

STATE OF VERMONT
ENERGY GENERATING SITING POLICY COMMISSION

December 6, 2012 - 12 p.m.
Pavilion Auditorium, State Street
Montpelier, Vermont

Commission Members

Jan Eastman, Chair
Louise McCarren, Vice Chair
Tom Bodett
Scott Johnstone
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1 CHAIRMAN EASTMAN: Good afternoon. As
2 always, we are pretty tightly scheduled, so
3 I'm going to get started.

4 My name is Jan Eastman. I'm Chair of
5 the Energy Generation Siting Policy
6 Commission. We are at information session
7 number four today.

8 So briefly let me just explain the
9 process. I'm going to add a little bit more
10 in today, because as we said, we are doing
11 this all in the open.

12 MEMBER OF THE PUBLIC: I don't think
13 your microphone is on.

14 CHAIRMAN EASTMAN: I'm just not speaking
15 into it. I need to be closer. Is that
16 better?

17 MEMBER OF THE PUBLIC: That's better.
18 Thank you.

19 CHAIRMAN EASTMAN: I'm also going to be
20 actually speaking to Commission members to
21 inform them about some things so they
22 understand how we got where we are. Okay?

23 Okay. So we were all asked to serve.
24 As you know, Jim Matteau was asked to serve
25 and had to recuse himself because he's off

1 helping in Jersey. So Tom Bodett joined us
2 after the first session.

3 But how we have set this process up so
4 far is that we were having some information
5 sessions here in the beginning so that we
6 could learn sort of the lay of the land
7 which was our first session, you know,
8 here's what's going on currently in Vermont.

9 The actual -- our actual appointment
10 letters asked us to look at other states
11 relative to the siting processes, and hence
12 the staff has gone out to find other states'
13 information, and so we had one session
14 listening to other people, and we have a
15 second session on December 19 scheduled on
16 those issues. We also, of course, always
17 have requests from people to be heard. So
18 when we had requests from people to be heard
19 on certain issues, then the staff put
20 together last week's session and this week's
21 session so we could try and hear from a
22 variety of perspectives so that we were
23 giving, you know, a fair warning. So that's
24 why last week we heard from people who have
25 participated in 248 processes, and that's

1 what we are continuing today.

2 Interestingly enough, especially -- I'm
3 going to use Tom here as an example, when I
4 was asked to serve on the Commission and was
5 told who the other possible members were, I
6 knew a little bit about each of them. And
7 in fact, may have worked a little bit --
8 Gaye -- I mean I worked a little bit with
9 Gaye when she was Speaker of the House on a
10 couple of projects. I haven't worked with
11 Scott, but he's been at the Agency of
12 Natural Resources while I was. Louise
13 McCarren and I go back --

14 MS. McCARREN: Too far.

15 CHAIRMAN EASTMAN: -- too far. I'm a
16 lawyer by education and training, and my
17 very first clerkship the summer of 1976
18 Louise McCarren -- I worked for Don Rushford
19 at CVPS and Louise McCarren represented the
20 public in what was then the process for
21 public participation in 248 cases.

22 MS. McCARREN: I was 10.

23 (Laughter.)

24 CHAIRMAN EASTMAN: Yeah. And Tom I
25 don't know. So partially what you're going

1 to hear I think in the next little bit here
2 is the fact that we need to get to know each
3 other. We need to get to figure out how we
4 learn together as we go through this
5 process. So this first bit here, you know,
6 on session four. So one more session,
7 session five, and part of a session in
8 January. We are trying to accommodate
9 people who or -- we are accommodating people
10 who wish to be heard. What I'm going to ask
11 the Commissioners to do while we are
12 listening today, and I want to come back to
13 this before we leave, is that I need them to
14 start thinking about the kind of format that
15 will be most useful to them for
16 deliberation.

17 For instance, I'm a person -- I'm not
18 going to deliberate like this. I'm not
19 going to be talking to you. I need to be
20 talking to them. And so it's likely that I
21 would suggest -- or well I'm going to
22 suggest and see if they put up with it that
23 we are going to be sitting around a table,
24 and they will be open meetings, and people
25 can be around the back, but we are going to

1 be talking to each other. That's the way I
2 need to do it.

3 Also I want them to be thinking about
4 specific issues that they believe have been
5 -- are missing, that we haven't yet
6 discussed, so we can get people here to talk
7 about the things that they need to learn
8 about in order to meet our mandate which is
9 to look at the process relative to electric
10 generation siting in Vermont.

11 I also -- there may be types of people
12 that we need to invite for their expertise
13 on certain topics. And we have lots of
14 other questions to ask. I mean some of us
15 are here writing down questions, and we are
16 waiting to get the opportunity for the
17 people that we think can most help us answer
18 those questions.

19 And I think the other thing we are going
20 to try and ask them to start thinking about,
21 we won't be talking about today, but
22 starting probably a meeting I think we are
23 scheduled for January 11 to hear from some
24 of you, but beginning in the afternoon we
25 are going to begin deliberations.

1 We want to talk about possibilities. We
2 are taking down notes. We have got a great
3 staff here taking down notes. We are taking
4 down notes about all the things that we are
5 hearing that might be possibilities. So
6 before we get to a draft report with what we
7 think we are going to recommend, we have got
8 to start somewhere, so it might be there.

9 The other thing as I said, we really
10 don't know each other very well. And that's
11 an all-day session in January. So what we
12 were just talking about, yes, this is a
13 public process, but we are thinking we might
14 all have lunch together if we can on January
15 11, and we will tell you where. Might drive
16 to the State House cafeteria which is where
17 all good work gets done, but we need to
18 spend some time thinking out how we learn,
19 you know, how we think, so that we can make
20 this process work.

21 And we promise to do this as openly as
22 possible, so we will see how it goes. Okay.
23 So today. Okay. So we will come back to
24 this before we leave so that we can start
25 having some idea of what we want.

1 Okay. So today is the second session of
2 perspectives of participants in the Section
3 248 process. Last week we heard from
4 Regional Planning Commissions, developers,
5 utilities, and citizen interveners. I do
6 want to say I loved that whenever you tell
7 me here's a recommendation, strengths,
8 weaknesses, it was great. And I thank
9 everybody for all the work they put in.

10 We are going to hear from legal experts,
11 people who are advising folks about the
12 process, environmental and conservation
13 groups and towns. All these folks have
14 participated as a formal party or
15 represented a formal party in the 248
16 process.

17 The presenters are all asked to focus on
18 key aspects of the Commission mandate, and
19 they were sent the same template asking to
20 talk about strengths and weaknesses along
21 with suggested improvements on the areas we
22 are supposed to be dealing with.

23 Our next meeting is December 19 where we
24 will hear from other states. On January 11
25 we will be in the Montpelier area. Not sure

1 exactly where. We are going to get some
2 other perspectives on the process and sort
3 of do a taking stock in the afternoon.

4 Mid January it may be that I, as Chair
5 and staff, go to the legislature to just
6 present to, you know, talk about what the
7 process is. It's not a formal legislative
8 hearing.

9 January and February we will have some
10 public hearings covering a variety of energy
11 sources in geographical locations. And then
12 by March we hope we will have some draft
13 recommendations so that we can have some
14 additional public hearings on the draft.

15 As you know, we are going to finish by
16 the end of April, late April because I'm on
17 my way to Michigan.

18 Again, thanks for last week. You did a
19 lot of good work under tight constraints,
20 and Regional Planning Commissions, I don't
21 know how you do all you do. I know you
22 didn't have this issue back when I was
23 working with some of you, so again, good
24 job. We really do appreciate it.

25 So yes, as we move forward I was just

1 talking to people -- I've already said that
2 -- that we may be asking for particular
3 people to come and join us in these
4 sessions, to help us. Okay. All right.

5 So today is a tight schedule. I'm going
6 to take time after the presentations to get
7 feedback from Commissioners around the
8 table. And so I'm not sure how much time we
9 will have for public comment today. We will
10 have other opportunities of course at the
11 public hearings and other meetings in
12 January, February and March. Thank you.

13 So first up. First we are going to hear
14 perspectives from legal experts. So Geoff
15 Hand.

16 MR. HAND: Yes.

17 CHAIRMAN EASTMAN: Hi over there.

18 MR. HAND: No problem. Thank you,
19 Chairwoman. My name is Geoff Hand. I'm an
20 attorney at the law firm of Dunkiel Saunders
21 in Burlington, Vermont. I've practiced
22 before the Public Service Board for about 10
23 years, but that's probably about -- Public
24 Service Board work is probably about half of
25 my practice. I also spend a lot of time in

1 Act 250 proceedings, land use proceedings,
2 and do a certain amount of national federal
3 litigation for national environmental non
4 profits. So I have experience in a number
5 of different forums and hope to offer some
6 perspective on pluses and minuses.

7 I'm here today with Leslie Cadwell from
8 Gravel and Shea. She will introduce herself
9 in a minute. I think what we have done is
10 sort of divided up the slides, and we will
11 tag team here a little bit --

12 CHAIRMAN EASTMAN: Thank you.

13 MR. HAND: -- to try to make it more
14 efficient rather than doing separate
15 presentations. And we may jump in when we
16 want to add something to the presentation or
17 to the slides.

