is different --  
16 because it's different than saying that it  
17 has to conform with the Town and Regional  
18 Plans because the Comprehensive Energy Plan  
19 is an energy plan, and the Town Plans are  
20 land use planning.

21 MR. RECCHIA: Okay. I'll just say this  
22 is about as far as I can go. A little  
23 further than where Scott was I will say. So  
24 Scott was -- just to clarify, you were  
25 saying substantial consideration to both the

1 town and regional plans.

2 MR. JOHNSTONE: If we are not going to  
3 connect it to conformance with the State  
4 Energy Plan, that's as far as I feel I can  
5 go, which is more than each has today.

6 MR. RECCHIA: I think this is where I  
7 would be. Substantial conformance with the  
8 -- substantial consideration for the local  
9 plan. Conformance with the Regional Plan  
10 that is deemed in conformance with the  
11 Comprehensive Energy Plan, and let the Board  
12 decide if the Regional Plan is indeed  
13 consistent with the Comprehensive Energy  
14 Plan. And I would be as a party before the  
15 Board as the Department on that piece.

16 CHAIRMAN EASTMAN: Well --

17 MR. JOHNSTONE: I can live with that. I  
18 didn't think we had a prayer of getting that  
19 far. That's why I went below that.

20 CHAIRMAN EASTMAN: We have got to get  
21 through this stuff.

22 MR. RECCHIA: Can I get your reaction to  
23 that, and what you do or don't --

24 MS. McCARREN: The statute already says  
25 that the project has to be in conformance

1 with the electric plan. And that says to me  
2 that the legislature has already spoken.  
3 They use different terms but comprehensive--  
4 I don't disagree with you that the project  
5 has to be in conformance with the  
6 Comprehensive Energy Plan.

7 What I don't agree is that the Regional  
8 Plan must be in conformance with the  
9 Comprehensive Energy Plan because the  
10 Regional Plan is land use planning. And the  
11 Comprehensive Energy Plan is energy  
12 planning. But the project, Chris, is  
13 already in the legislation, and if the  
14 legislation needs to be amended to go to  
15 Comprehensive Energy Planning, I don't have  
16 any problem with that.

17 MS. SYMINGTON: I'm lost.

18 MR. RECCHIA: I'm lost too. I'm with  
19 Gaye on this. But it --

20 MR. JOHNSTONE: Let me try to interpret.  
21 What I think you're saying, Louise, is you  
22 do not want the Regional Plan to have to  
23 meet a test of conformance with -- from a  
24 different perspective -- being energy  
25 instead of land use.

1 MS. McCARREN: Yes.

2 MR. JOHNSTONE: You want the Regional  
3 Plan to stand on its own per statute, and  
4 you would like that to be dispositive.

5 MS. McCARREN: Well I would. But I  
6 heard what you said. And I think --

7 MR. RECCHIA: I think right now --

8 CHAIRMAN EASTMAN: I need to interject  
9 on one thing to just explain this. Yes,  
10 it's a Regional Plan. It's not just land  
11 use.

12 MS. McCARREN: I understand.

13 CHAIRMAN EASTMAN: It deals with  
14 housing, it deals with transportation.

15 MS. McCARREN: Right.

16 CHAIRMAN EASTMAN: And it deals with  
17 energy. They are required to have energy  
18 components in the Regional Plan. So you've  
19 got to be careful by thinking it's a  
20 regional land use plan, because it isn't.

21 MS. McCARREN: Understand.

22 CHAIRMAN EASTMAN: So that means that  
23 already, already the Regional Plan is found  
24 by, you know, is it some point found to be  
25 in conformance with state planning goals,

1 not energy goals, but other state planning  
2 goals. Can I just tell you -- we can figure  
3 this, and I will tell you where the League  
4 is.

5 MR. BODETT: Can I make one suggestion.  
6 Maybe the verb is wrong, conformance is the  
7 wrong verb, because we have apples and  
8 oranges trying to conform to each other. If  
9 it was more that a Regional Plan would  
10 either -- I don't know what the verb would  
11 be unable, make allowances for, promote --

12 MS. MARKOWITZ: Implement.

13 MR. BODETT: -- the Comprehensive Energy  
14 Plan, the Regional Plans.

15 MS. MARKOWITZ: The goals of the region.

16 MR. BODETT: Yeah, because the  
17 conformance -- I see the problem, you're  
18 right. Could you -- can you -- they are not  
19 the same thing.

20 MS. McCARREN: All right.

21 MS. MARKOWITZ: I actually agree. I  
22 think we can get there using, I don't know  
23 if promoting the goals or implementing the  
24 goals --

25 MR. RECCHIA: I wonder if the last piece

1 of this, to get to Louise's point is that to  
2 be evaluated on a case-by-case basis, to be  
3 evaluated -- to have each project evaluated  
4 in that context, is that the issue? It's a  
5 project-by-project evaluation?

6 MS. McCARREN: You already have a  
7 project-by-project requirement that the  
8 project be in conformance with the energy  
9 plan.

10 MR. RECCHIA: Right.

11 MS. McCARREN: A little language change.  
12 But the legislature has already spoken on  
13 that one. Okay?

14 MS. GRACE: Would you like having  
15 nervous employees?

16 MR. RECCHIA: She is not close enough to  
17 kick me. Keep going.

18 MS. McCARREN: Where I --

19 MS. SYMINGTON: Can you just say that  
20 again slowly?

21 MS. McCARREN: Yes. Right now Section  
22 248 requires that a project be in  
23 conformance with the electrical plan of the  
24 state. What is different is we are talking  
25 about a Comprehensive Energy Plan rather

1 than the electric plan. That's just a --  
2 that is a change that would have to take  
3 place in the statute. And I'm fine with  
4 that.

5 Because what I'm looking at is I think  
6 projects conform to the Comprehensive Energy  
7 Plan, but if -- and I've heard what Jan  
8 said, but if towns and regions have a  
9 thoughtful land use plan as it relates to  
10 renewables, that I would have said was  
11 controlling.

12 I heard what you said, Scott, that there  
13 is a compromise language possible there, and  
14 I'm open to that, maybe it's just me, maybe  
15 I'm not drinking enough.

16 CHAIRMAN EASTMAN: No. It's that what  
17 we are talking about, if we wanted to change  
18 the standard for consideration of Regional  
19 Plans and local plans, it requires statutory  
20 change. So just like the legislature has  
21 said a project has to be in conformance with  
22 that plan, you know if we want to -- right  
23 now, Towns and Regional Plans in effect are  
24 given due consideration. That's it. And  
25 nothing relates to anything else, and they

1 you know, don't win.

2 If you want something more, so that  
3 people have more say and you have some more  
4 things done on planning as opposed to  
5 case-by-case reviews only, from the plan  
6 out, that does require, you know,  
7 legislative change.

8 MS. McCARREN: Here's a possibility.  
9 I'm hung up on land use planning. Okay.  
10 And maybe the path out of this, because I'm  
11 thinking differently than you guys are, that  
12 the Town and Regional Plans with respect to  
13 land use planning for electric generation, I  
14 say controlling, you would say substantial,  
15 whatever.

16 MS. SYMINGTON: Say that again.

17 MS. McCARREN: Okay.

18 MS. SYMINGTON: Sorry. I just don't get  
19 the distinctions.

20 MS. McCARREN: Well I'm afraid it's  
21 because I'm not either being articulate or  
22 I'm just thinking about it the wrong way.

23 MS. SYMINGTON: Just say it again.  
24 Sorry.

25 MS. McCARREN: What I am hung up on, and

1 what you're hearing from me is that I  
2 believe the towns and regions should be the  
3 controllers of land use planning on issues  
4 of renewables, because we are now dealing  
5 with highly dispersed generation, okay? And  
6 it is different than central station or  
7 transmission.

8 Therefore, I would like a vehicle to  
9 preserve the town and regions' thought  
10 through land use plan as it rolls in to the  
11 Board. Okay? The project already has to  
12 conform with the electric plan or the energy  
13 plan. So I see these as two kind of  
14 parallel things going on. And I heard what  
15 Jan said, that wait, the Regional Plans also  
16 include transportation and energy and  
17 blah-blah, and that's fine. But to the  
18 extent that they opine on land use planning  
19 for renewables, I want that -- I prefer it's  
20 controlling. You say substantial.

21 CHAIRMAN EASTMAN: I could have it  
22 controlling if it had to be in conformance  
23 with the state plan. The legislature has  
24 told the state, has told the Department,  
25 here's what has to happen. I can't have it

1 -- I can't go to it being controlling if  
2 it's going to be different and doesn't  
3 actually implement and get us where the  
4 legislature has told the state to go.  
5 That's to me the rub.

6 If I can find a connection between it  
7 and that plan, I can go to controlling. I  
8 can only go to substantial or something like  
9 that if it doesn't do it. And so for me,  
10 the concern I now have after thinking about  
11 all these things, is we have got to find a  
12 way to do that. Or I have to let  
13 controlling go or dispositive for Regional  
14 Plans go because we don't have a great  
15 planning process in Vermont right now.

16 So the thing for me, though, is this is  
17 why -- this has been an issue difference in  
18 language, because the Regional Plan talks of  
19 Regional Plan. It doesn't talk about a  
20 regional land use plan.

21 MS. McCARREN: I understand.

22 CHAIRMAN EASTMAN: It talks about a  
23 Regional Plan with a general purpose of  
24 guiding and accomplishing a coordinated,  
25 efficient and economic development of the

1 region which will in accordance with the  
2 present and future needs and resources best  
3 promote the health, safety, da-da-da-da-da.  
4 Then it requires all of these various  
5 things, and the same thing, a local plan  
6 talks about a lot of issues. And so but  
7 that's --

8 MR. JOHNSTONE: So really the goal, if I  
9 could just offer, is I think everybody in  
10 the room agrees projects need to conform.  
11 There is no disagreement about that. And  
12 the gulf is when some of us believe that you  
13 can't have a planning construct if each  
14 doesn't interrelate with the other and build  
15 to --

16 CHAIRMAN EASTMAN: A whole.

17 MR. JOHNSTONE: -- what the legislature  
18 has required, and that goes too far for you.

19 MS. McCARREN: And it does.

20 MR. JOHNSTONE: I hear that. That's the  
21 gulf.

22 MS. McCARREN: Right. And the reason it  
23 does --

24 MS. MARKOWITZ: Thank you, Scott.

25 MS. McCARREN: Yes. Is that where I

1 believe it would take us is that the concept  
2 of being in conformance with the energy plan  
3 means that at worst, an agency, again with  
4 all due respect, has control over land use  
5 and where electric generation will go in  
6 this state.

7 MR. JOHNSTONE: With the exception that  
8 statute currently disallows towns from  
9 zoning these issues out.

10 MS. McCARREN: I'm fine with that.

11 MR. JOHNSTONE: Already -- my point is  
12 the current statute, just to push back a  
13 bit, current statute already takes us away  
14 from towns and regions, if I understand  
15 current statute. So there is nothing -- you  
16 know, so I hear your concern. But you have  
17 a concern with current statute.

18 MS. McCARREN: Well I might. I'm going  
19 back to what Tom said. Right? Local towns,  
20 if the issue is where do you want to put the  
21 dump, excuse me, transfer station, where do  
22 you want to put -- it's always a great place  
23 to campaign by the way, or where do you want  
24 to put the gravel pit, or where do you want  
25 to put this, where do you want to put low-

1 income housing. Towns in my view are not  
2 always perfect, but I think that's where it  
3 stays.

4 CHAIRMAN EASTMAN: But through the  
5 planning process at least for housing and  
6 low-income housing there actually is a  
7 connection between what the state says is  
8 necessary over at the Housing and Community  
9 Affairs Office and then down to Regional  
10 Plans and then down to municipalities. So  
11 there is a connection back.

12 Anyway.

13 MS. MARKOWITZ: And actually there is  
14 rules that limit the ability of the  
15 municipalities to regulate all of those  
16 things in their plans -- in their zoning,  
17 for example.

18 MS. McCARREN: All right.

19 CHAIRMAN EASTMAN: We are not going to  
20 --

21 MS. McCARREN: This has been really  
22 helpful, and I can keep my mind open.

23 MR. RECCHIA: Let me try. Two choices  
24 are, keep the project compliance with the  
25 plan the way it is.

1 CHAIRMAN EASTMAN: With the state plan.

2 MS. McCARREN: Which is already in the  
3 statute.

4 MR. RECCHIA: And give substantial  
5 consideration to the regional and local  
6 plans. That's one -- I consider that to be  
7 one option.

8 The other option, at least in my mind,  
9 is I'm still willing to go to conformance  
10 with the Regional Plan, knowing that the  
11 towns and the regions will work that out.  
12 Conformance with the Regional Plan, if at  
13 least the Board gets to consider on a  
14 case-by-case basis as a project comes in  
15 whether that plan is in conformance with the  
16 state plan.

17 So the difference there, Louise, what  
18 I'm giving you --

19 MS. McCARREN: I've got you.

20 MR. RECCHIA: Is that again, I don't  
21 remember the word we used, but in case I'm  
22 crazy, you don't have the Department  
23 determining whether -- whether it is or  
24 isn't. In other words, I'm out of that.  
25 I'm giving -- I would give you that piece of

1 it.

2 MS. SYMINGTON: And that means that  
3 people would -- including the Department  
4 would testify as to their opinion as to  
5 whether it conformed with the Comprehensive  
6 Energy Plan.

7 MR. RECCHIA: Correct. So which of  
8 those feels better?

9 MS. McCARREN: I hear you. I need to  
10 take a mental break of some kind to think  
11 about this.

12 MR. RECCHIA: Can I just draw one other  
13 concept while you're kind of thinking about  
14 that piece, because I don't think this one  
15 will hurt too much.

16 MS. McCARREN: That's what they always  
17 say.

18 MR. RECCHIA: I do feel like the  
19 Department, independent of how it plays a  
20 role in the proceedings of a particular  
21 project or before the Public Service Board,  
22 I do feel the Department needs to have a  
23 role in evaluating the Regional Plans in the  
24 context of this as a broader principle, just  
25 statewide from a statewide planning

1 exercise, and maybe it's a separate  
2 recommendation --

3 CHAIRMAN EASTMAN: Yeah.

4 MR. RECCHIA: -- that we do that.

5 CHAIRMAN EASTMAN: Here's what I -- I  
6 was looking at these, Scott noticed this  
7 too. We talk about, you know, an increased  
8 emphasis on planning, you know, that  
9 recommendation, DPS shall develop a road  
10 map. And we really liked -- the Green  
11 Mountain Power, you know, talked about, you  
12 know, this -- what this analysis might  
13 include, made some recommendations, and sort  
14 of tied it to the transmission efforts. You  
15 know, maybe --

16 MR. JOHNSTONE: A group like that.

17 CHAIRMAN EASTMAN: A group like that.  
18 Or something for you to use, and I know that  
19 when they are doing the transmission  
20 planning they are talking to regions, and  
21 regions -- the regions are helping them work  
22 through it. So it may be that that's a  
23 piece that goes, you know, along with how  
24 you expand or enhance your current, you  
25 know, planning efforts.

1 MR. RECCHIA: Yeah.

2 CHAIRMAN EASTMAN: And as I say, I go  
3 back to that because the transmission folks  
4 say they have had success in what they have  
5 been doing. And the transmission company  
6 says it's saving them money by doing that.  
7 So I just -- that's one place we might put  
8 something like that.

9 MR. RECCHIA: Exactly.

10 CHAIRMAN EASTMAN: Enhance that language  
11 there to connect it.

12 Can I -- while you're thinking --  
13 because I did talk with Karen Horn of the  
14 League.

15 MR. RECCHIA: It would good to know what  
16 Karen says.

17 CHAIRMAN EASTMAN: About what  
18 substantial, it's interesting. They were  
19 trying to actually define substantial  
20 consideration. Those four things were their  
21 definition.

22 I talked to Linda about this. And we  
23 have got to think about this, if we change  
24 substantial consideration, if we change from  
25 due to substantial and use what they're

1 suggesting, we may have a problem in tier  
2 one and tier two reviews.

3 But when the League gave us their four  
4 items they talk about considering local  
5 decisions. I think that's not the language  
6 to use. I told her -- I went back and  
7 looked at 248, and right now it talks about  
8 recommendations from the, you know, from the  
9 Municipality Planning Commission, the  
10 Regional Planning Commission, the municipal  
11 legislative body. And I talk about that  
12 because, in fact, there aren't local  
13 decisions necessarily made, you know, by  
14 bodies, and I didn't want to have confusion.

15 So but the other thing is so that's what  
16 they meant by substantial consideration. I  
17 think in one of these drafts I've talked --  
18 we were doing a little differently. We  
19 think substantial consideration, but then  
20 part of the way of having the public process  
21 happen at tier three was to here's what you  
22 have to show. You know, that tier three and  
23 four that you've actually looked at the  
24 recommendation, you know, you've had a  
25 public hearing in the community, you've

1 actually considered the principal concerns,  
2 you've actually, you know, done something  
3 relative to them with the docket.

4 MS. MCGINNIS: Recommendation number  
5 nine, if you look at the language.

6 CHAIRMAN EASTMAN: You know, and you've  
7 actually responded kind of thing. So --

8 MR. JOHNSTONE: But what's inconsistent?  
9 I'm hearing you say there is an  
10 inconsistency with three and four.

11 CHAIRMAN EASTMAN: Well because, you  
12 know what? In tier one and tier two if the  
13 projects are easy, you may not have a public  
14 hearing.

15 MR. JOHNSTONE: So could we say  
16 significant for tier three and four?

17 MS. MCGINNIS: Which is what we said in  
18 recommendation number nine, that's exactly  
19 where it is.

20 MR. BODETT: My numbers don't line up.

21 MR. RECCHIA: Everybody has got to be  
22 dealing with the red line version which is  
23 dated April 8.

24 MR. BODETT: That's what I have.

25 CHAIRMAN EASTMAN: Yeah, April 3. So we

1 don't have --

2 MR. RECCHIA: Do we need more copies of  
3 that?

4 CHAIRMAN EASTMAN: Yeah. We need more  
5 copies of April 8.

6 MS. MCGINNIS: I think they are right  
7 there on the table.

8 CHAIRMAN EASTMAN: That's April 3.

9 MR. RECCHIA: Who do I have besides you,  
10 Sheila? Would you take a copy of that to --

11 MS. GRACE: I'll get April 8.

12 MR. JOHNSTONE: So you're saying in the  
13 April 8 that you are applying the  
14 substantial to tier three and four, is that  
15 what you're saying?

16 CHAIRMAN EASTMAN: What we were doing  
17 was -- well no. I mean what we had done in  
18 tier three was taken that process that they  
19 used, to be the process for what, you know,  
20 how the Public Service Board would consider  
21 things. But then -- I mean I still see a  
22 need to substitute, if we go this way, take  
23 the language that's currently in 248 where  
24 it says due consideration to regional and  
25 local plans and make it substantial

1 consideration throughout.

2 MR. RECCHIA: Right.

3 CHAIRMAN EASTMAN: And then find a way  
4 to define it, Sheila -- find a way to define  
5 what does more than do. Because you want  
6 that at the lower levels. That's the whole  
7 point. You want it in tier one, you know,  
8 you want to -- you want to -- if the town  
9 has said we want this little project here,  
10 we want it to go through. So I don't want  
11 to change the --

12 MR. BODETT: So what happens then -- so  
13 say a region goes through this whole  
14 planning process and six of the 10 towns or  
15 seven of the 10 towns involved approved the  
16 Regional Plan which means all the standards,  
17 and a project goes in and you have one of  
18 the abstaining towns or dissenting towns,  
19 Town Plan is different from the Regional  
20 Plan. So which one of those is getting, you  
21 know what I'm saying?

22 CHAIRMAN EASTMAN: Right now, I mean  
23 under this, and the way it would be, I don't  
24 think we are even talking about conformance.  
25 I would say duly adopted Municipal Plan,

1 whatever that process is, gets substantial  
2 consideration. It's more than due. They  
3 get substantial consideration, and at tier  
4 three, you know, and above you can see you  
5 really have to tie recommendations and have  
6 things actually considered during the  
7 process. So it's any duly adopted plan,  
8 whatever that is.

9 MR. BODETT: Well but are we including  
10 local and regional?

11 MR. JOHNSTONE: Yeah.

12 MR. BODETT: So even if they are in  
13 disagreement.

14 MR. JOHNSTONE: Substantial, not  
15 dispositive. It's not a rule. It's just  
16 the Board has to address it.

17 MS. McCARREN: And if there was a  
18 conflict then the Board --

19 MR. RECCHIA: The Board will decide it.

20 MR. JOHNSTONE: Can I walk us through  
21 the four? I think there is an easy way to  
22 deal with your problem.

23 CHAIRMAN EASTMAN: I wish we could wait  
24 only for this, because I think -- well no.  
25 I changed it slightly because for me --

1 MR. JOHNSTONE: I thought this was an  
2 easy way to deal with it, unless I'm wrong.  
3 They had four items in their letter that  
4 they thought were substantial. I think one  
5 of them we don't handle under the definition  
6 of substantial because of what you said.

7 The need for local hearings we can  
8 handle, we should include where it's  
9 appropriate in the tier structure. So we  
10 are saying -- we already say --

11 CHAIRMAN EASTMAN: In tier three.

12 MR. JOHNSTONE: In three and four you've  
13 got to have all your meetings locally. One  
14 and two is supposed to move more quickly.  
15 So the idea would be that we handle the  
16 public hearing stuff right in -- embedded  
17 right in the tier structure that it's  
18 local --

19 CHAIRMAN EASTMAN: Which we did.

20 MR. JOHNSTONE: -- it's already there.  
21 So it doesn't have to be part of the  
22 definition of substantial in that case, if  
23 we define it. The rest of them --

24 MS. MCGINNIS: I'm sorry, Scott. I was  
25 talking. I just need to understand if what

1 we have now is right or not. Say again what  
2 you just said.

3 MR. JOHNSTONE: What I said is the first  
4 requirement that they had under the  
5 definition of substantial which is hold  
6 local hearings in the municipalities, we  
7 deal with that embedded inside the tiers,  
8 not as a definition of substantial.

9 MS. MCGINNIS: Exactly.

10 MR. JOHNSTONE: Because we wouldn't want  
11 to handle -- we are not actually requiring  
12 hearings for tier one. We handle it there  
13 in the definition.

14 The second one is include all local  
15 decisions within the docket. I think we all  
16 agree with that. I don't think that's a  
17 problem.

18 MS. MCGINNIS: For every tier?

19 CHAIRMAN EASTMAN: It's local  
20 recommendations. There aren't local  
21 decisions.

22 MR. JOHNSTONE: Fine. So  
23 recommendations.

24 MS. MCGINNIS: For all tiers?

25 CHAIRMAN EASTMAN: If they have made

1                   them.

2                   MR. JOHNSTONE:  If somebody comes in,  
3                   sure.  It just says include it in the  
4                   docket.

5                   MS. MCGINNIS:  I'm saying tier one is  
6                   under 500 kilowatts, right?  And you're  
7                   going to ask people who are submitting a  
8                   project for 500 kilowatts to include in  
9                   their docket too, I'm just making sure that  
10                  I understand, all local recommendations.

11                  MS. McCAREN:  Well 500 kilowatts is --  
12                  we did this math, and what is it, five solar  
13                  trackers?  So it's not -- it should be as  
14                  simple as, landowner, I want it.

15                  CHAIRMAN EASTMAN:  Can I -- I know  
16                  you're trying, but this is the issue, can I  
17                  read to you -- I actually like Black's  
18                  dictionary.

19                  MR. JOHNSTONE:  All right.  Go ahead.

20                  CHAIRMAN EASTMAN:  Substantial.

21                  MR. JOHNSTONE:  I was trying to be  
22                  friendly to the League of Cities and Towns  
23                  for the record.

24                  CHAIRMAN EASTMAN:  The League will be --  
25                  I think the League won't be unhappy.  I

1 talked to Karen, and I talked about the  
2 issue of how we do this. But substantial;  
3 of real worth and importance, of  
4 considerable value, valuable. I mean --

5 MR. JOHNSTONE: Okay. So you're saying  
6 just use the definition.

7 CHAIRMAN EASTMAN: Use the definition,  
8 and then where we actually are having  
9 hearings like this, or where municipalities  
10 are actually making recommendations, define  
11 that they actually have to be considered.

12 MS. MCGINNIS: The way -- can I just see  
13 if you guys are okay with the way I tried to  
14 deal with this issue after having  
15 discussions with Jan and with the  
16 Department, is in the new recommendation,  
17 number four, it says; the Commission  
18 recommends that local Town Plans found to be  
19 in conformance with approved Regional Plans,  
20 and I don't know if we are there right now,  
21 be given substantial consideration by the  
22 Board. Currently Section 248 requires that  
23 the Board give due consideration to Town  
24 Plans. So it's a simple -- in every case  
25 you give Town Plans substantial

1 consideration, and it's more than they are  
2 currently being given.

3 Then to be very specific, let me just  
4 finish how it's organized, to be very  
5 specific, in the tier discussion under  
6 recommendation number nine, we are giving  
7 the exact wording of Karen Horn, the exact  
8 wording with the exception of changing  
9 recommendations -- decisions to  
10 recommendations. It says; in tier three and  
11 four, in addition to the new requirements  
12 for tier two and longer public notification  
13 deadlines, we require the Board to hold  
14 public hearings in at least one of the  
15 municipalities potentially affected by the  
16 projects at issue, require that the Board  
17 formulate areas of inquiry based on the  
18 principal concerns raised in the local  
19 hearing process, include recommendations of  
20 the Municipal Regional Planning Commissions  
21 and Municipal Legislative Bodies in the  
22 Board's evidentiary record. And ensure that  
23 any decision on a given project addresses  
24 the principal concerns raised in these  
25 recommendations.

1           Those are the words of the League. And  
2           it's for tiers three and four, to be very  
3           specific, to give very specific  
4           recommendations on the larger ones. But  
5           give substantial consideration in all tiers.

6           CHAIRMAN EASTMAN: And if we go -- I  
7           mean we could -- maybe we don't do this.  
8           But maybe in this piece -- I mean do a  
9           footnote to Black's. Due is lawful,  
10          sufficient, reasonable. Substantial is of  
11          real work and importance, of considerable  
12          value. Valuable. I mean --

13          MR. RECCHIA: It's pretty clear.

14          MR. JOHNSTONE: I think we should do  
15          that.

16          CHAIRMAN EASTMAN: We can disagree, but  
17          --

18          MR. JOHNSTONE: I think we should  
19          include those. And the only point in this  
20          language, and I don't think that they mean  
21          it as exclusive, but that I would want to  
22          widen, is in the sentence that says require  
23          the PSB to formulate areas of inquiry based  
24          on the principal concerns raised in the  
25          local hearing process.

1 I don't think it should be exclusive to  
2 those issues. There are other issues, and  
3 they probably didn't mean to be exclusive.

4 MR. RECCHIA: No. I think they meant to  
5 include them.

6 MR. JOHNSTONE: But the plain reading of  
7 that would say no other issues matter in  
8 terms of inquiry.

9 MR. RECCHIA: Right.

10 MS. MCGINNIS: Among other others.

11 MR. JOHNSTONE: Must be included, among  
12 others, something like that, and I doubt  
13 Karen would object to that. Maybe she  
14 would. I don't know.

15 MS. MARKOWITZ: I didn't see in my draft  
16 here in the evidentiary record --

17 MS. MCGINNIS: I added that based on the  
18 Department discussions yesterday.

19 MS. MARKOWITZ: That works. And then  
20 this doesn't -- does this language, am I  
21 missing it, that it then -- or is there  
22 somewhere else where it reflects back our  
23 conversation on the Regional Planning  
24 Commission?

25 So here we are given this increased

1 consideration, to Town Plans that are  
2 consistent with the Regional Plan, but then  
3 we also really need the Regional Plan to be  
4 consistent with the State Energy Plan. And  
5 so where do we get to that?

6 MS. MCGINNIS: That's where we come back  
7 to the discussion with Louise.

8 CHAIRMAN EASTMAN: Right. Because for  
9 me if -- I'm stuck at substantial  
10 consideration for both plans, unless there  
11 is a connection between the Regional Plan  
12 and the Comprehensive State Energy Plan. If  
13 there isn't that connection by somebody,  
14 then I can't go to compliance, because --  
15 that's where I can't go.

16 If there is a way to make a connection,  
17 I can go further. If we can't make that  
18 connection, I'm at substantial.

19 MS. MARKOWITZ: So we have the  
20 substantial consideration is sort of the  
21 baseline. And that if we can get the  
22 Regional Plans to be consistent with, or in  
23 conformance with, or implementing the goals  
24 of the plan, then --

25 CHAIRMAN EASTMAN: I could move it up.

1 We could move it up.

2 MS. MCGINNIS: And that's the  
3 recommendation number three. And that's  
4 where we need --

5 MR. JOHNSTONE: We are not there right  
6 now.

7 MS. MCGINNIS: We are not there now, but  
8 that's where it's contained. That's where  
9 we give the weight to the Regional Plans.  
10 They have automatic formal party status,  
11 once the energy components of the Regional  
12 Plans, not all Regional Plans, but the  
13 energy component of the Regional Plans have  
14 been completed. And we are saying in this,  
15 because that's where we were last week,  
16 approved by the DPS in consultation with  
17 other agencies, like ANR, to be in  
18 conformance with the State Energy Plan and  
19 the statutory targets. It's not just the  
20 Comprehensive Energy Plan. There are  
21 statutory targets that agencies are required  
22 to meet.

23 CHAIRMAN EASTMAN: Okay. So now I think  
24 where we are is, if we go that far, we are  
25 going to go with it being a decision by the

1 Public Service Board on a case-by-case  
2 basis.

3 MS. MARKOWITZ: I like that too.

4 MR. RECCHIA: I agree with that.

5 MS. SYMINGTON: That's how it is now.

6 CHAIRMAN EASTMAN: No. This is relative  
7 to Regional Plans. If we can find -- I  
8 could go further if we can have this  
9 connection. Where we would then make the  
10 connection between the Department and the  
11 Regional Plans, to me is we go back up and  
12 we would enhance the very first  
13 recommendation and take some of the language  
14 like the GMP proposed, you know, like give  
15 you some guidance on how to enhance your  
16 planning process and ask that you really  
17 connect and consider your plan in  
18 relationship to what regions are doing.

19 MR. RECCHIA: Yeah. So I am on board  
20 with that if that brings Louise in the tent.

21 And also let me just quickly say, what I  
22 really need from this exercise, so what I  
23 would ask in recommendation one is just a  
24 timing thing. I need the Regional Plans to  
25 all be developed in a coordinated fashion so

1 that they are all available to assess.

2 MR. JOHNSTONE: And they aren't.

3 MR. RECCHIA: And they are not at the  
4 moment. And there is nothing yet indicating  
5 that they would be. So that would be my one  
6 last condition on this process, so that I  
7 can come to a judgment as to whether --

8 CHAIRMAN EASTMAN: And this may be hard  
9 to write. I don't know if it's hard to  
10 write. I don't know, but just so for me it  
11 is, you see I could have a recommendation  
12 that says, you know, with this explanation,  
13 you know, I'm at substantial and  
14 substantial, da-da-da-da. And say if,  
15 however, the state, you know, the Department  
16 can come up with, you know, the Department  
17 and the regions come up with a way to have  
18 this sort of connection, you know, do this  
19 connective process, and that then, you know,  
20 I could come up with saying the Board should  
21 determine that, you know, if the Regional  
22 Plan is or the energy components of the  
23 Regional Plan is in conformance with, you  
24 know, the State Energy Plan, and if it is,  
25 it can control.

1           Meaning there to me is at least -- we  
2           are not there yet because we don't have it.  
3           But it would incentivize regions to work  
4           with you.

5           MR. RECCHIA:    So I get you.

6           MS. MCGINNIS:   Two levels, if then.

7           MR. RECCHIA:    Are we taking a break?

8           MS. MCGINNIS:   I'll work on wording,  
9           because it's like two options.

10          MS. SYMINGTON:  I think when you all  
11          figure this out, you'll translate, and then  
12          I'll decide whether I agree.  I've given up.

13          CHAIRMAN EASTMAN:  For thinking  
14          purposes, we are just back at what Chris  
15          said, there were two options.  Substantial  
16          and substantial, you know, and/or for region  
17          -- or substantial for locals and for  
18          regions, the Board making a determination on  
19          a case-by-case basis, if the Regional Plan  
20          is in conformance with the, you know, state  
21          plan or whatever the language would be, or  
22          if it's implementing it, as Deb says, then  
23          it can be dispositive.

24          My thought is that in, one, you know,  
25          there has to be a process where that's

1 really working before you can get there.

2 MR. RECCHIA: Correct.

3 CHAIRMAN EASTMAN: And so that may be  
4 something that happens six months from now,  
5 a year from now. Because -- anyway. I'm  
6 sorry. I do need a break.

7 MR. JOHNSTONE: Let's take a break.

8 (Recess was taken.)

9 CHAIRMAN EASTMAN: Okay. Let's go back  
10 and see if we can move beyond planning.

11 MS. SYMINGTON: Well I don't think we  
12 all understand where we are with planning.

13 CHAIRMAN EASTMAN: Chris has a  
14 suggestion that we -- and I wish he were  
15 here.

16 MR. JOHNSTONE: He'll be back.

17 CHAIRMAN EASTMAN: Well here's where I  
18 think we are. I'm going to try and make it  
19 simple. And I'm just talking about the  
20 piece that's, you know, local plans and  
21 Regional Plans and whatever.

22 Okay. So I think there is a proposal  
23 that we give duly adopted local and Regional  
24 Plans substantial consideration in the  
25 process. And we use Black's Law

1 dictionary's definition of substantial.

2 MS. SYMINGTON: With no reference to  
3 whether they add up to having --

4 CHAIRMAN EASTMAN: Yeah. Substantial  
5 and substantial -- yeah. Substantial with  
6 no reference. I think there has then been  
7 consideration of -- substantial  
8 consideration for municipal plans and  
9 possibility of -- oh, there has been a  
10 conversation of substantial for local plans,  
11 and dispositive for Regional Plans without  
12 any rollup to anything. And then there has  
13 been a conversation about substantial for  
14 local plans and dispositive for Regional  
15 Plans, if there has been -- if the  
16 Department of Public Service and the regions  
17 have somehow planned together. And then on  
18 a case-by-case basis the Board, as part of a  
19 docket, determines that there is -- that the  
20 Regional Plan either conforms with the state  
21 plan or implements the state plan, it can  
22 become dispositive. Okay? Or at the last  
23 minute I was thinking you could, in fact,  
24 put a process in place where substantial --  
25 you could say now, it's substantial for

1 local, substantial for regional, and for  
2 those -- have in place again that process --  
3 well maybe that is what the other one, so  
4 some sort of conformance where the planning  
5 process between state and regions, and for  
6 those regions who want to, you know, do  
7 that, then it can be dispositive.