18 And also just to be clear, we do
19 represent parties that are in front of the
20 Board. We represent parties that are
21 currently before the Board and have been
22 before the Board. Neither Leslie or I are
23 here today speaking on behalf of any
24 particular client. I think really -- I hope
25 we are here as a resource for you all. A

1 lot of what we are going to say you've heard
2 in various forums from different
3 participants. And I think the value we can
4 provide is answering questions you guys have
5 about how the process has really worked, if
6 you do have them, and I hope we save enough
7 time to do that at the end.

8 I know that your charge is to look at
9 generation siting, and I understand that
10 that's a narrow charge. And we have
11 tailored this presentation as you asked to
12 really focus on generation siting. But I
13 think before we dive into that, and Leslie
14 may have something to add here, I think it's
15 important for us to recognize that that
16 question of generation, and I know this is
17 what you all recognize given your
18 backgrounds, is one piece of a much broader
19 puzzle. And it's an important piece, but
20 there is certain extensions with other parts
21 of that puzzle.

22 At one level we have a broad overarching
23 state policy that has been clearly expressed
24 by the legislature over many years to focus
25 on siting in-state, sustainably priced,

1 renewable power, and to do that in a way
2 that I think, you know, facilitates both the
3 sustainably priced but also the in state
4 aspect of that challenge. And I think those
5 goals broadly have consistent public
6 support, about 70 percent generally for
7 supporting renewable development.

8 Renewables are obviously just one part
9 of the puzzle that you all are looking at,
10 but there is that broad policy. The other
11 piece that's very important to keep in mind,
12 and we thought about in doing this
13 presentation, is the interconnectiveness of
14 our electrical grid. And that siting is one
15 consideration -- in-state siting is one
16 consideration, but that's balanced against
17 both transmission and out-of-state
18 generation. And we should recognize that
19 the decisions we make here about generation
20 siting really impact those other pieces, not
21 just, you know, where is power being
22 generated, but questions of efficiency as
23 well.

24 And so to the extent we are making it
25 harder or easier to permit projects in

1 Vermont, we may be incentivising development
2 out of the state instead of within the
3 state. We may be, and I think we are, I
4 think the process currently is designed to
5 or has the effect of encouraging out-of-
6 state development over in-state development;
7 that a lot of the balance of this equation
8 makes it more practical for developers to
9 site facilities outside of Vermont than
10 inside of Vermont. And I think you just
11 need to look at the market to see that
12 that's the case.

13 When you look at where a lot of the
14 current generation is being built in the New
15 England grid, it's not in Vermont. And the
16 developers that we work with generally say
17 that Vermont is the most rigorous state that
18 they deal with. It's more expensive, and
19 the process is generally longer. I think
20 some of us may approach that and say well
21 maybe we have got the right balance. We
22 have a rigorous process that looks carefully
23 at the details, but as we are thinking about
24 our process, let's not lose sight of the
25 fact that if we make something harder to

1 site here, that means most likely we are
2 sending the burden of energy production
3 somewhere else; that someone else is going
4 to experience the cost of the burden of
5 producing that power that is supplied in the
6 grid.

7 And we -- in Vermont I think we have the
8 luxury -- turned the mike off on me there.

9 MR. JOHNSTONE: Yeah. There you go.

10 MR. HAND: Do you want me to stop
11 talking?

12 MS. WHITE: Subtle hints.

13 (Laughter.)

14 MR. HAND: We have the luxury for the
15 large part of not necessarily confronting
16 the consequences of our energy choices on a
17 daily basis, and that has a certain
18 importance in the way we approach everything
19 from how we feel about generation to how
20 important efficiency is. And it's not
21 surprising that the more we build projects
22 here in Vermont, the more the public is
23 rightfully interested in how we do that.
24 But I think there are also positives to
25 that, not just a broader dialogue. But it

1 focuses us on the impacts of energy
2 production everywhere and the benefits and
3 burdens we are either accepting or passing
4 along to someone else.

5 I'm going to stop with the overarching
6 comment and let Leslie jump in, and she will
7 start the slides.

8 MS. CADWELL: Good afternoon, thank you
9 for having us here. My name is Leslie
10 Cadwell, as Geoff said, I'm an attorney with
11 Gravel and Shea in Burlington. I represent
12 energy and telecommunications clients before
13 the Public Service Board primarily.

14 I'm actually going to read from prepared
15 remarks because I'm not as good on my feet
16 as Geoff apparently. So my comments today I
17 think it's important to give you a little
18 bit of my own background.

19 This most recent experience as a private
20 practitioner informs what I have to say, but
21 I have prior experience also in the public
22 sector. I served as Special Counsel and
23 Director for Telecommunications for the
24 Department of Public Service under
25 Commissioner Sedano, Salembier, and O'Brien.

1 And I've also served as a staff attorney for
2 four years for the Vermont Supreme Court
3 which is the appellate court for decisions
4 of the Public Service Board. So I had some
5 understanding on how the court looks at the
6 law in deciding whether the Board has
7 committed error or not.

8 And finally my experience as a client or
9 user of the system also informs my comments.
10 I served as General Counsel for the Vermont
11 Electric Power Company from 2007 to 2010.
12 My comments are -- really are at a very high
13 level. I accept the policy that the General
14 Assembly has set. I am not making comments
15 on whether that policy is good or bad. I'm
16 here to really talk about sort of a bigger
17 picture.

18 The touch tones -- the touchstones for
19 regulatory authority and action are the
20 underlying policy goals and interests that
21 the General Assembly has established through
22 legislation. I'm trained as a legal
23 practitioner, and I take a -- folks who know
24 me, I'm very lawyerly, unfortunately for my
25 husband. But I'm trained to look at the

1 statutory scheme as a whole, understand how
2 it works and why it's working that way or
3 why it was intended to work that way. And
4 the why is the underlying policy that the
5 legislature intended either through the
6 plain language or in some direct policy
7 statement that's part of the legislation.

8 So with that in mind, this is how I look
9 at the 248 scheme as a whole and the
10 responsibilities of the Public Service Board
11 and Public Service Department. So for
12 electric generation projects, I'm going to
13 go to the first slide because my comments
14 are -- sort of tie into this a little bit.

15 We have an administrative body with the
16 powers of a court of record who is
17 authorized to approve a project if it can be
18 justified as needed, and provide some
19 economic benefit to the state. It does not
20 adversely impact the environment, and it
21 promotes the public good. This is different
22 from Act 250 projects where you don't have
23 to prove need, and you don't have to prove
24 that they have an economic benefit, and you
25 don't have to prove that they serve the

1 public good. You only have to prove that
2 they meet the environmental criteria.

3 The administrative body and the state
4 that's responsible for representing the
5 interests of the people of the state, the
6 Public Service Department, they are allowed
7 to hire experts, they can charge the cost of
8 those experts back to the petitioning party.
9 The statute in fact does not recognize a
10 right for adjoining landowners to get notice
11 of a project but the Public Service Board
12 has created that right by rule. And as an
13 aside, in advising anybody that's going to
14 go through a Section 248 process, you're
15 going to be a neighbor, and if you don't
16 talk to your neighbors about what you're
17 planning to do, it will make the process
18 much more hard -- much harder for you. So
19 whether or not it's required by law, if you
20 want to get a project done, at a reasonable
21 cost, without protracted disputes with your
22 neighbors, it's really a matter of good
23 practice to work with folks in the
24 communities and landowners who may be
25 affected.

1 The statute requires the Board to hold a
2 public hearing, and it directs the Agency of
3 Natural Resources to weigh in on the Act 250
4 environmental criteria that are incorporated
5 into Section 248. A host of state agencies,
6 the town and regional commissions all get
7 notice of the project when it's filed, with
8 the latter two, the town and the regional
9 commissions, getting advanced notice before
10 the petition is filed, for the purpose of --
11 for the purpose of having the developer take
12 into account what they say, and modifying
13 the project as necessary to accommodate any
14 interest or mistakes that may have been made
15 in the original analysis. The town and
16 regional plans are to be given due
17 consideration by the Board but they aren't
18 dispositive of whether a project ultimately
19 promotes the general good.

20 On the question of public participation,
21 and the voice of local communities affected
22 by the Section 248 process, I really
23 recommend you, the Commission, consider the
24 comments you've received in light of the
25 structure of Section 248. The statute

1 mandates that the Public Service Board
2 consider input from the public. I don't
3 know how you reach a decision that something
4 promotes the general good of the state
5 without that public input. And any member
6 of the public, any member, whether you live
7 in the town, or you don't, whether you live
8 in this country, or you don't, has a right
9 to make comments, make their voice heard to
10 the Public Service Board either through
11 public hearing process or through written
12 comments.

13 Now I want to be clear there is no
14 dispute that the public should be provided
15 an opportunity to weigh in. I think really
16 the controversy that I see in some of the
17 comments that I've read, and I haven't done
18 an exhaustive review of what you've heard,
19 really is how you get that input and how the
20 Public Service Board uses it. I also
21 recommend, this is my big sort of big
22 picture piece, that you consider the
23 comments you've received as part of your
24 charge in light of this question which I
25 think is fundamental to the Section 248

1 process. Are in-state electric generation
2 facilities still part of the state's
3 critical infrastructure as they have been
4 since Section 248 was adopted decades ago?
5 In my view, I think they are.

6 The electric grid needs a combination of
7 generation, transmission, and efficiency
8 measures to ensure that the electricity we
9 use is least cost, environmentally sound and
10 reliable. The generation siting process in
11 Vermont needs to account for the critical
12 nature of this infrastructure, and should be
13 implemented in a manner that allows the
14 state to achieve its policy goals, currently
15 increasing the state's renewable energy
16 portfolio.

17 So those comments really speak to, I
18 think, the first slide which are the
19 strength. Moving along, we will go to
20 weaknesses. I think there is probably no
21 dispute that there are extremely high
22 transaction costs, not only for the project
23 proponent, but for the Public Service Board,
24 for the Department of Public Service, for
25 the Agency of Natural Resources, for the

1 towns, regional commissions, and interested
2 parties who wish to be heard.

3 There are -- there is still a
4 requirement that cases that are settled --
5 cases that have no controversy still have to
6 go through an evidentiary hearing. There is
7 no electronic filing system at the Board
8 currently. I know that they are in the
9 process of doing it, but there are thousands
10 of pieces of paper that get filed depending
11 on the size of a project, and the cost of
12 reproduction is astronomical.

13 In my prior life I had to review a bill
14 for photocopying services for a project for
15 my former employer. It was \$64,000 for --
16 to copy the first petition. I actually took
17 the tape and went sort of line by line
18 because I couldn't believe how much it cost
19 to have a -- that much paper reproduced.
20 Now there is a reason for it. It's a lot of
21 information and a lot of parties that get
22 notice. But it's a high transaction cost.

23 I think there are no deadlines. This is
24 a weakness for Section 248. There is no
25 deadline for docketing. You can file

1 something and wait and wait and wait before
2 any action is taken. For the projects that
3 can go through the expedited so-called (j)
4 procedures, it can take maybe a month or
5 more before the public notice for the
6 project ever gets issued.

7 So projects that have no impacts or no
8 meaningful impacts on the 248 criteria can
9 languish simply because the Board has to
10 prioritize its work based on other cases
11 that may actually have deadlines. I think
12 -- and I felt this when I was a practitioner
13 at the Department of Public Service, you
14 can't find Public Service Board decisions
15 easily unless you-- unless you --

16 MS. McCARREN: I did my best.

17 MS. CADWELL: Unless you work in the
18 Public Service Department where you have
19 binders full of them or you have Westlaw or
20 Lexis, a paid account, they are very
21 difficult to find, and practitioners like
22 myself, and others who have, you know,
23 collect them, have a better shot at
24 understanding what that precedent is than
25 someone who is trying to go through the

1 process on their own.

2 And I also think the other weakness is
3 this, and I can't believe I'm saying this,
4 because it used to drive me crazy when I was
5 at the department, but the one-size-fits-all
6 approach really does have an impact on
7 frustrating the state's other policy goals.
8 Promotion of agriculture, or achieving the
9 renewable energy goals.

10 CHAIRMAN EASTMAN: You've got three
11 minutes.

12 MS. CADWELL: Yeah. So I will in terms
13 of improvements then, I'll go very quickly.
14 You ought to consider recommending deadlines
15 for -- particularly for projects that are
16 limited in size and scope, for example. The
17 legislature was able to, I think, help
18 achieve the telecom policy goals by
19 recognizing that there is a way to protect
20 the environment and promote development by
21 passing Section 248(A). There are specific
22 time frames for the Board to take action.
23 And I think that statute has worked. Once
24 we fulfill those goals or get close there is
25 a sunset, that will go away. And we go back

1 to the -- how it used to be before 248(A).

2 The two other things is I would say the
3 department ought to do much more outreach on
4 its own in the communities. When I visited
5 a community in where was it? It was Dover,
6 it was hard to get to from anywhere at least
7 for me, this was not about 248. People in
8 the community were so happy to see somebody
9 from Montpelier that they could talk to
10 about their issues. And it gave me the
11 opportunity to actually educate them on the
12 process and I think fills the gap or the
13 lack of information that may cause people to
14 believe that they are not being listened to
15 or things are being rubber stamped, that
16 kind of thing.

17 And then finally I think the other
18 improvement, and this is just a particular
19 issue that I have, is particularly with
20 respect to farms because we have important
21 agricultural policy here in the state, we
22 need to do a better job in regulating the
23 farms when they put an electric generation
24 system in. Manure and nutrient management
25 are an integral part of farming. It's

1 regulated by ANR and Ag, and the Public
2 Service Board has no choice because of its
3 mandate, to -- and precedent to insert
4 itself into that process, and you ought to
5 consider some policy discussion on that.

6 MR. HAND: I think Leslie has left me a
7 minute and-a-half.

8 MS. CADWELL: I'm sorry.

9 MR. HAND: That's okay. Do you want to
10 move ahead? Just quickly on the substantive
11 criteria, I'm not going to be able to go
12 through all these. I think the criteria are
13 quite rigorous. There has been some
14 discussion about should this be in Section
15 248 or should we move some of it back to Act
16 250, and that's been a debate that's gone on
17 over a number of years.

18 I think the scope of review you get in
19 Section 248 is much broader and much deeper
20 than what you get in Act 250 both in terms
21 of the criteria that are considered and the
22 depth of the consideration. Importantly the
23 burden of proof is on the applicant and all
24 the criteria. It's really different than
25 Act 250 where the opponents actually have

1 the obligation to prove certain things about
2 the project. Would it have a negative
3 impact on wildlife, negative aesthetic
4 impact, it's a very different balance, and I
5 think the appropriate one to keep.

6 Decisions are based on scientific
7 evidence and on expert testimony that is
8 subject to cross examination. It's very
9 important in my view when you're talking
10 about large projects that they are based on
11 facts and evidence and scientific evidence
12 that is subject to cross examination. And
13 there is a balance between the statewide
14 priorities and the local concerns, that
15 those concerns and issues are raised and
16 addressed, but they are not determinative.
17 In other words, there is a balance there.

18 Weaknesses, I think we all have to
19 acknowledge the process is long and
20 technical. I'm not saying that there is a
21 solution there, and in fact moving into some
22 other process like Act 250 where you have
23 multiple layers of appeal in the District
24 Commission, Environmental Court and the
25 Supreme Court, make it longer and more

1 expensive. But I think we need to
2 acknowledge that for all parties involved,
3 particularly in the controversial projects,
4 it's expensive and long. And there aren't
5 siting guidelines. And I think this is an
6 area where generally most people who are
7 involved in this process, including
8 developers, would acknowledge that some
9 objective criteria could go a long way to
10 really guiding the process.

11 And I say objective criteria, criteria
12 that are developed appropriately, that are
13 based on science, and they are applied
14 uniformly by a single board rather than, you
15 know, haphazardly by different entities.
16 And that could really be encouraged by
17 giving a benefit of complying with those
18 guidelines.

19 In other words, you do this some with
20 other state permits, that if you meet the
21 guidelines you have a rebuttable presumption
22 that your project has met certain criteria.
23 That could be a nice way to balance the up-
24 front effort with making the process more
25 efficient down the line.

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Appeal process, we can talk about that if you have questions, but I think it strikes the appropriate balance between providing an opportunity to appeal but not allowing that appeal to frustrate the pursuit of projects that have been determined to be in the public good.

I think we are over time, but just very quickly the Public Service Board -- I think this is an important issue, timing of the coordination of permits. A lot of states do it under one umbrella where all the permits are issued one place. That could be a good model. I think the model we have now works okay when it's done efficiently, but it creates opportunities for additional, multiple, duplicative appeals that can be a real challenge for all the parties participating.

On the other hand I don't think we should start with the smaller state permits. The Public Service Board gives you a chance to look at the holistic impacts and say we need to consider this issue and that may result in a project change, than if you did

1 it in the inverse it would really, I think,
2 make the process worse. If you started with
3 the smaller permits.

4 CHAIRMAN EASTMAN: We are going to go to
5 questions. Yes, Louise.

6 MS. McCARREN: Are you surprised?

7 CHAIRMAN EASTMAN: No.

8 MS. McCARREN: Okay. Hey Leslie, it's
9 good to see you again.

10 MS. CADWELL: Back at you.

11 MS. McCARREN: Here's my big picture
12 question for you guys. Siting and the
13 Public Service Board are inherently a
14 legislative function. In Vermont we have
15 chosen the contested case proceeding to
16 carry out that legislative function. Your
17 comments on -- and I think you've covered
18 this, your comments on whether the contested
19 case proceeding is really the right way to
20 do it given it is a legislative function.
21 And do we, with all those trappings, do we
22 exclude people to make it more difficult.