8 Some Regional Plans may only be given  
9 substantial consideration, and some may be  
10 dispositive.

11 MS. McCAREN: So it would be like I  
12 want a gold star as my Regional Plan, so I  
13 go to the Department and I say approve my  
14 plan as -- I'm sorry.

15 CHAIRMAN EASTMAN: I'm not saying they  
16 necessarily have to approve. Here's the  
17 thing, and here's why Scott is concerned,  
18 and he's right.

19 I think the only way that can work, of  
20 course, is Chris going to have to see all  
21 the Regional Plans at some point in order to  
22 be able to testify before the Public Service  
23 Board, right? That the state plan can get  
24 implemented. So he's got to see all of  
25 them, you know, at some point.

1           But it's possible you see that only some  
2 of them actually plan so well as to be  
3 dispositive. But there is enough, you know,  
4 that Chris can say, yeah, I can let that go  
5 because I know these other things are  
6 happening.

7           MS. McCARREN: So it's like a LEED  
8 certification? It's voluntary? I step  
9 forward? I'm just trying to understand.

10          CHAIRMAN EASTMAN: No, no. Here's the  
11 point.

12          MR. JOHNSTONE: In a way. You get more  
13 status with it.

14          CHAIRMAN EASTMAN: Right now planning is  
15 not equal. I mean some Regional Plans are  
16 much more specific than others. And so the  
17 point is for those regions who want to put  
18 in more effort and become more specific and  
19 play like that, then maybe there is a way to  
20 incentivize that. The concern I have is,  
21 which you know, is though that somebody's  
22 going to have to be able to look at the  
23 whole package to be able to sign off.  
24 Because a whole state plan has to be  
25 implemented, so this may be hard, and people

1 may not be able to get there. But I'm also  
2 willing to encourage more.

3 MR. BODETT: How is it now with like  
4 affordable housing statute? Who like makes  
5 sure that that is in --

6 CHAIRMAN EASTMAN: Regional Plans have  
7 to, you know, are reviewed, right? By the  
8 -- or are reviewed by the Department of  
9 Housing and Community Affairs against state  
10 planning goals.

11 MR. BODETT: Okay. So --

12 CHAIRMAN EASTMAN: There are state  
13 planning goals, that Regional Plans go, but  
14 here's my concern, and I have -- I'm backing  
15 off because I don't think this is a very  
16 rigorous process currently.

17 So what I'm suggesting is for me to go  
18 to have the Regional Plan be dispositive, I  
19 need to see a more rigorous process that  
20 connects the state legislatively, you know,  
21 required, here's what we are doing, and what  
22 regions are doing.

23 If they can come up with that, then --

24 MR. BODETT: And so does -- in this  
25 scenario would a local plan have capability

1 of become dispositive, or substantial is as  
2 high as they can go?

3 CHAIRMAN EASTMAN: Not in my scenario.  
4 It's incredibly difficult. You have got how  
5 many community plans? You'd have to be  
6 looking -- to make sure this all works  
7 you've got to look at everybody's. One  
8 municipality can't meet all the goals.

9 MR. BODETT: Can -- under the scenario  
10 can a municipality implicitly or explicitly  
11 veto wind or solar?

12 CHAIRMAN EASTMAN: No. Not under mine.

13 MR. BODETT: That's a part I missed.

14 MR. JOHNSTONE: They would, but they  
15 would just be substantial.

16 MR. BODETT: That's what I mean. They  
17 still get promoted to substantial even  
18 though they may completely not be  
19 implementing the CEP in any way.

20 MS. MARKOWITZ: It's a heightened  
21 deference, but it's still not dispositive.

22 MR. JOHNSTONE: Which frankly I object  
23 to, but that's what I'm willing to give to  
24 try to find a way to better planning. I  
25 think that's an error.

1 MR. BODETT: I'm just wondering if the  
2 difference -- if the incentive between  
3 substantial and dispositive is great enough.

4 MS. MCGINNIS: To provide incentive to  
5 actually do a good job.

6 MR. BODETT: The difference between due  
7 consideration and substantial, I think, is a  
8 much bigger carrot.

9 CHAIRMAN EASTMAN: See I don't. I  
10 actually think substantial to dispositive.  
11 If a Regional Plan -- to go from substantial  
12 to dispositive, I mean it means that it  
13 would win.

14 MS. MCCARREN: I know what you guys are  
15 thinking too.

16 MR. BODETT: Dispositive. I don't know,  
17 it sounds like something you could take  
18 medicine for.

19 MR. JOHNSTONE: So let me just ask the  
20 lawyers in the room, just so we get clarity  
21 on this, because many of us are not lawyers  
22 in the room. And so it would be helpful, at  
23 least my understanding dispositive is kind  
24 of a synonym with controlling.

25 CHAIRMAN EASTMAN: Yeah.

1 MS. GRACE: Veto power.

2 MS. MARKOWITZ: Veto.

3 MR. JOHNSTONE: It's the veto. When the  
4 lawyers are telling us dispositive, that's  
5 what they are telling us for us non lawyers,  
6 at least as I understand; is that right  
7 lawyers?

8 MS. GRACE: Yes.

9 MR. BODETT: That is a big fat carrot.

10 MS. McCARREN: All right. Does someone  
11 want to tell me what it means to be in  
12 conformance with the energy plan or the  
13 legislative goals? What does that mean?

14 MS. MCGINNIS: That's the crux of her  
15 issue.

16 MR. RECCHIA: That to me is the Public  
17 Service Board's decision when it comes to  
18 them. But -- so that's the piece I'm  
19 suggesting that we are giving you, is that  
20 the Public Service Board decides that on a  
21 case-by-case basis as things come before  
22 them.

23 The Department will weigh in as a party  
24 to that with its own interpretation and  
25 proposed -- and in order to do that

1 successfully, I need some help on the front  
2 end in a different setting to participate  
3 with the Regional Plans and understand what  
4 their pieces are. But that's a separate  
5 piece.

6 MS. McCARREN: You can do that anyway.

7 MR. RECCHIA: Right.

8 MS. McCARREN: That's part of your  
9 planning.

10 MR. RECCHIA: So the answer is we would  
11 weigh in as a party as to whether we think  
12 it is or not, but the Board would decide.

13 MS. McCARREN: I guess I just don't know  
14 what it means to be in conformance. I know  
15 the legislation right now says --

16 MR. RECCHIA: Right, what does it mean  
17 for the conformance with any other aspect?

18 MS. McCARREN: That is what I'm trying  
19 to figure out. As Linda said, we have got  
20 -- the real issue on the table is the  
21 remaining 77 and-a-half megawatts of --  
22 under standard offer. Right?

23 MS. MARKOWITZ: Let me just bring you --  
24 I pulled up the statute that talks about the  
25 elements of Regional Plan, and I'm hoping

1 that this helps you understand, because I  
2 think you're still caught up in the planning  
3 versus -- so this is what a Regional Plan  
4 has to have. I'm looking at 24 V.S.A. 4348  
5 -- 4348(a), and it's called elements of  
6 Regional Plan. And it says -- amongst the  
7 things it says; is the Regional Plan must be  
8 -- must have an energy element which may  
9 include an analysis of energy resources,  
10 needs, scarcities, costs and problems within  
11 the region, a statement of policy on the  
12 conservation of energy, and the development  
13 of renewable energy resources. And a  
14 statement or policy on patterns and  
15 densities of land use and control devices  
16 likely to result in conservation of energy.

17 In addition, there is a utility and  
18 facilities element, although it has a list  
19 of things, public sites, it focuses on  
20 public sites. And then there is a program  
21 for implementing the objectives including,  
22 one assumes, the energy plan.

23 And so my hope is in saying that in the  
24 statute you'll see that this is looking at,  
25 you know, it's looking at land use planning,

1 but it's also looking at transportation,  
2 it's also looking at energy, it's also  
3 looking at these other separate plans, and  
4 that if we are thinking about conformance  
5 with the CEP, it's saying this energy  
6 section has to take into account the CEP.  
7 To say, okay, here's the statutory goals,  
8 here's what the CEP, the State Energy Plan,  
9 wants.

10 And the way it would be implemented is  
11 that the heading of their energy section  
12 would be, you know, here's our goals, and  
13 here's how our goals in our implementation  
14 strategy would overlay with the state plan.

15 CHAIRMAN EASTMAN: And conformity simply  
16 means in agreement with or harmony with.  
17 That's what conformance -- in Act 250  
18 conformance means that the project is in  
19 agreement with the plan.

20 MR. BODETT: Harmonize with. There is a  
21 verb.

22 CHAIRMAN EASTMAN: Harmonized.

23 MR. BODETT: A very Vermonty verb.

24 MS. SYMINGTON: So we are giving -- my  
25 concern that we are giving increased

1 significance to the Town and Regional Plans,  
2 with no reference to any standards, whether  
3 it's reference to the CEP, or reference to  
4 meeting the existing statutes as to what  
5 they need to, you know.

6 MS. MCGINNIS: What if on that one,  
7 because I agree completely. Giving more  
8 deference to Town Plans that aren't trying  
9 to help the state reach its goals is kind  
10 of -- doesn't quite work. But what if you  
11 said give substantial consideration if the  
12 whole -- you can't say no to no energy at  
13 all. It doesn't -- it could be efficiency  
14 improvements instead of wind. It could be  
15 -- but to have something in your plan that  
16 says we as a town are going to do something  
17 about the fact that we consume energy.

18 And but then you could get substantial  
19 consideration. But it doesn't have to be we  
20 are allowing wind, and we are allowing  
21 solar, and we are allowing everything. That  
22 it's just we have a package that says we are  
23 actually thinking about what we are going to  
24 do with respect to energy.

25 CHAIRMAN EASTMAN: Here's my take on

1 that. And I just have to fall back on the  
2 fact that I don't think we have good  
3 planning assessments, you know, after the  
4 fact currently in place. We tried that.  
5 You know, in the '90s with Act 200, and we  
6 simply don't have it.

7 I mean the Regional Planning  
8 Commissions' review of a Town Plan is, you  
9 know, really nothing. Town plans don't go  
10 up to anything anywhere else. And you would  
11 have so many to do. How I look at it is I  
12 think that it's fine -- I really do, I do  
13 believe that for these projects, I mean in  
14 effect, you know, they don't control. But  
15 if people have -- they have been through a  
16 process, and I would give substantial  
17 consideration to somebody who says, wait a  
18 minute, we have preserved this part of stuff  
19 to do X, and so this is why we don't want it  
20 there. We don't -- you know, we want it  
21 someplace else.

22 I believe that if -- I just--

23 MS. SYMINGTON: I'm not actually asking  
24 what Linda was suggesting. I don't think,  
25 though, what you're doing, if I understand

1 it right, is what you just said. I'm  
2 looking for something -- I agree, we don't  
3 do that much planning.

4 (Mr. Recchia left the room.)

5 MS. SYMINGTON: I don't understand why  
6 we are giving more deference to a Town Plan  
7 if the Town Plan doesn't meet the current  
8 standards and statute. So why can't it --

9 CHAIRMAN EASTMAN: Duly adopted, the  
10 current standards for the Town Plan are it's  
11 duly adopted, that the town process has been  
12 through.

13 MS. SYMINGTON: And it meets those --

14 MS. MARKOWITZ: I actually read you the  
15 regional. The town one is a little stronger  
16 than the regional one actually. So let's  
17 see, it shall include the following, now I'm  
18 looking at section 4382 of Title 24, and  
19 it's subsection nine.

20 So the language is, you know, a plan for  
21 the municipality's got to be consistent with  
22 the goals of the sub chapter and shall  
23 include the following. And subsection nine  
24 is an energy plan. So shall include an  
25 energy plan, including an analysis of energy

1 resources, needs, scarcities, costs and  
2 problems within the municipality, a  
3 statement of policy on the conservation of  
4 energy, including programs, such as thermal  
5 integrity standards for buildings, to  
6 implement that policy, a statement of policy  
7 on the development of renewable energy  
8 resources, a statement of policy on patterns  
9 and densities of land use likely to result  
10 in conservation of energy.

11 So it has a more specific requirement.  
12 So it may be, and but the truth is, you're  
13 right, in terms of the practice, is that a  
14 community can adopt a Town Plan and not  
15 really do this.

16 MS. MCGINNIS: Address those.

17 MS. MARKOWITZ: And if it's passed, it's  
18 passed. So maybe what you're looking for is  
19 when we are looking at moving to the  
20 substantial, that we want to make sure that  
21 the -- the Board has agreed that the plan  
22 meets the current statute at the very least.

23 MR. BODETT: Right. Here's a lawyer  
24 question. So if these -- if the Town Plan,  
25 they haven't done the energy work, but they

1 get this substantial consideration, can it  
2 be challenged before the Board to say -- but  
3 it does not conform to state planning  
4 goals --

5 MS. MARKOWITZ: Could.

6 MR. BODETT: -- therefore it should not  
7 receive substantial consideration. Is that  
8 available as a safety valve for that?

9 MS. MARKOWITZ: I think we would want to  
10 make that explicit. I think we would run  
11 the risk of not being able to do that.

12 MS. GRACE: Right. I mean I was just --  
13 Tom was looking at me. Without legislative  
14 change, the answer would be no.

15 CHAIRMAN EASTMAN: Can I -- here's okay.

16 MR. BODETT: Well that's a problem.

17 CHAIRMAN EASTMAN: Well I think here's  
18 for me what the problem is. Already the  
19 standard here is with substantial  
20 consideration the town can totally lose  
21 because we still have the issue of public  
22 good. So for me it is, what I think we are  
23 trying to -- what I'm trying to accomplish  
24 by doing this is to get more voice from  
25 local -- for local people when we as a state

1 said we want to do X, but there is no place  
2 else for them to play over a specific  
3 project.

4 I have no -- I really have no problem  
5 thinking that what the local Planning  
6 Commission, what they might recommend or  
7 what the, you know, local Select Board might  
8 recommend, or what the local town said about  
9 all their resources in their town actually  
10 be really considered. It doesn't mean it's  
11 going to win, but I actually think they  
12 ought to be really considered.

13 MS. SYMINGTON: I agree. I agree. But  
14 I would like to know that Town Plan actually  
15 meets statutory minimum requirements.  
16 That's all. I'm not saying -- I'm not  
17 saying anything about, you know, conforming  
18 with the state plan or anything.

19 CHAIRMAN EASTMAN: And here's the whole  
20 thing now, there is no place that that  
21 actually happens now. And I can't imagine  
22 that that being one more process that in  
23 every case we ask the Public Service Board  
24 to make a decision on, there is a -- three  
25 more days of hearings. That's the concern I

1 have.

2 MS. SYMINGTON: I don't understand that.  
3 I mean they currently -- all we are saying  
4 is if you want to have substantial  
5 consideration, you just need to meet the  
6 statutory requirements of the Town Plan.

7 CHAIRMAN EASTMAN: Who makes the  
8 determination that it's met?

9 MS. SYMINGTON: The Public Service  
10 Board.

11 CHAIRMAN EASTMAN: That's another three  
12 days of hearings seriously. If anybody  
13 disagrees, I mean you've got to then --

14 MR. JOHNSTONE: So to paint the  
15 scenario, what will happen is if the town  
16 adopts the piece that says they are against  
17 wind and has a local moratorium, the  
18 developer in every case will challenge  
19 whether they have a duly adopted Town Plan.

20 MS. MARKOWITZ: Maybe that's fine.

21 MR. JOHNSTONE: Just to put it out  
22 there.

23 MS. SYMINGTON: As long as they have  
24 done that --

25 MS. MCGINNIS: Due diligence.

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MS. SYMINGTON: They are going to be covered.

MS. MARKOWITZ: And if there's a lot at stake, of course they would. That would be appropriate.

MR. JOHNSTONE: That's what I'm saying.

MS. MCGINNIS: If they haven't then you would have due consideration. You have due consideration which is what it is now.

MR. BODETT: How does it work now like in Act 250? Say somebody wants to build an affordable housing project, the local Town Plan does not include affordable housing as it should. And it goes to the Environmental Commissioners, and the reason that this has not been approved by the municipalities is because their Town Plan does not conform with the state statute.

But still under Act 250 rules they are supposed to conform to the Town Plans. So what happens in that case? How do they handle that?

CHAIRMAN EASTMAN: Well I don't think they ever make a determination. And I wish Anne were here. I've never known an Act 250

1 District Commission to make a determination  
2 that the plan was, you know, they make a  
3 determination if it was duly adopted,  
4 meaning did people vote for it. I don't  
5 think they have ever made a determination  
6 that it met with anything else.

7 I mean when we first -- when we went to  
8 proposed planning in the '90s that's what we  
9 were trying to do. Right? We kept in place  
10 the program where here's some -- here's what  
11 the state goals are, then you go out and  
12 plan, and then regions implement and you go  
13 back. So there actually isn't. Okay?  
14 There is nothing that's really checking  
15 that.

16 MR. JOHNSTONE: Can I try to frame the  
17 choice slightly differently? And I think  
18 this is all --

19 MS. McCARREN: I was going to say  
20 something. I agree with you. For the Town  
21 Plan to have status, whatever we are going  
22 to say, it has to meet the requirements in  
23 the statute. I agree with that. Because  
24 that means it's well thought out, but that  
25 statute also says, this is really important

1 to me, a statement of policies on the  
2 preservation of rare and irreplaceable  
3 natural areas, scenic and historic features.

4 CHAIRMAN EASTMAN: Right.

5 MS. McCARREN: Okay. So that gives the  
6 town enough authority within this plan, and  
7 I read the energy section too, just says,  
8 yes, we have considered all these things,  
9 and here's our decisions. I agree with you.  
10 It has to meet the requirements in the  
11 statute.

12 MR. JOHNSTONE: So --

13 MS. McCARREN: Doesn't say -- the  
14 statute doesn't say what it has to say.

15 MR. JOHNSTONE: Again what I would  
16 suggest is we are asking --

17 MS. SYMINGTON: Exactly.

18 MR. JOHNSTONE: We are asking the PSB to  
19 become a state planning office.

20 MS. McCARREN: That's my line.

21 MR. JOHNSTONE: We made a mistake when  
22 we got rid of it, in my personal judgment,  
23 and we still need one. And the question is  
24 is the PSB the right place to be the state  
25 planning office, where you would logically

1 do this function?

2 For me, we have got three -- there is  
3 kind of I think of the three choices  
4 slightly differently. I think we either  
5 ought to have a planning model that holds  
6 together and is actually doing planning,  
7 which we don't really have any proposals on  
8 the table right now, in my view, that do  
9 that.

10 MS. MCGINNIS: Except what's currently  
11 written.

12 MR. JOHNSTONE: Well even that is, you  
13 know, we have whittled away at it over time.  
14 We either need a model that really gets us  
15 to everything be in sync with each other, or  
16 we ought to stay with the status quo and  
17 acknowledge that we are not really doing  
18 planning as a state.

19 The reason for the middle ground with  
20 substantial is simply we have heard an awful  
21 lot in this process, and I'm okay if we want  
22 to define how you get substantial, but  
23 again, I have a problem with forcing the PSB  
24 to become the state planning office. So  
25 that bothers me a little bit, I guess I

1 should say.

2 The reason it goes to substantial, if at  
3 all, and I'm the one that offered it as a  
4 compromise, we have heard a ton about local  
5 voices, people believing that their voice  
6 isn't heard. The PSB would tell us that  
7 they hear it very well, and it's just the  
8 legal jargon of the hearings, and it changes  
9 projects substantially. And I think we have  
10 seen projects have changed from initial to  
11 final. But it's the difference between  
12 being heard and having the decision go  
13 exactly as you wanted it.

14 So there is lots of room for  
15 interpretation there. But the notion of  
16 substantial was if the public believes that  
17 their voice isn't heard enough, and  
18 substantial is more than due, then a way to  
19 force more of that discussion, in a way  
20 substantial doesn't guarantee an outcome,  
21 that the Board has to listen more closely.  
22 Substantial offers that as a compromise.

23 MS. SYMINGTON: And I get that. I'm  
24 okay with that. But I don't see how you  
25 would -- I don't see what's so hard about

1 saying we have statutes, why not use them.  
2 And I don't see that it's turning the Public  
3 Service Board into a state planning office.  
4 I think it's just a matter of you have --  
5 what you're saying is we already have the  
6 statutes.

7 MR. JOHNSTONE: And nobody is reviewing  
8 them now for compliance. Nobody.

9 MS. SYMINGTON: So this just gives them  
10 incentive. If you want to have substantial  
11 consideration, all you have -- it's pretty  
12 minimal requirements, they can say I mean  
13 here's our policy.

14 MR. JOHNSTONE: I can live with that. I  
15 just think we are making -- I do think it's  
16 a lot -- I agree that it's a really big new  
17 thing on the PSB's plate, because every case  
18 will be contested.

19 CHAIRMAN EASTMAN: Every case is going  
20 to be contested, every single one. And I  
21 just -- so --

22 MS. McCARREN: Do you think that's true?  
23 I mean this is -- isn't it the kind of  
24 exception, one of the places we hope that  
25 the state goes is when the town does its

1 plan, right, Waterbury, probably others,  
2 that the town is going to say we -- not only  
3 is here a great place for some renewables,  
4 but we also as a town support this.

5 It might actually work the other way,  
6 which is that a town, I'm not so sure  
7 everything will be contested is all I'm  
8 saying, because if you get enough towns that  
9 really are, for whom this is very important,  
10 won't they come in and support it?

11 CHAIRMAN EASTMAN: But then you have --  
12 well I can see we will have lots of  
13 interventions by the neighboring towns. You  
14 know, like if we don't -- because that's the  
15 other thing, depending upon how far do you  
16 go, the size of the project, the viewshed  
17 and all of that.

18 I mean I just-- I can remember years ago  
19 when hearing John Dooley, you know, talking  
20 about how do you keep the cost of, you know,  
21 prisons down. He said stop criminalizing  
22 behavior.

23 My concern is every time we have another  
24 decision making point, we are adding  
25 potential delay and cost to a process. And

1 for me, you know, I just -- I want it to go  
2 on, and I want to encourage people, you  
3 know, I want to encourage people to do it.  
4 So I don't know how it will all go if we are  
5 going to have another requirement that the  
6 Public Service Board actually has to find  
7 that the plans in --

8 MS. MARKOWITZ: Only if they are getting  
9 the increased consideration. So maybe  
10 that's --

11 MS. SYMINGTON: You had duly adopted.  
12 This is just a matter of duly adopted, and  
13 it meets the statutes.

14 CHAIRMAN EASTMAN: Well I think duly  
15 adopted is a lot easier standard, of course,  
16 because that it is in Act 250, they just  
17 duly adopt it. Nobody is looking at does it  
18 meet everything they read. A lot of them  
19 do. I'm not assuming that they don't. A  
20 lot of them are having all these, you know,  
21 components.

22 MR. BODETT: Well aren't the incentives  
23 now for Town Plans to conform is that the  
24 Regional Commissions review them, that they  
25 conform to state planning guidelines, and

1 then if they do, then they can be -- then  
2 the towns qualify for planning grants.

3 CHAIRMAN EASTMAN: Well because that's I  
4 thought -- Regional Plans --

5 MS. MARGOLIS: That's correct.

6 CHAIRMAN EASTMAN: -- regions are  
7 reviewing Town Plans?

8 MS. MARGOLIS: Regions do. It's not  
9 mandatory, it's optional.

10 CHAIRMAN EASTMAN: I would be very happy  
11 to go -- I'm happy to move that far to have  
12 the decision, if these were reviewed, if the  
13 RPCs reviewed the plans and found that the  
14 plans are in conformance, I would be fine to  
15 have that be the move up.

16 MR. FRIED: That's the process today.

17 MR. JOHNSTONE: The question is do the  
18 regions really determine conformance, or do  
19 they determine duly adopted? And is that  
20 consistently applied across every RPC?

21 MS. MARKOWITZ: I'll see if I can find  
22 the statute.

23 CHAIRMAN EASTMAN: Yeah, because if it's  
24 the regions doing it --

25 MR. JOHNSTONE: I don't think it is.

1 MS. MARKOWITZ: The regions used to  
2 have, I know, a lot more authority. And now  
3 and I believe that it changed.

4 MR. BODETT: Well I mean we just  
5 approved ours, and after we adopted it, then  
6 it was sent to the RPC. I believe it was  
7 after we adopted -- it might have been just  
8 before the last step.

9 MS. MARKOWITZ: They have to be notified  
10 all along.

11 MR. BODETT: Right.

12 MS. MARKOWITZ: But it used to be they  
13 would have some ability to -- and needed to  
14 get their stamp of approval, and that  
15 changed.

16 MS. FRIED: They still do get their  
17 stamp.

18 CHAIRMAN EASTMAN: Not all of them have  
19 to at all, and they are still in play.

20 MR. FRIED: It's an option.

21 CHAIRMAN EASTMAN: You don't have to  
22 have it.

23 MR. BODETT: The incentive was to  
24 qualify for the state planning grants.

25 MS. FRIED: Right.

1 MR. BODETT: Which was nothing, because  
2 when you're rewriting your zoning bylaw and  
3 everything else, it takes a lot of money.

4 MR. JOHNSTONE: Again, are they  
5 determining that you duly adopted it or that  
6 you conformed --

7 MR. BODETT: That you conform.

8 MR. JOHNSTONE: I know that's what  
9 they're saying, but what do they actually  
10 look for?

11 MR. BODETT: That I don't know.

12 MR. JOHNSTONE: It's pretty  
13 controversial in a region to reject a Town  
14 Plan, just to let that flop on the table a  
15 bit.

16 MS. MARKOWITZ: Yeah.

17 CHAIRMAN EASTMAN: I can't even find  
18 what the provision is.

19 MS. MARKOWITZ: I'm looking here.

20 CHAIRMAN EASTMAN: Me too. I hate it  
21 when I can't -- maybe it's up under regions.  
22 Here it is; review and consultation, do you  
23 think?

24 A Regional Planning Commission shall  
25 review and approve plans of its members'

1 municipalities when approval is requested  
2 and warranted. Each review shall include a  
3 public hearing which is noticed at least 15  
4 days in advance by posting in the Office of  
5 the Municipal Clerk. The Commission shall  
6 approve a plan if it finds that the plan is  
7 consistent with the goals established in  
8 section 4302 of this Title, is compatible  
9 with it's Regional Plan, is compatible with  
10 the approved plans of other municipalities  
11 in the region, and contains all the elements  
12 included in subdivisions 4382(a)(1) through  
13 (10) of this title.

14 MR. JOHNSTONE: So if one town says they  
15 were in favor of an energy generation  
16 source, and an abutting town said that it  
17 was not, then the region could not approve  
18 the plan based on that language.

19 MS. MARKOWITZ: Right. Well that was  
20 the idea initially is that you wanted to  
21 make sure they all coordinated because, you  
22 know, you affect your neighbor. But what  
23 the change was in that statute is it no  
24 longer required the approval. And that was  
25 sometime in the late '80s, the early '90s, I

1 think. And so now it's -- it's if  
2 requested.

3 MS. McCARREN: I think I'm with Scott.  
4 I'm okay with substantial substantial based  
5 on what we think it means. Because my goal,  
6 my goal is to give towns more control which  
7 they don't have now because the due  
8 consideration is ignored by the Public  
9 Service Board. Okay?

10 So and I agree with him that the  
11 dispositive case-by-case it would be a  
12 nightmare. And a movement of control  
13 probably where it doesn't be. But my goal  
14 is to give more say to local communities.  
15 We have heard that over and over again.

16 MR. JOHNSTONE: With you on more say.  
17 Just to have it out there, I don't actually  
18 think the Public Service Board is not paying  
19 attention to the towns. But I hear you, and  
20 I hear you.

21 MS. McCARREN: That was my editorial. I  
22 should have left it out.

23 MR. JOHNSTONE: They are being heard and  
24 having the decision go that way.

25 MS. McCARREN: I should say towns

1 perceive.

2 MR. JOHNSTONE: I understand that.

3 CHAIRMAN EASTMAN: Okay. We have got to  
4 -- we are never going to get through this  
5 stuff.

6 MS. McCARREN: We just did.

7 CHAIRMAN EASTMAN: No. Did we? I don't  
8 think we have got consensus on substantial  
9 substantial. Unless -- so it could be  
10 substantial and substantial with a duly  
11 adopted -- with duly adopted plans.

12 MS. McCARREN: Yeah.

13 CHAIRMAN EASTMAN: Or it could be  
14 substantial substantial if the local plan is  
15 approved by the Regional Planning Commission  
16 pursuant to this provision and there is at  
17 least some review that the town's done  
18 whatever, and it meets the things around it.  
19 Or it could be substantial, you know, only  
20 if the Public Service Board decides that,  
21 that's what Gaye is talking about, if the  
22 Public Service Board decides that it --

23 MS. MCGINNIS: Is in conformance with  
24 the statutes.

25 CHAIRMAN EASTMAN: Is in conformance

1 with the statutes.

2 MS. MCGINNIS: And then even if you go  
3 with substantial substantial, what happens  
4 to the planning emphasis that you have been  
5 talking about? Is my question. Do we take  
6 out everything that has to do with the  
7 planning?

8 CHAIRMAN EASTMAN: No. No. I mean I  
9 still want -- I still want the Department of  
10 Public Service doing more planning. This is  
11 why I want to incent -- I want to move up  
12 the Regional Planning Commissions to incent  
13 them and have, you know, incentivize more  
14 stuff.

15 The issue is, I guess I don't think the  
16 Public Service -- we should be asking the  
17 Public Service Board to approve -- you know,  
18 to in effect look at Regional Plans other  
19 than to get the input that this is what the  
20 community wanted about stuff. I just think  
21 that's asking too much of the Public Service  
22 Board and this process.

23 MS. MCCARREN: And I agree with you.

24 CHAIRMAN EASTMAN: It will delay things,  
25 I think. I hear what you're saying, Scott,

1 that, you know, you're reading or listening  
2 to this and saying that if the RPCs are  
3 approving the plan that, you know, it may be  
4 tough for some of them to get approved, but  
5 I might be willing to go to substantial  
6 consideration of an approved plan to at  
7 least encourage that people play together  
8 and around.

9 MR. JOHNSTONE: I can live with that.

10 MS. MARKOWITZ: That's not a bad idea  
11 actually. That's an additional incentive to  
12 get the approval.

13 MR. BODETT: And who is doing the  
14 approval?

15 CHAIRMAN EASTMAN: The Regional Planning  
16 Commissions in accordance with --

17 MS. MARKOWITZ: The statutes.

18 CHAIRMAN EASTMAN: In accordance with 24  
19 V.S.A. section 4350.

20 MR. BODETT: We have to have that.  
21 Otherwise it's the wild west. If you could  
22 just ignore state statute, then what's the  
23 point?

24 MR. JOHNSTONE: Does that help you out  
25 with not needing to go to PSB? I can live

1 with that. You know --

2 MS. SYMINGTON: Not really. We are  
3 still not tying it to the state. At that  
4 point we are tying it to the region.

5 CHAIRMAN EASTMAN: In fact, you're tying  
6 it to the state in that it's the region who  
7 looks at what they did in conformance with  
8 the state goals that were established.  
9 Okay. So the region's looking at those  
10 things that Deb read.

11 MR. JOHNSTONE: But to your point,  
12 Linda, I think we should leave the language  
13 in about the need to aggregate and have the  
14 Department look at how the regions all add  
15 up. But --

16 MS. SYMINGTON: Well and that gives the  
17 opportunity --

18 MR. JOHNSTONE: I think for the  
19 Department's testimony really to the  
20 process, it's not because some higher level  
21 of decision making off the RPC plan goes  
22 with it. It's stand-alone. And which  
23 raises the question of if that's the case,  
24 do we need to bother with funding for the  
25 RPCs if they are not in the plans --

1 MS. MCGINNIS: It takes out the entire  
2 one through five. It guts a lot of it.

3 CHAIRMAN EASTMAN: Well no. I guess I  
4 don't think so. It may weaken it, because  
5 it's not dispositive, but I think actually,  
6 as I say, what we take out is that we are  
7 not requiring that the Department of Public  
8 Service approve Regional Plans. Right? We  
9 are not requiring that.

10 MR. JOHNSTONE: No.

11 CHAIRMAN EASTMAN: But we are asking for  
12 the PSD to do more planning at a statewide  
13 basis with input of the RPCs, and I think we  
14 should fund that. And now maybe it is the  
15 \$30,000 figure as opposed to the \$300,000  
16 figure per whatever. And somewhere up here  
17 -- and Chris is going to have to with his  
18 staff look at the language, how is this  
19 going to work? He's going to have to be  
20 able to -- anyway. In order to provide  
21 testimony later he's going to have to be  
22 able to somehow start to look at everything  
23 in the aggregate. But I think we ask for  
24 that to happen there.

25 That goes along somewhat with just what

1 Green Mountain Power's suggestion was is  
2 looking more at the current planning process  
3 that we do for transmission, you know, in  
4 Vermont. And that includes participation at  
5 regional levels and so forth, and so on.  
6 But it may not be totally defined. And then  
7 we -- and then they do all this work. They  
8 get substantial compliance, they have party  
9 status.

10 MR. JOHNSTONE: I just don't think we  
11 need five in this case, because we already  
12 get land use tax to do energy plans and all  
13 the things we are talking about, and if it's  
14 not rising to that level of conformance with  
15 the state plan, then I don't know what the  
16 increased level of effort is. I think we  
17 had rather keep those dollars so that DPS  
18 can do their job at that point.

19 CHAIRMAN EASTMAN: Well it may be that  
20 we give the money to DPS, and DPS has a fund  
21 that they put out. And to the extent that  
22 they need help from Regional Planning  
23 Commissions, DPS does it.

24 MR. JOHNSTONE: They can decide.

25 CHAIRMAN EASTMAN: So DPS is funding it.

1 MS. McCARREN: I mean I agree with you,  
2 that the Department of Public Service should  
3 be doing a lot more scenario analysis on how  
4 we are going to get another 75 megawatts of  
5 renewable in the state which is what will be  
6 coming because of the standard offer, and  
7 some overview of what that means to the  
8 state.

9 So it's all solar, how many, you know,  
10 whatever. I support at that. And I also on  
11 the substantial substantial I support that.  
12 I support taking out the dispositive with  
13 the Board reviewing.

14 MS. SYMINGTON: Substantial substantial  
15 with the regional -- as long as the Regional  
16 Plan --

17 CHAIRMAN EASTMAN: The Municipal Plan is  
18 in conformance with the Regional Plans -- is  
19 found -- it's an approved -- what we need to  
20 say it's an approved Municipal Plan in  
21 accordance with 24 V.S.A. Section 4350.

22 MS. McCARREN: I can live with that. As  
23 opposed to --

24 CHAIRMAN EASTMAN: Approved local plan.

25 MS. McCARREN: It's an approved local

1 plan. I'm okay with that. I would take out  
2 the conformance, Linda, and just say it's --

3 MS. MCGINNIS: That's what I just heard  
4 from her was conformance with the statute.

5 CHAIRMAN EASTMAN: Say it's an approved  
6 local plan as defined by 24 V.S.A. Section  
7 4350. And that gives the approval process  
8 for local plans. And those plans will get  
9 substantial consideration.