23 And number two, what in your opinion is
24 the role of policy? Because if the
25 legislature has expressed its policy, then

1 why go through the contested case
2 proceeding? So if the legislature has
3 expressed its policy for whatever, that
4 we'll have gerbils running around trying to
5 do electricity, how in your view from a
6 process point of view does that affect what
7 the PSB should do?

8 Because what I heard -- I heard you say
9 two very different things, guys. I heard
10 you say, one, the policy is to do
11 renewables. Okay. But you also embrace
12 this really difficult contested case
13 proceeding. So tell me where that balance
14 lies.

15 MR. HAND: I guess you would have to
16 acknowledge that the process, the Board's
17 process is really about giving effect to
18 those broader policies on a project and
19 site-specific basis. And the policy is not
20 going to dominate all the time.

21 I think if you looked at an individual
22 project, and the Board considered those
23 criteria, that policy is part of that
24 consideration, but if the impacts of the
25 project outweigh the benefits in that

1 particular location, the Board should and
2 has said no. You know, in East Haven, East
3 Haven Wind Project, the Board there one of
4 the first wind projects took three years to
5 consider the impacts of that particular
6 project. And despite the overarching policy
7 said, you know, what because of -- in that
8 case the lack of evidence that they had,
9 they couldn't reach a positive conclusion
10 that this would promote the public good.

11 And so that policy in my mind comes in
12 as a factor of that promote the public good
13 consideration.

14 MS. McCARREN: But it doesn't trump any
15 or all of the 248 criteria.

16 MR. HAND: No, not at all.

17 MS. CADWELL: So my answer to that
18 question, Louise, is the -- there is nothing
19 in the statute that requires it to be a
20 contested case.

21 MS. McCARREN: Well (j).

22 MS. CADWELL: None of them --

23 MS. McCARREN: Fair enough.

24 MS. CADWELL: It's the Public Service
25 Board's rules that make it a contested case

1 procedure. This is actually the lawyerly
2 answer. It makes me crazy when I read
3 Supreme Court precedent that says this is a
4 legislative process, but it's not really.

5 MS. McCARREN: That's why I asked you.

6 MS. CADWELL: Because this is a
7 contested case procedure. So I think really
8 that, and that question in my mind, ought to
9 be asked in the Public Service Board's
10 hearing room like a workshop where everybody
11 in this room can participate; and you don't
12 need to be an intervener, you don't need to
13 have a lawyer, you can come and help inform
14 the Board's judgment about whether its rules
15 serve the purpose.

16 MS. McCARREN: Okay. But are you saying
17 that on a case-by-case basis the Board can
18 determine what process it wants to apply, or
19 are you saying that the rules can be
20 changed?

21 MS. CADWELL: I'm saying that the rules
22 can be changed.

23 MS. McCARREN: Got it.

24 MS. SYMINGTON: Can you -- could you two
25 repeat that in like layman's terms? I'm

1 lost, because I'm not a lawyer. And I don't
2 need you to repeat it all, but I'm lost as
3 to what the crux of that was about.

4 MS. CADWELL: Yeah. So in your -- you
5 have folks come testify before your
6 committees when you're in the legislature,
7 and you all deliberate openly and you make a
8 decision.

9 The Public Service Board's proceedings
10 by rule, they have established -- they are
11 required to establish rules, and their rules
12 establish a contested case procedure for
13 just about everything that they do, even if
14 the thing that they are deciding isn't a
15 contested case as a matter of law under the
16 Administrative Procedures Act.

17 So you have to have a witness with
18 prefiled testimony --

19 CHAIRMAN EASTMAN: Contested case means
20 court rules. It means everything goes in
21 subject to cross examination. Okay. It
22 means that everybody gets all that stuff
23 early. It means they spend \$64,000 on
24 pieces of paper.

25 MS. McCARREN: For which I apologize.

1 MR. HAND: Just to be clear, not
2 everything is done under a contested case,
3 but 248 project applications are done in a
4 contested case. The Board does do some
5 things that are not contested case
6 proceedings.

7 CHAIRMAN EASTMAN: Can I -- I would like
8 to ask you, do you ever participate in
9 transmission processes? I'm curious because
10 --

11 MS. CADWELL: Yes.

12 CHAIRMAN EASTMAN: As I understand it
13 there is a different community engagement
14 process for major transmission facilities
15 that the Public Service, you know, Board is
16 using. And I'm curious -- I'm going to want
17 to learn about that. Because I'm wondering
18 if it's working there, and I'm just curious
19 if either of you have any experience with
20 that.

21 MS. CADWELL: I do. And I suggest that
22 you talk to Deena Frankel who is the
23 strategic system -- she is the -- she is in
24 charge of that process for VELCO.

25 CHAIRMAN EASTMAN: Okay.

1 MS. CADWELL: It's -- the process is
2 really owned -- is -- VELCO is responsible
3 for making it happen. But it's not -- VELCO
4 doesn't own it. They fund it, they staff
5 it. And I think if you talk to folks there,
6 they would say it's a process that's
7 working. You know, it took awhile for folks
8 to understand sort of what it is, but I
9 think the VSPC is successfully taking into
10 account a number of different interests, and
11 they have a very transparent way of doing
12 business.

13 CHAIRMAN EASTMAN: Okay. Thank you.
14 And then one more thing, and I know we are
15 running out of time with you guys, so you
16 may not be able to answer this today, but I
17 would like some advice on this at some point
18 from somebody. And that is the issue of --
19 I'm hearing what you're saying about having
20 the Certificate of Public Good be, you know,
21 the first day out of the track, but we still
22 have other permits that are required.

23 I'm really curious about consolidating
24 the whole process and then having simply one
25 appeal. Because I understand that right now

1 there are multiple appeals for various
2 permits and multiple avenues. I know some
3 of them have now gone to the Public Service
4 Board, but there are even different
5 standards of review.

6 So I'm wondering if it wouldn't behoove
7 us to consider, you know, adjusting those
8 kinds of things.

9 MR. HAND: I think it would frankly -- I
10 think it would make the process shorter and
11 less expensive for everyone involved, even
12 opponents. Sheffield is a great example
13 that we were involved in that case.

14 The CPG process was two and-a-half
15 years, involved 15-plus parties, 20-plus
16 experts. And then after that, we had
17 another two years of litigation with 14
18 additional days of testimony on the
19 stormwater application for a temporary
20 construction stormwater permit that really
21 only lasted in effect for 10 months.

22 And so it wouldn't make the process much
23 more efficient. As long as you're not
24 losing the substantive protections I see a
25 lot of positives.

1 CHAIRMAN EASTMAN: Thanks. Anybody else
2 have questions? Are we going to move on?

3 MS. CADWELL: Thank you.

4 CHAIRMAN EASTMAN: Thank you very much.
5 So next up we have got perspectives from
6 various environmental groups. Green
7 Mountain Club, Vermont Public Interest
8 Research Group, Vermont Natural Resources
9 Council, Vermont Land Trust and the
10 Conservation Law Foundation. And how you
11 guys are going to split time will be
12 interesting.

13 MR. WIQUIST: I guess we are doing one
14 at a time, the five groups. Can you hear me
15 all right? I'm Will Wiquist. I'm the
16 Executive Director of the Green Mountain
17 Club, and I'm also going to actually read my
18 remarks. I feel like that's a better way to
19 cover all the things I would like to say.

20 The Green Mountain Club is the founder
21 and maintainer of the Long Trail.
22 Historically we have been involved in the
23 Vermont public policy discussions when those
24 debates have impacted the Long Trail and
25 people's experience on it. To that end, the

1 Club was engaged in the Green Mountain
2 Parkway debate in the 1930s and the creation
3 of Act 250 by the Gibb Commission in 1969.
4 Namely this provision giving special
5 protections to lands over 2,500 feet.

6 The 10,000 member 102-year-old Green
7 Mountain Club is entrusted by the Vermont
8 General Assembly with the responsibility for
9 leadership in the development of policies
10 related to the Long Trail. We know that
11 energy policy, especially wind development
12 siting policy, inescapably relates to the
13 Long Trail.

14 The legislature also asks that the Club
15 report to the General Assembly such actions
16 as it deems may be required to ensure the
17 preservation, maintenance and proper use of
18 the Long Trail system and other hiking
19 trails. I believe that is essentially what
20 we are doing by engaging in this debate.

21 The Green Mountain Club understands the
22 existence of climate change and have sought
23 to do our part with a hundred percent
24 on-site renewable energy generation at our
25 Waterbury Center headquarters. We also

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accept that wind energy is already part of the Vermont's energy generation portfolio through wind projects in Searsburg and Sheffield and soon at Georgia and Lowell.

We are not interested in reopening those debates, but we are interested and believe it's very important to learn from those choices.

We recently participated in Section 248 proceedings before the Public Service Board regarding the Lowell wind development. The Club neither opposed nor supported the project. Instead we sought to reduce the impact of the project on the hiking experience on the Long Trail which looks out at the Lowell range. Specifically, we saw the developer-funded decommissioning plan and radar-activated lighting systems for the proposed towers. The Board agreed to both these stipulations, though the lighting system will not be installed until it is FAA approved which we expect by next summer.

The Club experience before the Public Service Board was productive but expensive and complicated. The Club spent \$42,000 of

1 its own money to hire counsel and an expert
2 witness. While the Club has an excellent
3 staff and dedicated, experienced volunteers,
4 we cannot engage in the process without
5 hiring experts.

6 As a volunteer-lead organization that
7 built America's first long-distance hiking
8 trail it runs counter to our nature to hire
9 experts, but we did because we felt it was
10 important to the trail. The Club was able
11 to gain party status in the Lowell
12 proceedings. That status however was
13 limited to our concerns about impacts on the
14 Long Trail and a historic Long Trail
15 shelter. We were not allowed to comment on
16 quote; any generalized impacts of the
17 project. We were also initially prohibited
18 from engaging on a decommissioning plan and
19 funding for that plan until we successfully
20 appealed that ruling.

21 Meanwhile in Act 250 we have been able
22 to engage and play a role while limiting
23 costs. This more open public engagement
24 process has allowed the Club to raise
25 concerns with projects that impact Vermont

1 hiking trails while also allowing us to move
2 our own project forward even when they have
3 fallen under Act 250.

4 While we were satisfied by the -- that
5 the Public Service Board heard and
6 considered the concerns we raised, we do
7 feel that is very expensive and required a
8 great deal of expertise to appropriately
9 engage in the process.

10 We respectfully support a mechanism to
11 fund interveners. We understand other
12 states have adopted a similar feature. One
13 criterion for eligibility could be whether
14 an intervener offers public benefits.
15 Having gone through this process and
16 observed other similar proceedings, the
17 Green Mountain Club felt that there was a
18 great deal that can be improved about
19 Vermont's policies and procedures related to
20 wind energy development, particularly
21 regarding siting questions.

22 It is with this in mind that we helped
23 established and lead a coalition of
24 conservation groups which pushed to
25 establish this very Commission as a means to

1 reviewing and hopefully improving our
2 policies and procedures. In general, the
3 Public Service Board process under Section
4 248 as well as Agency of Natural Resources'
5 permitting processes, do not adequately
6 consider all the criteria by which a project
7 should be judged.

8 With Act 250 the State of Vermont sought
9 to protect, among other things, lands above
10 2,500 feet. Our state felt that these
11 special -- that these were special places
12 for ecological and cultural reasons, yet
13 energy projects are uniquely exempted from
14 the stringent requirements that Act 250
15 places on any other type of development
16 above 2,500 feet. This must largely be
17 because Section 248 did not envision site-
18 dependent industrial scale energy projects
19 built above 2,500 feet. This loophole
20 should be filled.

21 Section 248 does not allow for the
22 consideration of the cumulative impacts of
23 multiple projects. If we as a state are
24 adequately to plan our energy future and
25 manage the impacts of development on our

1 environment and our communities, we must
2 understand that projects do not exist in a
3 bubble. For example, we can currently see
4 the Sheffield and Lowell projects from the
5 Long Trail on Mt. Mansfield and the
6 Searsburg towers from the Long Trail,
7 Appalachian Trail and the Glastonbury
8 Wilderness.

9 We should have mechanisms in place that
10 allow regulators to understand that these
11 two projects, seeing two projects along the
12 272-mile Long Trail, have a different impact
13 than seeing a series of many projects all
14 along the trail. Yet our policies would
15 consider each of these projects purely on
16 their own merits.

17 Section 248 does not sufficiently gauge
18 environmental impacts of projects. The Act
19 250 criteria that are considered by the
20 Public Service Board are not binding. That
21 is, the Board can ignore any environmental
22 impacts if they felt the project is in the
23 public good. This uniquely exempts energy
24 projects from key development regulations.

25 The Club has conserved more than 25,000

1 acres in Vermont and transferred most of
2 those into state ownership. These lands
3 should be protected for the purposes in
4 keeping with the reasons for which they were
5 conserved. The previous administration's
6 moratorium on wind development on ANR lands
7 appropriately prohibited large-scale
8 development on conserved lands while
9 expressly allowing small-scale energy
10 development like the wind tower on Burke.
11 This sound policy should be codified.

12 It is worth noting that no state agency
13 is currently expressly tasked with weighing
14 visual impacts of a project. The Department
15 of Public Service had viewed this as an
16 Agency of Natural Resources area, but ANR
17 does not specifically have authority to
18 weigh in on aesthetic impacts on behalf of
19 the public unless the project directly
20 impacts other areas of ANR statutory
21 authority.

22 Lastly it's worth pointing out that the
23 Public Service Board is not tasked with
24 protecting our environment or our cultural
25 resources and history. The Board's goal is,

1 as it relates to renewable energy, project
2 is to promote renewable energy. While this
3 has been a legislative priority, so too has
4 the legislature sought to create special
5 protections for land above 2,500 feet.

6 So as for recommendations, our policies
7 must consider cumulative impacts on multiple
8 projects. We should take places such as the
9 conserved lands of the Long Trail off the
10 table in terms of energy development. Just
11 as the Department of Public Service can
12 advocate for the best interest of Vermont
13 ratepayers, some entity in the State of
14 Vermont should be tasked with advocating for
15 the state's best interest in terms of
16 aesthetic and cultural impacts.

17 An intervener fund should be
18 established, which a Section 248 case, for
19 both quasi-public entities like the Green
20 Mountain Club and for Vermont citizens
21 should qualify as interveners. I'm sorry,
22 who qualify as interveners. This should be
23 funded by the applicant.

24 Environmental protections, lastly
25 environmental protections that other

1 developments must go through should be
2 applied to energy projects. Namely energy
3 development above 2,500 feet should not be
4 the only kind of high elevation development
5 proposal exempted from strict environmental
6 standards. The state chose to give special
7 protections to these lands in 1970 under Act
8 250, and we should continue that tradition.
9 Thanks.

10 CHAIRMAN EASTMAN: Thank you.

11 (Applause.)

12 CHAIRMAN EASTMAN: I've asked in the
13 past that we don't have applause because it
14 takes time out from presentations. So next
15 up is Paul Burns of Vermont Public Interest
16 Research Group.

17 MR. BURNS: Well I can at least begin
18 with an introduction. Again thanks for the
19 opportunity. I'm Paul Burns. I'm the
20 Executive Director of VPIRG, the Vermont
21 Public Interest Research Group, and VPIRG
22 has been around for 40 years now. We have
23 worked on -- continue to work on a broad
24 range of public interest issues as citizen
25 advocates through organizing advocacy and at

1 times as formal interveners in the processes
2 before the Public Service Board.

3 We have actually been involved in a
4 large number of cases over the years in
5 front of the Board. And it's probably worth
6 noting that in the majority of those cases
7 we are expressing reservations or concerns
8 about projects that have been proposed
9 before the Board. But organizationally it's
10 important to add that we believe strongly in
11 a responsibility, our own responsibility and
12 our responsibility as Vermonters, not merely
13 to point out problems with particular
14 projects, but also we hope to be part of the
15 solution. That is to lend support to
16 solutions, to some of our most vexing
17 problems, in this case how are we going to
18 generate the energy that we need in a
19 sustainable and responsible way.

20 And so we aren't here merely as folks
21 who have come to try to stop projects, and I
22 think that that's just important to note.

23 I am -- given the time, I'm just going
24 to hit some of the broad strengths and
25 weaknesses and recommendations over the next

1 10 minutes, and we will be submitting more
2 detailed comments on the various criteria
3 that you had requested. So let me jump
4 right to it. I'm not going to spend an
5 awful lot of time on the strengths. I know
6 you've heard a bit about this. The Board
7 being an independent, professional body
8 tasked with determining and safeguarding the
9 public interest. That's right on. That's
10 critically important.

11 The process itself being scientific, you
12 know, depending on science and including
13 broad public participation is very, very
14 important in our eyes. Again working with
15 the experts at the other agencies and being
16 able to retain other experts as necessary is
17 critically important.

18 Moving to some -- there are certainly
19 additional strengths, but those are some of
20 the most important from our perspective.

21 Looking at some of the weaknesses in the
22 system currently, an insufficient
23 prioritization of the State Energy Plan and
24 the state's legislatively-passed global
25 warming emission reduction goals. I guess

1 what that means is we as a state have taken
2 a good deal of time to try to put together a
3 responsible energy plan. And looking at the
4 problem of global climate change have
5 decided that we as a state are going to do
6 something about it here. And those
7 important decisions which are broadly
8 supported by the citizens of this state are
9 not actually given sufficient weight, I
10 think in the current permitting process for
11 energy facilities here. And that -- and we
12 will talk a little bit more about that in
13 the recommendations.

14 The lack of the effective public
15 engagement and transparency process. Others
16 have talked about this. It is how will the
17 public comment in a public hearing be
18 considered, evaluated, by the Board. And
19 indeed how are the various criteria
20 considered. You know, how are decisions
21 ultimately made, I guess is what this boils
22 down to. More transparency around that I
23 think would be helpful to all parties.