10 MS. MCCARREN: And would that mean --  
11 well that local plan, if it is approved,  
12 will get substantial.

13 CHAIRMAN EASTMAN: Yeah.

14 MS. MCCARREN: Okay. I can live with  
15 that. Because in theory, that's where the  
16 competing town interests should be thought  
17 out.

18 MS. MARGOLIS: I guess it would just be  
19 maybe good to talk to some Regional Planning  
20 Commissions about this. My understanding is  
21 that a Regional Planning Commission can  
22 approve a Town Plan but with certain  
23 sections of it not being approved; that the  
24 Regional Planning Commission goes back to  
25 the Town, and says we are not okay with this

1 area, but we will approve 95 percent of your  
2 plan.

3 And then you get into a situation where,  
4 you know, you have an approved plan, but say  
5 the energy section is, that's the one area  
6 of concern, and then it comes up before the  
7 Public Service Board, and somebody has to  
8 make that decision.

9 CHAIRMAN EASTMAN: Well we are going --  
10 we will have to have a footnote, I totally  
11 agree, totally. It's got to be approved.

12 MR. JOHNSTONE: Approved means approved  
13 perhaps.

14 CHAIRMAN EASTMAN: Because this doesn't  
15 say that in here. But they implemented some  
16 other processes to encourage people I'm  
17 sure.

18 MR. FRIED: I've never heard of a  
19 Regional Planning Group approving a Town  
20 Plan or at least it's not done in the -- in  
21 our area of the state. The Regional  
22 approving with the exception of certain  
23 sections. They wouldn't approve it. We  
24 work with NVDA. They won't approve it.  
25 They would bounce it back to us. And say

1 you need to --

2 CHAIRMAN EASTMAN: We get the qualifier.

3 MR. FRIED: -- you need to work on that  
4 section.

5 CHAIRMAN EASTMAN: So does that help us  
6 here? And then on the funding issue, I  
7 still believe that if we want this to be  
8 done, it may require more resources at the  
9 -- I just don't see how we get regions to  
10 really play. We need regions to play with  
11 Chris. We need regions to play with the  
12 state.

13 And I think we should leave the idea of  
14 additional funding with Chris making a  
15 determination, you know, I mean he was going  
16 to write the checks anyway probably.

17 MR. JOHNSTONE: I would do it through  
18 him. I wouldn't dictate it region by  
19 region. Just being honest, we are making  
20 incredibly incremental progress on planning,  
21 and we are deferring the bigger planning  
22 question. And we are deciding that, and  
23 it's fine. You know, I would rather go all  
24 the way. But why pay for, you know, when we  
25 are talking paying for really solving the

1 planning problem, and that's not what we are  
2 talking about doing.

3 MS. SYMINGTON: We weren't really paying  
4 for -- if that was a joke, the notion that  
5 \$30,000 in RPC, I think \$30,000 an RPC will  
6 help them, one work out the difference  
7 between Lowell and Sutton or, you know,  
8 Sutton and Newark, neighboring towns that  
9 might come -- have Town Plans that have  
10 essentially different components that have  
11 to get resolved if they are going to be in  
12 the same region, and coming to the table to  
13 work with Chris.

14 I mean so I feel like we need to be  
15 somewhat realistic. They don't have extra  
16 dollars to do that work.

17 CHAIRMAN EASTMAN: Well and you see even  
18 I think that if you go to the -- if the  
19 Department chooses some of the kind of  
20 planning, you know, that the transmission  
21 committee does, that transmission -- they go  
22 out to regions, and they ask for their help.  
23 So that's the kind of thing that if you're  
24 going to ask the regions to host  
25 conversations and facilitate stuff, they

1 have got to have some support for that.

2 Yes, I know there is a whole lot we are  
3 supposed to be doing, but I think again this  
4 is a critical piece like transportation.  
5 Transportation, regional, you know, there  
6 are transportation dollars and, yes, I know  
7 they are federal, that really help support  
8 the transportation planning. So this is an  
9 area that the state has said is a big  
10 policy, so we have got to find some way to  
11 really throw some more money, and I don't  
12 mean just throw it at it, but really enhance  
13 the efforts.

14 And if they are playing as part of the  
15 bigger process, then that can be determined  
16 how many resources are needed, but we will  
17 have to talk to Chris.

18 MS. MCGINNIS: I still need to  
19 understand, because I do think it guts a lot  
20 of this. And on number three, for example,  
21 so Regional Planning Commissions shall have  
22 automatic formal party status immediately?  
23 Or what do they have to do? Do they just  
24 get it now without having any sort of  
25 conformance with anything?

1 CHAIRMAN EASTMAN: Yup.

2 MS. MARKOWITZ: So they should have  
3 automatic party status no matter what.

4 CHAIRMAN EASTMAN: I agree.

5 MS. MARKOWITZ: As a practical matter,  
6 they are treated that way, but it's not  
7 clear in the statute.

8 MS. MCGINNIS: No language saying once  
9 energy components have been completed,  
10 nothing. Just they have automatic formal  
11 party status.

12 MS. MARKOWITZ: That's because they are  
13 not necessarily getting deference for their  
14 plan unless they have done something else.

15 CHAIRMAN EASTMAN: We want to say that  
16 they get substantial consideration. That  
17 moves them up. Right now they are also at  
18 due consideration.

19 MS. GRACE: Just to the extent this  
20 might make things worse, sorry.

21 MS. MCCARREN: Go ahead.

22 MS. GRACE: But oftentimes towns or  
23 regional committees will be granted  
24 intervention, but they will be granted  
25 intervention on a limited topic. So do you

1 want to limit the topic that they are going  
2 to talk about energy, that they are going to  
3 talk about land use, or can they talk about  
4 environmental things? Can they talk about  
5 --

6 CHAIRMAN EASTMAN: Here's the thing.  
7 For me if a Regional Planning Commission  
8 plays in these things as I understand it in  
9 talking with some of them, they are not only  
10 playing necessarily on energy issues, they  
11 may be playing on some of the other  
12 environmental issues and wanting to be, you  
13 know, a party to some of the, you know, to  
14 some of the other issues. They talked about  
15 when we were down there talking with them  
16 Memorandum of Understanding around, you  
17 know, certain things that relate to  
18 environmental quality issues or how it  
19 affects other issues.

20 So for me, I think -- I have no problem  
21 with a Regional Planning Commission being  
22 given -- being granted full party status, so  
23 long as they are not required to play on  
24 anything that they don't want to play on.  
25 And then it's up to them to determine which

1 of the issues are significant to their  
2 region.

3 MS. McCARREN: The only thing it means  
4 is I don't have to petition to get into the  
5 case. That's all it means.

6 MS. MCGINNIS: Right. I guess I was  
7 trying to get the -- at the whole notion  
8 that Chris was just raising that if the  
9 Department is actually going to carry out  
10 some of the scenario planning that it needs  
11 to do, it needs to be working with regions  
12 to understand what regions' priorities are  
13 as well and all that sort of thing. And he  
14 needs to be able to get Regional Plans to be  
15 able to see if it all sort of makes sense.

16 He needs to have this iterative process  
17 back and forth. So I thought the original  
18 idea was to have an incentive for Regional  
19 Plans to actually up their game a little bit  
20 on the energy front, and say you get  
21 automatic formal party status if you've  
22 upped your game, and you have a better and  
23 more explicit energy plan that can be used  
24 by the Board and the Department. That's  
25 what I thought the whole thing was about.

1 MR. JOHNSTONE: It was. And if we can't  
2 get there because we can't get to  
3 conformance with the state plan, which is  
4 what we are saying, then that's why I think  
5 the money has to run through Chris so he has  
6 some carrots, and he can figure out how to  
7 put the carrots out.

8 And then I think, frankly the other  
9 thing he has is a pretty big stick, because  
10 if the regions don't play, I can go into the  
11 Board and his testimony can be, you know, I  
12 can't determine --

13 CHAIRMAN EASTMAN: I can't make this  
14 decision.

15 MR. JOHNSTONE: I can't determine  
16 conformance for you at the CEP because the  
17 regions and towns aren't playing. And so  
18 therefore, you know, the objections that  
19 you're hearing about this, I can't support.

20 MS. MCGINNIS: I guess I'm just trying  
21 to see if there is a way, because I think it  
22 works better if all regions do it, right?

23 MR. JOHNSTONE: Sure.

24 MS. MCGINNIS: So if you have incentives  
25 for all regions to up their game, as far as

1 energy plans are concerned, and from this  
2 discussion I'm understanding they can do it  
3 however they want, they just have to make  
4 sure that they are actually doing that.  
5 Then it seems like giving them automatic  
6 formal party status is a minimum thing to be  
7 able to say if you've done it, then you get  
8 it, if then.

9 MS. McCARREN: The problem is I don't  
10 think it's enough -- very much of a carrot.  
11 Because you're going to get it anyway. So  
12 --

13 CHAIRMAN EASTMAN: Right.

14 MS. McCARREN: So I think that's kind of  
15 -- it's nice -- it's kind of nice to tell  
16 them that, but maybe if you take it out it  
17 probably doesn't matter. That's not where  
18 the action is.

19 MS. MCGINNIS: Is the money.

20 MS. McCARREN: Actually it's going to be  
21 the Department and you can do some joint  
22 scenario analysis.

23 MS. MARKOWITZ: And actually the carrot  
24 is that if their plan is determined by the  
25 Board to be in conformance with the CEP,

1 then it's controlling.

2 MS. MCGINNIS: No. What I just heard is  
3 that they are getting rid of that.

4 CHAIRMAN EASTMAN: I think people are  
5 there. I mean I was there.

6 MR. BODETT: I was there.

7 MS. MARKOWITZ: If it's in conformance  
8 with the CPG. Who wasn't there?

9 CHAIRMAN EASTMAN: If the Regional Plan  
10 is determined by the Board to be in  
11 conformance with the CEP, then it's  
12 dispositive.

13 MS. MARKOWITZ: Why wouldn't you like  
14 that?

15 MR. BODETT: Scott didn't like the Board  
16 being a Planning Commission.

17 CHAIRMAN EASTMAN: For me if I -- what  
18 the Board is determining is only that the  
19 Regional Plan is in conformance with the  
20 CEP, with the energy plan.

21 MR. BODETT: I think I'm still having  
22 trouble with the conformance, and I think it  
23 might be part of the problem with the whole  
24 discussion. I mean I think it's just the  
25 wrong -- it's just the wrong verb. I don't

1 know if I want the Public Service Board  
2 determining whether it's in conformance or  
3 not. But is it in -- is it obstructing it?  
4 I mean --

5 MS. MARKOWITZ: Is it consistent with  
6 its goals?

7 MR. BODETT: Yeah. Consistent with its  
8 goals? Does it give any consideration? And  
9 would it be okay, like say a town, make up a  
10 -- probably a poor scenario, decides it just  
11 will not tolerate wind in its town. So it  
12 completely -- it makes that clear in its  
13 plan. But in its place it's going to  
14 increase its home efficiencies by this, it's  
15 got this bond issue. And so --

16 CHAIRMAN EASTMAN: We are not talking  
17 about Town Plans being dispositive. See,  
18 this is the thing. This is now -- let's  
19 talk about the Regional Plans. This is the  
20 thing.

21 MS. MCGINNIS: It's this one.

22 MS. MARKOWITZ: Can I come back with  
23 words, because I actually think that we are  
24 really close here. And that's really the  
25 carrot that we want at the end of the day.

1 We want to say, hey, we want to have more  
2 local involvement in advance through  
3 planning. The way we do it is that if you  
4 do the planning, and if that planning is  
5 consistent with the goals, maybe instead of  
6 conformance with, say consistent with the  
7 goals of the CEP, and the legislative goals,  
8 because there is some specifics in  
9 legislation, as decided by the Board,  
10 because then they can look at it and that  
11 can be part of the conversation that happens  
12 in a case, then that's dispositive. And  
13 that --

14 CHAIRMAN EASTMAN: In both cases?

15 MS. MCGINNIS: No. In this. This is  
16 the one she is talking about here.

17 MS. MARKOWITZ: Just the regional.

18 CHAIRMAN EASTMAN: I have no problem --

19 MS. MARKOWITZ: Let's see if Louise gets  
20 that.

21 MS. MCCARREN: Wait a minute. I'm  
22 reading from the Municipal Plan.

23 MS. MARKOWITZ: Is this the Municipal --  
24 but we want to look at the Regional Plan.  
25 Right now we are talking about the regional.

1 MR. BODETT: Can we use my scenario on  
2 the regional level? I misspoke. What if  
3 that was, okay, an entire region decided.

4 CHAIRMAN EASTMAN: And then part of the  
5 -- part of the Public Service Board process,  
6 you know, is that if the Public Service  
7 Board determines that the Regional Plan is  
8 consistent with --

9 MS. MARKOWITZ: The goals of --

10 CHAIRMAN EASTMAN: -- you know, the  
11 statutory goals and the state's  
12 Comprehensive Energy Plan, it can then be  
13 dispositive.

14 MR. BODETT: Yeah. While at the same  
15 time eliminating one technology over  
16 another.

17 MS. MARKOWITZ: We can be quiet about  
18 that. Because the goals permit that.  
19 Right? The goals of the CEP permit that.

20 CHAIRMAN EASTMAN: I've got to get us to  
21 understand this. I'm sorry.

22 MS. MCGINNIS: How about lunch and  
23 everybody can have a little time to sort of  
24 --

25 MR. JOHNSTONE: Can I just ask one thing

1 on this when we are thinking about it? I do  
2 think we are very close, but I'm trying to  
3 understand in this piece at the regional  
4 level, Tom, I think what -- I'm trying to  
5 make sure if this was Chris's original  
6 proposal or something new. And so it's my  
7 turn to be lost.

8 You know, are we saying that this is  
9 region by region and all don't have to play,  
10 and if so, what I'm trying to understand is  
11 how would the Public Service Board or  
12 anybody be able to determine consistency if  
13 we don't have a comprehensive picture?

14 MS. MARKOWITZ: So the Board --

15 MR. JOHNSTONE: That's where I'm stuck.

16 MS. MARKOWITZ: So I think it needs to  
17 play with these other planning pieces, but  
18 boards make decisions all the time based on  
19 the information that's brought to them by  
20 the parties.

21 So what would happen is the Regional  
22 Planning Commission as a party would talk  
23 about how they came up with what they have  
24 come up with. And how they see it in  
25 conforming with the -- the requirements of

1 the CEP and the statutes and goals.

2 CHAIRMAN EASTMAN: And what Chris said,  
3 he's a party, and unless he can have a way  
4 -- the Department is a party and unless he  
5 can have a way to look at all of them in a  
6 sense to be able to see, does it all work,  
7 then he can't testify in favor of that plan.  
8 And so it's not going to be dispositive.  
9 It's only going to be given substantial  
10 consideration.

11 MS. MARKOWITZ: Unless the Regional  
12 Planning Commissions all get their act  
13 together and deal with it, you know, and  
14 say, hey, we want it -- we want our plans to  
15 be dispositive, so therefore we are going to  
16 take the money that you're offering to do  
17 the planning and to do the coordination.  
18 Like it creates a meaningful incentive.

19 And I think it's what, you know, I think  
20 it makes sense in terms of, you know, the  
21 way you encourage planning is by saying if  
22 you do what -- if you plan, and if you plan  
23 taking into account the state plans and  
24 goals, then we listen to you.

25 MS. McCARREN: Well okay. The Town

1 Plans, the town statute says --

2 MS. MARKOWITZ: We are looking at  
3 regional.

4 MS. SYMINGTON: We are not doing town.  
5 We already agreed. We got shot down on  
6 that, Louise. You and I actually agreed on  
7 that.

8 CHAIRMAN EASTMAN: I thought what we had  
9 agreed -- please, because we are not getting  
10 anywhere. I thought that -- okay. Let's --  
11 do we have consensus? Because I thought we  
12 had come to consensus.

13 MR. JOHNSTONE: On what?

14 MS. McCARREN: On lunch?

15 CHAIRMAN EASTMAN: That approved local  
16 plans will be given substantial  
17 consideration.

18 MS. SYMINGTON: Yes, regardless of any  
19 reference to the statute, which is what we  
20 were looking at.

21 MS. MCGINNIS: No, but it is --

22 CHAIRMAN EASTMAN: It's approved local  
23 plans approved according to the 24 V.S.A.  
24 Section 4350. So an approved local plan  
25 will be given substantial consideration. If

1 it's not approved, it will be left at due  
2 consideration.

3 All right. So that's what I thought we  
4 decided.

5 MS. MARKOWITZ: And they have got to  
6 have that energy component.

7 CHAIRMAN EASTMAN: That's right, because  
8 it's approved.

9 MR. BODETT: So due to substantial.

10 CHAIRMAN EASTMAN: If it's an approved  
11 local plan.

12 MR. BODETT: Approved by the RPCs.

13 CHAIRMAN EASTMAN: Yes.

14 MS. MARKOWITZ: Saying, okay, we want  
15 the RPC plan --

16 CHAIRMAN EASTMAN: -- to get substantial  
17 consideration, excuse me. No, I understand.  
18 An RPC plan will be given substantial  
19 consideration unless the Public Service  
20 Board on a case-by-case basis determines  
21 that it is consistent with the Comprehensive  
22 Energy Plan.

23 MS. MARKOWITZ: That's right. In which  
24 case --

25 MS. SYMINGTON: And statutes.

1 CHAIRMAN EASTMAN: And statutory goals.

2 MS. MARKOWITZ: And statute. In which  
3 case it will have --

4 CHAIRMAN EASTMAN: Substantial  
5 consideration.

6 MS. MARKOWITZ: It will have more  
7 consideration.

8 MR. BODETT: It will be dispositive.

9 CHAIRMAN EASTMAN: If it doesn't, it's  
10 substantial. If it does, it's dispositive.

11 MR. BODETT: All those in favor, aye.

12 MS. McCARREN: No.

13 CHAIRMAN EASTMAN: And why when we are  
14 making it more for regions you don't like  
15 it? Because we are giving them more power  
16 if it's in conformance with the plan.

17 MS. McCARREN: If town A says we are  
18 going to do an energy plan, and it's going  
19 to meet all these things, but in addition  
20 our, Bristol, I'm thinking of Bristol Bluffs  
21 or whatever they are called, Bristol ridge  
22 is an --

23 MS. SYMINGTON: Significant wildlife  
24 area.

25 MS. McCARREN: Yeah, wildlife area, or

1 it is a protected area for us, okay. Town  
2 of Bristol said that, they have done all the  
3 other energy things. They have said, yeah,  
4 we are going to do this, this and that for  
5 energy conservation.

6 And that goes to the region. And the  
7 region says, yup, we have read through this,  
8 and we understand that the Bristol ridge is,  
9 you know, your town has decided that that is  
10 a great value, scenic whatever, blah-blah.  
11 And I'm all with you, and the region stamps  
12 that, and it goes to the Board, and it has  
13 substantial. I'm there. I can stop right  
14 there.

15 But what you're saying in order for it  
16 to be dispositive, it has to be consistent.  
17 But that will create the fight that says  
18 towns cannot preserve their ridgelines  
19 because that is not consistent with the  
20 Comprehensive Energy Plan. And that I  
21 cannot agree with.

22 MS. MCGINNIS: But it can be.

23 MS. MARKOWITZ: But it can be  
24 consistent.

25 MS. MCGINNIS: It totally can be.

1 MS. McCARREN: It gives to the Board the  
2 ability to say, no, you can't preserve your  
3 ridges because we need them.

4 CHAIRMAN EASTMAN: This is really  
5 interesting, and I just -- and so I mean  
6 I've got to say --

7 MS. McCARREN: Sorry guys.

8 CHAIRMAN EASTMAN: I've got to tell you  
9 what I can't get through -- wow, by doing  
10 what we are proposing to do, we give more  
11 voice to locals and regions, to other  
12 people, not less. And that's where the  
13 disconnect is. Because, you know, because  
14 the Comprehensive Energy Plan is not going  
15 to be saying, you know, you're going to --  
16 it's okay.

17 I think that we either decide -- I think  
18 we have got us on the local, we have got  
19 consensus on the local issue, the  
20 substantial issue if it's approved.

21 MS. McCARREN: I agree with that.

22 CHAIRMAN EASTMAN: I'm very happy to go  
23 on the regional issue because I really want  
24 to encourage this planning that if it's  
25 consistent with the energy plan to have it

1 be dispositive, but Louise isn't.

2 MS. McCARREN: Let me think about it.

3 MS. MCGINNIS: You can say a dissenting  
4 opinion.

5 MS. McCARREN: But I also totally  
6 support that the Department should have the  
7 funds and the ability to do scenario  
8 planning. And to say --

9 MS. MCGINNIS: That's not what they are  
10 saying, Louise. That's the thing. It's not  
11 just that. It's more than that.

12 CHAIRMAN EASTMAN: I understand. But I  
13 think what we have is, we totally -- we are  
14 okay on the local. We are okay on the  
15 state. You know, doing planning, and the  
16 issue is RPC conformance with, you know, the  
17 Comprehensive Energy Plan.

18 MS. MCGINNIS: With statutory goals.

19 MS. MARKOWITZ: I wonder if this is --  
20 if this is the place where if -- that there  
21 be a dissenting opinion in the footnote,  
22 that we put this out there. These are  
23 recommendations.

24 MS. MCGINNIS: Exactly.

25 MS. MARKOWITZ: I'm for making this

1 recommendation, and then as Louise writes  
2 her dissenting concerns, it will maybe give  
3 us an opportunity to address them. Because  
4 once you've put them in writing maybe we  
5 will be able to find a way to satisfy your  
6 concerns and bring you in.

7 But I would propose for now we put that  
8 -- we take that X off, put that back. And  
9 then have you articulate in writing what  
10 your little dissent would be.

11 MS. McCARREN: I don't think it would be  
12 little.

13 MS. MARKOWITZ: Your giant dissent,  
14 whatever.

15 MS. McCARREN: Again, all right. I've  
16 said enough.

17 CHAIRMAN EASTMAN: The interesting thing  
18 is --

19 MS. MCGINNIS: She's been consistent.

20 CHAIRMAN EASTMAN: For me what happened  
21 is the fact that the ridgeline is being  
22 protected in the Municipal Plan, to me  
23 builds up into the Regional Plan. What we  
24 are saying is here is the Regional Plan is  
25 dispositive. Not just a section, right?

1 Aren't we saying the Regional Plan is  
2 dispositive? So that would mean there is a  
3 real chance that some of the other interests  
4 that the region have could, you know, so  
5 long as the plan is still consistent with  
6 the Comprehensive Energy Plan, could win.  
7 It's got to be consistent with.

8 MR. BODETT: There is another ridge in  
9 another town.

10 MR. COSTER: I think the question that's  
11 being raised is whether you can exclude a  
12 certain technology and still be consistent  
13 with the Comprehensive Energy Plan.

14 CHAIRMAN EASTMAN: And I think you may  
15 be able in a community, or in a place in a  
16 region, you may not be excluding it  
17 everywhere, but in a place in a region I  
18 think you could exclude it and still be  
19 consistent with the Comprehensive Energy  
20 Plan.

21 MS. MCGINNIS: Absolutely.

22 MS. MCCARREN: You know what my concern  
23 is? My concern is that the centralized  
24 entity will be able to say that's not  
25 consistent because all ridges in Vermont

1 have to be made available.

2 CHAIRMAN EASTMAN: I don't think that's  
3 what it says at all.

4 MS. McCARREN: How do you know that?  
5 Because you can't tell me it means to be in  
6 conformance with the Comprehensive Plan.

7 CHAIRMAN EASTMAN: We are actually  
8 saying consistent with it.

9 MS. GRACE: There is still substantial  
10 consideration given to the plan.

11 MS. MCGINNIS: To me, they will never  
12 say all ridgelines in the state have to be  
13 for wind. That would be ridiculous for any  
14 Department to say that. That all ridgelines  
15 --

16 CHAIRMAN EASTMAN: Here's the thing, as  
17 I say. What's going to happen with this all  
18 for me, which I'm really concerned about, is  
19 if we don't move things along a little bit,  
20 you know, the legislature will change, and  
21 we won't have any renewable goals, you know.  
22 That's -- and some people want that, and I  
23 don't want that.

24 So what I want is to try and have a  
25 process where people can be heard and that

1 there is some choices made. And that they  
2 don't go everywhere.

3 MS. SYMINGTON: I think the scenario  
4 that I would imagine is we have a county  
5 where there has been plenty of new  
6 generation established, and it's -- we are  
7 still sort of coming to terms with what that  
8 means as a state. In that same county they  
9 have more generation than they can even  
10 accommodate on the grid much less use within  
11 the county. They clearly have a preference,  
12 I would say as a majority of the county, not  
13 to have more of that generation.

14 So to me the likely outcome if we were  
15 to go this way is that actually that region  
16 --

17 CHAIRMAN EASTMAN: The Northeast  
18 Kingdom.

19 MS. SYMINGTON: Would have a  
20 dispositive, you know, would have a Regional  
21 Plan that says no more wind.

22 MS. MCGINNIS: Exactly.

23 MS. SYMINGTON: In a sense, and it would  
24 be dispositive. I don't see why this is so  
25 -- threat --

1 CHAIRMAN EASTMAN: I think it helps.

2 MS. SYMINGTON: Yeah.

3 CHAIRMAN EASTMAN: I think it helps. I  
4 don't think it threatens.

5 MS. MARKOWITZ: That's the disconnect I  
6 have as well.

7 MS. SYMINGTON: That's what I'm missing  
8 here.

9 CHAIRMAN EASTMAN: See, that's what I  
10 think. I think now if I were in NVDA and  
11 all the towns up there, if we do this, I'd  
12 be going back and planning and saying, okay,  
13 I would be calling up Chris tomorrow and say  
14 how much do we have to take, and what do we  
15 have to do? We have totally done this kind  
16 in this place, we have some other interests  
17 for other reasons, economic, tourism and  
18 whatever, keeping our wildlife habitat --  
19 keeping it wild.

20 Okay. So we have done our, you know, we  
21 have done that in some places, so now I  
22 would like us to encourage maybe some solar  
23 or something that we may not have done, but  
24 think about all those things, or us saying  
25 there are other energy issues.

1           So for me, but that's because I guess  
2 maybe I'm putting too much faith -- I just  
3 think there needs to be these kinds of  
4 conversations, and I think we ought to  
5 encourage them up front and earlier, and  
6 this is the way to do it. If we don't do it  
7 through a planning process, it's not going  
8 to get done.

9           MR. FRIED: Jan, I would say that's  
10 exactly what will happen in the Northeast  
11 Kingdom. Okay. And it was happening before  
12 these huge projects started abusing the  
13 area. Okay. We put a lot of community-  
14 based projects and an emphasis on energy  
15 planning at the local level, but even at the  
16 regional level was kind of put on the back  
17 shelf because we feel we are in such a  
18 defensive mode.

19           CHAIRMAN EASTMAN: Yeah. So the other  
20 thing is for me, I mean the issue of people  
21 talking about the cultural resources and all  
22 of those things that we have been hearing,  
23 the way you get at those things is through  
24 planning, I think, and I still have, you  
25 know -- anyway. We need to break.

1 MS. McCARREN: Yeah, we do.

2 CHAIRMAN EASTMAN: Can we come back by  
3 -- can you come back in 40 minutes?

4 (Recess was taken.)

5 (Mr. Recchia is present.)

6 CHAIRMAN EASTMAN: So do we have to go  
7 back and talk about what we just did? Do we  
8 need to talk about -- more about what we  
9 talked about, or is that sort of where we  
10 are regarding local and regional?

11 MS. McCARREN: I think write it up, and  
12 I don't sign off on it. But I will, as  
13 requested, I will be very happy to put  
14 something serious in writing to you. Okay.

15 CHAIRMAN EASTMAN: Okay.

16 MR. BODETT: I ran into Chris Company  
17 during the break and told him where we are  
18 at, and he wanted me to reiterate that the  
19 Regional Plans are all town involvement.  
20 Those are -- all of the representatives to  
21 the Regional Commissions are from the towns.  
22 The towns approve the Regional Plan, so it's  
23 not like that's something dictating to the  
24 towns. It's the other way around, and that  
25 giving the strength to the Regional Plans is

1 not in fact cutting towns' -- diminishing  
2 towns involvement.

3 MS. McCAREN: I'm fine with that side.  
4 It's the other piece.

5 MS. MCGINNIS: It's the other piece she  
6 is not okay with.

7 CHAIRMAN EASTMAN: One more thing I'm  
8 planning before we go forward, I'm so glad  
9 you're back. This relates to, I think,  
10 recommendation one, which really talks about  
11 --

12 MS. SYMINGTON: I need to talk about  
13 that one.

14 CHAIRMAN EASTMAN: Enhanced -- really  
15 enhanced planning at your level. And in the  
16 Green Mountain Power at least, you know,  
17 some of their comments and recommendations  
18 and things, I don't know whether to sort of  
19 suggest in here, it would be great if your  
20 planning regarding generation got to look  
21 something like what VELCO has to do for  
22 transmission.

23 MR. RECCHIA: Right. I agree.

24 CHAIRMAN EASTMAN: If we get that far.  
25 And then for me that would mean you'd really

1 be working with RPCs and integrating, and  
2 then all these sort of connections would  
3 start to fall out more. I didn't know if it  
4 was possible.

5 MR. RECCHIA: Sure.

6 MR. JOHNSTONE: Could we add some  
7 language to one that referenced that, and  
8 that would not feel too constraining?

9 MR. RECCHIA: Sure. That's fine.  
10 Recommend. I assume it's a recommendation  
11 to use the VELCO model or assess the VELCO  
12 model.

13 CHAIRMAN EASTMAN: Yeah.

14 MR. JOHNSTONE: VELCO model, VSPC model,  
15 that whole thing.

16 MR. RECCHIA: So at the risk of blowing  
17 up that last thing I just wanted to say that  
18 I learned something new when Deb was reading  
19 what was required in the Regional Plan, and  
20 it said that the Regional Planning  
21 Commissions may include the energy  
22 components. I think it has to be that they  
23 shall include an energy component. Just  
24 throw it out there.

25 MS. MCGINNIS: Their plans or in their

1 approval of the Town Plans?

2 MR. RECCHIA: In their plans.

3 MR. BODETT: That's a statute thing.

4 MR. RECCHIA: Yeah, it's a statute  
5 thing, so it goes over to the right-hand  
6 side. But it's --

7 CHAIRMAN EASTMAN: What we still, what  
8 we are left with, so you know from this  
9 morning, is that it's only after -- they  
10 only -- our Regional Plan only becomes right  
11 now for most of us dispositive after the  
12 Public Service Board finds them consistent  
13 with your plan.

14 MR. RECCHIA: Fine. But --

15 CHAIRMAN EASTMAN: And then we have to  
16 get, you know, to be sure you get to look at  
17 all of them and all that kind of stuff.  
18 Okay? And then we are hoping that this kind  
19 of planning that you do would really be  
20 giving much more guidance to what goes on.

21 MR. RECCHIA: Is the Board only looking  
22 at those in the context of when they are  
23 considering a project within that region, or  
24 are they looking at them generically?

25 CHAIRMAN EASTMAN: Only when they are

1 considering a project.

2 MR. RECCHIA: That's a bad time to do  
3 that. I'm okay with that. I still think --  
4 in number one now.

5 CHAIRMAN EASTMAN: In number one I think  
6 it's really important to talk about your  
7 role with planning in relationship to the  
8 RPCs. Okay. And even, you know, go so far  
9 as to say, you're right, you can't provide  
10 testimony about that issue until you really  
11 have had a chance to look at this.

12 So to me I think it means your  
13 connection with the RPCs has to get beefed  
14 up.

15 MR. RECCHIA: It means to me in number  
16 one, and sounds like Gaye has other  
17 comments, but for number one it means it's  
18 the Regional Planning Commissions have to --

19 CHAIRMAN EASTMAN: Participate in the  
20 process.

21 MR. RECCHIA: -- look at the plan,  
22 reassess the energy components of it, and  
23 evaluate them in the context of meeting the  
24 state goals and requirements, extra  
25 requirements. And get them to us in some

1 form that we can consider them as a whole.

2 CHAIRMAN EASTMAN: Yeah.

3 MR. RECCHIA: I'll stop there.

4 MR. JOHNSTONE: That's a process that  
5 DPS will drive.

6 CHAIRMAN EASTMAN: Okay.

7 MS. SYMINGTON: For me concern with that  
8 is to -- I would like to see us bring the  
9 goals of the state plan down from the  
10 stratosphere to being something more  
11 concrete. And I think that the process that  
12 Anne Ingerson, you know, spoke about around  
13 the dynamic modeling, scenario modeling, I  
14 think would help that. So because I feel  
15 like right now people are -- or what I  
16 perceive or what I hear is a couple of  
17 different things.

18 One is that people are afraid of, you  
19 know, 90 miles of ridgeline or 150 miles of  
20 ridgeline when I don't think -- being  
21 required to meet, you know, a reasonable  
22 expectation, you know, amount of our power  
23 from wind, when that isn't consistent with  
24 what I've understood. And people are -- so  
25 I think they are more fearful of what could

1           come of the landscape than at least what I  
2           understand is likely if we were to have say  
3           15, 20 percent of our power come from wind.

4           And also I think people make sweeping  
5           statements, we just don't need wind or some  
6           other, we can have solar instead. And  
7           aren't really coming to terms with the  
8           trade-offs of what that means in terms of  
9           acreage or cost. And so if as a state we  
10          could look at what does -- what might it  
11          look like, and build some models that use  
12          realistic price points and realistic  
13          acreage, and realistic power generation,  
14          then there could be, you know, more weighing  
15          in to say I'm really -- you know what, it's  
16          still too much. It's still, you know, if  
17          it's five Lowells or three Lowells, it's  
18          still too big, and I would prefer this mix  
19          which is, you know, one more Lowell and more  
20          of this. And this is what that might mean,  
21          and have that conversation be more grounded  
22          than it is now.

23          Because right now it just feels like we  
24          are, as I say, not making realistic choices,  
25          and more -- and you know, more -- I don't

1 know if fearful is the right word, but I  
2 just don't think we understand what it would  
3 really look like until we can get more  
4 grounded.

5 And that's my concern around the  
6 Comprehensive Energy Plan is to see it  
7 become more real so we can all understand,  
8 and I'm not suggesting that I know what it  
9 would look like. I think it would help us  
10 all understand what would this really mean.

11 CHAIRMAN EASTMAN: And that's what the  
12 Regional Planning Commissions, you know, you  
13 know asked for too, that they need more  
14 guidance about what might it look like, how  
15 much will it lead to and all that kind of  
16 stuff.

17 So for me if we have enhanced language  
18 here about -- and that's -- I think that's  
19 totally a process driven, you know.

20 MS. SYMINGTON: I also think that can  
21 guide the statewide conversation about this  
22 spine is really inappropriate for turbines,  
23 or this region is inappropriate for biomass  
24 because of the way the valley works. Or --

25 CHAIRMAN EASTMAN: Yeah. Right.

1 MS. SYMINGTON: That we end up, you  
2 know, creating the yellow, green, red zones,  
3 and we can -- I don't understand how you can  
4 deal with issues like cumulative aesthetic  
5 impact without having the context be in that  
6 kind of scenario rather than project by  
7 project.