24 The process of obtaining approval from
25 the Board and the environmental agencies,

1 this is the question of do we need a dual
2 decision-making process. Even the
3 panelists, legal panelists before me, were
4 talking about there are other states that
5 have different ways of doing this, whether
6 it's in the consideration process or in the
7 appeal process. I don't have -- we don't
8 have strong opinion about it. It's just
9 that there may be a way to streamline this
10 process. It does not sacrifice any
11 protection of public health or our natural
12 resources of the state, but that could make
13 it frankly easier, somewhat less time
14 consuming and expensive for all parties
15 whether they be developers or those with
16 concerns, so I think that is definitely
17 something that's worth looking at.

18 It is -- kind of following on that
19 comment, difficult and expensive
20 particularly for private citizens to engage
21 in the technical hearings in front of the
22 Board. That's just a fact. And this is not
23 a problem so much in the current process.
24 The last point here, but the Department of
25 Public Service as you know, and the Governor

1 have spoken of, I'm using quotes, the local
2 veto authority, I think we know what we are
3 talking about here, but there is a question
4 about whether a municipal town plan, for
5 instance, should be dispositive, if the plan
6 says no to a particular type of energy
7 project. We believe strongly that that is
8 not in the public interest. That the town
9 should have that authority.

10 MEMBER OF THE PUBLIC: Boo. Boo.

11 CHAIRMAN EASTMAN: Please. Please.

12 MR. BURNS: So let me speak a little
13 more about that in terms of recommendations.
14 As a matter of public policy, it seems to me
15 it's important for projects -- that projects
16 that are consistent with the state's energy
17 plan, and the state's carbon reduction
18 goals, present no bona fide threat to public
19 health, should not have this -- there should
20 be no presumption that the town has the
21 authority to simply say no to that.

22 In this case a lot of what we are
23 talking about to be clear is it's wind
24 projects. And wind projects being some of
25 the most sustainable and clean renewable

1 energy sources that we have available.

2 The state has, as you well know, a goal
3 of 90 percent of our energy coming from
4 renewable energy sources by 2050. This is
5 the time it seems to me to answer the
6 question about whether we are serious about
7 trying to achieve that goal, or whether we
8 are satisfied by putting an ambitious goal
9 on paper, and trumpeting the fact that our
10 state has a very strong goal. In light of
11 problems of Tropical Storm Irene, Hurricane
12 Sandy, the droughts, the fires, you name it,
13 this is the time for us to actually get
14 serious about dealing with climate change.
15 And the state has done so in terms of
16 putting these plans together, using a lot of
17 state resources, inviting public comment,
18 receiving public comment, and we have every
19 reason to believe that there is overwhelming
20 public support for those goals, both the
21 carbon reduction and the clean energy goals
22 over time. And therefore, as a matter of
23 public policy in the state it seems to me we
24 need to be looking at permitting process
25 that will allow the state to move toward

1 these goals most efficiently, again while
2 protecting our natural resources and
3 certainly while protecting public health.

4 It is not unlike where the state has
5 given some authority to exceed federal
6 standards on some issues and not others. I
7 don't know that these lights here contain
8 any mercury, but I suspect that they do. If
9 they do, they are all labeled with something
10 that says they contain mercury. That is for
11 one reason. Vermont as a single state
12 required legislation that those light bulbs
13 be labeled. They were challenged in that
14 where the light bulb manufacturers said the
15 federal government won't allow you to do it,
16 because you can't go further than the feds.
17 Vermont argued and successfully won, because
18 mercury is a public health threat. That is
19 different than some other issues where
20 states are not allowed to go further than
21 what the feds allow.

22 Similarly this is a case where it seems
23 to me if you're talking about a subject, if
24 we haven't banned fracking in the state, a
25 local town wanted to do that and could

1 demonstrate a real public health threat,
2 that's something that could be looked at
3 from a global town health issue.

4 CHAIRMAN EASTMAN: Three minutes.

5 MR. BURNS: If someone could demonstrate
6 a public health threat from wind, I know
7 there are people who believe there are
8 legitimate public health threats, I think
9 that's something that should be looked at
10 and considered carefully. Again we do not
11 believe the scientific evidence of that
12 exists.

13 Moving along, considering the intervener
14 funding. This addresses the other issue,
15 others have raised this. A number of other
16 states have different processes for doing
17 this. I think that the criteria should be
18 clear about how citizens and municipalities
19 could qualify for support, particularly for
20 the technical expertise; increasing the
21 predictability, transparency of the
22 decision-making process, and giving -- the
23 second to last one, giving the weighted
24 criteria or preference to those projects
25 that advance the state towards those goals

1 that I was talking about, the clean energy
2 goals and the climate reduction goals.

3 Again, consider streamlining the
4 separate processes for PSB approval and the
5 state agency approval. And that is it.

6 CHAIRMAN EASTMAN: Thank you.

7 MR. BURNS: In less than nine minutes.
8 I cede my time for the Q and A.

9 CHAIRMAN EASTMAN: Thank you. Next we
10 have Brian Shupe from Vermont Natural
11 Resources Council.

12 MR. SHUPE: Thank you for the
13 opportunity to speak to the Commission, and
14 also thank you for your contributions to
15 Vermont for doing this.

16 I can speak as quickly as Paul can, but
17 I'm still not sure that would get me through
18 everything I have, so I'm going to probably
19 not finish, but we are going to submit
20 written questions at an appropriate time in
21 the future or written comments as you move
22 further along in your deliberations.

23 For a little bit of context VNRC is just
24 kicking off its 50th year this year. We are
25 a membership organization. We have four

1 policy program areas, I think this relates
2 to what you're talking about today. We have
3 an energy and climate action program, we
4 have a forest and wildlife program, we have
5 a sustainable communities program, and we
6 have a water program. And all of those
7 programs promote good decision making in
8 Vermont with a lot of citizen engagement at
9 all levels of government.

10 We have a long history at Act 250 and
11 considerable history with the 248 process,
12 probably not as extensive as with Act 250.
13 Within the past five years we have
14 intervened in three Public Service Board
15 processes, a wind project, a biomass
16 facility, and a nuclear facility. And our
17 areas of concern in those proceedings
18 involved a desire to transition Vermont to
19 renewable energy, impacts to wildlife
20 habitat, impacts to water quality, and
21 forest health. And I think that that kind
22 of defines the tension that you're dealing
23 with.

24 We have multiple concerns about the
25 future of Vermont, we are concerned with its

1 environmental well-being, we are concerned
2 with water quality, we are concerned about
3 renewable energy and the promotion of
4 renewable energy in addressing climate
5 change. And sometimes those multiple goals
6 and objectives can come in conflict. And
7 that's where a 248 process needs to be able
8 to resolve those conflicts in a way that has
9 the trust of Vermonters and the
10 participation of Vermonters.

11 So I won't get into the strengths.
12 That's already -- of the PSB process --
13 that's already been highlighted. That they
14 do serve an important function, a statewide
15 function to provide a forum for decision
16 making on energy issues, to promote energy
17 security and ratepayer protection.

18 I do want to note that there have been
19 recent changes in the process, with the
20 streamlined process for net metering which
21 is a good way to deploy small-scale
22 renewable energy in the state. And as Paul
23 Burns has said, there is -- VNCR shares that
24 support for promoting renewable energy.

25 There are some problems with Section 248

1 and the Public Service Board process as we
2 have experienced them though. They do lack
3 the expertise that is necessary to do
4 complicated land use and environmental
5 permitting. Their reliance on ANR is not
6 really clear. How ANR -- what -- how
7 they're in deference to ANR plays out with
8 regard to various environmental impacts.

9 And with regard to your question about
10 time lines and schedules for the permitting
11 process, we found the process to be
12 extremely onerous and burdensome as a small
13 NGO. We have worked with citizen groups who
14 have attempted to participate in various
15 processes without an attorney, and it's
16 really overwhelming to them. So additional
17 time lines, additional requirements that
18 would limit public participation would be
19 really problematic.

20 We have a concern that the process now
21 results in CPGs being issued before
22 environmental issues are resolved, when they
23 have conditions subsequent to future action
24 or subsequent to future environmental
25 permitting. And there is really, as I

1 mentioned, a lack of clarity around the
2 ANR's deference. And just in general in a
3 broader sense, there is a lack of clarity
4 around that balancing act between what is in
5 the public good and how do we require
6 compliance with various environmental
7 standards and criteria.

8 And that's really the overarching
9 concern that we have with the process. We
10 have some suggestions, and I've kept -- this
11 is in our summary so I'm going through the
12 template that you provided, so it's a little
13 bit redundant. But we do -- we have
14 experienced a problem with a moving target
15 during the review process. There should be
16 a completion date when projects are required
17 to submit complete applications, and then if
18 there is substantial changes to that
19 application, the process should be suspended
20 and started over again.

21 It's very, very difficult for us to
22 participate when there is changes to project
23 design and new information coming in mid way
24 in the review process. Likewise, we would
25 like to see permitting to the extent

1 possible to be done up front so the CPG
2 serves as that umbrella permit, that
3 consolidates all of the other environmental
4 permits under the final CPG, not issuing
5 CPGs that are reliant on future permitting.

6 And one of the ideas that we had is
7 looking at Act 250 where you have partial
8 findings, if that's really a problem for the
9 applicant, for the utilities, there might be
10 a way to deal with their schedule in that
11 way.

12 Let me go on. So moving onto the second
13 set of practices, again we feel as though
14 the use of the Act 250 criteria is a
15 strength of the process. We also feel that
16 the consideration of local and regional
17 plans is a strength. Later when I'll
18 mention the citizen participation, one thing
19 that Vermont has tried to do for many years
20 is to involve citizens in the planning
21 process early so they don't need to be as
22 involved in the regulatory process later.
23 We haven't achieved that. Certainly hasn't
24 been achieved in the 248 process, but that
25 remains a goal.

1 We feel as though Act 250 and the
2 incorporation of Act 250 in the 248 process
3 is really applying outdated environmental
4 standards to contemporary problems, and we
5 feel that not only specific to the 248
6 process but to Act 250. Some of the
7 criteria are 40 years old. One example is
8 they really -- the water criteria don't
9 address the full range of hydrologic impacts
10 and issues of certain types of development
11 projects. Those should be updated, and they
12 don't address some of the contemporary
13 problems that are facing the state such as
14 climate change and the need to reduce
15 greenhouse gas emissions.

16 So we would like to see those criteria
17 changed across the board both in the Act 250
18 process as well as the Section 248 process.
19 And likewise, the conformance with the town
20 plan, it's not a conformance, but the
21 consideration of the local plan and the
22 regional plan in 248 process was written
23 before the planning statutes were updated,
24 and it doesn't align well with the current
25 planning structure.

1 So looking at how -- the role of the
2 local and regional plan is another
3 consideration that we have, another change.
4 I'm going to jump ahead a little bit.

5 Well some of the other problems with the
6 criteria is they don't address the regional
7 issues, they don't address landscape scale,
8 environmental impacts, and so we would like
9 to see the criteria changed, the ANR's
10 resource inventory integrated into the
11 review process to deal with cumulative
12 impacts and regional landscape scale
13 impacts.

14 We would like to strengthen the town and
15 regional plan consistency provision,
16 although VNRC does not support the local
17 veto authority either. We are talking about
18 something more along the lines of a
19 telecommunications preemption which requires
20 communities to make reasonable provision for
21 renewable energy resources and have very
22 high standards for local planning and
23 resource protection if the plan is going to
24 serve as a barrier to certain types of
25 development. But currently it's not clear

1 whether the plan really plays a significant
2 role until very recently which seems
3 somewhat arbitrary to us.

4 And then we would like -- also like to
5 see the question that the Commission had is
6 with regard to voluntary guidelines. I was
7 a little unclear what that meant. If there
8 are impacts to the natural resources,
9 impacts to public health, there should be
10 guidelines and standards to protect those.
11 They shouldn't be voluntary. And closing --
12 I'm out of time?

13 MS. WHITE: You've got about 10 seconds,
14 a minute and 10 seconds. I'm sorry. That's
15 my bad.

16 MR. SHUPE: Do want to talk about some
17 of the public participation and
18 representation things, and this is going to
19 be redundant. You heard it from Paul. We
20 agree with both Paul and Will, and I believe
21 Sandy Levine is going to talk about this.
22 It's very difficult for the public to be
23 involved. While there are strengths, there
24 is a public hearing in the process. It is
25 relatively easy to get intervener status,

1 which is a good thing.

2 And as I talked about, there is a role
3 for the local and regional plan. It's
4 really difficult to participate as an NGO.
5 It's really difficult for a citizen group to
6 participate. The fact that there is a
7 public hearing that is not part of the
8 record makes citizens feel as though they
9 are being ignored, that their effort put
10 into commenting isn't being duly considered.

11 We do agree, you ask about a dispute
12 resolution process, that's not my area of
13 expertise, but we do support you exploring
14 that wholeheartedly. We think that anything
15 you can do to form a stakeholders' process
16 to involve citizens early would be a good
17 thing.

18 One of the most recent regulatory
19 processes created in Vermont that VNRC was
20 very much a part of was the groundwater
21 bill, and that built in very clearly up
22 front citizen outreach and involvement
23 process to try to engage the communities and
24 to engage affected citizens and landowners
25 very early in the process. So that might be

1 a place to look for the type of direction
2 you should head in.

3 And then we would also support
4 intervener funding. Okay. And then I'll
5 share the rest with you later.

6 CHAIRMAN EASTMAN: Thank you. And so
7 next we have Gil Livingston from Vermont
8 Land Trust.

9 MR. LIVINGSTON: I appreciate the
10 invitation to appear this afternoon. And
11 I'll probably say that I may be the least
12 competent person to talk this afternoon.
13 The Vermont Land Trust, as many people know,
14 is a 35-year-old membership-based
15 organization. We, with the help of citizens
16 across the state, conserve north of half a
17 million acres. And it consists -- inventory
18 consists of about 1,600 different
19 ownerships.

20 Our work is heavy to working farm
21 protection, community land protection,
22 working forest protection. And it's
23 important to know that the reason I'm
24 incompetent is the Land Trust does not
25 participate in Act 248 proceedings. We

1 really don't participate as an advocate in
2 any adversary proceedings which is not to
3 judge one way or another. It's simply our
4 model of engagement is around collaborative
5 working with communities, landowners,
6 citizens groups around land protection.

7 And so while I appreciate the
8 invitation, I'm not certain this will be all
9 that useful, but let me share some
10 perspectives. The first is this. We have
11 an innovative hard working board that is
12 extraordinarily concerned with global
13 climate change. Global climate change is a
14 driver of some of the core principles around
15 the projects we select as well as the way in
16 which we achieve land conservation in those
17 projects. And specifically, with respect to
18 community conservation our board has
19 directed us specifically, and I'll quote,
20 "To support renewable energy production that
21 meets community needs."

22 So in achieving those goals I'll say a
23 couple of quick things. One is of that half
24 million acres perhaps 2/3 or more of that
25 consists of forested acres that are subject

1 to protective easements that require
2 management for long-term rotations. So
3 natural byproduct of that work is carbon
4 sequestration on a large scale in Vermont.
5 Continues to be a goal, continue to focus on
6 large-scale forest land protection in
7 particular.

8 Beyond that I think people may know of
9 many more obvious examples of renewable
10 energy across Vermont's landscape of being
11 unconserved properties. People know the
12 Laser family's Butter Works Farm in
13 Westfield, Vermont, one of the first wind
14 generators in Vermont on a farm that's on
15 that property. Another example I think
16 people are familiar with several methane
17 digester energy producers on farms in
18 Vermont, the Montagne family in St. Albans,
19 for example, is one on a conserved farm.
20 There are several. And then for people who
21 are familiar with the Food Bank farm in
22 Waitsfield, a farm that we purchased a
23 couple of years ago, and manage to transfer
24 the Food Bank for food production for
25 Vermonters, there are solar trackers on that

1 property. We are proud of the existence of
2 those trackers.

3 Having said that, I'll also be candid
4 from our 5,000 or so members, we get
5 strident feedback on both sides of the
6 renewable energy debate. There are many
7 people who oppose the easements that we have
8 on especially working farms that permit
9 renewable energy. And there are many people
10 who are enthusiastic about that and actually
11 like us to participate in an advocacy role
12 in forums like this.

13 So though we don't participate in Act
14 248, I think we have been in the midst of
15 the divisiveness, which I think you've heard
16 this, the divisiveness I think comes from
17 the case-by-case analysis and the lack of
18 holistic perspective on the cumulative
19 impacts, the lack of clear criteria
20 especially with respect to natural resource
21 impacts, lack of a comprehensive siting plan
22 especially with respect to large-scale wind.

23 And finally, the dichotomy in terms of
24 the financial winners and losers in the
25 permitting process, which brings me to four

1 recommendations. One is with our friends at
2 the Nature Conservancy, the trust for public
3 land and elsewhere, there may be a
4 tremendous amount of landscape-scale land
5 protection in Vermont that's among the most
6 innovative in the nation really looking at
7 both large species movement and the
8 inevitable need to accommodate the climate
9 change driven movement of species in natural
10 communities in the future.

11 So protection of that legacy and public
12 investment, private investment in that
13 legacy is critical. And Will spoke to this
14 as well. So it's very important, and I
15 would really encourage you to focus on a
16 rigorous process that integrates natural
17 resource mapping as part of the analysis.

18 If you haven't heard about the Agency of
19 Natural Resources' GIS mapping process, you
20 should. That builds on work that originated
21 actually with the Nature Conservancy, so
22 it's a complicated, pretty diverse, about as
23 integrated a system as you can imagine.

24 There also you should probably know this
25 too, there are also templates across the

1 nation. Audubon is a national organization,
2 the Nature Conservancy is a national
3 organization, has developed siting protocols
4 for natural resource analyses, so I really
5 encourage you to look at those.

6 Second recommendation, this is
7 repetitive of what you've heard already.
8 Siting should be evaluated in terms of its
9 cumulative impacts as opposed to
10 case-by-case analysis. And I won't say any
11 more about that.