8 CHAIRMAN EASTMAN: Yeah. I agree. So  
9 okay. Does everybody agree with that?

10 MS. McCARREN: Well let me tell you what  
11 I do agree with, which I think is pretty  
12 close. I do support the Department doing  
13 scenario planning. I'm not wedded to that  
14 word. I would like to see that not only be  
15 economic planning costs, but I would also  
16 like it to be visual, what will this look  
17 like, and what are our choices, and you  
18 know, what is the aesthetic landscape kind  
19 of ramifications of that, as well as what  
20 are the cost ramifications of that.

21 And so I absolutely totally support the  
22 Department undertaking -- I mean I can't  
23 think of another Agency that should be able  
24 to do that. And so I support that planning.  
25 I support you getting the resources to do

1 that planning. That doesn't change my issue  
2 about this.

3 MR. JOHNSTONE: What this says, just to  
4 be clear, to make sure it works for you.

5 MS. McCARREN: Where are we?

6 MR. JOHNSTONE: Number one, the last  
7 part it says environmental economic  
8 transmission load analysis is what they  
9 should be focused on.

10 MS. McCARREN: Let me catch up with you,  
11 buddy.

12 MS. MCGINNIS: Environmental  
13 considerations as well as economic  
14 transmission and load analysis. That's what  
15 you're saying.

16 MR. JOHNSTONE: Yeah. I am just trying  
17 to make sure -- I think that's consistent  
18 with what you just said, but I want to make  
19 sure.

20 MS. SYMINGTON: I feel like the process  
21 -- maybe this goes without saying, but I  
22 think there should be some public, you know,  
23 as the CEP was developed --

24 CHAIRMAN EASTMAN: Totally.

25 MS. SYMINGTON: -- some 9,000 people

1 weighed in.

2 CHAIRMAN EASTMAN: Right. This is a  
3 public planning process written by, you  
4 know, the Department, but lots of input.  
5 And I think sort of partnering with the  
6 RPCs, at least that's what I understand,  
7 with the transmission stuff they work  
8 through, you know, they go out to all the  
9 regions and work with the Regional Planning  
10 Commissions and stuff.

11 MS. McCARREN: Ms. Cranky Pants here  
12 will say she doesn't agree to recommend the  
13 amount of in state. I think you should do  
14 the scenario analysis so those -- that they  
15 can then see various mixes on what it means  
16 to the state. This says recommend.

17 MR. JOHNSTONE: Well --

18 MS. McCARREN: Mix of in-state and out-  
19 of-state renewables.

20 MR. JOHNSTONE: But it's in the context  
21 of statutory and goals for the state. So  
22 somebody has to say there is a pathway for  
23 it. If not the Department, then who, is  
24 what I would ask you back.

25 MS. McCARREN: No. Yes, well here --

1 MR. JOHNSTONE: That is what this is  
2 saying.

3 CHAIRMAN EASTMAN: It says state's goals  
4 and statutory targets.

5 MR. JOHNSTONE: Scenario planning they  
6 have to recommend a preferred choice  
7 forward, so that's what I'm trying to  
8 understand is -- if you follow me.

9 MS. McCARREN: I think I'm with you.

10 MS. SYMINGTON: Different scenarios  
11 could have different mixes.

12 MS. McCARREN: That's right.

13 MS. SYMINGTON: So I could say there  
14 could be scenario A where 80 percent of the  
15 power is coming with in-state from  
16 renewables, and we see what that looks like.

17 MS. McCARREN: Sure.

18 MS. SYMINGTON: And another one of the  
19 scenarios could be more of the power,  
20 another 15 percent comes from Hydro-Quebec.  
21 And another 10 percent comes from wind from  
22 New York. And that will have to be more of  
23 each those, because there will be  
24 transmission losses, but the scenario will  
25 take that into account.

1           So this would be a 50 percent scenario  
2 in state which is where we are now.

3           MS. McCARREN: I'm fine with that. When  
4 I was running WEC we did the transmission  
5 planning for the western interconnection,  
6 and we basically had the capacity to run  
7 unlimited numbers of scenarios in terms of  
8 what would the transmission grid look like  
9 if you -- if you went through all of this  
10 stuff. So I support that. And I have no  
11 problem with that.

12           I think the question then becomes among  
13 those scenarios who gets to make the  
14 decision.

15           MR. JOHNSTONE: That's what I'm asking  
16 you, if not him, then who?

17           MS. McCARREN: Well maybe we don't know  
18 right now.

19           CHAIRMAN EASTMAN: But here's a  
20 possibility for me.

21           MS. McCARREN: With all due respect,  
22 this is a politically appointed agency head.

23           MR. RECCHIA: They all are.

24           MS. McCARREN: I know that.

25           MR. RECCHIA: With some respect. Every

1 single executive branch --.

2 MS. SYMINGTON: They are appointed by  
3 someone who is elected every two years.

4 MR. RECCHIA: Either you believe that  
5 state government actually has public  
6 interest in mind, or there is some other  
7 problem.

8 CHAIRMAN EASTMAN: And here's my thing.  
9 I totally agree you can scenario plan around  
10 everything. But ultimately relative to your  
11 partnership with the regions and the locales  
12 there are state goals and statutory targets,  
13 and so that's where when we get down to the  
14 deep stuff, we have got to at least do that  
15 until the statute changes. And if I want to  
16 weigh in on what the statutory goals are  
17 regarding renewables I should have played  
18 much earlier in this process.

19 Okay. And the next time they want to do  
20 it, I'll weigh in if I think it should  
21 change. For right now the legislature sets  
22 something, and we have got to try and  
23 implement it until they change it. And they  
24 may go up instead of down. Who knows. So  
25 is there consensus around this? Okay.

1 Pretty innocuous.

2 MS. McCARREN: No.

3 CHAIRMAN EASTMAN: No. You don't want  
4 us to have --

5 MS. McCARREN: It's fine. I'm trying  
6 not to be really difficult.

7 MR. RECCHIA: You want to change the  
8 recommend --

9 MS. McCARREN: No, no. Leave it for  
10 now, and I'll give you my thoughts in  
11 writing. Okay?

12 CHAIRMAN EASTMAN: Okay.

13 MS. McCARREN: Because we need to move  
14 on.

15 CHAIRMAN EASTMAN: Yeah.

16 MR. RECCHIA: With all due respect, I  
17 think we do need to move on, but I think we  
18 need to actually make some decisions along  
19 the way. And I just think that constant,  
20 okay, take this back and regurgitate on it  
21 and evaluate it, and then provide written  
22 comments that object, we keep revisiting  
23 these issues.

24 MS. SYMINGTON: What we agreed I think  
25 when you were gone --

1 MR. RECCHIA: Oh good.

2 MS. SYMINGTON: -- was that there are  
3 some pieces of this that, like the  
4 substantial substantial we all agreed on,  
5 and that will be stated that way. But then  
6 --

7 MR. RECCHIA: Thank you, Vanna.

8 MS. SYMINGTON: But when you move to  
9 that additional step --

10 CHAIRMAN EASTMAN: For the dispositive.

11 MS. SYMINGTON: The dispositive.

12 CHAIRMAN EASTMAN: That most of us are  
13 there.

14 MR. RECCHIA: I've got it.

15 MS. SYMINGTON: There will be a minority  
16 opinion. And that minority opinion I think  
17 is related to this.

18 MR. RECCHIA: I think so too.

19 MS. SYMINGTON: And so --

20 MS. McCAREN: I'm just saying --

21 MS. SYMINGTON: Louise will have a  
22 footnote and that piece will be identified.

23 CHAIRMAN EASTMAN: Okay.

24 MS. MCGINNIS: Which the current version  
25 does have a footnote, and Louise can change

1 the wording however she wants. I had  
2 already included a footnote in  
3 recommendation number one. One Commission  
4 member does not support the role of the PSD  
5 in designating, this was your words,  
6 designating land use or establishing energy  
7 quotas.

8 I don't think that they have said that  
9 they are going to establish energy quotas,  
10 so you might want to just change that word  
11 in however you want it.

12 CHAIRMAN EASTMAN: Okay. So move on  
13 from planning and go to simplify the tier  
14 system, and see where we are relative to  
15 that.

16 MS. McCARREN: I don't have any problems  
17 with the way this is done, but we did get at  
18 least two comments that said we should  
19 collapse three and four.

20 MS. SYMINGTON: And then we had comments  
21 the other way as well.

22 MS. McCARREN: So I just thought we need  
23 to readdress it. I'm fine with the way it  
24 is now.

25 CHAIRMAN EASTMAN: Now I understand

1 relative to the tier system that more staff  
2 work has been done about the ability to  
3 slide up or down, you know, depending if  
4 things are more complicated and things like  
5 that. And so for me I've got to tell you  
6 I'm happy enough with the tier system the  
7 way it's presented here. Knowing that  
8 details, you know, when staff getting into  
9 this there may be details, or when you do --  
10 when the Board does rulemaking around it,  
11 you know, 15 may change to 12. I don't  
12 know.

13 MS. MCGINNIS: Can I present what the  
14 staff -- and yesterday we talked with a  
15 bunch of people in the Department, and Billy  
16 was in the conversation as well, because we  
17 knew a lot of you were uncomfortable with  
18 the screening process, and we thought how  
19 can we think this through a little bit more  
20 so it's clearer and simpler. It may not be  
21 a screening process in the way it's  
22 described here.

23 What they were proposing is that when a  
24 project comes before -- comes before the  
25 Board, it comes in at its nameplate value.

1           Okay.  If issues are raised that are deemed  
2           significant issues by the Board, that that  
3           project can be bumped up a tier.  But that  
4           you would have no bumping down of a tier.  
5           Because we never got around to figuring out  
6           incentives to bump down, and because the  
7           tiers as they currently exist, the way they  
8           are proposed, provide incentives for the  
9           types of projects that we want to have go  
10          forward, which are the smaller ones that  
11          have more community support and all that  
12          kind of thing.

13                 So the way the Department was trying to  
14                 sort of propose something that would be  
15                 simpler than this is that there is only an  
16                 ability to move up to a more difficult  
17                 process if there are significant issues that  
18                 are raised and determined by the Board to be  
19                 significant issues, and the Board says oops,  
20                 sorry, you're not in tier two but you're  
21                 actually in tier three, which has a longer  
22                 process and --

23                         MR. JOHNSTONE:  How do you practically  
24                         do that when you were supposed to have --  
25                         spend 150 days before you file?

1 CHAIRMAN EASTMAN: That's tier four.

2 MR. JOHNSTONE: If you file a tier three  
3 and you get bumped up. If you file for tier  
4 three, because whatever it is, 10 megawatts,  
5 and you start the process, you have been  
6 through a 60-day whatever the window is for  
7 public work, you've done whatever we have  
8 required of you for public participation,  
9 and you now get in front of the Board and  
10 they deem a significant issue, do you now  
11 need to go back and start 150-day public  
12 process?

13 CHAIRMAN EASTMAN: So can I tell you  
14 that, I think, is what actually currently  
15 happens with (j) at least.

16 MS. MCGINNIS: It is what happened with  
17 (j).

18 CHAIRMAN EASTMAN: I hear from  
19 applicants (j) is supposed to work like  
20 that, it's supposed to be simpler. If  
21 people think something is going to happen,  
22 they don't do (j), they just go with a  
23 longer process because it ultimately saves  
24 them time.

25 MR. BODETT: Only if it kicked -- I mean

1 if the prefiling, the prefiling actions of  
2 the 60 to 150-day notice, once you're filed  
3 maybe that should just be considered done.  
4 Because the only thing that's really  
5 different between the two tiers is the nine  
6 month and the 12-month time line on the  
7 final decision.

8 CHAIRMAN EASTMAN: Or the public  
9 participation in front between three and  
10 four.

11 MR. BODETT: Where do you see --

12 CHAIRMAN EASTMAN: There is -- in tier  
13 three we asked for certain things to be  
14 happened at the community level. At tier  
15 four we actually require 150 days prior to  
16 actually doing something that you actually  
17 go through a public engagement process,  
18 begin a public engagement process. You file  
19 a public engagement plan with the Department  
20 of Public Service, and there is actually a  
21 public engagement process around that case  
22 for tier four.

23 MR. BODETT: So then what -- what would  
24 be gained by the Public Service Board  
25 bumping something? Let's assume for the

1 moment that you can't just start over.

2 CHAIRMAN EASTMAN: Well bumping from  
3 three to four would mean that you've missed  
4 that public engagement process, so does that  
5 have people going back?

6 MR. BODETT: Can they just extend it?

7 MR. JOHNSTONE: That's what I'm asking.  
8 It's not clear to me --

9 MR. BODETT: Right. That's a good  
10 question.

11 MR. JOHNSTONE: -- what the proposal is.

12 MS. MCGINNIS: I agree. It's not. It's  
13 what they came up with yesterday.

14 MR. JOHNSTONE: It's fine. I'm not  
15 trying to be critical. I'm just seeing a  
16 loophole in it, that's all.

17 MR. RECCHIA: Yeah. Well in terms of --  
18 I think in terms of the tiers, I like the  
19 four tiers. I know that people were trying  
20 to push the 2.2 into the tier four, but I  
21 just don't think that makes sense.

22 CHAIRMAN EASTMAN: I don't -- I don't  
23 think it makes sense. I think if we do all  
24 this other planning it's not necessary, you  
25 know, around every project to have the extra

1 150 days. And tier three you are requiring  
2 some, you know, really considering  
3 everything the locals are saying and all of  
4 that kind of stuff.

5 MR. JOHNSTONE: So can I just ask on  
6 this issue of moving between tiers, and I  
7 always love these kinds of models because  
8 they sound so elegant, and they really --  
9 and in theory they are very elegant because  
10 it gives you a lot of flexibility to create  
11 carrots and sticks. And yet when you talk  
12 to a developer or talk to a member of the  
13 public usually what you hear from people  
14 it's one of the only things that both sides  
15 in a case of anything environment, energy,  
16 whatever it is, that everyone agrees on is  
17 we want to know what the rules are. We want  
18 clarity, certainty, so I guess I'm curious  
19 as to what we think we are gaining. And I'm  
20 not opposed to this -- necessarily this idea  
21 of being able to bump back and forth. But  
22 I'm trying to understand what in the  
23 interest of the elegance of trying to deal  
24 with the issues better, which is what I  
25 think you're after, what we end up with is

1 mushiness, which I think all sides will be  
2 concerned about.

3 MS. MCGINNIS: I have two answers.  
4 Initially, the notion -- and I'm trying to  
5 speak for a couple of people who were  
6 putting this together, initially the notion  
7 was to be able to provide incentives for  
8 projects that are meeting all of the types  
9 of things that you want them to meet to be  
10 bumped down.

11 CHAIRMAN EASTMAN: Down.

12 MR. JOHNSTONE: Which we got rid of.

13 MS. MCGINNIS: To have a benefit to bump  
14 down is the carrot. We were trying to meet,  
15 and yet we never got any clarity around what  
16 people felt like would need to be the  
17 carrots. That was initially part of the  
18 discussion.

19 Then in the second round, one of the  
20 issues, and we may need to bring it in now,  
21 is ANR's concern with time lines. And the  
22 realistic nature of time lines as they  
23 currently stand, we agreed that they were no  
24 longer going to be statutory time lines, but  
25 performance standards for the overall. And

1 Judith from ANR described it this way which  
2 I thought was elegant in the wording, which  
3 was that it's not -- I'm trying to think --  
4 I should have written it down. It was  
5 really good. I did write it down. That we  
6 are not looking at -- oh, yeah, whether it's  
7 -- we need to determine a project not by  
8 impact of its nameplate capacity but by its  
9 impact more broadly speaking.

10 So if for example, a project -- to bump  
11 it up, so for example, if you have a  
12 relatively small project, 1.5, right, that  
13 actually has pretty big environmental  
14 impacts, and the Board determines based on  
15 ANR's evidence that it actually needs a lot  
16 more attention and more time because ANR's  
17 concerned with the time that it takes to  
18 actually prove certain things, then it would  
19 need to be bumped up to a more substantial  
20 process that allows more time to get at  
21 those issues.

22 CHAIRMAN EASTMAN: But can I just  
23 interject here? Because now I've got to  
24 think about this. I just want to say this,  
25 that you see, for me, that's always

1 possible, I mean you can always get to a  
2 case and a prehearing conference and find  
3 out there are these significant issues, and  
4 the Hearing Officer and everybody will say  
5 these things have to be addressed and this  
6 is why it's going to take more time, this is  
7 why these are performance standards not cast  
8 in stone.

9 The only thing that changes, to me what  
10 changes is what preprocess did we require at  
11 a local level, and the notice time, you  
12 know, to a community. And so if we can  
13 somehow address that, I totally agree that  
14 -- I mean these are performance related once  
15 you get into the process, and if there are  
16 substantial contested issues and that's what  
17 the Board believes, they have got to --  
18 everybody, you know, reasonably has to have  
19 the time to address those issues.

20 MS. GRACE: Maybe to the extent this  
21 might be helpful, what we were thinking at  
22 some point in time is that the Petitioner  
23 would submit an application to the Public  
24 Service Board requesting review under a  
25 specific tier. And that application would

1 describe generally the impacts to natural  
2 environment, the land use characteristics of  
3 the area surrounding the project, zoning and  
4 planning for the project site.

5 We weren't anticipating that an  
6 application that had all the prefiled  
7 testimony and all of the information would  
8 be filed at that point in time. So if an  
9 applicant was concerned that maybe somebody  
10 was going -- and so they would file that  
11 asking to be put into a specific tier. And  
12 then after they filed that, everybody would  
13 have 10 days in order to decide -- in order  
14 to say, well this brings up a substantial  
15 issue. It should be under a different tier.

16 And then the Public Service Board would  
17 make a determination within 21 days. So if  
18 they -- they could do this 190 days prior.

19 MR. JOHNSTONE: I hear you. I just  
20 think that is so ambiguous that we will  
21 never have any even idea of what we are  
22 trying to accomplish from a timing  
23 perspective. I think it's -- I think it's  
24 better to deal with this by having  
25 performance standards and expectations on

1 the performance standards, and having the  
2 Board determine, rather than every party who  
3 is sitting here, every party gets to demand,  
4 you know, a different outcome. And it  
5 doesn't seem like a workable process to me.

6 MR. RECCHIA: I was going to suggest  
7 that because you're a Commission that's  
8 making recommendation --

9 CHAIRMAN EASTMAN: Right.

10 MR. RECCHIA: -- that we take out the  
11 movement among tiers piece out of this and  
12 instead say, hey, the Commission thinks it  
13 would be a good idea if a workable system  
14 could be designed, and encourage people --  
15 either provide it as flexibility, provide  
16 carrots for people to do something that move  
17 them to a lower tier, and sticks that in the  
18 event they didn't address something, they  
19 can be put in another tier.

20 CHAIRMAN EASTMAN: Right. Because I  
21 totally like -- remember we have talked  
22 about those community-owned, community led,  
23 what Scott came up with.

24 MR. RECCHIA: There are various  
25 criteria. You can give some examples that

1 we do, there are things that might bump a  
2 tier one way or another. Leave it like  
3 that, and say we encourage -- even some of  
4 this might be legislators might be able to  
5 come up with criteria.

6 CHAIRMAN EASTMAN: To me the review  
7 process is a way to incentivize getting, you  
8 know, communities to all agree. Or you  
9 know, and if --

10 MS. MCGINNIS: The review process? I'm  
11 sorry. I didn't understand.

12 CHAIRMAN EASTMAN: Being in a different  
13 tier could, you know, I mean you could have  
14 one of the things if it was a community-  
15 owned, community-led, you know, everybody  
16 approve it.

17 MR. JOHNSTONE: I still don't -- even in  
18 what you're talking about, Chris, and I can  
19 maybe get there. But even then I'm  
20 concerned about the ability in a system to  
21 be using the tiers as a way to jump around  
22 to get at it. I would rather if you want to  
23 incentivize community energy, incentivize  
24 community energy within the tier, and  
25 frankly if you do it right, and you have the

1 money and other incentives in the process,  
2 don't just -- there won't be any objections  
3 to time lines. There won't be any unfounded  
4 issues. The town will be on board.

5 And no one says the Board has to take  
6 all the time to approve something. I think  
7 that's how you create the incentive.

8 MR. RECCHIA: I'm kind of convinced by  
9 that.

10 MS. MCGINNIS: How?

11 CHAIRMAN EASTMAN: Well you do it within  
12 the, you know --

13 MR. COSTER: I think just the one page  
14 that Linda just handed out, the number two  
15 tries to get at that incenting within a  
16 tier, basically a fast track for projects  
17 that have issues resolved and a more drawn  
18 out contested process for the cases that  
19 don't.

20 CHAIRMAN EASTMAN: But so Billy, but  
21 you're still then opposed to those  
22 performance standards of the times that we  
23 have got in here.

24 MR. COSTER: Those -- I'm suggesting  
25 faster times.

1           CHAIRMAN EASTMAN: I know you are, but  
2           and I like that. But what I'm saying is  
3           what if we -- and so actually because --  
4           actually this says statutory in here now,  
5           and I thought you said we had gone to  
6           performance standards. On the little chart,  
7           Linda. It says statutory.

8           MS. MCGINNIS: That's just I have had so  
9           many --

10          CHAIRMAN EASTMAN: For me if you said  
11          these were performance standards, I mean not  
12          standards but state performance standards.

13          MS. MCGINNIS: I will change that.

14          CHAIRMAN EASTMAN: And then take your  
15          language and say here's how it gets  
16          addressed. Here's how it will work  
17          practically. If there aren't any issues, it  
18          could be less. There are issues that are  
19          substantive. It might take more time than  
20          this, which is practically what happens.

21          MR. COSTER: Yeah. I just don't see why  
22          you would have an arbitrary performance  
23          standard if it's not tied to anything.

24          CHAIRMAN EASTMAN: So why do you have  
25          arbitrary performance standards for all of

1 your ANR permits now? I mean over the time

2 --

3 MR. COSTER: Because they are based on  
4 what we think it takes for us to turn them  
5 around. No one has had a conversation with  
6 the Public Service Board or any of the  
7 statutory parties about how long these  
8 things actually take.

9 We have picked these numbers out of the  
10 hat.

11 CHAIRMAN EASTMAN: Well actually you --  
12 I think they were picked out of the hat in  
13 part, but one thing some of us asked when we  
14 went around to the site visits and things, I  
15 actually asked Mr. Brewster, how long did it  
16 take you, how many days did you file with  
17 the town before you actually, you know,  
18 before you actually started the project. So  
19 I looked at that. You know, and Kingdom  
20 County went how many days once you did  
21 something, or how much time did it actually  
22 take to happen?

23 So some of this was actually I was --  
24 I've always been thinking did that fit  
25 within what somebody needed to do at least

1 in that case.

2 MR. COSTER: I guess our experience is  
3 with the cases that aren't very contested or  
4 have issues that can be easily resolved,  
5 they can be permitted on a much faster time  
6 line than currently happens because there is  
7 these big gaps in the proceeding. Things  
8 lay idle for months.

9 CHAIRMAN EASTMAN: That's what we would  
10 like to get rid of.

11 MR. COSTER: What we are suggesting is  
12 for those cases where everyone agrees, this  
13 is something that should move forward, we  
14 speed that up and we move through the  
15 system. For cases at the beginning of the  
16 process the parties admit there are large  
17 contested issues, that the parties work with  
18 the Board to set the schedule. There is no  
19 point in having a performance standard at  
20 that point because the parties are going to  
21 -- based on that case -- figure out how long  
22 it's going to take to work through it.

23 CHAIRMAN EASTMAN: Here's the only  
24 reason or one reason I can think to still  
25 have a performance standard. That's just to

1 encourage the Board to deal with the  
2 schedule for how they fit things in. The  
3 thing for me is when I look at the longer  
4 times, for tier four there is a heck of a  
5 lot of time in here. When you've got the 12  
6 months, but that's actually -- you've  
7 already had 240 days; right? Isn't it 150  
8 days prior to notice?

9 MR. COSTER: None of the parties are  
10 able to do any of -- there is only so much  
11 you can do before one files their petition.  
12 That's just the reality.

13 MR. JOHNSTONE: I get that. My issue  
14 about the need for time lines, Billy, and I  
15 get that they may need to be influenced over  
16 time based on experience, so yeah, I think  
17 we are making an educated guess on the time  
18 line to start with. But I don't think it's  
19 a pure guess.

20 But you know, when parties are -- either  
21 you have parties that are never going to  
22 agree, in which case unspecified performance  
23 standards just cost everybody a lot of money  
24 because you never get to the end. Or if  
25 parties are trying to find some common

1 ground, it always happens at the 11th hour.  
2 And without a performance standard you never  
3 get to the 11th hour. Or you get there  
4 after a really protracted time, and every  
5 week in the process is costing, you know,  
6 the generation money which some people care  
7 about and some people don't. And frankly  
8 the people that are trying to have their  
9 voice heard are having to fund raise and  
10 have more bake sales and everything else.  
11 It's costing everybody in the process money  
12 when we can get at it quicker.

13 So now I get that within that, what you  
14 need is enough time to form your opinion on  
15 the environmental impacts, and I understand  
16 all that. So that part I get, because  
17 that's also happening in this window; right?  
18 But I actually think some time pressure not  
19 to hold people's feet to the fire, but just  
20 to simply recognize that, pick a performance  
21 standard, they may need to change over time  
22 as we learn, but the nature of things is  
23 people are going to try to get to common  
24 ground, deadlines are good. They actually  
25 force us all to get done.

1           And it will force the Board to schedule  
2 more aggressively and acknowledge if they  
3 can't. And they still have the opportunity  
4 then to go beyond it if the conditions  
5 warrant.

6           MR. COSTER: We are fine with that. But  
7 then the performance standards as  
8 recommended are still, we think, too short.  
9 The biomass facility that just went to  
10 technical hearings, it's going to be a 19-  
11 month proceeding for a 35-megawatt biomass  
12 facility.

13          MR. JOHNSTONE: Does it need to be that  
14 long?

15          MS. McCARREN: Billy, that was -- the  
16 scheduling order was done? I mean 19  
17 months. I'm just questioning.

18          MR. COSTER: That's in part due because  
19 there was a supplemental filing, because the  
20 applicant changed their plans midway  
21 through. But without that it still would  
22 have been a 16 month.

23          MR. RECCHIA: So here's, I think, what  
24 your last point was though, Billy, is  
25 critical, it's critically important. That

1 when the projects change, that that is  
2 what's -- the time lines get revisited.

3 MR. JOHNSTONE: Of course, and they  
4 should be.

5 MR. COSTER: If they hadn't changed, it  
6 still would have been 16 months.

7 MR. RECCHIA: I think part of that  
8 frankly was because of scheduling -- I don't  
9 think it counts like from day one to day --  
10 I think you've got to subtract out the fact  
11 that there was this little nuclear power  
12 plant in between that was causing delay in  
13 schedules, and that will get done. One way  
14 or another it will get done.

15 MR. JOHNSTONE: Really.

16 CHAIRMAN EASTMAN: John's going to die  
17 first.

18 MR. RECCHIA: My point though is that  
19 these are recommended targets. They need to  
20 be able to be extended for cause which we  
21 have allowed for. They are not, thank God,  
22 automatic like approvals if you get to that  
23 date and nothing has happened. So nobody is  
24 anywhere near that type of scenario. But I  
25 do think we need to provide some

1 expectations for how long this should take  
2 if you're really working at it.

3 MS. McCARREN: Do we have any facts,  
4 Chris?

5 MR. RECCHIA: I think we do.

6 MS. McCARREN: In terms of how bad is  
7 the situation?

8 MR. RECCHIA: Okay. So we are gathering  
9 the actual tangible examples for you.

10 MS. McCARREN: I support some kind of --

11 MR. RECCHIA: Right, right.

12 MS. MCGINNIS: I know I'm --

13 MR. COSTER: We were just looking at how  
14 long these things have taken. I totally  
15 agree with you there should be time lines.  
16 This is a capacity issue for our Agency. We  
17 have multiple dockets going at once. We  
18 participate more robustly in these  
19 proceedings than any other Agency. I think  
20 that's fair. In most of these cases the  
21 resource issues are the ones that turn the  
22 large cases, and if we are going to have to  
23 do faster, we are going to need more  
24 resources.

25 CHAIRMAN EASTMAN: I am happy to have a

1 say in this document because I want to say  
2 that, you know, for Deb and for Chris, that  
3 if they determine what this actually means  
4 and if more, you know, we believe that if we  
5 want to do this, then you need to be given  
6 the resources to meet it. I totally agree  
7 with that.

8 Now but I think that that's totally an  
9 issue and a decision that needs to be left  
10 to the Commissioner and to the Secretary,  
11 and you guys determine, you know, what you  
12 need and I would -- and I will support that.

13 MR. RECCHIA: But recognize, I  
14 appreciate that very much. But let me just  
15 say for the record, there is no way you're  
16 going to get the number of resources that  
17 they need to do this in a way that meets  
18 this. This is appreciated. But it's not  
19 going to happen.

20 So that said, I think the realistic --  
21 for me this is a two-part thing. One is  
22 providing some expectations for developers  
23 and the public about how long a process they  
24 are in for.

25 MR. JOHNSTONE: Right.

1 MR. RECCHIA: Combined with really  
2 pushing people to have their projects well  
3 defined before they get in there. I mean  
4 how much of your -- of our problem is the  
5 fact that the thing changes, and you've got  
6 to go back and reassess. It makes a real  
7 difference where the footprint of this thing  
8 is.

9 MS. McCARREN: What I wanted to say is,  
10 I think now that we have gotten by the land  
11 rush of the first 15 megawatts on standard  
12 offer, and where I've got to get mine in the  
13 queue regardless of how good or bad it  
14 really is, I think you guys have done a  
15 super job, Chris, on trying to bring some  
16 more discipline into that process, right?  
17 For the next five and whatever.

18 My question is, maybe that will get a  
19 whole lot better. The other thing is we  
20 should be seeing fewer cases. I mean  
21 Louise's view, which I think I'm going to be  
22 shocked if you all don't agree with me.

23 MR. RECCHIA: Just for the fun of it,  
24 I'm going to agree with you in advance.

25 MS. McCARREN: Is that when the --

1 absent the standard offer, we certainly  
2 would not be seeing this amount of activity.  
3 So what I'm trying to say is, I think, I  
4 think it should begin to level off, and if  
5 they get rid of the Yankee case, which they  
6 will be getting rid of by the end of July.

7 CHAIRMAN EASTMAN: I thought it was  
8 August 26.

9 MS. McCARREN: Thank you. Okay.  
10 Anyway. My point is do we expect some of  
11 this will -- actually says to me I actually  
12 support some kind of pressure on the Board  
13 to get things done.

14 CHAIRMAN EASTMAN: And maybe this won't  
15 work either. In tier three and four at  
16 least some of the community issues should be  
17 identified earlier which may help a little  
18 bit. I mean in both tier three and four  
19 you're going to have, you know, people  
20 telling you, you know, the public, we want  
21 you to be looking at this issue or whatever  
22 so maybe that will help a little bit too,  
23 front ending some of those questions if we  
24 stick with this process.

25 You know, and I'm happy to -- if between

1 now and the end of April I hear more, or the  
2 last time we meet, April 25, you know, I see  
3 this stuff and it says oh no, this can never  
4 possibly be 12 months, it's never been 12  
5 months, I could adjust. And/or between now  
6 and the time, you know, things happen, I can  
7 see you all guys adjusting.

8 And so I think what we have done here is  
9 at least we have said we would like some  
10 performance standards, and why, and our  
11 rationales for why, and they may change.  
12 And I get it.

13 MR. COSTER: That's fine.

14 CHAIRMAN EASTMAN: And I like some of  
15 your language here, and I totally agree if  
16 they change something, you should get all  
17 the time.

18 MR. COSTER: That's fine. I've just got  
19 to keep beating the drum. I think we will  
20 all really benefit of seeing what the  
21 performance has been at different tiers.

22 CHAIRMAN EASTMAN: I think that's  
23 extremely important. So enough on tiers.

24 Now the other thing that the tier stuff  
25 has is -- it does have some increased, you

1 know, public notice requirements. And I  
2 know some people have -- I mean think it may  
3 be too long, and I know that.

4 MR. RECCHIA: In advance of the filing?

5 CHAIRMAN EASTMAN: Yeah. In advance.  
6 But I think that these are reasonable.

7 MR. RECCHIA: I think these are right.  
8 We do 45-day right now. And for the Vermont  
9 Gas proposal which would, of course, not fit  
10 in this because it's a pipeline and not a  
11 megawatt, but 45 days goes by really quickly  
12 especially when filed in December; right?

13 CHAIRMAN EASTMAN: Yeah. And the other  
14 thing, Billy, speaking of filing in  
15 December, the other thing relative to these  
16 performance standards, I also, you know,  
17 totally believe that you have a great  
18 argument depending upon when they file, if  
19 you can't do the kinds of studies, you know,  
20 the timing issue on environmental reviews is  
21 important. And that's something an  
22 applicant needs to take into account. You  
23 know, listening to that gentleman last  
24 night, I don't disagree with that.

25 MR. RECCHIA: Well if it's happening

1 after filing, it's too late. That applicant  
2 should have known their project well enough  
3 to know that they needed to do those studies  
4 during the season before filing.

5 CHAIRMAN EASTMAN: Totally.

6 MR. RECCHIA: That's one of the  
7 fundamental problems that I see in this  
8 process is it allows for people to get their  
9 foot in the door and then make changes, and  
10 that's become standard practice.

11 MS. MCGINNIS: Will that be addressed  
12 with the concurrent filing or not?

13 MR. RECCHIA: Should help.

14 MS. MCGINNIS: Okay.

15 CHAIRMAN EASTMAN: So okay. There is  
16 consensus around this? Still? Okay. Wow.

17 So does that mean we move on to  
18 increased opportunities for public  
19 participation?

20 MS. MCGINNIS: I'm sorry. I just had  
21 one question, because last time there was a  
22 suggestion that in tier three we move from  
23 60 days to 90 days' public notice. And I  
24 just need to know if -- where you want me to  
25 put it.

1 CHAIRMAN EASTMAN: And who --

2 MS. MCGINNIS: It was Gaye who had  
3 suggested it. And it was in part because  
4 when you're looking at tier four it's 90  
5 plus 150 really of activity prior to filing.  
6 Whereas in tier three the only major  
7 difference was that it was just from 45 to  
8 60 days.

9 CHAIRMAN EASTMAN: Well for me in tier  
10 three what we have -- what we added instead  
11 of that is we added this pre -- what's in  
12 here now is that some of that language from  
13 the --

14 MS. MCGINNIS: Towns.

15 CHAIRMAN EASTMAN: You know, from the  
16 League, that when they file they actually  
17 have to have presented something about we  
18 have gone out, we have had -- you know, we  
19 have communicated with people, so there is  
20 some advance work done prior to the 60-day  
21 filing. But so -- but I can go to the 90.

22 MR. JOHNSTONE: We didn't really change  
23 the language. It says good faith effort.  
24 We talked about that last time. Developer's  
25 good faith effort, I don't know quite what

1 that means. I think there is a need for a  
2 town and RPC to have some role in that.

3 CHAIRMAN EASTMAN: Okay. Yeah.

4 MR. JOHNSTONE: Because if that -- if we  
5 can figure out how to make that meaningful,  
6 then 60 might be okay. And if that is going  
7 to feel kind of loose, I probably would fall  
8 closer to Gaye for the 90.

9 CHAIRMAN EASTMAN: Me too.

10 MR. RECCHIA: That to me should be  
11 tightened up for the developer, as we talked  
12 about, the developer holds a meeting with  
13 the Select Board and the RPC. The only  
14 difficulty --

15 MR. JOHNSTONE: Unless the town refuses.

16 MR. RECCHIA: If the town refuses, what  
17 do you do? That's easily documented.

18 CHAIRMAN EASTMAN: I think it's got to  
19 be RPC, legislative body and Planning  
20 Commission. Local Planning Commission. The  
21 three entities.

22 MR. JOHNSTONE: We talked about that  
23 last time.

24 CHAIRMAN EASTMAN: Have to all have an  
25 opportunity to comment.

1 MR. JOHNSTONE: If they had done that in  
2 advance, 60 might be adequate. But if they  
3 are not going to tighten it up to that  
4 level, think I probably would want 90.

5 MS. MCGINNIS: I'm changing the  
6 language, so I understand, in tier three to  
7 be beyond just showing that you have a good  
8 faith effort, to saying the developer must  
9 hold a meeting with the RPC, the municipal  
10 legislative body, and the Planning  
11 Commission, local Planning Commission.

12 MR. JOHNSTONE: Unless they decline.

13 MR. BODETT: But that would show a good  
14 faith effort, if they petition.

15 MS. SYMINGTON: A duly warned meeting?

16 MR. RECCHIA: If you're holding meetings  
17 with those, and they are public meetings,  
18 they need to be duly warned by the Select  
19 Board or the RPC.

20 MR. JOHNSTONE: It's worth having them.  
21 If you come up under other business, it's a  
22 duly warned meeting, but the public has no  
23 opportunity to know. It shouldn't be other  
24 business or executive session.

25 MS. SYMINGTON: We have heard, yeah, the

1 Select Board knew, but we didn't know.

2 MR. RECCHIA: No. I know that.

3 MS. RADEMACHER: Tier two has it also.  
4 The good faith effort. Should that be  
5 changed too?

6 MS. MCGINNIS: I think the notion was to  
7 make tier three be harder to meet.

8 MS. RADEMACHER: I know it seems like --

9 MR. RECCHIA: I agree with Anne. I  
10 think, sorry, makes you a member of the  
11 Commission. I think it should be the same  
12 again for consistency. I don't see any  
13 reason --

14 CHAIRMAN EASTMAN: Okay.

15 MR. RECCHIA: You're either having the  
16 meetings or you're not.

17 CHAIRMAN EASTMAN: If the town doesn't  
18 want to do it then --

19 MR. RECCHIA: That shouldn't hold the  
20 developer up. That's the problem.

21 MR. JOHNSTONE: Shame on them.

22 MR. FRIED: Quickly under tier two and  
23 three the statutory procedure time lines, we  
24 have seven days for responses to motions and  
25 scheduling conferences. I just lived

1 through that, and if you have a Select Board  
2 or a Planning Commission as an intervener,  
3 that's impossible when you have to warn a  
4 public meeting, get a quorum, make a  
5 decision. And for small towns, I mean we  
6 ran pony express to Montpelier from Newark  
7 and hand delivered our responses.

8 CHAIRMAN EASTMAN: Here's -- and here's  
9 what I'm going to suggest to you, what that  
10 relates to. If a town decides to actually  
11 become a party and participate in this  
12 process, you are going to have -- you're  
13 going to have authorized somebody to  
14 participate in this process on your behalf  
15 and respond that quickly, because if we left  
16 -- I mean I agree with all the early notice,  
17 giving you time, what role you want to play,  
18 but once this process starts after a  
19 scheduling ordering and things like, that  
20 that's how fast -- this is how it will have  
21 to happen. And that's -- and so all the  
22 stuff up front, but once you decide to play,  
23 you know, somebody is going to be --

24 MR. FRIED: Well that's good. We need  
25 to be told that.

1           CHAIRMAN EASTMAN:  And this is what I  
2           mean.  We need to -- that's why it's so  
3           important to do some stuff up front for you  
4           guys.  But once you're a party to the  
5           proceeding, I can just -- prefiled testimony  
6           will be filed, you'll have so many days to  
7           respond, and somebody's going to have to be  
8           looking at it for you.  And so what, if I  
9           were you, what I would do as a town, I would  
10          -- at that first hearing you can, you know,  
11          properly notice it, and then as part of that  
12          you say, and these three people are now  
13          going to be handling this process for us.  
14          And periodically, you know, check in.  But  
15          -- and somebody can help you figure out how  
16          to do this.  Call me the next time you get  
17          into one.

18          MR. FRIED:  Well it would be good.  What  
19          we are trying to do is follow the  
20          information of Public Service Board's  
21          process.

22          CHAIRMAN EASTMAN:  Understood.

23          MR. FRIED:  So if they go back to their  
24          guidelines, that's a good point, especially  
25          now that we are trying to accelerate, is

1 towns need to appoint a special group to  
2 play.

3 CHAIRMAN EASTMAN: Remember only --  
4 acceleration in these lower levels are only  
5 going to happen if you all agreed.

6 MR. FRIED: Right. It's the three and  
7 four then I'm concerned with.

8 CHAIRMAN EASTMAN: Yeah. But three and  
9 four are not -- we are not accelerating time  
10 there. We are actually saying that's the  
11 way an actual case happens, okay, and rolls  
12 out. I know it's hard. But this is why I  
13 say --

14 MS. GRACE: But responding to a motion  
15 to intervene, I'm sorry, Jan, can I just  
16 make this one point? What this is trying to  
17 get at is that you're going to have 21 days  
18 for the public hearing to be set. Okay?  
19 Then there is going to be 14 days after that  
20 for anyone to do a motion to intervene. And  
21 then the seven days after that is for  
22 responses to that motion to intervene.

23 Everything else will be up to the Public  
24 Service Board to decide.

25 CHAIRMAN EASTMAN: And that's after you

1 have had 45-days' notice even before  
2 something is set. So it's really more than  
3 -- okay. I'll time it out for you, okay?

4 We are trying to be sure you get enough  
5 time to decide.

6 MR. FRIED: Well you're making a lot of  
7 recommendations. At some time -- at some  
8 point the Public Service Board is going to  
9 have to go back to their guidelines, which  
10 probably haven't been revisited for quite  
11 sometime, and try to pull some of that  
12 information out.

13 CHAIRMAN EASTMAN: Exactly. So what  
14 else here?

15 MS. SYMINGTON: Can we just summarize  
16 where we are with the tiers? And there was  
17 a suggestion that there be an open docket  
18 workshop process, with all interested  
19 stakeholders to assess the appropriate  
20 tiered structure. Is that -- that's not  
21 what we are recommending.

22 MR. RECCHIA: I would not support that.  
23 But you might have recommended it. An open  
24 docket to assess what the right tiers should  
25 be?

1 MS. SYMINGTON: Right. Where were we  
2 going with the tiers? We are generically  
3 saying we like the idea of tiers, but we  
4 think the legislature should figure out what  
5 the tiers should be?

6 CHAIRMAN EASTMAN: No, no. I thought we  
7 were saying -- for me I thought I was saying  
8 we are recommending -- I am happy  
9 recommending tiers that include these kinds  
10 of -- that include this kind of performance  
11 standard time lines, that include some more  
12 specificity regarding, you know, what a good  
13 faith effort of a developer is. And that  
14 with the understanding that the performance  
15 standard time lines for having things get  
16 done may need, you know, might need to  
17 change depending upon what real practice is  
18 and what happens. And I think these -- I  
19 think establishing the tier system is --  
20 it's rulemaking. It's not -- the  
21 legislature won't establish tiers.

22 MS. SYMINGTON: Then there was some  
23 reference to --

24 CHAIRMAN EASTMAN: You think they have  
25 to authorize the establishment of tiers?

1 MS. GRACE: I think you need legislation  
2 in order to -- right now you need to have a  
3 technical hearing or we are going to need  
4 some legislation regarding tiers.

5 MS. SYMINGTON: And we are staying  
6 silent on moving among the tiers.

7 CHAIRMAN EASTMAN: No. I don't think  
8 you're required --

9 MS. MCGINNIS: We are saying that that  
10 needs to be studied and determined whether  
11 that's possible.

12 MS. SYMINGTON: By whom?

13 MS. MCGINNIS: By -- this is what Scott  
14 was saying -- by the agencies who would be  
15 responsible for that, which would most  
16 likely be the Department or the Board; is  
17 that correct? On the bumping up, bumping  
18 down, at least as I was understanding.

19 CHAIRMAN EASTMAN: Yeah. The bumping  
20 up, bump down. Yeah, we need more -- we  
21 think that that -- we would like to  
22 incentivize things or something, some  
23 general language about that.

24 MS. MCGINNIS: We think it's a good idea  
25 to be able to do it, but a workable system

1 needs to be designed.

2 CHAIRMAN EASTMAN: We haven't done that.

3 MS. MCGINNIS: And the Commission  
4 encourages this. Very general language.

5 MR. JOHNSTONE: If you're still talking  
6 about bumping up and down, I'm not sure -- I  
7 think you lose more by the confusion you  
8 create of doing it that way than by creating  
9 the ability to expedite within the tiers. I  
10 think it should be within the tiers.

11 CHAIRMAN EASTMAN: Within the tiers. I  
12 like that actually.

13 MR. JOHNSTONE: To expedite the process  
14 by use of incentives and other actions.

15 MS. MCGINNIS: That was a question I had  
16 for you though. Do you have any example of  
17 an incentive that would do that within a  
18 tier? I just want to give an example.

19 CHAIRMAN EASTMAN: If everybody  
20 stipulated to everything.

21 MR. RECCHIA: I can give you one, I was  
22 saving it because I was trying not to  
23 embarrass myself with stupid ideas, but I  
24 will give you this one.

25 MR. LEWENDOWSKI: Go for it.

1 MR. RECCHIA: This goes into the  
2 Corrections Department mode of getting  
3 credit for time served. If you are --

4 MS. McCARREN: You know all about this;  
5 do you?

6 MR. RECCHIA: I don't actually, but  
7 thanks. If you begin your process sooner  
8 and have more up front discussions somewhere  
9 that in some fashion you can get credit for  
10 that in the proceedings, that the Board will  
11 make every effort to make up that additional  
12 time that the applicant has invested up  
13 front by expediting the process by a similar  
14 amount. Told you it was a stupid idea.

15 MS. MCGINNIS: And the carrot for that  
16 would be to shorten the time line within a  
17 tier?

18 MR. JOHNSTONE: Sure.

19 MR. RECCHIA: Shortens the contested  
20 case time line in exchange for expanding the  
21 informal public process that people feel  
22 that they get more out of frankly.

23 MS. MARKOWITZ: Another way to  
24 incentivize, you know, shortening the time  
25 frame within the tiers, if as part of, you

1 know, process with the parties you come to  
2 certain agreements, those agreements what  
3 you've agreed to, what you've stipulated to,  
4 could be simply rubber stamped by the Board  
5 and have a status that would prevent the  
6 Board from having to actually make them  
7 litigate those issues.

8 MR. JOHNSTONE: Let's say you did a good  
9 job even before you were going to start the  
10 150-day clock for public participation  
11 because you were doing stuff in advance of  
12 that --

13 MS. MCGINNIS: That's what Chris was  
14 talking about.

15 MR. JOHNSTONE: -- if the town and the  
16 RPC and everybody else is thinking this is a  
17 great community energy process, the Board  
18 doesn't need to make the 150-day clock run,  
19 which is to your point. Just to make it a  
20 little more granular, right?

21 MR. RECCHIA: Well I think the up front  
22 stuff from filing still needs to stay. I  
23 don't think they could do anything about  
24 that.

25 MR. JOHNSTONE: Sure.

1 MR. RECCHIA: And I used the term  
2 specifically, you know, make every effort to  
3 but not require them to shrink the thing.

4 MR. JOHNSTONE: Sure.

5 CHAIRMAN EASTMAN: But it might happen.

6 MR. RECCHIA: It can happen. Should  
7 happen.

8 CHAIRMAN EASTMAN: For me if things have  
9 been resolved then you get a speedier  
10 process.

11 MR. BODETT: That would seem to be --

12 MR. RECCHIA: One caution, because I'm  
13 the Public Service Department, and I realize  
14 not everyone feels like we adequately  
15 represent the public interest all the time.  
16 What I would say --

17 MS. MARKOWITZ: We don't want to hurt  
18 your feelings.

19 MR. RECCHIA: I will be paying attention  
20 to making things too short and too many  
21 stipulations, because if it creates a vacuum  
22 where we are not getting a public viewing of  
23 what's going on any more, that will be a  
24 problem, and I will not let that happen.

25 CHAIRMAN EASTMAN: Thank you. Okay. So

1 other things on the tier system? Or the  
2 screening issue?

3 MS. MCGINNIS: There was one comment  
4 that did come up among a couple of different  
5 sectors, and I don't know if you want to  
6 bring it up or not, but I just want to keep  
7 it out there; is that the thresholds be  
8 based on a combination of project nameplate  
9 capacity and project area, acreage affected.  
10 And I don't know if you want to go that  
11 route, or if you're fine with sticking with  
12 nameplate capacity.

13 CHAIRMAN EASTMAN: Can I tell you right  
14 now I think we should stick to capacity.  
15 For me that's one of the issues that happens  
16 within the tier.

17 MS. MCGINNIS: Great. We will move on.

18 CHAIRMAN EASTMAN: We just have so many  
19 combinations that --

20 MS. MCGINNIS: South Burlington --

21 MS. SYMINGTON: Can you just say that --  
22 I got three quarters of the way into that.  
23 Can you say that again?

24 CHAIRMAN EASTMAN: What I think is right  
25 now we have the tiers based upon megawatt

1 capacity. Some people think, and they are  
2 right, that, you know, a megawatt of solar  
3 require generally more geographic area than,  
4 you know, megawatts of something else. But  
5 I think that that's something to determine  
6 once you get in, you know, within the tier.  
7 And if we have this, you know, again, to me,  
8 we go to Billy's thing. If there aren't  
9 significant issues, if everybody agrees  
10 there aren't, and they can all be settled,  
11 it will go faster. If there are, it will  
12 take longer.

13 MR. BODETT: That's another thing good  
14 planning can take care of too because good  
15 planning would make the distinction between  
16 technologies and allocate areas accordingly  
17 I would think. Understanding that solar is  
18 going to have a much bigger footprint.

19 CHAIRMAN EASTMAN: Again Billy is right,  
20 you could have a very small project that  
21 they sat right in a wetland, and he would  
22 have to say no way Jose in anything. And  
23 there is always that possibility. Always.

24 MR. JOHNSTONE: And they have the  
25 authority to stop that project today.

1           CHAIRMAN EASTMAN: Right, and they have  
2 the authority and they would have a  
3 responsibility --

4           MR. JOHNSTONE: They should.

5           CHAIRMAN EASTMAN: -- to say I'm sorry,  
6 this doesn't work. We have a -- and I love  
7 the story, it's a long time ago, but the  
8 golf course over here in Huntington back all  
9 those years ago when I was on the Public  
10 Service Board I actually ended up writing  
11 the decision.

12          MS. McCARREN: You weren't on the Public  
13 Service Board.

14          CHAIRMAN EASTMAN: On the Environmental  
15 Board. I ended up writing the decision  
16 because literally people couldn't understand  
17 why we said no when they hand mapped the  
18 streams. They had things located in the  
19 streams, not next to them, located in them.  
20 Of course, we have to deny. That kind of  
21 thing. So I understand.

22          MR. RECCHIA: This is probably a good  
23 time for me to say I'm now going to my last  
24 conflicting appointment of the day. I'll be  
25 back at 3 o'clock, and I'll be with you the

1 rest of the day.

2 CHAIRMAN EASTMAN: We're done at 4, and  
3 we'll be back again.

4 MR. RECCHIA: The truth is Deb and I are  
5 not allowed to be in the same room.

6 MR. BODETT: We always seem to agree on  
7 something when you're gone.

8 MR. RECCHIA: Believe me, if you can get  
9 this resolved before I get back, I'm okay  
10 with that.

11 (Mr. Recchia left the room.)

12 CHAIRMAN EASTMAN: So move on to  
13 provisions around public participation?

14 MR. JOHNSTONE: Can I just ask one  
15 question?

16 CHAIRMAN EASTMAN: Sure.

17 MR. JOHNSTONE: So I assume the dialogue  
18 we have just had around the time lines --

19 MS. MCGINNIS: That comes.

20 MR. JOHNSTONE: -- will both be amended  
21 based on the dialogue we have had because we  
22 have changed slightly what Billy sent, and  
23 it would change what's in the current draft  
24 around, some of the things we talked in  
25 Rutland about, ANR having, you know, a sole

1 veto. And so I assume we are going to see a  
2 new draft based on the time line issues.

3 MS. MCGINNIS: Oh, yeah. You'll see a  
4 new draft. All kinds of things we talked  
5 about today.

6 MR. JOHNSTONE: We have three or four  
7 different things on this topic. I'm just  
8 trying to understand where we go.

9 MR. COSTER: I think where we are is  
10 recommending some performance standards but  
11 being more clear about this expedited versus  
12 more contested process.

13 CHAIRMAN EASTMAN: Put in some language  
14 so we know that --

15 MR. COSTER: More language around what  
16 it means to try to achieve the performance  
17 standards or not.

18 CHAIRMAN EASTMAN: Yeah. So we take  
19 some of your language.

20 MR. JOHNSTONE: We will take a look at  
21 it when it comes up.

22 MS. MCGINNIS: Just to clarify. You had  
23 come up, Scott, with wording a long time ago  
24 that sort of used the visual of sliders  
25 within the tiers. And that's what I'm

1           imagining in terms of language, expedited  
2           versus contested or whatever. But to have  
3           that all within the construct of the tiers  
4           as they currently exist.

5           MR. JOHNSTONE: That's fine.

6           CHAIRMAN EASTMAN: Mainly what we are  
7           talking about now is the -- right now we are  
8           talking about the time line within a single  
9           tier.

10          MS. MCGINNIS: Yes. Yes.

11          MR. JOHNSTONE: Yes.

12          CHAIRMAN EASTMAN: Okay. Hearing  
13          nothing.

14          So the public participation provisions.  
15          This is where we talk about -- it's the  
16          notice provisions that we talked about  
17          already briefly. You know, the 45 to 60-  
18          days, tier four was 45 to 90 days.

19          MR. JOHNSTONE: Can we -- can I just ask  
20          Gaye, so if we got greater clarity about --  
21          on the front end of the meetings with the  
22          three bodies, do you still feel a concern  
23          that tier three should be 90 instead of 60,  
24          does that do it for you? Because we raised  
25          it -- that was a concern for you, and then

1 we ran over you, or I did. So sorry. So I  
2 would rather not run over you. I would like  
3 to back up and let you speak.

4 MS. SYMINGTON: So how did you fix it?

5 MR. JOHNSTONE: What I suggested was  
6 that in the table on that column to the  
7 other side where it said good faith effort  
8 to meet with the legislative body or  
9 whatever it said, that they shall, unless  
10 refused the opportunity, meet with the  
11 legislative body, the planning body and the  
12 RPC, at the very front end. And then 60  
13 could be okay if they met that requirement.

14 CHAIRMAN EASTMAN: Because that means  
15 they have been out there early, you know.  
16 If they have met with them, they have been  
17 out there.

18 MS. McCARREN: Good time served.

19 MR. JOHNSTONE: I want to make sure --

20 MS. SYMINGTON: I'm okay either way. I  
21 guess I was trying to respond to the issue  
22 that I think a number of people raised which  
23 was that, you know, 10 to 15 megawatts is  
24 not a small thing, project.

25 CHAIRMAN EASTMAN: Right.

1 MS. SYMINGTON: And you know, so 15  
2 megawatts gets the 150 days plus the 90  
3 days.

4 CHAIRMAN EASTMAN: Can I say for me --

5 MS. SYMINGTON: I'm okay with it.

6 CHAIRMAN EASTMAN: This also rolls down  
7 to when we get down to -- more on the --  
8 later on the public participation, the fact  
9 that I still think we ought to have a web  
10 site where there should be notice of things  
11 even prior to this happens. If somebody has  
12 officially asked for an ANR permit, and they  
13 are in that permit process application, and  
14 it relates to a generation, you know,  
15 facility, there should be some way to have,  
16 you know, that information available, you  
17 know, on a Web site to somebody.

18 So for me, on these bigger projects that  
19 require other permits there should -- I  
20 think all of these things, if we do that,  
21 there would be much more information  
22 available to a lot of people earlier. Okay.

23 MS. MCGINNIS: What she is saying has a  
24 lot of implications. So you guys need to be  
25 okay with what she is saying on whether --

1 because it can be -- I just want to make  
2 sure because I know we have had push back  
3 from others on this. If the first time ANR  
4 gets somebody interested in looking at a  
5 site, Charles, GMP might want to be  
6 listening to this.

7 MR. PUGHE: I am.

8 MS. MCGINNIS: That could be two  
9 and-a-half years in advance. It could be at  
10 a stage at which a project is not defined at  
11 all.

12 And so I just want to make sure that we  
13 -- before I write it down, at what stage in  
14 that contact, and Deb you need to let us  
15 know too. Does it make sense for something  
16 to be triggered. And I know ANR has done a  
17 lot of thinking about this on a web site so  
18 that it becomes public knowledge. And at  
19 what stage is that going -- is a developer  
20 just sort of saying, I'm looking here, and  
21 I'm looking here and I'm looking here. And  
22 I'm not really --

23 CHAIRMAN EASTMAN: I mean if it's  
24 already a public conversation with ANR, so I  
25 agree. I do not know what that time is. I

1 don't know what that time is. But I expect  
2 that there is sometime prior to this August  
3 all happening, you know, at the Public  
4 Service Board, that things are happening at  
5 ANR that are actually appropriate times for  
6 -- to have at least a public notice of it.

7 MS. MARKOWITZ: So my staff suggested  
8 that site control is that -- sort of the  
9 magic moment.

10 MR. JOHNSTONE: Can you define site  
11 control?

12 MS. MARKOWITZ: Site control is when you  
13 get a lease or a purchase option, when there  
14 has been some commitment to a particular  
15 piece of land. And is that too early?

16 MR. PUGHE: I was going to let -- from a  
17 commercial perspective it's early because if  
18 I'm trying to do it with multiple land --

19 MS. MARKOWITZ: You might have site  
20 control in a bunch of places.

21 MR. PUGHE: I might have site control on  
22 two, and one a third. I don't want the guy  
23 that has the third to know I have the other  
24 two because that just shot my negotiating.

25 CHAIRMAN EASTMAN: Is it site control

1 for the entire project?

2 MR. PUGHE: I don't know. I don't know.  
3 That's the side I'm coming at it from. In a  
4 commercial transaction if you're trying to  
5 put together a project, just like a real  
6 estate developer, if he's going to buy a  
7 couple pieces of land and put up a Wal-Mart  
8 or a Dollar Store or whatever, they are  
9 going to do -- they don't want everybody in  
10 the neighborhood to know what they are doing  
11 because you tip your hand to what's going  
12 on.

13 MS. MARKOWITZ: That's the last spot.

14 \*mr. lewendowski: That's the point.

15 CHAIRMAN EASTMAN: Can I say that we  
16 have got some environmental issues here, but  
17 we also have some, you know, business issues  
18 here. So we have got to find -- I mean --

19 MR. JOHNSTONE: And there is an -- on  
20 the environmental side there is also --  
21 there is a real -- I don't know how to say  
22 it so it won't sound weird -- there is a  
23 real juxtaposition here of everybody's  
24 rightful desire to know the minute somebody  
25 is looking at a property for the first time.

1 And I get why everybody wants to know that.

2 And there is also -- the juxtaposition  
3 is there is a role and a space for ANR  
4 staff, among others, to be having informal  
5 conversation that makes most of those  
6 projects, those properties never actually  
7 hit the radar. That if the -- if they are  
8 not allowed to talk to anybody without it  
9 being, you know, put on a Web site, frankly  
10 means developers are going to do more wing  
11 nut stuff with less information.

12 MS. MARKOWITZ: Yeah.

13 MR. JOHNSTONE: And actually bring them  
14 forward and freak everybody out as opposed  
15 to when it gets to the appropriate tipping  
16 point, I think that's a better conversation.

17 MS. MARKOWITZ: That's the question.

18 MS. MCGINNIS: What is the tipping  
19 point?

20 MR. JOHNSTONE: Where's the right  
21 tipping point of transparency against not  
22 cooling the ability to make sure developers  
23 don't look at dumb sites, not that you're  
24 dumb, I don't mean it that way, I hope you  
25 understand what I'm saying.

1 MR. PUGHE: I don't take offense.

2 MS. MARKOWITZ: In your view if site  
3 control won't do it, you understand what we  
4 are trying to get at. Once you're committed  
5 to a particular location, at that point it's  
6 appropriate that people know about it, and  
7 we start talking in more detail about that  
8 location. Public conversation. So how is  
9 that identified? That moment?

10 MR. FRIED: Is that a question that --

11 MR. PUGHE: I don't have a good answer  
12 for you right at the moment, but I can think  
13 about that and try and talk to some folks.  
14 I'm thinking once you have site control of  
15 all the parcels --

16 CHAIRMAN EASTMAN: Of all the parcels.

17 MR. PUGHE: And you're done with the  
18 commercial issues.

19 MS. MARKOWITZ: So the second trouble is  
20 maybe the right focus, but it's site control  
21 over the entire site --

22 MS. MCGINNIS: That sounds like --

23 MS. MARKOWITZ: -- for the proposed --

24 MR. FRIED: To me, letting the developer  
25 make that decision by holding off, using

1 state resources for a year prior to signing  
2 the lease arrangement doesn't make sense. I  
3 mean when we start -- at some point when the  
4 state has spent a certain amount of  
5 resources, I think the public needs to know.  
6 And rather than you just keep spending  
7 resources and then the developer maybe makes  
8 the decision to go the extra 10 yards with  
9 the commitment for the real estate.

10 CHAIRMAN EASTMAN: But Deb and Billy,  
11 but you don't --

12 MS. MARKOWITZ: There is not resources  
13 -- significant resources.

14 CHAIRMAN EASTMAN: This is it. If they  
15 had filed -- if they didn't have site  
16 control, but they filed for --

17 MS. MARKOWITZ: You can't file for a  
18 permit without site control.

19 CHAIRMAN EASTMAN: Exactly. As soon as  
20 they actually file for a permit, you know,  
21 they will be up there anyway.

22 MS. MARKOWITZ: So what happens is the  
23 early conversations aren't significant state  
24 resources. The early conversations really  
25 are, you know, what's the permit process.

1           What do we need to get to get this done.  
2           Here are the places we are thinking about.  
3           Can we see your environmental Atlas. How do  
4           we figure out, you know, what do you know  
5           that is there? Is there a class II wetland.

6           MR. JOHNSTONE: I don't want developers  
7           to be afraid to ask you.

8           MS. MARKOWITZ: They have to be able to  
9           ask.

10          MR. JOHNSTONE: That's my point. And  
11          that shows their willingness to ask you  
12          that. That doesn't serve the process.

13          MS. MARKOWITZ: You can't treat the  
14          energy developers differently than any other  
15          person in this regard.

16          MR. PUGHE: I think on Kingdom we hiked  
17          on the mountain one day with folks from ANR,  
18          and then we went to the Selectboard because  
19          it kind of gave us an idea of what it was,  
20          and that was it. It really wasn't a huge  
21          amount of --

22          MR. FRIED: Well I would say in our  
23          case, and Deb, I think you received some of  
24          my earlier E-mails, there was -- and Billy  
25          can confirm that, is that prior to the real

1 estate being leased, there was a lot of  
2 involvement by the ANR.

3 MR. COSTER: They already had a lease on  
4 the Brighton lands. On the -- met parcel.

5 MR. FRIED: Right, they had the met.

6 MR. COSTER: But they weren't talking to  
7 us about the Newark site until after they  
8 signed that lease. The initial  
9 conversations were focused entirely on the  
10 piece that they had site control over.

11 CHAIRMAN EASTMAN: I want you to know  
12 I'm hearing you, and I'm hearing this, and  
13 the whole thing about this is what I'm just  
14 trying to explain in terms of these notice  
15 things that are in the tiers, I think there  
16 is more likelihood that there will be public  
17 notice of these things much sooner than what  
18 the tiers require.

19 Because if we can get this Web site, you  
20 know, up, that information will be there,  
21 and so you'll know. Here's what they have  
22 officially applied for. And the CPG may  
23 come six months later. Okay. So --

24 MS. MCGINNIS: CPG filing may come six  
25 months later.

1                   CHAIRMAN EASTMAN: Well may come six  
2 months. I think there is increased  
3 opportunity for public participation as well  
4 if we find that tipping point for other  
5 permits and get that noticed in some easy  
6 framework so you all know --

7                   MR. JOHNSTONE: So can I add perhaps a  
8 second test, and I think it's a useful test,  
9 and I'm not quite sure what the level is,  
10 Deb, but you'll get it right for me.

11                   I also am thinking a way to game the  
12 system would be to say I'm always looking  
13 for one more deal, so my real estate deal is  
14 never complete. So is there a way to add an  
15 and? There is a level of defining a scope  
16 of what the environmental requirements are?  
17 Where, you know, your staff --

18                   MS. MARKOWITZ: You're doing a scoping,  
19 right.

20                   MR. JOHNSTONE: -- you're actually  
21 scoping the work in addition to the site  
22 control, that perhaps is the second piece of  
23 this. So that you all should think about  
24 that. But that would shortcut somebody just  
25 saying well I don't really know my deal yet

1 because I'm still talking about another  
2 property, as a dodge, you know, the untoward  
3 developer, if you will, right?

4 MS. MARKOWITZ: So Scott, we have three  
5 kinds of work that we do. One is just  
6 constituent services; somebody comes in and  
7 says hey --

8 MR. JOHNSTONE: We want you to do that.

9 MS. MARKOWITZ: I want to know about  
10 this piece of land, or I'm thinking about --  
11 that they are doing that. So that's and  
12 then there is -- then there is our  
13 participation as a party in Act 250. That's  
14 when we really do the scoping. That's when  
15 the real work happens when we are really  
16 talking the land. That's when we begin to  
17 engage in a more active way, the applicant,  
18 because as we see problems, during our  
19 preparation for 248, is we will say, hey, we  
20 see bear-scarred beech, you didn't say that  
21 in the application. That's going to be a  
22 problem. We want you to get rid of a  
23 turbine, whatever, or move it, because  
24 that's going to be a problem for you.

25 That's when the real work and

1 conversations happen is in the context of  
2 getting ready for the 248, and then the  
3 third, of course, is our permits.

4 MR. JOHNSTONE: I'm thinking about is  
5 there a piece -- so I like that as one  
6 standard. Is there a piece before that?  
7 Because I'm imagining this, where you're  
8 describing based on a site control that with  
9 a certain wetland that you're starting to  
10 frame out for them even before you get to  
11 where the placements are, if you went here,  
12 you know, not in conceptually, but you know,  
13 in more detail, you would really have to get  
14 to a certain level that would trigger that  
15 they are serious enough about this site that  
16 really we should put this up on the Web site  
17 now. And so call the bluff of do you have  
18 any other sites you're really looking at  
19 that you haven't got under site control yet,  
20 if you will. I don't know where that is.

21 MR. COSTER: Typically when it gets to  
22 that point we schedule a meeting, and they  
23 come in with a map and say we are looking at  
24 this general vicinity, what do you know?  
25 And I think that's real enough where we

1 could say put people on notice.

2 It's at that point, you know, documents  
3 have exchanged hands. There is a public  
4 record. And I think what we have said all  
5 along is we are happy to be transparent  
6 about those sorts of interactions. I guess  
7 what you have been discussing is a trigger  
8 that predates that meeting.

9 CHAIRMAN EASTMAN: No. Maybe not. I  
10 don't know what we have been discussing.  
11 I'm trying to get it so that people know all  
12 the public process that's involved in a  
13 project, and some of that public process,  
14 because of other requirements is happening  
15 potentially much before even this.

16 MS. MARKOWITZ: The key is there is an  
17 exchange of documents, and that's the public  
18 record. And so -- because otherwise there  
19 is nothing to post. Can I post that I've  
20 taken a walk on the land with you? I mean  
21 what are you going to post?

22 MS. MCGINNIS: What would we call that  
23 stage in the process?

24 MS. MARKOWITZ: Scoping meeting.

25 MR. COSTER: Scoping meeting.

1 MS. MCGINNIS: That actually conforms  
2 with what they are doing in New York too and  
3 in your guidelines. To me that makes a lot  
4 of sense. Because it's a public record  
5 phase, and it's a lot earlier than when the  
6 public is currently notified.

7 MS. MARKOWITZ: So the scoping meeting  
8 will become --

9 CHAIRMAN EASTMAN: We will think about  
10 it.

11 MS. ISELIN: Just very briefly along the  
12 same lines of having something way, way, way  
13 at the get-go, if towns and regions had  
14 already identified what areas they were  
15 willing to do certain projects on or the  
16 Biofinder map --

17 CHAIRMAN EASTMAN: Exactly.

18 MS. ISELIN: Then when you were going to  
19 look for your project you would be able to  
20 say well they don't want us. Instead of  
21 leasing the land and finding out.

22 CHAIRMAN EASTMAN: So this all plays in.  
23 Okay. So --

24 MR. COSTER: Could I just make one  
25 comment? So that's how the kind of scoping

1 meeting process works for the very large or  
2 complicated projects. For like a 2.2  
3 megawatt solar project we will get a 45-day  
4 notice and never hear a peep from anyone.  
5 So there is a range.

6 MR. JOHNSTONE: And you didn't have  
7 knowledge.

8 CHAIRMAN EASTMAN: You didn't have any  
9 more information. What we are trying to get  
10 at, if you have information which relates to  
11 your work and then relates to the public,  
12 when do they get notice.

13 MR. COSTER: We are just one  
14 participant.

15 MR. JOHNSTONE: Of course.

16 MR. COSTER: If you use something like  
17 site control, it's incumbent on the  
18 applicant, no matter who they are talking  
19 to, to pick a date to publicize their  
20 project.

21 CHAIRMAN EASTMAN: We have to think  
22 about that. I'm looking at you because  
23 you're here. If they're playing with  
24 anybody else, the same thing. They might be  
25 going to the Department of Health.

1 MR. COSTER: They might be talking to  
2 the Department about interconnective issues  
3 and all those things.

4 CHAIRMAN EASTMAN: Totally.

5 MR. JOHNSTONE: I would say there ought  
6 to be a test like that as well. Some  
7 definitional piece there.

8 MR. COSTER: I just wanted to clarify  
9 that.

10 CHAIRMAN EASTMAN: We were -- we were  
11 pointing fingers at you, but I agree with  
12 you on that, Billy. It's when is an  
13 applicant dealing with the state about  
14 something and --

15 MR. COSTER: In a substantive way.

16 CHAIRMAN EASTMAN: In a substantive way.  
17 And even I say if they have been and had a  
18 conversation with the town, it ought to go  
19 up, if they went to the town first. It  
20 ought to go up. And then the public will  
21 know. So -- is that enough on this for --

22 MS. MARKOWITZ: I think so.

23 CHAIRMAN EASTMAN: -- for right now?

24 MR. JOHNSTONE: Linda is rolling her  
25 eyes.

1 MS. MCGINNIS: I'm not sure how much I  
2 should put in. I'll put in something that  
3 was -- and you guys can respond to it. That  
4 was a lot of ifs.

5 MS. MCCARREN: Last thing we want, team,  
6 is have Linda fire us. If Linda fires us  
7 and goes to another project --

8 MS. MCGINNIS: That's an unlikely  
9 scenario.

10 (Laughter.)

11 CHAIRMAN EASTMAN: I think it's worth a  
12 couple of lines in our support that says our  
13 vision here is we have just put in, you  
14 know, earlier notification in tier three and  
15 tier four to the towns. But there is  
16 opportunities here with what we are doing  
17 that there could be much earlier  
18 notification that's legitimate. I think  
19 that's an important statement to make.  
20 Okay. Because --

21 MS. MCGINNIS: Yup.

22 CHAIRMAN EASTMAN: And then we talked  
23 already about the public engagement  
24 requirements. Right, Linda? We talked  
25 about that when we talked about the tiers.

1 MR. JOHNSTONE: Yup.

2 MS. MCGINNIS: Yup.

3 CHAIRMAN EASTMAN: And then we have this  
4 RPC funding support, if requested, on a cost  
5 share basis in both the preapplication and  
6 application periods.

7 MS. SYMINGTON: We are silent on towns.

8 CHAIRMAN EASTMAN: Towns. That's what I  
9 have. What about local?

10 MS. MCGINNIS: I had added in there  
11 earlier, and you guys had come to an  
12 agreement to take it out. So I just want to  
13 flag that.

14 MR. BODETT: Well maybe we didn't agree,  
15 but what we had discussed is to create an  
16 incentive for the towns and their regions to  
17 work it out and agree with one another. And  
18 then the Regional Plans would have the  
19 access to what we are calling intervener  
20 funding at that time.

21 CHAIRMAN EASTMAN: Well they're -- if  
22 they are statutory parties it's not really,  
23 but what I believe though we have -- yeah.

24 MS. MCGINNIS: Look at the two bullets  
25 underneath that. I'm assuming I take those

1 two out now based on the discussion this  
2 morning; that there is no conformance with  
3 anything.

4 CHAIRMAN EASTMAN: No, we are still  
5 talking about conformance with the State  
6 Energy Plan. The RPC.

7 MR. JOHNSTONE: PSD determines it. It's  
8 actually where we landed.

9 CHAIRMAN EASTMAN: Right now we are  
10 there, or we are talking about that.

11 MR. BODETT: All who wander are not  
12 lost.

13 MS. MARKOWITZ: Mostly we are wandering.

14 CHAIRMAN EASTMAN: I wish that Chris  
15 were here for this because I think that  
16 Chris is going to be, you know, the  
17 Commissioner is the holder of the, you know,  
18 of the money and the resources, but I think  
19 that Regional Planning Commissions should  
20 have some support to play if it's  
21 significant.

22 MR. JOHNSTONE: The trick for this is  
23 going to be we are talking about  
24 preapplication in addition to application.  
25 And so how does the Board in a

1 preapplication process find positively on  
2 conformance or whatever -- the energy  
3 sections consistent with the State Energy  
4 Plan.

5 CHAIRMAN EASTMAN: Can I tell you I'd be  
6 comfortable enough if we go back to where  
7 the Department is planning with the regions,  
8 and we are getting that planning done, I  
9 think that the regions to the extent need to  
10 be supported to do that, okay, and then I  
11 would go, fine. And then I would go, skip  
12 the preapplication. To me that's the  
13 preapplication part, a lot of it, and then  
14 potentially fund them if -- you know to  
15 participate --

16 MR. JOHNSTONE: Sure.

17 CHAIRMAN EASTMAN: -- in the actual  
18 application process.

19 MR. JOHNSTONE: I'm fine with that.

20 MS. MCGINNIS: So I take out  
21 preapplication here because that's being  
22 covered by the funding we had in the first  
23 one in the planning part. This is on a  
24 project-by-project basis just to -- the  
25 reason this was put in there is because

1 regions and towns were saying when we get  
2 notice, and we need to prepare ourselves for  
3 a specific project, that's when we have to  
4 expend resources in order to be able to  
5 respond to a given project. I just want to  
6 give you the reasoning that it was in there.

7 CHAIRMAN EASTMAN: I believe if we do  
8 this more enhanced planning, this other  
9 planning, that there would be more people  
10 saying, no, we are going here. And so if --  
11 so I think there should be fewer problems  
12 relative to planning, you know, plans, but  
13 if there are issues and they really need to  
14 participate or even to the extent that they  
15 need to play on it, then they should be  
16 provided the resources to do it.

17 MS. MCGINNIS: In the application.

18 CHAIRMAN EASTMAN: In the application.  
19 Because to me I can say application -- I  
20 would be willing to say application starts  
21 from the official notice.

22 MR. JOHNSTONE: We are only saying that  
23 we are willing to, on a pro rata share --  
24 pro rata cost share basis fund them for  
25 issues of conformance with the Regional Plan

1 not any idea they come up with. Because  
2 that's what the second bullet talks about.  
3 So we are limiting what they can receive  
4 some cost reimbursement for.

5 CHAIRMAN EASTMAN: Right. But we are  
6 asking them to -- what do you think?

7 MR. JOHNSTONE: I'm good.

8 MR. BODETT: Yeah.

9 CHAIRMAN EASTMAN: Well I think  
10 application should be -- we should define  
11 the application process as at least from the  
12 point where they are given whatever, the 45-  
13 day notice, the time that it takes them to  
14 hire somebody to review the documents and  
15 see whether there was an issue.

16 MS. MCGINNIS: Oh, well that was what I  
17 was defining as preapplication. As soon as  
18 they get notice, that's when they say they  
19 need to begin preparing things. That was  
20 the argument that was coming from the  
21 Regional Planners. As soon as they get  
22 notice 60 days in advance --

23 CHAIRMAN EASTMAN: I think from the  
24 notice is a fine point. To me  
25 preapplication is all the stuff that might

1 be going on with ANR or something like that.

2 MR. BODETT: Let's define that. I agree  
3 with that. Once notice is filed that's when  
4 you should qualify for the bill back. But  
5 the pre-outreach and all that, no.

6 MS. MCGINNIS: So I'll say on a cost  
7 share basis in the application period, in  
8 parenthesis, defined as the point at which  
9 they receive notice, and onward.

10 CHAIRMAN EASTMAN: Yeah.

11 MS. MCGINNIS: Okay.

12 MR. JOHNSTONE: So --

13 CHAIRMAN EASTMAN: They are going to  
14 have work to do in advance of that. But  
15 that's part of their normal, you know,  
16 planning. They are going to want to talk to  
17 ANR if they hear things. That's what I  
18 think would be a point.

19 MR. JOHNSTONE: So are we going to say  
20 that the cost share basis is determined by  
21 the Board, or are we going to be elegant and  
22 say on an equal cost share basis.

23 CHAIRMAN EASTMAN: I don't know what  
24 cost share basis means.

25 MR. JOHNSTONE: I think it means that

1 the RPCs are spending something and getting  
2 some back as well. I assume that means  
3 shared cost. That's what I read there.

4 MS. MCGINNIS: That's what you and Gaye  
5 have consistently said you wanted to have in  
6 there over and over again.

7 MR. BODETT: We always talked about that  
8 when we were still talking local.

9 CHAIRMAN EASTMAN: Do we want to define  
10 it, or have the Board define it on a  
11 case-by-case basis like they do in  
12 California? They spend the money, and then  
13 the Board is out there or whatever, pays  
14 them back something.

15 MR. BODETT: What's the split on  
16 Regional Planning grants? Is it 80/20?

17 MS. MARKOWITZ: There was a share. I  
18 don't remember.

19 MR. BODETT: I don't remember if it's  
20 80/20, something like that.

21 MS. SYMINGTON: Local option tax revenue  
22 sharing is 70/30 I think.

23 MS. MCGINNIS: This is under bill back.  
24 And I mean I don't think you have to get  
25 into too much detail on that.

1 MR. JOHNSTONE: I'm happy to say  
2 determined by the Board.

3 CHAIRMAN EASTMAN: Can I say I think  
4 it's up to the Department and the Board and  
5 the people who fund it to figure out is it a  
6 bill back issue or is it a different kind of  
7 issue.

8 MR. BODETT: I'm good with that.

9 MR. JOHNSTONE: The idea is having some  
10 of your own money in, I think is important  
11 for frivolous play, but beyond that having  
12 the Board determine what's a fair share, I'm  
13 totally happy with.

14 CHAIRMAN EASTMAN: Maybe we want to make  
15 a reference to something like it's 80/20 if  
16 it's 80/20 for planning and 70/30 for that,  
17 you know, have them mention something like  
18 that so we can see. It doesn't necessarily  
19 have to be 50/50. It may be 70/30.

20 MS. MCGINNIS: 70 state, 30 RPC that  
21 kind of thing?

22 CHAIRMAN EASTMAN: Yeah.

23 MR. COSTER: They are going to have to  
24 participate if the Regional Plan is a  
25 component.

1 CHAIRMAN EASTMAN: Exactly.

2 MR. COSTER: So they are not going to be  
3 -- even if they don't want to, they are  
4 going to have to be there. So the burden  
5 shouldn't be too high on them.

6 CHAIRMAN EASTMAN: That's why I'm  
7 thinking not half and half or something.  
8 You know, but anyway -- okay.

9 So are we fine on this section? Oh my  
10 gosh.

11 MR. BODETT: We feel the wind in our  
12 faces now, huh?

13 MR. JOHNSTONE: See my hair blowing in  
14 breeze? It's easy when you have none.

15 CHAIRMAN EASTMAN: Can I say though, so  
16 here's where I am, and I think we should say  
17 it. I'm happy to go on the record about the  
18 intervener funding issue, I am of a mind  
19 from a municipal standpoint to trade that  
20 150-day, you know, requiring that 150-day  
21 public engagement process for intervener,  
22 you know, instead of intervener funding.  
23 What I would be -- what I think should  
24 happen with municipalities I actually think  
25 municipalities it is an issue, if a

1 municipality has a real issue, that hasn't  
2 gotten resolved, if we do all this stuff  
3 right, you know, all this stuff, then I mean  
4 they should, you know, they can request to  
5 be made a party right at the Public Service  
6 Board.

7 MS. McCARREN: Yeah. Did you not -- we  
8 give them --

9 CHAIRMAN EASTMAN: I haven't given local  
10 party status yet. We have given them  
11 notice, we haven't given them automatic  
12 party status yet. They can file and make a  
13 case. And if it's issues that have not --  
14 okay, here's what I've got to say.

15 We tried to set up a process here where  
16 the Public Service Board is -- has to take  
17 -- consider their recommendations, and  
18 actually pursue, you know, pursue testimony  
19 on areas that they think are of concern. So  
20 if that happens, the municipalities  
21 shouldn't have to be paying the cost because  
22 in fact, what's going to go on is that, you  
23 know, the Board's going to say this is an  
24 issue that has to be addressed, you know, by  
25 the statutory -- by the parties.

1 MS. MCGINNIS: Ensure that any decision  
2 on a given project addresses the principal  
3 concerns raised in these recommendations  
4 will require that the towns actually be  
5 there. That's what you're saying.

6 CHAIRMAN EASTMAN: No. I'm saying no.  
7 I'm saying that what it is is the towns may  
8 have an environmental concern. Okay? And  
9 so -- or they could have a, you know, a  
10 noise or a health concern. So -- and if  
11 they are specific enough in their  
12 recommendations, that what we have said  
13 earlier really is that the Board has to  
14 establish areas of inquiry as part of the  
15 process into that.

16 And then statutory parties, i.e., the  
17 Agency of Natural Resources or the Public  
18 Health Department or the Department of  
19 Public Service are going to have to provide  
20 testimony, you know, on those issues. So in  
21 fact, what should happen, is that the  
22 statutory parties at the state, you know,  
23 and region have stepped in to represent the  
24 local interests.

25 I can see because we have actually said

1 you've got to pay attention to this, Board.  
2 You actually have to require that this  
3 happens. Okay. Which is why I then say  
4 because it is a -- this is to try and get  
5 the burden away from them, get their issues  
6 raised, but not have them have to pay for  
7 the cost of the process.

8 So then I can see there may be a time  
9 where they then file for intervener status  
10 and there is something that isn't getting  
11 addressed. What happens then? They will  
12 probably be given party status about it,  
13 because that's not hard. But how do they  
14 pay for it?

15 MS. McCARREN: Okay. The Board would --  
16 we share the same goal of having the towns  
17 have their plans heard.

18 CHAIRMAN EASTMAN: We have done that.

19 MS. McCARREN: Yeah, we have done that.  
20 Okay. The problem is, I mean who has the  
21 burden at the Board of demonstrating that  
22 the project is whatever term, substantial,  
23 tell me the words again.

24 CHAIRMAN EASTMAN: No. That the plans  
25 are given substantial consideration. I'm

1 not worried about the plans here.

2 MS. McCARREN: No, the plan is going to  
3 come in. It's going to come in.

4 CHAIRMAN EASTMAN: I'm not worried about  
5 the plan. I'm worried about are all of the  
6 issues that people have raised around other  
7 things been addressed. You know, I mean  
8 they may be concerned, the community may be  
9 concerned.

10 MS. MCGINNIS: As regards a specific  
11 project.

12 CHAIRMAN EASTMAN: As part of that  
13 specific project.

14 MS. FRIED: They wouldn't hire expert  
15 witnesses?

16 CHAIRMAN EASTMAN: No. The goal here is  
17 what you've done for me, I don't think  
18 communities should always have to  
19 participate. You're supposed to have other  
20 --

21 MR. JOHNSTONE: So they may. But I  
22 think what you're trying to get at is the  
23 issue of -- so is there a necessity for  
24 intervenor coming from municipalities. I  
25 think that's where you're coming around the

1 bend, because on the one hand we have  
2 designed a process where the issue should be  
3 squarely on the table.

4 CHAIRMAN EASTMAN: Way in advance.

5 MR. JOHNSTONE: And it shouldn't cost  
6 the kind of dollars. But if the town then  
7 decides they want to participate heavily,  
8 should that burden fall back for somebody  
9 else to pay or should they have to pay it?  
10 What's fair here?

11 CHAIRMAN EASTMAN: What we have now said  
12 is we have now got more enhanced planning on  
13 big projects. We are requiring a public  
14 engagement process of 150 days which is  
15 managed by the Department, not by the, you  
16 know, applicant. I mean how much more do we  
17 do? I mean that costs money.

18 MR. BODETT: Can you think of a scenario  
19 where a town might have an issue that the  
20 Regional Plan would not adopt? Like, you  
21 know, if there was a project going in  
22 Dummerston and Windham region was going to  
23 -- was going to be a party here, and the  
24 Regional Plan, and we said, but you guys  
25 have got to stand up for the fact that this

1 is going to destroy our, whatever it is. I  
2 can't imagine a scenario where a Regional  
3 Plan would not do, you know, any reasonable  
4 complaint like that, would not represent the  
5 town in that. Why -- where a town would  
6 actually be put in the position of having to  
7 become a party on its own.

8 The only reason I could think that would  
9 happen is if their Regional Plan did not  
10 cover their concern.

11 CHAIRMAN EASTMAN: Yeah, but there are  
12 -- I can imagine specific issues coming up  
13 in things, in big cases. The issue is when  
14 we had the testimony on, I mean Annette said  
15 give public process on these projects in  
16 advance or intervener funding. You know,  
17 she wanted public process, or you know,  
18 that's one suggestion. So you can define  
19 what the issues are.

20 What we have tried to do is put in more  
21 public process even on tiers three and four.  
22 We are saying we are giving more credence,  
23 you know, giving more credence, and we are  
24 saying we want to hear, you know, don't just  
25 make the recommendations. They have to be

1 considered as part of the, you know, as part  
2 of the project. So we have gone along  
3 there.

4 But I still know that people are going  
5 to say something about, you know, well we  
6 haven't provided intervener funding for  
7 municipalities or intervener funding for  
8 just interveners. And I'm not-- I just want  
9 to put this on the table so we are clear and  
10 square where we are coming from about it.

11 MS. McCARREN: We could do something  
12 like this. I do not support intervener  
13 funding generally.

14 CHAIRMAN EASTMAN: Neither do I.

15 MS. McCARREN: However, the issue of a  
16 town, I'm wondering we could do it something  
17 like -- now I'm just going around in circles  
18 -- do it something like if the Board  
19 determines that it's necessary for the town  
20 to properly represent its interests.

21 CHAIRMAN EASTMAN: But that's what --

22 MS. McCARREN: You and I we tried to fix  
23 this by all the planning process. Now we  
24 are down to the hearings. There is a  
25 project proposed. Department, right, if the

1 town planners came in and said we do not  
2 think that this project is consistent with  
3 our Town Plan, what is the Department --

4 CHAIRMAN EASTMAN: Honestly, Louise, I'm  
5 not worried about the Town Plan  
6 consistencies. I think we have got enough  
7 in on that.

8 MS. McCARREN: Yeah, yeah.

9 CHAIRMAN EASTMAN: What I'm worried  
10 about is the town disagreeing with the  
11 position that ANR is taking on something.  
12 Okay. That's what I'm worried about. And  
13 have we done enough. That's what I'm  
14 saying.

15 We have already put in place a process  
16 where the decision-making process has to  
17 definitively take into account what the  
18 recommendations, i.e., concerns are of the  
19 community, right? And actually play it into  
20 the process. Which means you're going to  
21 have to be providing testimony. But so for  
22 me, for me here's what -- here's how I put  
23 it. I'm just thinking about this.

24 To the extent that the Public Service  
25 Board determined that a municipality should

1 be granted intervener status, you know, on  
2 an issue because it believed that their  
3 interests were not, you know, were not  
4 represented by other statutory parties, that  
5 maybe there is a cost share around that, but  
6 it's a standard further down. Think about  
7 it. Maybe we don't decide it today.

8 MS. MCGINNIS: That's sort of what  
9 Louise was saying too. Is that the point at  
10 which the Board decides that a town needs to  
11 properly -- to represent itself, only in  
12 those cases do they tap into the same type  
13 of bill back financed --

14 MR. COSTER: What we have heard  
15 consistently from all the parties is that  
16 one of the strains of the existing system is  
17 the generous -- the Board's generosity  
18 around granting intervener status.

19 So the expectation is if a town wants to  
20 be an intervener, they are allowed in the  
21 proceeding. If you're implying they are  
22 only going to get this money if they are  
23 allowed in, that seems to raise the bar for  
24 intervention, which is not anything we want.

25 MS. MCGINNIS: Isn't helpful.

1 MS. McCARREN: I think our boss told us  
2 we were taking a break.

3 MR. JOHNSTONE: How about quarter of? I  
4 have no authority, but how about quarter of.

5 MS. McCARREN: Works for me.

6 (Recess was taken.)

7 CHAIRMAN EASTMAN: So we should -- okay,  
8 so maybe we can't -- maybe we can't resolve  
9 this issue, or maybe we don't want to go  
10 there at all. This issue of what if the  
11 town, you know, needs to participate, what  
12 if the town were -- requested intervener  
13 status and it was given by the Board. You  
14 know, do we want to help -- what do we want  
15 to do about that relative to funding?

16 We can just leave it and say hopefully  
17 all the issues will be gone, and they will  
18 be minor, or maybe that there is something  
19 we can do about, if it's an issue again,  
20 something along the language if it were an  
21 issue that the Board thought was  
22 significant, it wasn't being addressed by  
23 any other party, then consider, you know,  
24 then consider some source of cost sharing or  
25 whatever or not, or leave it alone.

1 MR. JOHNSTONE: I think the furthest I'm  
2 willing to go at this point, and subject to  
3 all sorts of conversation, I don't mean it  
4 as the end of the conversation, but for me,  
5 it's hard to get there from where we are  
6 right now to be honest because we have  
7 really stayed away from intervener funding  
8 for everybody, after all the testimony we  
9 heard about it, and it can get fairly  
10 enormous fairly quick.

11 So if we wanted to be sure that the  
12 Board had enough authority to open a docket  
13 on the question, so that they could consider  
14 it, I might go there. But to kind of decide  
15 that -- and for the reason Billy said, but  
16 even beyond that, I mean it's -- there is a  
17 lot of consequence to putting cash on the  
18 table for everybody to play.

19 CHAIRMAN EASTMAN: Yeah. You see I  
20 guess I don't know when it might be. But I  
21 can foresee a situation perhaps when the  
22 Public Service Board actually thought that  
23 something wasn't being addressed. You know,  
24 an issue that a community was concerned  
25 about. And in that case, I would be willing

1 to say if they think it's significant, then

2 --

3 MR. JOHNSTONE: They the Board?

4 CHAIRMAN EASTMAN: Yeah, they the Board.

5 MS. McCARREN: They can on their own  
6 hire an expert. They can do that.

7 MS. SYMINGTON: They can't do that now?

8 MS. McCARREN: They can.

9 MR. JOHNSTONE: That's what I'm saying.

10 MS. McCARREN: They have the power to do  
11 that now.

12 CHAIRMAN EASTMAN: Maybe -- I just think  
13 we need to say something in here or -- as to  
14 I don't know, maybe, you know, or maybe we  
15 don't, but --

16 MS. SYMINGTON: Well if they can do it  
17 now, I would just repeat it, and say we  
18 believe that it's right that --

19 CHAIRMAN EASTMAN: To the extent that a  
20 community raises an issue that's not  
21 otherwise being raised, and the Board thinks  
22 it's significant, then we understand that  
23 they have the ability to, you know, hire  
24 experts to address those issues.

25 MS. SYMINGTON: And continue to do so.

1 CHAIRMAN EASTMAN: Yeah. Okay.  
2 Something like that at least for now. Okay.  
3 MS. McCARREN: Yes, I agree with that.  
4 MS. FRIED: Do they do that right now?  
5 CHAIRMAN EASTMAN: They can, and they  
6 have done it on specific complicated issues.  
7 MS. RADEMACHER: But to clarify, does  
8 the Board's -- the Board would have to say  
9 it was okay for a town to go out and hire  
10 their own experts.  
11 CHAIRMAN EASTMAN: No, no.  
12 MS. RADEMACHER: We are just talking  
13 about the funding.  
14 CHAIRMAN EASTMAN: A town can always  
15 request to be a party and then handle it  
16 yourselves. But we are just trying to be  
17 sure that as much as possible if they really  
18 think it's a significant issue that we take  
19 it off your --  
20 MS. McCARREN: The other way that this  
21 should work too is if the town has done its  
22 planning and the project is proposed, and  
23 the Planning Commission believes that it's  
24 not consistent with the plan, their first  
25 stop is at the Department. And it's the

1 Department's job, I would suggest, to look  
2 at that, look at the plan, look at the  
3 project, and if they agree, right, the  
4 Department can carry --

5 CHAIRMAN EASTMAN: That's what I'm  
6 saying. On this issue we have done -- we  
7 have asked for recommendations, we have had  
8 them integrated, we have them addressed. To  
9 me that should put some of that up to the  
10 level of state agencies actually carrying  
11 the weight.

12 MS. McCARREN: Okay.

13 CHAIRMAN EASTMAN: Okay. So that's it  
14 for this section. Linda, anything else we  
15 haven't talked about in this section? And I  
16 hate to -- and we have got about 55 minutes  
17 left.

18 I just want to be sure we get through  
19 everything that Gaye --

20 MS. McCARREN: We have 65 minutes.

21 CHAIRMAN EASTMAN: 65 minutes left. I  
22 want to make sure we get through everything  
23 that Gaye wants to talk about because we  
24 have another session. So you want to move  
25 just on?

1 MS. SYMINGTON: Sure.

2 MR. JOHNSTONE: Are any of these more  
3 important to you of the sections that are  
4 left?

5 CHAIRMAN EASTMAN: Or the remaining  
6 issues.

7 MS. McCARREN: She sent us comments.

8 MR. JOHNSTONE: That's a good point. If  
9 we are not going to have your voice next  
10 time, it would be great to cover those now.

11 MS. SYMINGTON: I don't have my comments  
12 in front of me.

13 MS. MCGINNIS: I have one of them here  
14 that I want to make sure we have addressed.  
15 You said I don't think we are being  
16 realistic when we are silent about the  
17 timing gap between now and when this  
18 planning is complete. We should address  
19 what happens in the interim period, and we  
20 are starting to do that here, but we need to  
21 continue with that.

22 CHAIRMAN EASTMAN: I think some of the  
23 conversation we had this morning I thought  
24 helped to address it. I had the same  
25 concerns, that really saying do some of

1 these things right away. And understanding  
2 that, you know, that Regional Plans will not  
3 become dispositive until this other piece  
4 happens. Something has to happen. This  
5 doesn't mean that they won't be there, but  
6 there will be some of that for awhile.

7 MR. BODETT: I think we may need some  
8 real clarity on that point.

9 CHAIRMAN EASTMAN: But saying that, you  
10 know, some of these issues that we have  
11 raised, some of these things that might be  
12 done by rulemaking, again, we have said you  
13 can push them and have it be part of the  
14 process before the rulemaking finishes. The  
15 Board has that authority to consider things,  
16 so just saying.

17 MS. McCARREN: It's kind of like saying  
18 a report to the Board that says based on our  
19 discussions and all the information that we  
20 have taken and everything we have read and  
21 studied, that we recommend to you that  
22 immediately you give great consideration --  
23 you give further consideration, or more  
24 consideration, whatever those right words  
25 are, to issues. We have been through them,

1 you know, whatever that list is.

2 CHAIRMAN EASTMAN: Yeah.

3 MS. McCARREN: I think that's a great  
4 idea. They don't have to listen to us. But  
5 --

6 MS. MCGINNIS: I just want to make sure  
7 as we are going through all the  
8 recommendations I think it would be useful  
9 to categorize them in these different --

10 MS. SYMINGTON: We are not doing -- some  
11 of the comments have been there should be no  
12 more applications --

13 CHAIRMAN EASTMAN: No.

14 MS. SYMINGTON: -- until all of this is  
15 resolved.

16 CHAIRMAN EASTMAN: Right. I'm not  
17 willing to say that. But I'm willing to  
18 push some things out and push back at  
19 people.

20 MS. SYMINGTON: Is it realistic to say  
21 we think these things should happen by X  
22 date, otherwise why? Is the system going to  
23 move of its own accord because there is  
24 enough pressure, or do we need to add  
25 something that --

1                   CHAIRMAN EASTMAN: You know, I think  
2                   it's going to be up to Deb and Chris. For  
3                   me when I read what's come out of the Senate  
4                   on S30, as I said earlier, I'm concerned  
5                   they may delay some things. So I don't want  
6                   to say you wait until you do -- a whole  
7                   reporting process between now and, you know,  
8                   do more work like this and you don't decide  
9                   until November 13 what you then do  
10                  legislatively or rulemaking.

11                  So I think we ought to encourage, you  
12                  know, you start these things when you can.  
13                  Some things do need more, you know, more  
14                  finesse.

15                  MS. SYMINGTON: And there is enough --

16                  CHAIRMAN EASTMAN: Pressure. I think  
17                  there is enough political pressure.

18                  MS. SYMINGTON: That in itself is  
19                  driving the system to move.

20                  CHAIRMAN EASTMAN: I believe it's being  
21                  driven.

22                  MS. MARKOWITZ: Yeah.

23                  MS. McCARREN: Just to -- I think I  
24                  absolutely understand what you're saying.  
25                  The way this could work in the short run is

1 these are our recommendations to the  
2 Governor. And these are our recommendations  
3 to the Board as well and to the Department.  
4 And the Department does what the Governor  
5 wants we hope; right? Most of the time.  
6 And so that's the way the politics of it  
7 should flow.

8 CHAIRMAN EASTMAN: I think there is  
9 pressure to have people keep doing these  
10 things. I do at this time. But -- okay.

11 MS. SYMINGTON: So I mean I guess I  
12 would say that, you know, that maybe at  
13 someplace it could say we have heard concern  
14 about what happens in the interim. And  
15 should --

16 MS. McCARREN: Yes.

17 MS. SYMINGTON: -- should the system  
18 stop. And our feeling is that, you know,  
19 one, there are things that we are  
20 recommending that get implemented now. And  
21 two, we believe there is enough pressure on  
22 those --

23 CHAIRMAN EASTMAN: To get done.

24 MS. SYMINGTON: -- to get things moving.  
25 And that it's unrealistic and not

1 appropriate to put the whole system on hold,  
2 because we believe there is enough pressure  
3 to move.

4 MR. LEWENDOWSKI: Can I just ask a quick  
5 question? You just said that you don't want  
6 to stop them from putting in proposals.

7 CHAIRMAN EASTMAN: No, I -- well --

8 MR. LEWENDOWSKI: Let me just finish  
9 what I'm saying. I mentioned this to Chris  
10 before, because Chris mentioned this morning  
11 that they could put in their applications.  
12 And that they wouldn't be acted upon.

13 CHAIRMAN EASTMAN: Considered.

14 MR. LEWENDOWSKI: Until the next  
15 legislature. So if the next legislature  
16 puts through the proposals that have come up  
17 from this, would they be retroactive on to  
18 somebody who did?

19 CHAIRMAN EASTMAN: That's the issue. Is  
20 that when does -- when -- the general rule  
21 is that on the date of application, the  
22 rules are in place on the date you apply are  
23 what you have to go by.

24 Here's the thing. There is so much that  
25 has to happen before any of these projects

1 could go forward to have a complete  
2 application. I believe that they haven't  
3 even started working with ANR, so there is  
4 no way --

5 MS. FRIED: They are working with ANR.

6 MR. COSTER: No. There are several that  
7 have done significant natural resource  
8 assessment work already.

9 MS. FRIED: They are ready to go.

10 MR. LEWENDOWSKI: Can they say we are  
11 grandfathered in? We don't have to go by  
12 these rules?

13 MS. McCARREN: There is rules, and there  
14 is rules. What we are saying is there is  
15 already a long list of considerations that  
16 the Board has to do under 248. What we are  
17 saying to the Board is right now, right now,  
18 we just simply want you, this is our first  
19 column, we want you to give heightened  
20 consideration and awareness. That does not  
21 require a rule change, and it does not  
22 require legislative change. And it's a  
23 message to the Department and to the Board  
24 from us, and they are not obligated to  
25 follow it. But they could -- if they take

1 our advice, they would follow it right now.

2 CHAIRMAN EASTMAN: Right. So in -- that  
3 in itself could say, no, you really need to  
4 seriously consider setbacks. No, we think  
5 there are really potential issues, you  
6 really need to do that. So many of the  
7 things that we have heard are concerns,  
8 okay, could be addressed like that.

9 MR. LEWENDOWSKI: Okay.

10 CHAIRMAN EASTMAN: The issue of -- the  
11 issue of the standard of review for the Town  
12 Plan can't change until we get it changed,  
13 but much of the issues that are underlying  
14 that you could deal with in the separate  
15 way. All right.

16 So our -- I think what we are trying to  
17 think about doing is really pushing back and  
18 saying this is how these things need to be  
19 handled in the interim. And Scott's just  
20 suggested well, you know, could we have an  
21 executive order from the Governor in the  
22 interim. Not really. It's the Board who  
23 gets to push it. But I think you could --

24 MS. FRIED: Then we would have to hire

25 --

1           CHAIRMAN EASTMAN: No, you wouldn't have  
2 to hire, because what you've got here is  
3 you've got the Agency of Natural Resources,  
4 you have got the Department of Public  
5 Service. It's their roles to push this  
6 stuff. And --

7           MS. FRIED: So they would work with us.

8           CHAIRMAN EASTMAN: They would work on  
9 behalf of all of us who said da-da-da, this  
10 is how we want it to go. Okay. So we get  
11 the concern, and yes --

12          MR. LEWENDOWSKI: Somebody did it with  
13 the met towers, they said, oh, your plan  
14 came in too late.

15          MR. JOHNSTONE: So the reason -- I just  
16 didn't know the law stuff.

17          CHAIRMAN EASTMAN: I don't know.

18          MR. JOHNSTONE: I was curious in this  
19 shorter term bucket that you have been  
20 talking about, what did we call it? Now,  
21 now. Are there components of this, and I  
22 just don't know the relationship between the  
23 executive branch and the quasi-judicial  
24 piece.

25                 Are there components of this that while

1 the second columns are being done that the  
2 Governor could issue an executive order to  
3 try to enforce some things. And that may  
4 feel heavy handed, it may be too heavy  
5 handed, but I have been -- just been in the  
6 spirit of putting all tools on the table.

7 MS. MARKOWITZ: So the executive order  
8 could apply to the administrative agencies,  
9 but it would not affect the Board.

10 MR. JOHNSTONE: That's what I wasn't  
11 sure of.

12 MS. MARKOWITZ: Even though the Board is  
13 quasi-judicial it's still independent.

14 MR. JOHNSTONE: On the implement now  
15 that would give not all the comfort that  
16 folks from the affected communities are  
17 looking for. It wouldn't give everything  
18 you're looking for, but it would send some  
19 signals to the public around the pieces at  
20 least that agencies like yours, Department  
21 of Health, and others can do.

22 But I don't know if that feels too heavy  
23 handed. Obviously he would have to be  
24 comfortable with that. It's up to you all.

25 MS. McCARREN: The other thing, even if

1 we couldn't get to the executive order, if  
2 these were our recommendations, and you were  
3 in a contested case, it doesn't have a ton  
4 of weight but you could say to the Board,  
5 you know, that Commission said you've really  
6 got to pay close attention to setbacks. It  
7 helps. It doesn't hurt.

8 CHAIRMAN EASTMAN: It's the issue of if  
9 you decide to do setbacks by rule, then you  
10 say, you know, somebody request a rulemaking  
11 process. So sooner rather than later. You  
12 don't have to know the end -- where you're  
13 coming out at the end. You need to know we  
14 want a rulemaking process around it.

15 So I think there is pressure already.  
16 And I bet that that's, you know, who knows  
17 what happens with this version of the, you  
18 know, legislation, but that may end up still  
19 being there, things have to happen. But as  
20 I say, for me where I look at that, I don't  
21 want things to wait. You know, but for  
22 those things that take sometime that means  
23 they will be there putting pressure back on  
24 the Agency, and the Agency and the  
25 Departments to move.

1 MS. SYMINGTON: So another area that I  
2 had -- this is just -- I was not clear about  
3 was there are other things besides setbacks  
4 that were like not really addressed through  
5 permits like wildlife corridors, and I don't  
6 know where those show up. Is just that a  
7 laundry list we turn over and trust that the  
8 agencies are going to handle, or like  
9 setbacks, do we want to propose some kind of  
10 guidance?

11 CHAIRMAN EASTMAN: We have got that down  
12 here, ensure adequate environmental health  
13 and all of those things. This is where we  
14 talk about all these other areas.

15 MR. BODETT: Appendix four.

16 MS. MCGINNIS: Appendix four is the ones  
17 that fall under -- the tricky ones, Gaye, is  
18 right. These are the ones that fall under  
19 ANR's jurisdiction, and wildlife corridor is  
20 in the high value habitat connectivity  
21 areas. So they have already determined, at  
22 least as of now, which of these three  
23 categories these things fall under. Some of  
24 them are simply just too difficult to have  
25 guidelines developed right now. Because

1 there is not enough information, or it needs  
2 to be done on a case-by-case basis, and  
3 particularly that latter.

4 The wildlife corridors fall in that  
5 third category. Some of the other really  
6 difficult issues that we talked about  
7 earlier, setbacks being one, we have said at  
8 least as, Chris, I hope you bless that, that  
9 it would fall in the second category which  
10 is could be developed over the next 12 to 18  
11 months. Because there is enough data out  
12 there nationally on setbacks where you could  
13 have guidelines on that. There are other  
14 issues --

15 MS. GRACE: I thought we had left the  
16 setbacks we were going to do a docket before  
17 the Public Service Board.

18 MS. MCGINNIS: Right. Docket before the  
19 Public Service Board. But would likely end  
20 up --

21 MR. RECCHIA: So at the risk of getting  
22 myself in trouble with my staff, do you want  
23 a sheet like this?

24 MS. GRACE: Since I'm the only one here,  
25 should I come and sit closer to you?

1 MS. MCGINNIS: This is what I was asking  
2 for last week is a sheet exactly like this.

3 MR. RECCHIA: From us.

4 MS. MCGINNIS: From your staff on  
5 everything that falls outside.

6 MS. GRACE: We talked about it.

7 CHAIRMAN EASTMAN: So in fact, Gaye,  
8 yes, I think that recommendation is the 14th  
9 hereunder, that that first recommendation  
10 about guidelines is that. That we haven't  
11 got to develop them yet, or there are some  
12 that are already in place or can be in  
13 place.

14 MR. JOHNSTONE: I'm lost.

15 CHAIRMAN EASTMAN: We are under Ensure  
16 Adequate Environmental Protection. I want  
17 to make sure we talk about the things Gaye's  
18 concerned about. So yeah, some of these  
19 things are now, some of those things are,  
20 you know, further out. But again, even the  
21 things that -- we have heard some things  
22 about issues to say these are significant  
23 issues.

24 So even again, on a case-by-case basis,  
25 we can say da-da-da, look, we now have the

1 Department of Health saying they ought to be  
2 considering, you know, health issues which  
3 they weren't doing before. So for me that's  
4 a, you know, a move in the right direction.  
5 So it may take them a time to develop, you  
6 know, all that, you know, the overall stuff,  
7 but there may be issues. Now I'm not saying  
8 there are always issues. But it ought to be  
9 something that has to be considered.

10 MR. PUGHE: It's like anything. It's  
11 just a criteria you check off.

12 CHAIRMAN EASTMAN: Right. It's just a  
13 criteria you check off.

14 MS. SYMINGTON: And when we talk about  
15 the impact of a project on any of those  
16 criteria, we are talking about not just the  
17 part you see, like the turbines, you're  
18 talking about the whole project which might  
19 include a couple thousand acres that were  
20 conserved, right?

21 CHAIRMAN EASTMAN: Yeah.

22 MS. SYMINGTON: Do we need to say that  
23 in someplace so people understand that the  
24 project is more than those turbines you see,  
25 but it's also, you know, the conserved area

1 that went along with it as part of the whole  
2 deal?

3 MS. MCGINNIS: There are several people  
4 who have brought up that point, and it's an  
5 important point. That there are -- it's not  
6 just the negative impact, but it's the  
7 positive impact. And that if you have  
8 conserved areas that are going along with a  
9 project, that needs to be also taken into  
10 account.

11 CHAIRMAN EASTMAN: Maybe, but that's  
12 normal practice in any projects. I mean --

13 MS. SYMINGTON: That's not what people  
14 understand and see when -- you know, what  
15 you see is the wildlife corridor has been  
16 interrupted. What you don't see -- by what  
17 you can see. But you don't see that there  
18 is a corresponding piece of the same project  
19 that is making up for that corridor.

20 MR. RECCHIA: So can I comment on this?  
21 It's fair that I'm going to just go to  
22 focusing on wind because this is a really  
23 good example.

24 That we and the Agency of Natural  
25 Resources did a great job in spite of, you

1 know, any desire of people thinking about  
2 how Lowell came out, that project started  
3 with this administration and Deb's  
4 leadership at the 11th hour with Green  
5 Mountain thinking that this was a leased  
6 project, they were leasing the land for 20  
7 years, they were putting the wind turbines  
8 up. And at the end of 20 years they would  
9 decommission them and they would go away.  
10 That changed to recognition that this is  
11 permanent impact, that you had to have  
12 permanent control over the land, including  
13 not only the land you're directly --  
14 footprint of your project, but all the  
15 mitigation land as well.

16 And that's a huge concept that I think  
17 needs to be right up front and can be good  
18 guidance to developers that you have to have  
19 a controlling interest in this land, not  
20 just for the 20-year life that your CPG is.  
21 But this is a forever commitment.

22 CHAIRMAN EASTMAN: Right, because it  
23 addresses the issue that we keep hearing  
24 from people on the monitoring and  
25 enforcement side, well how do they get taken

1 out. Well actually the state has already  
2 dealt with the issue. You've got to have  
3 decommissioning funds in place, and they are  
4 going to come out. And that came up in the  
5 prior wind, you know, wind study. And  
6 that's been addressed.

7 So people aren't -- people don't see  
8 what's already been addressed from --

9 MS. MARKOWITZ: I think that's always  
10 going to be the case.

11 CHAIRMAN EASTMAN: Me too.

12 MS. MARKOWITZ: It's complex. There is  
13 a lot of, you know, a lot of what we do, you  
14 know --

15 CHAIRMAN EASTMAN: People don't see.

16 MS. MARKOWITZ: Even if they see it,  
17 they don't understand it in the context.

18 MS. SYMINGTON: I think in this context  
19 though, this is a process that people have  
20 spoken up with. And that's something we  
21 have heard. And so I don't think it would  
22 take that much extra copy time on our part  
23 to have a consensus devoted to, we heard  
24 this, and we feel that this, you know, that  
25 by these mechanisms, these serious concerns

1 have been addressed.

2 CHAIRMAN EASTMAN: Yeah. And maybe we  
3 can go back to even some of them. I mean I  
4 don't mind referring back to the Wind  
5 Commission, how Linda put the Wind  
6 Commission report to get a presentation,  
7 that's been implemented, this has only been  
8 partially done, so maybe some of these  
9 issues we have heard.

10 MS. MCGINNIS: Just so you know, in the  
11 longer report I have a shorter summary of  
12 all the things that were addressed in the  
13 previous Wind Report, and the ones that  
14 still remain issues that this Commission has  
15 actually taken under its wing, and many of  
16 them are. So I have a summary, and I also  
17 have as an appendix the full thing that I  
18 shared with you that says this is what was  
19 implemented, this is what was not  
20 implemented.

21 But I think Gaye's point goes one step  
22 further and says that we have heard on  
23 multiple occasions things on wildlife  
24 corridor, on noise, on setbacks, on  
25 blasting, on head waters, all those

1 different things, and I guess I need to  
2 know, because I have not yet written  
3 specific words about each of them.

4 That's going to be delicate whatever I  
5 end up writing on it. If it's setbacks,  
6 then I have some guidance from what you've  
7 discussed today. If it's noise, I have zero  
8 guidance from what I've heard other than it  
9 continues on a case-by-case basis. If it's  
10 blast --

11 MS. SYMINGTON: And the Department of  
12 Health.

13 CHAIRMAN EASTMAN: And the Department of  
14 Health.

15 MS. MCGINNIS: Saying that they will do  
16 a study over time and provide guidelines  
17 when that study is completed.

18 CHAIRMAN EASTMAN: Plus I want to push  
19 the Department of Health, now that we are  
20 talking about this, so on that issue for me  
21 I mean noise is a potential, you know, is an  
22 issue. And so the Department of Health has  
23 got to do some work around that.

24 In the interim the Department of Health  
25 should be actively participating and

1 reviewing these proposals and taking  
2 positions to protect the public health.

3 MS. McCARREN: Yes. And also that goes  
4 on our list of things, Dear Board and  
5 Department.

6 MR. RECCHIA: Pay attention.

7 MS. McCARREN: Please increase your  
8 attention to these health issues because we  
9 have heard from physicians and others --

10 CHAIRMAN EASTMAN: Right. And there is  
11 already the authority for them to do that.  
12 We don't have to give them any more  
13 authority. They have it.

14 MS. McCARREN: Yes, they do.

15 MR. RECCHIA: Yeah. So noise.

16 MR. JOHNSTONE: We have number 20.  
17 Number 20 speaks to this.

18 MS. McGINNIS: Number 20 basically just  
19 says throw them in the categories. Okay?

20 MR. JOHNSTONE: Wait a minute. That's  
21 not what it says. Provide health  
22 assessments under tier two to four under 30  
23 V.S.A. and that the DOH reviews national  
24 standards from peer-reviewed literature on  
25 impacts and monitoring systems. Modern

1 technology, and that's what we are saying.

2 MS. MCGINNIS: Do you want me to also  
3 include this point Gaye brought up on  
4 wildlife corridor, that on wildlife corridor  
5 basically A, it falls under this third  
6 category that needs to be on a case-by-case  
7 basis, but also we need to understand that  
8 it in part is being addressed by the  
9 commensurate conservation land that's been  
10 held. I don't know, something along those  
11 lines.

12 CHAIRMAN EASTMAN: Well and maybe we are  
13 that specific, but to me you've got -- there  
14 is the authority -- I mean I'm hearing from  
15 the Agency of Natural Resources, who I think  
16 are responsible for this issue, that they  
17 have enough authority to respond to these --  
18 to respond to this issue.

19 MR. COSTER: We have to make an argument  
20 before the Board like any other party.

21 CHAIRMAN EASTMAN: Yeah but --

22 MR. COSTER: So --

23 MR. JOHNSTONE: Which you had to do in  
24 Act 250 with all the ski area stuff.

25 MR. COSTER: Yes.

1 MR. JOHNSTONE: And you use the same  
2 tools.

3 MR. COSTER: So I think I understand  
4 what Gaye's expressing that we should shine  
5 a brighter light on the fact that there is  
6 this offsetting mitigation work that happens  
7 often with these projects.

8 My only comment is it's not a given that  
9 that has to be argued for in each case. So  
10 --

11 CHAIRMAN EASTMAN: Well maybe we make a  
12 statement that, you know, well maybe we can  
13 make a statement. But -- and they did it in  
14 the docket -- who was it? Wasn't it Rich  
15 Cowart who said we could look at the  
16 environmental impacts from anything. But  
17 you can -- this is not unusual. In every  
18 major project, Act 250 or generation, it's  
19 typical to consider mitigation.

20 MR. RECCHIA: It starts with the concept  
21 that without mitigation there is an undue  
22 adverse impact, and the project can't be  
23 approved.

24 CHAIRMAN EASTMAN: Right.

25 MR. RECCHIA: Of course, it's again the

1 Agency representing that before the Board,  
2 and the Board, you know, it gets to the  
3 fundamental point of the Board listening or  
4 not listening. But I think they are  
5 listening, and I think now they have  
6 precedent.

7 CHAIRMAN EASTMAN: I think they are  
8 listening.

9 MR. RECCHIA: I don't think they can  
10 avoid this concept in the future. But I do  
11 agree it feels like that one in particular  
12 is more on a case-by-case basis.

13 MS. MCGINNIS: What, the wildlife  
14 corridor one?

15 MR. RECCHIA: Yeah. But I have more  
16 experts here.

17 CHAIRMAN EASTMAN: And what are the  
18 other ones?

19 MS. MCGINNIS: Blasting.

20 CHAIRMAN EASTMAN: Well blasting needs  
21 some --

22 MR. RECCHIA: Let me talk briefly about  
23 the four that you gave us the assignment  
24 for. Okay.

25 So setbacks I think that we can provide

1 some guidance on in concept, but I do think  
2 that will require -- that will be a  
3 case-by-case project specific application, I  
4 think.

5 MS. McCARREN: I don't want to interrupt  
6 but when you do that can't you develop --

7 MR. RECCHIA: I'm going to get kicked  
8 again.

9 MR. JOHNSTONE: Sit down.

10 (Laughter).

11 MR. RECCHIA: Okay. Thank you.

12 MS. GRACE: Sorry.

13 MS. McCARREN: You would have to do the  
14 actual setback recommendation project by  
15 project, but you would be able to establish  
16 the primary criteria like --

17 MR. RECCHIA: Correct. So I think it's

18 --

19 MS. McCARREN: What did you say to him?

20 MR. RECCHIA: I think it's -- I think  
21 sometimes things have multiple things that  
22 go in. One is guidance up front, and then  
23 case-specific application of those in the  
24 thing.

25 Noise -- let me go to blasting next. So

1 this is where I get kicked. This is why I  
2 have good staff to take care of me. So my  
3 reaction to blasting is why do we need a big  
4 evaluation of this before the Board? This  
5 is -- I won't use the expletive, keep it on  
6 your property. If you can't keep it on your  
7 property, then make arrangements with your  
8 neighbors that's satisfactory so you can use  
9 their property.

10 MR. JOHNSTONE: Do we require preblast  
11 surveys?

12 MR. RECCHIA: You know, blasting is not  
13 regulated.

14 MR. JOHNSTONE: Most blasting stuff with  
15 VTrans and others, that's what you do. You  
16 go around to the abutting properties, you do  
17 preblast surveys, and then you have a  
18 baseline from which to determine whether the  
19 blast actually had an impact.

20 MR. RECCHIA: Right.

21 MR. JOHNSTONE: I don't know if that's  
22 required by the Board, but other people have  
23 solved for this is my point.

24 MR. RECCHIA: I picture the guidance  
25 looking like this, right. Preblast surveys,

1 hours of 8 to 5 Monday through Friday, no  
2 nights and weekends, and you keep the blast  
3 shots on your own property, period.

4 MS. GRACE: This goes back to the  
5 conversation we had this morning about  
6 setbacks. The Department goes before the  
7 Public Service Board as a party, so we can  
8 say, hey, we have these guidelines and we  
9 want you to follow them, but we are just --  
10 unless there is some sort of legislation  
11 that's passed that says you have to abide by  
12 the guidelines the Public Service Department  
13 has put in, it doesn't mean more than that.

14 CHAIRMAN EASTMAN: I know. But again  
15 what we can do in this is say look, this is  
16 an issue that people have. And this seems  
17 like a no-brainer to us. Sorry, it just  
18 seems like a no-brainer. And if you have  
19 construction, you know, construction issues  
20 that involve blasting, then they have got to  
21 be dealt with, you know, that's just nuts to  
22 me.

23 MR. BODETT: That seems like that's all  
24 part of that whole pre -- but we had the  
25 same, the District Environmental Commission

1 with our gravel pit permit. We had already  
2 worked that out with the neighborhood. We  
3 had worked out the preblast survey, and that  
4 we were going to do testing, and all of  
5 these different stages out for five years.  
6 We worked that out with the neighbors before  
7 we even got to the DEC. So it was -- it  
8 wasn't an issue by then.

9 Otherwise, you know, they would have  
10 continued to contest, and we may not have  
11 gotten the permit. I would think, like you  
12 say, it's a no-brainer that parties would  
13 just work this out.

14 MR. RECCHIA: So I have no objection to  
15 -- like to this Commission saying this is a  
16 no-brainer and should not even be an issue.  
17 Or rest assured that, you know, unless again  
18 I get kicked multiple times on the way back  
19 down the stairs, you know, the next time  
20 this issue comes up, our testimony is going  
21 to be pretty straightforward along the lines  
22 of what I just described, barring some --  
23 and it just --

24 MS. McCARREN: Right.

25 MR. RECCHIA: -- it just amazes me that

1 did not occur in the last version of this.

2 So noise. I'm sorry. Go ahead, Gaye.

3 MS. SYMINGTON: And does that cover  
4 groundwater impacts?

5 MR. RECCHIA: No.

6 MS. MCGINNIS: ANR has that.

7 MR. COSTER: We are in the process of  
8 developing guidance on that very issue right  
9 now. So it should be coming out within the  
10 next few months.

11 MS. MCGINNIS: So in this table that  
12 Billy provided with the three categories of  
13 where it is, it's in the new guidelines to  
14 be developed. And they are working on it in  
15 the next 12 to 18 months. So --

16 MR. COSTER: That one will be much  
17 sooner than 12 months.

18 MS. MCGINNIS: Okay.

19 MR. RECCHIA: So noise.

20 MR. PUGHE: Sorry, having been an  
21 integral in the middle of a blasting issue  
22 on a number of projects in the last couple  
23 years, not just Lowell, who is the referee  
24 when you can't come to terms with your  
25 abutting -- your neighbor?

1 MR. RECCHIA: I would think the Public  
2 Service Board would be for the projects --

3 MR. PUGHE: So you're going to go to  
4 condemnation at that point?

5 MR. RECCHIA: No. You're going to  
6 figure out how to keep it on your property.

7 MR. PUGHE: It's not a question of the  
8 material on your property.

9 MR. RECCHIA: What is it?

10 MR. PUGHE: For Lowell it was a safety  
11 issue. We wanted a safety zone that was far  
12 enough back so people weren't in a dangerous  
13 position. That's what we couldn't get  
14 anybody to agree to. It wasn't a condition  
15 of putting blast material on somebody else's  
16 property.

17 MR. RECCHIA: I would figure out a  
18 different way. I'm sorry. Smaller charges,  
19 jack hammers, I'm sorry, but condemnation is  
20 not an option for a merchant plant in this  
21 -- I don't believe that that's an option.

22 MR. PUGHE: Okay.

23 MS. MCGINNIS: I do think, however,  
24 putting all of these points out in a  
25 guideline that goes on line that everybody

1 understands --

2 MR. RECCHIA: I agree.

3 MS. MCGINNIS: -- so when it comes up  
4 you can point to something that says; this  
5 is what we have decided is the guideline,  
6 would be helpful.

7 CHAIRMAN EASTMAN: And for me, on  
8 blasting, I'm sorry. I think it's somebody  
9 at your Department who is going to get the  
10 call.

11 MR. RECCHIA: Correct.

12 CHAIRMAN EASTMAN: You're going to get  
13 the call from the public or from somebody,  
14 and you're not stuck, but then you're going  
15 to push back and say --

16 MR. RECCHIA: I'm going to get the call  
17 because they will either be complying or not  
18 complying with a Public Service Board order,  
19 and I'll take action based on that, is that  
20 what you mean?

21 CHAIRMAN EASTMAN: Right. And you're  
22 going to be pushing this in a Public Service  
23 Board order.

24 MR. RECCHIA: Yes.

25 CHAIRMAN EASTMAN: I think it's fine for

1 us in our recommendations to say blasting is  
2 an issue. It's in -- other than for  
3 groundwater, it's in the hands of the  
4 Department of Public Service, and they have  
5 got --

6 MR. RECCHIA: In the context of the  
7 energy plan.

8 CHAIRMAN EASTMAN: Right.

9 MR. RECCHIA: I guess what I'm trying to  
10 say is, I don't need 12 to 18 months to  
11 develop this guideline, because I just did  
12 it in 45 seconds. Unless I'm really messed  
13 up. I even -- we do need a public comment  
14 period.

15 MS. GRACE: Louise was looking at me to  
16 kick you, and I actually just wanted to pat  
17 you on the back.

18 MR. RECCHIA: So noise. A little more  
19 complicated, but I do think this is not a  
20 case specific. Noise should not be  
21 evaluated on a case-by-case basis. In my  
22 mind we need a non-contested docket for  
23 health assessment or input to -- or both, to  
24 address noise in a more comprehensive way.  
25 So that when another project, or if another

1 project comes up, then we can evaluate it in  
2 the context of that information that was  
3 developed. So I'm leaning towards a non-  
4 contested docket for noise.

5 MS. MCGINNIS: So are we still thinking  
6 about a docket, excuse me, to go back to  
7 setbacks, open a docket for setbacks? We  
8 are still going with that, okay. And if we  
9 have these three categories, just so that we  
10 are staying consistent with what ANR has  
11 done, setbacks would be where? And blasting  
12 would be in the new guidance?

13 MS. GRACE: I think it's just a totally  
14 different --

15 MS. MCGINNIS: A totally different  
16 thing.

17 MR. RECCHIA: It feels like a different  
18 structure.

19 CHAIRMAN EASTMAN: But great. Okay.

20 MS. MCGINNIS: The other one --

21 MR. JOHNSTONE: What's the fourth one?

22 MS. GRACE: I don't think it's  
23 necessary. And I think we can just move on.  
24 I don't think it's necessary to do it.

25 MS. MCGINNIS: To do what?

1 MR. RECCHIA: Fourth one.

2 CHAIRMAN EASTMAN: What's the fourth  
3 one?

4 MR. JOHNSTONE: I'm sorry. My fault.  
5 You should have kicked me.

6 MR. RECCHIA: It was the whole  
7 efficiency thing regarding recommending  
8 efficiency standards for biomass.

9 CHAIRMAN EASTMAN: Well --

10 MR. RECCHIA: That doesn't feel like a  
11 siting issue to me.

12 CHAIRMAN EASTMAN: Oh, I think it's --  
13 all these -- to me it's a siting -- it's a  
14 siting issue because I don't want to screw  
15 this up.

16 MR. RECCHIA: Okay.

17 CHAIRMAN EASTMAN: I'm serious. I mean  
18 to me I go back to the issue of, you know,  
19 how many opportunities are we going to have  
20 to use the resource, and --

21 MR. RECCHIA: Correct.

22 CHAIRMAN EASTMAN: And we better use it  
23 wisely, or what a waste it's been.

24 MR. RECCHIA: So let me describe two  
25 examples.

1 CHAIRMAN EASTMAN: You are my biomass  
2 expert.

3 MR. RECCHIA: All right.

4 CHAIRMAN EASTMAN: Sorry Sheila.

5 MS. GRACE: That's okay. I just didn't  
6 want to --

7 MR. RECCHIA: In the case of biomass  
8 electric generation you've got X efficiency  
9 of conversion of the fuel to electricity --  
10 electrons. Okay. And you've got a resource  
11 that you're using to do that which comes  
12 from a certain distance away. So that is  
13 one scenario. One model. It's explicit to  
14 biomass.

15 But what I ask is -- my brain doesn't  
16 let me think of that in an isolated context;  
17 conversion of coal, conversion of gas, well  
18 gas is a little more efficient, but  
19 conversion of coal, conversion of oil, are  
20 the same efficiencies. And I've got to add  
21 to it. Then I've got to add to it the other  
22 losses of efficiency of transport, of  
23 digging that out of the ground, of moving it  
24 long distances, of moving then the electrons  
25 across thousands of miles. I'll make it

1 more complicated just by saying a scenario  
2 the electrification for what purpose? Are  
3 -- we are electrifying our fleet vehicles,  
4 our cars, right? We are going that  
5 direction. So I've got a 25 percent  
6 efficient conversion from the fuel to the  
7 electrons, a 20 percent line loss going from  
8 the line to where it gets plugged into your  
9 car, an 18 percent efficiency of running the  
10 car on the electricity that gets into the  
11 battery. What efficiency is my car at?  
12 Like two percent or something like that.

13 How do I judge that value against the  
14 other efficiencies, you know, of like  
15 burning wood in your wood stove. You know,  
16 so part of this is we are in the midst of  
17 evaluating a total energy standard to try  
18 and come up with -- come up with a common  
19 metric to compare BTUs to kilowatts and be  
20 able to assess those, and do them on a  
21 carbon life-cycle basis to really get a  
22 sense of what are the trade-offs and what  
23 are the balances.

24 I just give you those two examples  
25 because this is extremely complicated, and

1 I'm not sure the answer at the end of the  
2 day is we should go with the most efficient  
3 thing.

4 CHAIRMAN EASTMAN: Okay.

5 MS. SYMINGTON: But the piece that I --  
6 I don't -- or that seems to me is worth --  
7 makes this a siting issue, is that the coal  
8 and the oil are coming -- are not having an  
9 impact on the land use within Vermont.

10 MR. RECCHIA: Can I --

11 MS. SYMINGTON: Whereas I think in terms  
12 of the impact of biomass on forest health,  
13 that is -- I mean it's a regional impact,  
14 it's not just Vermont, but it is a much more  
15 localized land impact.

16 That corresponds in some ways with the  
17 other technologies we are talking about. So  
18 for me, I just think that that efficiency  
19 factor matters, and someone once told me  
20 that when you burn wood for heat you're  
21 using three pieces of wood for every four  
22 that you took out of the forest.

23 MR. RECCHIA: Sounds familiar.

24 MS. SYMINGTON: And if you use wood for  
25 electricity, you're throwing out three

1 pieces of wood for every four you take out  
2 of the forest. And to me that's an  
3 underlying dynamic that really we should  
4 have in mind every time we consider biomass  
5 and how we are using it.

6 MR. RECCHIA: I don't disagree with you  
7 at all. And I do recall, yeah --

8 MS. SYMINGTON: Teaching my board that.

9 MR. RECCHIA: Right. I absolutely agree  
10 with that. I just don't think it's in  
11 isolation and biomass alone. And you know,  
12 taking the coal example, you know, has no  
13 real land use impacts. Well burning coal,  
14 that released mercury that caused mercury  
15 deposition on all of our forests, as a  
16 forest health impact on our forests.

17 CHAIRMAN EASTMAN: That's why we have  
18 acid rain.

19 MR. RECCHIA: Acid rain has a forest  
20 health impact on our forests.

21 CHAIRMAN EASTMAN: Snelling takes the  
22 story about the Secretary from the Kingdom  
23 explaining that to him. He said it took him  
24 six years, but he finally got it.

25 MR. RECCHIA: I'm saying it's more

1 complicated, and it should be applied in  
2 some equal way across all of these  
3 evaluations, and that's really all I was  
4 trying to say.

5 MS. MCGINNIS: That's what you're trying  
6 to get at with the total energy standard.

7 CHAIRMAN EASTMAN: Can we talk about  
8 that in here at all though? In our report  
9 to encourage --

10 MR. RECCHIA: You can do whatever you  
11 would like.

12 CHAIRMAN EASTMAN: We want to encourage  
13 that kind of --

14 MR. JOHNSTONE: The question is could  
15 you guys come up with some draft language  
16 for us to review, which is why she kicked  
17 you, I'm sorry.

18 MS. GRACE: You can say anything you  
19 like. How am I supposed to not kick him?

20 MR. JOHNSTONE: Around -- not to pin you  
21 down, but the notion that this total energy  
22 standard as a mechanism is perhaps the right  
23 way to evaluate going forward, but that  
24 you're in the middle of it. You can qualify  
25 it. But if not --

1 MR. RECCHIA: Yeah.

2 MR. JOHNSTONE: -- efficiency is a  
3 siting issue. If what you're saying from a  
4 guidance perspective it's on the X number of  
5 months, and yes, here yet, but we are  
6 actually thinking about it currently in this  
7 way, and you're going to have a question of  
8 whether guidance is even coming up because  
9 you don't know yet. But this is where it  
10 fits on your time schedule for a decision,  
11 really that might be responsive I think. I  
12 don't know if that's enough for you all.

13 CHAIRMAN EASTMAN: But it gets me, I  
14 mean it's interesting. I've learned a lot  
15 in the past, you know, few months, and I  
16 would argue that I came to this knowing  
17 nothing because I hadn't been paying any  
18 attention really. But it's interesting.

19 And so of course, I want to go back to  
20 being the diva, I wish I could be the diva,  
21 and unfortunately I do need a new role,  
22 because it would be so great if I could take  
23 that 5,000 foot view and say if we fixed  
24 this, this, this and this, we could actually  
25 get something. It doesn't work like that.

1           Much of what I see as the real issues to  
2 get at aren't about what I'm doing here, but  
3 now I want to say oh please.

4           MS. MCGINNIS: And it is a fundamental  
5 part of the overall planning effort that if  
6 you're going to look at what kind of mixes  
7 make sense in each scenario, that's -- the  
8 total energy standard is fundamental  
9 information to feed into that, so that you  
10 can decide what makes the most sense in  
11 order to have from out of state or whatever,  
12 if you're going to be measuring your impact  
13 on greenhouse gases too, which is a  
14 statutory target, and the statutory target  
15 says what your impact is in the State of  
16 Vermont as well as outside of the State of  
17 Vermont, then you need to be able to assess  
18 if 50 percent of your electric supply is  
19 coming from the grid, the market, and 50  
20 percent of that is natural gas, then what is  
21 the impact of natural gas in this total  
22 energy standard.

23           So I mean it's a fundamental part of the  
24 scenario planning.

25           MR. JOHNSTONE: So while we are in this

1 broad section of environmental and health,  
2 the piece that's missing for me on all the  
3 tables and has largely been missing from our  
4 conversation from the very beginning,  
5 because it really is found in the CEP, so I  
6 get it, but we do a disservice to the  
7 dialogue. We all agree with the need to  
8 protect all of the things we have been  
9 talking about through this whole process,  
10 and we haven't at all been talking about in  
11 any way providing guidance to people about  
12 what's happening to the frog in the kettle;  
13 right?

14 So Lake Champlain is many degrees warmer  
15 than it was 20 years ago. The impact such  
16 as you're talking about the forests from  
17 acid rain, retreated northern forest, and  
18 the fact it's all happening much more  
19 quickly than any model has ever suggested --

20 (Mr. Coster left.)

21 MR. JOHNSTONE: I don't know if there is  
22 -- it seems to me there is an opportunity to  
23 providing guidance which you're kind of  
24 required to do I think, you're supposed to  
25 protect from the status quo today, the snap

1 shot of now. But you know that that's not  
2 actually the snapshot 20 years from now.  
3 And we are going to have animals and flora  
4 and fauna that don't exist in places that we  
5 are needing to protect from other events  
6 that are happening, which is partly why we  
7 need a transition in our energy economy,  
8 right?

9 And I know that gets really difficult to  
10 think about, but it strikes me that  
11 contextually it's pretty important to the  
12 work we are doing. And I don't know who  
13 else to look at but you two to think about  
14 that.

15 MR. RECCHIA: What do you --

16 MS. McCARREN: I'm planning to have a  
17 pet polar bear frankly.

18 MR. BODETT: I'm going to grow bananas.

19 MR. RECCHIA: I think that maybe gets to  
20 some of the comments we heard last night,  
21 what is this Comprehensive Energy Plan, as  
22 though it was dropped in somebody's lap. I  
23 think we need a few paragraphs at the  
24 beginning explaining the year that went into  
25 that, the 9,000 comments that we received,

1 multiple drafts. And that that's what we  
2 are dealing with in terms of policy. And  
3 included in that could be the vision of why  
4 it is what it is.

5 MR. JOHNSTONE: Fact is the ridgelines  
6 and the waters are under attack now with no  
7 projects in front of us, and we have got to  
8 do something about it. And it doesn't even  
9 get to the issue of how many people we might  
10 need to accept over the next decade from  
11 places that can't sustain life any more.

12 MS. McCARREN: We also haven't talked  
13 about efficiency.

14 MR. JOHNSTONE: Right.

15 MS. McCARREN: So if you want to start  
16 talking about this --

17 MR. JOHNSTONE: We have got to do all of  
18 the above. I'm the efficiency guy, and  
19 efficiency alone won't get us there.

20 MS. MARKOWITZ: And the energy plan took  
21 an all-of-the-above approach. It wasn't  
22 just about, you know, energy, new energy. I  
23 think there is value in that.

24 CHAIRMAN EASTMAN: So Gaye, what about  
25 -- is there anything else or -- on this, the

1 other page, you know, we still never got,  
2 and I know I've skipped over some things,  
3 Linda, but I want to make sure we get  
4 Gaye's, because we have got the issues of  
5 the RECs. I think we are not going to deal  
6 with it directly, we will talk about it  
7 though. That's in the -- that's S30. Even  
8 in this plan has, you know, someone else  
9 suggesting that this needs -- that this  
10 issue needs to be addressed, so I think we  
11 have sort of done that.

12 MS. SYMINGTON: So we basically will say  
13 we heard a lot about RECs, and we are  
14 pleased to see that S30 will deal with that.  
15 We didn't feel it was within our purview.

16 MS. MCGINNIS: I changed language in  
17 this specifically to see if you guys were  
18 okay with it.

19 CHAIRMAN EASTMAN: It's here, the  
20 Commission recognizes that Vermont's current  
21 policy is to sell those public health --  
22 given the current set of recommendations,  
23 centers upon the importance. What did we  
24 say, Linda?

25 MS. McCARREN: Where are you?

1 CHAIRMAN EASTMAN: You go into Other.

2 MS. MCGINNIS: Other, bringing back the  
3 ones we discussed.

4 MR. RECCHIA: Before the tables.

5 CHAIRMAN EASTMAN: But it also  
6 undermines the right of renewable generators  
7 to claim renewable status. So what did we  
8 say?

9 MS. MCGINNIS: Given the current set of  
10 the recommendations --

11 CHAIRMAN EASTMAN: We acknowledge the  
12 importance of addressing this issue as we  
13 move forward.

14 MS. MCCARREN: Yes, I wouldn't say it's  
15 not in our purview only because you could  
16 make a case that it is. But I'm good with  
17 this language.

18 MR. RECCHIA: Okay. Did you want to  
19 acknowledge that the Public Service Board  
20 has made a recommendation to the legislature  
21 on this already?

22 CHAIRMAN EASTMAN: Yeah. Why don't we  
23 do that. Because they don't need our  
24 guidance if they have already said they  
25 should move in this direction, right?

1 MR. JOHNSTONE: That's fine.

2 CHAIRMAN EASTMAN: Okay. The Ag energy  
3 issues, there are some things that Ag would  
4 still like us to put in that we haven't  
5 talked about at all.

6 MS. MCGINNIS: All four of these bullets  
7 is what they basically wrote, another letter  
8 that I shared with all you guys that said  
9 please --

10 MR. BODETT: Yeah. I didn't compare  
11 these. Did that new language in the memo we  
12 just got -- is it identical to this?

13 MS. MCGINNIS: Yeah.

14 MR. RECCHIA: These feel too specific  
15 for me for the rest -- in the context of the  
16 rest of the report.

17 MS. MCCARREN: Yeah. I share that  
18 concern. Also the issue of generate -- what  
19 we would call generator leads, which is,  
20 right? You put the digester in, but now  
21 you've got to connect it to the grid. That  
22 is one that we don't know really what that's  
23 going to cost. I mean it could be to  
24 explore that in the overall context, but the  
25 next thing -- you've got to be ready for the

1 next thing which is, okay, thanks for that,  
2 Vermont, now we would like to have whatever,  
3 the next wind project, the next biodigest --  
4 the next biomass project, we want that. We  
5 want free interconnection too. Okay. And  
6 I'm just saying --

7 MS. MCGINNIS: Well the language is  
8 pretty vague, because I massaged their  
9 language there to make it vague which is  
10 what I was understanding from you. The DPS  
11 should explore the possibility, it's pretty  
12 vague, of spreading the costs of electrical  
13 integration of manure digester projects  
14 among the ratepayer base. I used their  
15 language. It's basically explore the  
16 possibility. It's trying to address that  
17 you have a sister agency that's come up with  
18 a specific recommendation in the context of  
19 energy, give them a nod, and say you're  
20 going to explore the possibility.

21 MS. SYMINGTON: Well maybe then we need  
22 a sentence that says this would provide a  
23 significant incentive to further development  
24 of on-farm distributed energy generation.  
25 On the other hand we are concerned that

1 there could be precedence that would be, you  
2 know, passed on to other technologies, and  
3 we might not want to do that.

4 MS. McCARREN: I would be happy if we  
5 just ended it after generation. Took out  
6 the last significant.

7 MR. JOHNSTONE: Where are you? I'm  
8 sorry.

9 MS. MCGINNIS: In the first bullet.

10 MR. RECCHIA: I agree with that.

11 MS. MCGINNIS: Take out this would  
12 provide an incentive thing?

13 MS. McCARREN: Yeah. We all love our  
14 farms.

15 MS. MCGINNIS: Just leave it at that?

16 MS. McCARREN: The next one I wrote in  
17 my original comments that conserved land is  
18 conserved land. But I have rethought that.  
19 And --

20 CHAIRMAN EASTMAN: It's interesting,  
21 because what this allows to happen is  
22 actually conserved lands to be used for  
23 their purpose.

24 MS. McCARREN: That's what I was coming  
25 around on that issue.

1           CHAIRMAN EASTMAN: This is why it's  
2 really interesting, because you know, the  
3 costs are high or something. So for me, and  
4 I've dealt -- I've done some conservation  
5 stuff, and I represented farmers, and I was  
6 on the Land Trust, so for me it's really an  
7 interesting issue that this actually makes  
8 it possible, and that the world changes.  
9 You know, agriculture 50 years ago looks  
10 different than it does now. It's going to  
11 look different in the future. So for me,  
12 upon what the conservation easement actually  
13 says, if it was for the purpose of  
14 traditional agricultural, you know,  
15 traditional cows, it should be allowed.

16           MS. McCARREN: If this is a farm  
17 digester and not an industrial-scale, I  
18 agree. I support it.

19           CHAIRMAN EASTMAN: Yeah.

20           MS. SYMINGTON: I also believe there is  
21 legislation in process on this very topic,  
22 right? That Darby has been working on hard.

23           MS. MARKOWITZ: I understand there is  
24 complexities in this, in that in order to  
25 keep these digesters continually producing

1 energy, sometimes you're bringing in manure  
2 from other places which is not necessarily a  
3 bad thing because it's a great way to do  
4 something with that manure rather than  
5 letting it wash right into the rivers, but  
6 that being said, it leads to truck traffic  
7 --

8 CHAIRMAN EASTMAN: And how far is the  
9 truck traffic?

10 MS. MARKOWITZ: At what point does it  
11 become a commercial use of the land as  
12 opposed to an agricultural use?

13 MS. SYMINGTON: You're removing  
14 fertility from the land.

15 MS. MARKOWITZ: That's why it's a really  
16 good thing to study it, so we are careful  
17 how we address it.

18 MS. MCGINNIS: That's in point one. Are  
19 we talking now about point two though?  
20 Conserved land is in the point two.

21 MS. MARKOWITZ: Yes.

22 MR. BODETT: How does that apply to  
23 conserved forest land? This seems to  
24 address ag land.

25 MR. RECCHIA: Right, I thought it was

1 applying to both. And interpreted the  
2 conserved land meaning that, you know, if  
3 you could construct a solar field or a wind  
4 system that didn't permanently commit prime  
5 ag soil or soils of statewide significance,  
6 which might be also agricultural to energy  
7 use, you could extend this to or, you know,  
8 diminish the soil productivity of any area  
9 really, then you might be able to do this.

10 MR. BODETT: Could you cut down a  
11 conserved forest to put in solar panels?

12 MR. RECCHIA: That's the thing, this is  
13 speaking to renewable energy projects, not  
14 source of fuel. I was wondering the same  
15 thing about the biomass.

16 CHAIRMAN EASTMAN: Can I say, conserved  
17 forests are working forests. It's not like  
18 preservation. It's conservation. And there  
19 are standards for how they have to be -- how  
20 you can cut it. From my mind, yes, mine  
21 isn't conserved, but ours is in current use.  
22 And mine is in forest, but you can have like  
23 20 percent of your land can be open if  
24 you're conserved forest.

25 And so for me actually it's a perfect

1 use for my open to do solar, if it's in the  
2 right place. And yes, you want me using my  
3 crap, you know, wood that I need to cut out  
4 on an annual or semiannual basis for, you  
5 know, you might want my wood in that biomass  
6 plant.

7 MS. MARKOWITZ: So you can already do  
8 that under the forest conservation because  
9 it's managed forest, so you can already take  
10 out wood for a variety of reasons.

11 CHAIRMAN EASTMAN: Yeah.

12 MS. MARKOWITZ: So I don't think it puts  
13 us in any danger in terms of the fuel beyond  
14 what's permitted in a conservation context.

15 MS. McCARREN: My reconsideration was I  
16 read -- I first read conserved land as all  
17 conserved land no matter what. And I  
18 couldn't agree with that. If it's conserved  
19 for agricultural purposes, then it's subject  
20 -- I agree being used for digesters, forest  
21 conservation, if it's a working forest,  
22 right?

23 CHAIRMAN EASTMAN: It will all depend  
24 upon if it's also a combination of, you  
25 know, farm and ag.

1 MS. McCARREN: But there is a lot of  
2 conserved land in this state that goes to --  
3 conserved from development, and there is  
4 also the islands out in the lake.

5 MR. RECCHIA: Natural wildlife areas.

6 MS. McCARREN: The Town of Charlotte has  
7 got a ton of voluntarily conserved areas  
8 that should be off the table.

9 CHAIRMAN EASTMAN: I agree, but see the  
10 issue with this is it's all dependent on  
11 what the conservation easement says. So you  
12 don't say all conserved can't be used. You  
13 have to look at what the conservation  
14 easement is, just like, sorry, with state  
15 lands you really have to look at why was the  
16 gift made.

17 For me, I know we are not going there,  
18 but we have the policy that says you don't  
19 ever use it for anything, I question.  
20 Because just you've got to look at what was  
21 its purpose. What was it given for and  
22 what's its good use.

23 MR. JOHNSTONE: There is very little of  
24 it that says it can't be used for anything.  
25 The state lands, very small pieces of state

1 lands --

2 CHAIRMAN EASTMAN: So we can get to some  
3 of this.

4 MR. RECCHIA: Again, I'll come back to  
5 feeling like not that this is a bad level of  
6 detail, but we don't have this level of  
7 detail for anything else. So it points out  
8 how little detail we have.

9 MS. MCGINNIS: I agree, which is why I  
10 sort of lumped it into the other categories.  
11 I did incorporate one of the recommendations  
12 earlier that felt like it was consistent  
13 with everything you were saying. The  
14 Department of Agriculture should be a  
15 statutory party in siting stuff when it  
16 involves agriculture, blah-blah-blah.

17 CHAIRMAN EASTMAN: I agree.

18 MS. MCGINNIS: That was a tougher one to  
19 understand how to incorporate these. I  
20 agree with Chris, they are a level of detail  
21 that's pretty small. That said, they have  
22 now written to you, they presented to you,  
23 and written to you twice, saying please  
24 incorporate these, and so I'm trying to  
25 figure out how to do that.

1 CHAIRMAN EASTMAN: I support what they  
2 are doing.

3 MS. MCGINNIS: And it is trying to get  
4 to inter-agency collaboration of issues on  
5 energy.

6 MR. RECCHIA: I am too. I'm resentful  
7 they haven't been sitting at this table, so  
8 I want to punish them. I know I haven't  
9 been either.

10 MR. JOHNSTONE: This table was created  
11 by your boss.

12 MS. SYMINGTON: I would just like to be  
13 cautious to not go -- be too prescriptive  
14 when there is legislation moving on this  
15 very topic, I believe.

16 MS. McCARREN: We could say something  
17 like we support this. We could put that --  
18 we could take this out and put it in a  
19 footnote or appendix or something.

20 MS. MCGINNIS: I have a section in the  
21 longer report, and I'm happy to share it  
22 with you now, but much of it is moot now  
23 given some of the discussion we have had  
24 today.

25 MS. MARKOWITZ: Sorry.

1 MS. MCGINNIS: But I do have a section  
2 at the end that does talk about other  
3 related issues. And --

4 CHAIRMAN EASTMAN: I think this can go  
5 in there. I think it can go in there, and  
6 we can say, you know, we, you know, we  
7 support these ideas and these concepts, you  
8 know, and whatever -- so we do it -- we say  
9 we support it on a conceptual level.

10 I'm not the person to determine all  
11 this, but I do think this is a good thing to  
12 support and to look at. And yeah, and so  
13 some things are more specific because they  
14 are more --

15 MR. JOHNSTONE: All we would be doing is  
16 being consistent with state practice for  
17 ever, that Ag has a special place and gets  
18 more attention and more specificity.

19 CHAIRMAN EASTMAN: Secretary of  
20 Agriculture. Yeah.

21 MS. MCGINNIS: But they are making an  
22 effort to link it to energy.

23 MR. JOHNSTONE: I'm being supportive.

24 MS. MCGINNIS: I think we need to  
25 acknowledge their effort.

1                   CHAIRMAN EASTMAN: We are. I can  
2 support this, and then the other one on here  
3 is intermittency of renewables and siting  
4 issues around stored energy.

5                   MS. McCARREN: I've got a note that I  
6 absolutely agree with the statement. But I  
7 have no idea how it got in here. Did we  
8 talk about this?

9                   CHAIRMAN EASTMAN: No. Gaye has been  
10 wanting to talk about it.

11                   MS. McGINNIS: Gaye has asked to talk  
12 about this for months ago.

13                   CHAIRMAN EASTMAN: I skimmed over. We  
14 haven't talked about it in any of our  
15 deliberations, and it's something that Gaye  
16 has been wanting to talk about.

17                   MS. McCARREN: I totally agree with your  
18 statement, and you're absolutely right, but  
19 most but not all storage actually ends up  
20 generation, because at some point it turns  
21 around and it's a generating station. So a  
22 big flywheel, pumped storage, right, but  
23 when you start talking about micro storage  
24 you've got -- you may have a different  
25 story. Because it's -- and it's passive,

1           you store it, and then you use it. So that  
2           wouldn't -- maybe we don't want that  
3           subject, right, Gaye, maybe we don't want  
4           that subject to 248. Or there is no reason  
5           you can't do it.

6           MS. MCGINNIS: The language I used to  
7           sort of -- because I had said a whole lot  
8           more before. And I reduced it  
9           significantly. The last line I put in there  
10          I just said basically storage is something  
11          that we have to think about more with  
12          renewable energy, which is a fact.

13          And at the end you also say the  
14          Commission recommends that the Department  
15          explore, again I used a vague word,  
16          potential siting -- potential siting  
17          implications of storage -- as the renewable  
18          energy portfolio expands across the state.  
19          Which is pretty much what they need to do if  
20          you're going to have more storage  
21          implications, you kind of need to understand  
22          what the siting implications are.

23          MS. MCCARREN: I guess I don't  
24          conceptually disagree. I know it's late and  
25          you've heard way too much from me, but if it

1 actually generates like Hydro-Quebec the  
2 largest storage in the world.

3 MR. JOHNSTONE: And it is our storage.

4 MS. McCARREN: That's right, that's how  
5 we store electricity. That is captured  
6 because it actually generates. Big  
7 flywheel, it would generate. What I'm kind  
8 of noodling about is what if you want to put  
9 an ice machine on your roof? That's a  
10 technology that, right, you can air  
11 condition with? Or maybe you want to put a  
12 barrel out in your backyard, I don't know.  
13 And you're not really generating  
14 electricity. You are offsetting  
15 consumption.

16 MR. RECCHIA: Right.

17 MS. McCARREN: That's all. I don't  
18 think we need to deal with that.

19 MR. RECCHIA: More concrete example,  
20 Waterbury complex, they are proposing to use  
21 -- to use big ice chillers and create ice at  
22 night using electricity at night off-peak.  
23 And then use that during the day for cooling  
24 instead of electricity load during peak.

25 CHAIRMAN EASTMAN: So is that 248?

1 MR. RECCHIA: That -- my preference  
2 would be not to trigger 248 for that sort of  
3 thing.

4 MS. McCARREN: National Life does that  
5 right now.

6 MR. JOHNSTONE: I think Gaye's point in  
7 raising this is not to say that we know it  
8 is or isn't 248, but that it's important,  
9 it's going to become part of system, and so  
10 I think what Linda said is, hey, so we don't  
11 see it as part of the current siting is  
12 really what I'm hearing you say, but it's  
13 going to become, so somebody ought to look  
14 at this as a downstream activity.

15 CHAIRMAN EASTMAN: But we don't want to  
16 look at it for instance --

17 MS. MCGINNIS: That might have siting  
18 implications.

19 CHAIRMAN EASTMAN: For me it goes back  
20 to the issue of, in part, though we don't  
21 want it to be treated separately like, you  
22 know, like we had with the biomass, we have  
23 the heat issue, and then we have the  
24 electric generation issue. So who gets to  
25 look at what; right?

1 MR. RECCHIA: Right. We were trying to  
2 avoid that.

3 CHAIRMAN EASTMAN: If you had a proposal  
4 for generation that it included storage, you  
5 would treat it all as one package.

6 MR. RECCHIA: Right.

7 CHAIRMAN EASTMAN: You wouldn't do two  
8 separate processes around it.

9 MR. RECCHIA: Right. Good point.

10 CHAIRMAN EASTMAN: You would pick a  
11 place and do it.

12 MS. SYMINGTON: As long as the storage  
13 is being used for generation though. I  
14 think that distinction is useful as opposed  
15 to storage that's used to offset the demand.

16 MS. McCARREN: Yeah. One of the biggest  
17 hopes for storage is your electric car.  
18 That in theory, right? But you don't want  
19 to --

20 MR. JOHNSTONE: We have a hundred  
21 thousand batteries in the state, you can do  
22 something.

23 MS. MCGINNIS: That wouldn't have siting  
24 implications. So it's just within those  
25 that have siting implications.

1 MR. RECCHIA: I have no objection to the  
2 statement. I'm always looking for more  
3 things to do.

4 CHAIRMAN EASTMAN: I have one more  
5 general thing I want to raise.

6 MR. RECCHIA: You're the chair.

7 CHAIRMAN EASTMAN: It's the issue --  
8 something else that hasn't been talked  
9 about, and Gaye's, you know, talked to me,  
10 you know, about this sometimes. And  
11 everything -- and I just want to be careful  
12 that -- again that we are the Electric  
13 Generation Siting Commission.

14 MS. McCARREN: Energy.

15 CHAIRMAN EASTMAN: Electric Energy  
16 Generation --

17 MS. McCARREN: No, the energy.

18 MS. MCGINNIS: It does say energy in the  
19 title. It's been a confusion of mine from  
20 the very beginning. It says energy in the  
21 title, but everything underneath it says  
22 electric. So it's a confusing thing.

23 CHAIRMAN EASTMAN: The title doesn't  
24 control, the specificity of the order  
25 controls. Anyway it doesn't matter.

1 My issue is we've spent all the time in  
2 the world talking about renewables, and we  
3 did go and see a gas plant. And we have a  
4 nuclear power plant, you know, in Vermont.  
5 I personally believe that the environmental  
6 protections and the language around health  
7 is enough to review any sort of facility.  
8 But to the extent that we are asking or  
9 saying to any Agency or Department that they  
10 should have guidelines or -- about specific  
11 technologies, then what do we have in place  
12 around gas or coal or nuclear or --

13 MS. McCARREN: Well nuclear has a long  
14 section of its own.

15 MR. RECCHIA: So I feel comfortable,  
16 because I have been looking at everything we  
17 have been doing. I've been looking through  
18 the lens of biomass plants, gas plants,  
19 nuclear plants, Howard Dean coal plants, the  
20 previous boss, and I think it all works. I  
21 don't see anything here.

22 I mean we have focused so extensively on  
23 wind because that has been the thing that  
24 has prompted a lot of the discussion, but I  
25 always have been looking at this with a lens

1 of all these applying, and I don't see any  
2 -- I don't see any conflicts. I don't see  
3 anything here, there are some things that  
4 aren't necessarily as applicable, like  
5 perhaps the habitat block stuff or things  
6 like that. But setbacks, noise, those all  
7 apply.

8 MR. JOHNSTONE: Even your planning --  
9 deeper planning process. I mean the biggest  
10 protection on that front, frankly, is at  
11 least with current CEP, the planning process  
12 you're going to have to do to draw down how  
13 do we get there, from a milestone  
14 perspective, you're going to end up having  
15 to testify that a fossil-based system,  
16 except perhaps peaker plant, is not  
17 consistent from a policy and goal  
18 perspective with meeting the statutory and  
19 CEP goals.

20 And maybe with the outlier being if you  
21 really needed some peak generation you might  
22 have a different path to go. But I think  
23 that the goals themselves, and then the  
24 planning process, the deeper planning  
25 process we recommended resolved that mostly,

1 I think, in addition to everything you said.

2 CHAIRMAN EASTMAN: And I mean I'm not  
3 saying that I think we need anything else.  
4 I just think that we need to say that we  
5 don't think we need anything else or  
6 something.

7 MS. SYMINGTON: And to the extent that  
8 we do need something else, if Kim Junghwan  
9 goes and proposes a nuclear plant in the  
10 Northeast Kingdom, as part of the NVDA  
11 process --

12 MS. McCARREN: Who is Kim?

13 CHAIRMAN EASTMAN: The leader of North  
14 Korea.

15 MS. McCARREN: I heard you say Kim and  
16 John.

17 CHAIRMAN EASTMAN: Kim and John. They  
18 are going to propose -- where they propose  
19 it is right next to me because the --

20 MR. JOHNSTONE: Really, after all this?

21 (Laughter.)

22 MR. FRIED: You'll find out when the  
23 dockets open.

24 CHAIRMAN EASTMAN: Because the second  
25 location for Yankee was Monroe, which is

1 right near me, and there is a fault line  
2 there. So Vernon won over. So I'm used to  
3 thinking it could have been me.

4 MS. SYMINGTON: Well where I was going  
5 to the extent that there are additional  
6 issues, aren't those covered by the feds?

7 CHAIRMAN EASTMAN: Yes. Safety is  
8 always covered --

9 MS. SYMINGTON: Radiation issues.

10 CHAIRMAN EASTMAN: Is covered by the  
11 feds, and requires legislative approval to  
12 have another nuclear power plant.

13 MS. McCARREN: In the state, it requires  
14 it. They are covered.

15 CHAIRMAN EASTMAN: And there are already  
16 some specific things, a few things relative  
17 to gas in the legislation. And we were  
18 there, you know, at the gas plant. So I  
19 don't think you need anything else.

20 To tell you the truth, had we needed  
21 something else regarding Vermont Yankee it  
22 would have been proposed a long time ago.  
23 They have been -- we have been -- seriously  
24 we have been using the 248 process for a lot  
25 of years on that one.

1 MR. RECCHIA: So my specific issue and  
2 again, as much fun as I made of Ag for not  
3 being here, I know I have been in and out a  
4 lot and I apologize, but it's multiple  
5 things scheduled at the same time.

6 So my question to you is rather than  
7 just saying -- blurting out what I think we  
8 should do, but let me ask you, what was your  
9 discussion about the 250 -- additional 250  
10 criteria in the 248 process? Because I'm  
11 not seeing it any more.

12 CHAIRMAN EASTMAN: We didn't think we  
13 needed any more 250 criteria into the 248  
14 process, because we -- I actually looked at  
15 them, the ones that weren't here. I  
16 actually did.

17 MR. RECCHIA: The statute books.

18 CHAIRMAN EASTMAN: I actually looked at  
19 them. Billy looked at them. Because we had  
20 we asked ANR, I said do we need anything  
21 else over there? So I then made a look and  
22 compared them to not just the 250 criteria  
23 that are already in 248, but the other  
24 generic protective language that is in 248.

25 MR. RECCHIA: Yes.

1           CHAIRMAN EASTMAN: I didn't think we  
2 needed it. For me, to tell you the truth,  
3 and I know a lot of the public doesn't  
4 believe this, but there is actually more  
5 environmental protection in 248 than there  
6 is in 250.

7           MR. RECCHIA: I agree. I think we need  
8 to --

9           MS. SYMINGTON: I think we need to  
10 explain that.

11          MR. RECCHIA: I think we need to explain  
12 that in not only the 75 pager but the  
13 executive summary, because I think that's  
14 also true. And I was going to suggest I was  
15 amenable to moving all the Act 250 criteria  
16 with the exception of the Town Plan for the  
17 reasons that we have discussed. But it's  
18 really not necessary. If you look at the  
19 environmental --

20          CHAIRMAN EASTMAN: Actually there is  
21 more flexibility in the generic language  
22 that was in 248 from the beginning. You see  
23 we had Yankee, but we had a lot of things  
24 built with 248, and we didn't even add the  
25 Act 250 criteria until the mid, you know,

1 early to mid '80s, right? So there were  
2 already protections there.

3 And as you say, the issue about the  
4 2,500 foot issue in Act 250 is you have to  
5 go through a permit process. You have to go  
6 through a permit process for 248 no matter  
7 the level. And in 250 why they have that  
8 protection is because in 250 it's the  
9 project size or land or, you know, land  
10 size.

11 So there is not that restriction in 248.  
12 So I think there are confusions, and I know  
13 you don't trust the public, but I lived Act  
14 250 for all my life.

15 MR. RECCHIA: Actually I think they  
16 trust --

17 MS. McCARREN: They trust the public.  
18 Don't trust us.

19 CHAIRMAN EASTMAN: I'm the public now.  
20 I don't represent anybody.

21 MR. RECCHIA: I think we need to explain  
22 that more. Maybe we need to in the pay  
23 attention department, maybe we need to be  
24 encouraging to pay attention more.

25 MS. MCGINNIS: To what, sorry?

1 MR. RECCHIA: I'm going to stop there.  
2 I don't know to what. But there is a  
3 disconnect there with -- I appreciate the  
4 frustration. The frustration is that the  
5 Board, which right now are made up of  
6 intelligent people, one of whom is a  
7 telecommunications expert, one of whom is  
8 some other communications expert, and you  
9 know, there are three people. No matter  
10 which three people you get, you're not going  
11 to get the full range of understanding and  
12 capacity.

13 And I'll just say this, there is not a  
14 lot of environmental training in the  
15 capacity of that Board.

16 CHAIRMAN EASTMAN: This is why, and  
17 maybe it is in here now. We have got the  
18 case manager proposed for the Board. And I  
19 wish that person would have that capacity.  
20 I once mentioned, and we didn't keep it in  
21 here because we were trying to keep costs  
22 down and not make them pay for everything,  
23 but there are within the Public Service  
24 Board staff, experts on various, you know,  
25 issues, that they deal with a lot. And so I

1 had -- but they may not think it's  
2 necessary, and we have ANR and you and  
3 everything.

4 But I had thought that is that the way  
5 that you handle something like that, that  
6 you have a siting expert. Or do you think  
7 that you look for that -- some of that  
8 background when you hire a case manager. So  
9 it is somebody who understands some of  
10 these, you know, nuances.

11 MS. McCARREN: Well I'm going to get on  
12 my soap box for exactly 18 seconds. This is  
13 what has fundamentally changed; right, from  
14 when I was the chair. Where the issue was  
15 cost and -- cost and need. The world has  
16 changed, and that's fine. But that's why  
17 I'm agreeing with you.

18 CHAIRMAN EASTMAN: Or we have an  
19 appointment.

20 MS. McCARREN: It's not a land use.  
21 It's an environmental issue now.

22 CHAIRMAN EASTMAN: Or Gaye, we have an  
23 appointment coming up, you know, the  
24 Governor has a position, every, you know,  
25 with the public every two --

1 MR. RECCHIA: Six.

2 CHAIRMAN EASTMAN: Every two years one  
3 gets replaced.

4 MS. McCARREN: Good.

5 MS. FRIED: Does anybody have any say in  
6 that other than the Governor?

7 CHAIRMAN EASTMAN: The Governor suggests  
8 and the legislature --

9 MS. McCARREN: They have to go through  
10 the judicial nominating.

11 CHAIRMAN EASTMAN: Nominating process.

12 MR. RECCHIA: For the chair.

13 CHAIRMAN EASTMAN: But the others are  
14 then just appointees by the Governor with  
15 approval by the Senate.

16 MR. RECCHIA: They do -- there is a bill  
17 now trying to mess that up further.

18 CHAIRMAN EASTMAN: Anyway, the long and  
19 short of it is a gubernatorial appointment.  
20 There is one up, and you know, the Governor  
21 might want to consider looking at somebody's  
22 background is, if he does consider or she  
23 does consider what people's backgrounds are  
24 when they appoint, and I might want to look  
25 more broadly.

1 MS. MCGINNIS: I've heard three things,  
2 and I want to know which one you want to put  
3 into the report.

4 MR. JOHNSTONE: Thank you, Linda.

5 MS. MCGINNIS: One, look at a case  
6 manager that has siting experience as part  
7 of the qualifications of the case manager.  
8 Two, use the new appointment to cover the  
9 fact that you're lacking in siting. I'm  
10 putting out what I'm hearing, okay? And  
11 three, have an additional staff member with  
12 that kind of expertise at the Board. Do you  
13 want any of those three?

14 MS. MCCARREN: Just one.

15 MS. MCGINNIS: Which one?

16 MS. MCCARREN: The case manager with  
17 siting experience.

18 CHAIRMAN EASTMAN: I have to tell you  
19 why aren't we suggesting that -- well okay.  
20 The Governor will make his decision, but  
21 it's not just that siting has been added to  
22 Public Service Board responsibilities or  
23 this kind of siting. Some things have gone  
24 off. Some things that they used to spend a  
25 lot of time on, they don't spend so much

1 time on any more.

2 MR. RECCHIA: If I were voting on those  
3 three, I would say one and two.

4 CHAIRMAN EASTMAN: Which is one and two?

5 MR. RECCHIA: One was the case manager.  
6 Two was pay attention to the qualifications  
7 of the Board appointment in the context of  
8 how the world has changed.

9 CHAIRMAN EASTMAN: Right. And not add  
10 another -- that's where I'm at.

11 MR. JOHNSTONE: I was almost there on  
12 two. The reason I didn't go there is we  
13 have --

14 MS. McCARREN: I don't think we should  
15 do that.

16 MR. JOHNSTONE: I wonder about that,  
17 Louise. I'm with you partly there. But we  
18 had a different discussion a month  
19 and-a-half ago that says not that he should  
20 use it to fix some of the siting issues, but  
21 that it's all cultural, and that should be  
22 the screen, not siting, of the appointment.  
23 And so we have talked about at least two  
24 different things of how the Governor ought  
25 to be thinking about something that's his

1 statutory authority.

2 MR. RECCHIA: Right.

3 MR. BODETT: He's used to that; right?

4 MR. RECCHIA: So I'm inclined to agree  
5 -- I'm going to go with Louise's sage advice  
6 and go with number one only.

7 MS. McCAREN: Let's stop right now.

8 CHAIRMAN EASTMAN: Well it is 5 after 4.  
9 So we have got things we didn't get through,  
10 Gaye, but we will talk about it next week.  
11 And --

12 MS. SYMINGTON: I trust you all.

13 CHAIRMAN EASTMAN: So we are here.

14 MS. MCGINNIS: As far as you can throw  
15 us.

16 CHAIRMAN EASTMAN: Are we here on the  
17 16th? Are we going to come back on the 25th  
18 and finalize and not report?

19 MR. JOHNSTONE: I'm not convinced we  
20 can't get through it next week.

21 MR. BODETT: I feel, yeah --

22 MS. SYMINGTON: We haven't even seen the  
23 full, I would think that we would want to  
24 actually see the full document before we  
25 submit it, and wouldn't that be the 25th?

1 MS. MCGINNIS: I'm happy to send you the  
2 full document, but I'm telling you a third  
3 of it is going to be changed based on the  
4 discussion.

5 MS. SYMINGTON: I don't want it now.

6 MR. RECCHIA: I wonder. So let me try  
7 this because I think this is where Gaye was  
8 going. So if we meet on the 16th and do  
9 final what was --

10 CHAIRMAN EASTMAN: We have still got  
11 three pages of recommendations we didn't get  
12 through.

13 MR. RECCHIA: Right. How long after  
14 that before we have the big kahuna?

15 MS. MCGINNIS: It depends on how big  
16 your changes are on the 16th.

17 MR. RECCHIA: Well let's say they are  
18 not different -- they are along the lines --

19 MS. SYMINGTON: Could we have them by  
20 the 20th?

21 MS. MCGINNIS: I can certainly try.

22 MS. SYMINGTON: Or 22d.

23 MR. RECCHIA: The point being can we use  
24 the 25th to review?

25 CHAIRMAN EASTMAN: The big thing --

1 MR. RECCHIA: The big thing, and the  
2 language.

3 CHAIRMAN EASTMAN: It will be  
4 everything. We will review the final thing  
5 and then, yeah.

6 MS. MCGINNIS: I'm actually more worried  
7 of the bigger one in part because some of  
8 it's all explanation of these things that  
9 are written in very relatively vague terms.  
10 So I would be happy to give you something  
11 earlier, but just understanding that on the  
12 16th, at least the way this has gone so far,  
13 there will be changes to make on both after  
14 that.

15 CHAIRMAN EASTMAN: And I think we should  
16 wait and hold the 25th for deliberations  
17 around the big report so Gaye is here and we  
18 are all here. And maybe it won't take us  
19 all day. Maybe we will be all, you know,  
20 hunky-dory.

21 MR. JOHNSTONE: Whatever you want.

22 CHAIRMAN EASTMAN: And so I think that  
23 we either -- if we go over -- and then it  
24 may be just, you know, a written report at  
25 this point depending upon where the

1 legislature is. Or we can be there on  
2 Monday or Tuesday morning or somebody else  
3 does it.

4 And I will contact the House Committee  
5 and say, I mean, yeah, I'll come and talk to  
6 you, but we are really close to having our  
7 full report, and I meet next week on the  
8 16th, so maybe you want to wait at least  
9 until the 18th before I go.

10 MR. RECCHIA: Recognize I think they are  
11 feeling like they are coming down to the  
12 wire as well and the 25th might be actually,  
13 you know, getting too late.

14 MR. JOHNSTONE: Now we are talking about  
15 the 29th.

16 CHAIRMAN EASTMAN: If they know -- if  
17 they can see, I can take the draft.

18 MR. RECCHIA: That's the other thing is  
19 to share it with them.

20 MR. JOHNSTONE: Well yes and no. I mean  
21 you can share a draft, but we don't know if  
22 they are going to really sign onto it at the  
23 end so a draft is a draft; right?

24 CHAIRMAN EASTMAN: Right. And right  
25 now, as I say, I'm talking about all they

1 are asking for is what current S30 is, which  
2 is pretty generic, and I would make  
3 statements like we are trying to come up  
4 with things that just get done now, that  
5 don't wait until November, that kind of  
6 thing.

7 MS. MCGINNIS: So just to be clear, I'm  
8 going to do an extra appendix that tries to  
9 categorize all of our recommendations into  
10 these three, although I'm going to need some  
11 help from lawyers to decide which of these  
12 go to rulemaking or legislative.

13 MS. MCCARREN: I'll try and give you a  
14 list tomorrow.

15 MS. MCGINNIS: That would be awesome.  
16 Okay. And then I'm going to be using this  
17 language, and you will also give an opinion  
18 on this, right? That's what I'm hearing.  
19 I'm just making sure I understand what needs  
20 to be done. I will get you a draft back out  
21 in, I hope in a couple of days, that will be  
22 with track changes so you can see if you're  
23 okay with what I've heard you say, because  
24 it's not always the case that I hear the  
25 right things. Or I hear four things and I

1 try and come up with one.

2 MR. RECCHIA: It's not a case we  
3 actually say the right things.

4 MS. MCGINNIS: If I don't hear back from  
5 you, it means you approve it, okay? Because  
6 the only person in the last one that  
7 actually gave me comments was Gaye. So I  
8 can go with the understanding, because I  
9 have to be able to move forward on this. If  
10 you don't respond, you approve, and I'm  
11 going to say that at the top.

12 MR. BODETT: That was my assumption last  
13 time as well.

14 MS. MCCARREN: Can I ask you, though,  
15 because I got lost in the communications.  
16 Would you put a star or something so that I  
17 know it's a lot more than some -- it's very  
18 important.

19 MS. MCGINNIS: If it says fourth draft,  
20 it's important. But I will put three stars  
21 in front of it, and I will put a whole bunch  
22 of exclamation points in the text, and I  
23 will say if you -- in capital letters -- if  
24 you say nothing, you approve. And I will  
25 tell everybody you approved it.

1 MS. McCARREN: That's fair. That's  
2 fair.

3 MR. JOHNSTONE: Linda, you need to  
4 include by when.

5 MS. MCGINNIS: Okay. Yes.

6 CHAIRMAN EASTMAN: And we know we have  
7 got some other -- it's like 2, 2 and-a-half  
8 pages of stuff we didn't get through today.  
9 They have fewer red lines, so it should be  
10 easier for us. So I propose next time we  
11 start with those before we go back to the  
12 fourth draft.

13 Okay. But can I tell you this? We are  
14 so much further along right now than I ever  
15 thought we would be at 12:20.

16 MR. RECCHIA: Having deadlines works.

17 CHAIRMAN EASTMAN: I'm sorry.

18 MS. SYMINGTON: I never say something  
19 like that. Oh my God, what got into you to  
20 say something like that?

21 (Laughter.)

22 (Whereupon, the proceeding was  
23 adjourned at 4:12 p.m.)  
24  
25

C E R T I F I C A T E

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I, Kim U. Sears, do hereby certify that I recorded by stenographic means the Hearing re: Energy Generation Siting Policy Commission Deliberative Session #8, at the Giga Room, 112 State Street, Montpelier, Vermont, on April 9, 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 373 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 Williston, Vermont, this 15th day of April, 2013.

\_\_\_\_\_  
Kim U. Sears, RPR