12 Third, and kind of back to one of those
13 principles I discussed earlier in terms of
14 our board's perspective on where we should
15 connect with renewable energy, it's very
16 important that barriers not be erected to
17 community renewable energy generation, which
18 I would describe as generation that's owned
19 by Vermont communities, or directly serves
20 citizens, or directly serves enterprises,
21 especially those farm-based enterprises.

22 So especially looking at that class of
23 projects that are a direct service of
24 Vermont communities' enterprises.

25 Fourth, it seems like the winner and

1 loser phenomenon around the tax revenue
2 benefits associated with wind generators
3 really drives a fair bit of divisiveness.
4 If there was a more interesting, creative
5 way in which those financial benefits were
6 shared more equitably among citizens,
7 independent of where town boundaries were
8 based upon impacts, might create more of a
9 community conversation about some of the
10 issues that Paul has described, what are
11 responsibilities with respect to climate
12 change.

13 And with the existence of GIS tools and
14 other sophisticated modeling there could be
15 I think fairly tangible ways in which to
16 assess impacts using those tools and then to
17 allocate financial benefits in direct
18 proportion to those model impacts.

19 So I appreciate your willingness to hear
20 me out, and I also appreciate, like others,
21 your willingness to take on the major
22 challenges around siting. Thank you.

23 CHAIRMAN EASTMAN: Thank you. You don't
24 have slides?

25 MR. LIVINGSTON: No.

1 CHAIRMAN EASTMAN: Can you give us a
2 copy of the comments?

3 MR. LIVINGSTON: Certainly can.

4 CHAIRMAN EASTMAN: Thank you. And I
5 especially like when you're saying go look
6 at this. Go look at that.

7 And finally Sandy Levine from
8 Conservation Law Foundation.

9 MS. LEVINE: Thanks. Thank you so much
10 for having me here. I really appreciate the
11 opportunity to talk with all of you. I'm
12 Sandra Levine. I'm an attorney with the
13 Conservation Law Foundation.

14 Just by way of background, Conservation
15 Law Foundation is a regional environmental
16 advocacy organization. We work throughout
17 New England, using law and science in the
18 market to create solutions to solve
19 environmental problems.

20 We have participated in numerous Public
21 Service Board proceedings over more than 20
22 years. I like to say my gray hair came from
23 my kids, but at least a few of them have
24 come from contentious Public Service Board
25 proceedings, I'm sure.

1 CLF has also served on the executive
2 committee overseeing Green Mountain Power's
3 Cow Power project over the past eight years
4 or so, and in response to a question or
5 comment from the Chairman, we have been
6 involved in transmission issues as well. I
7 didn't specifically address them because I
8 was told this is generation siting and
9 generation has been separate from
10 transmission. But in fact, the process
11 that's being used now for transmission came
12 out of a case that CLF was very involved in,
13 and the process does not go as far as what
14 CLF recommended, but is certainly a good
15 first step in that regard.

16 I would like to start with some siting
17 models. I think for the most part siting of
18 generation and transmission or other
19 projects tends to be sort of a tug of war.
20 And I'm not sure that that always results in
21 most effective advancement of public policy
22 either way. And to the extent we can look
23 at models that would be closer to rowing a
24 boat where everybody has got an oar, they
25 may not be agreeing, but they are all

1 pulling in the same direction, I think that
2 would be helpful.

3 And I can't give a Power Point. It only
4 has words. I have to bring something in.
5 Thanks for the indulgence.

6 And principles underlying my comments
7 involve, first, I think there really needs
8 -- we need to figure out a better balance
9 between both the benefits and the burdens of
10 the generation siting. There is a
11 disconnect there. And in many respects that
12 those bearing the burdens are not always
13 receiving the benefits, are not clear on
14 what those benefits are.

15 And second, and very important, this has
16 been addressed by others, that there needs
17 to be much more meaningful public engagement
18 in the process.

19 Going to specifics of the template that
20 you all provided, I did attempt to address
21 the strengths and the weaknesses and provide
22 some recommendations. Many of these have
23 been addressed by others, so I'll just
24 summarize them a little bit. Certainly a
25 strength of the Board is independence, and

1 it's separately funded. It has incredible
2 technical expertise on utility matters, on
3 economics, and on legal matters.

4 It's also a forum that's very amenable
5 to bringing in a range of issues, and I
6 think that's very helpful. Another one of
7 its key strengths is it has allowed broad
8 intervention. This is in stark contrast to
9 what I've seen develop in the Act 250
10 process where year after year there have
11 been efforts to exclude citizens from that
12 process. And I think the Public Service
13 Board has maintained broad opportunities for
14 intervention.

15 That said, weaknesses. There is no
16 process for broader citing of issues. It's
17 a case-by-case decision making, and that's
18 difficult. Time consuming and expensive for
19 everybody involved. And it's very difficult
20 to deal with projects changing during the
21 course of the process.

22 So recommendations, I think a clear time
23 frame. There is time frame requirements for
24 rate cases in the Public Service Board. You
25 could have similar time frame requirements

1 for 248 proceedings. Some standards for
2 what -- how to address changes that occur
3 during the course of a Public Service Board
4 proceeding, and a process for broader siting
5 issues.

6 In terms of the standards overall, I
7 would say the strength is that the same
8 substantive standards that we have in Act
9 250. They are also being addressed as part
10 of the 248 process, it's very helpful that
11 they feed into each other. Again that there
12 are broad appeal rights, again in contrast
13 to what I've seen occur in Act 250, and that
14 decisions are based on the evidence that's
15 presented during technical hearings. So you
16 know what decision is going -- what
17 information is going into the
18 decision-making process. And in that sense
19 it is a transparent process, and that's
20 helpful.

21 Weaknesses include a lot of permitting
22 occurs before some of the impacts are really
23 known and are well understood. And again,
24 that the burdens and benefits of a project
25 are not really addressed during the course

1 of the permitting.

2 In terms of recommendation, any greater
3 clarity that can be provided for the effect
4 of any guidelines and certainly maintaining
5 the broad appeal rights that are in place
6 now.

7 In terms of public participation the
8 fact that there is broad intervention, and
9 that's allowed; that there are public
10 hearings, that's very helpful. There is in
11 fact a mechanism for alternative dispute
12 resolution at the Public Service Board.
13 It's not used all that often, but it has
14 been used in the past, and it can be used
15 again.

16 Similarly there is already a mechanism,
17 and that -- for intervener funding that's
18 available. I've requested it many times. I
19 have never been granted it. It's there. So
20 I think that that could go a long way.

21 As others have said, it's difficult and
22 expensive for the public to participate in
23 the technical hearings. It's like asking me
24 to go out and play professional baseball.
25 There is no way. You need to -- generally

1 you need to hire a lawyer, you need to hire
2 experts. And I think some means that you
3 can provide for some joint funding, funding
4 for technical expertise that can be provided
5 for interveners would be extraordinarily
6 helpful.

7 I have some recommendations here. And
8 they -- one would be to provide a time
9 limited and less formal process before the
10 248 process. That could have an independent
11 moderator, and it would provide access to
12 technical information. That could then feed
13 into the 248 process. The public could be
14 more than engaged in that. It's somewhat
15 similar to what the Public Service Board
16 does on occasion with a workshop process
17 that occurs prior to the more formal
18 proceedings.

19 Secondly I think there could be funding
20 for independent technical expertise to
21 assist the intervener participants. I think
22 that would really go a long way. I think a
23 third possibility would be to have some sort
24 of pre-248 scoping meetings, and this might
25 be similar to what I've seen successful in

1 some FERC proceedings, Federal Energy
2 Regulatory Commission proceedings. That can
3 identify issues ahead of time, can identify
4 the studies that need to be done, and a
5 broad range of folks can help provide input
6 as to what will be studied, how it will be
7 studied, and the selection of the experts
8 that will be used for that.

9 And finally, broader use of intervener
10 funding. I think this is particularly
11 important where there are issues being
12 raised by interveners that are not being
13 addressed by other parties in the case. In
14 terms of protection of environmental and
15 cultural resources, others have mentioned
16 the strength of the umbrella that the Public
17 Service Board process provides.

18 Weaknesses include timing and
19 coordination and changes that occurred
20 during the process. Anything that can
21 happen to improve that timing and
22 coordination would be very helpful.

23 I'd also encourage the consideration of
24 advancing some sort of out-of-the-box
25 solutions that can protect the public

1 benefits. And I think just as energy
2 production on farms has been really helpful
3 in advancing the interests of farmers and
4 the economics of farming, I think there is
5 similar opportunities available for forestry
6 and for the use of our forests. That
7 limited siting, for example, of wind
8 projects on forested lands may provide very
9 unique opportunities to protect broader
10 areas of forested land for the public
11 benefit.

12 In terms of monitoring and compliance, I
13 have had not that much experience with it.
14 There is certainly lots of room for
15 improvement. I'm not sure the system is
16 really set up for that. That said, I have
17 seen very prompt and professional resolution
18 of complaints that have been raised. The
19 one recommendation in terms of monitoring
20 and compliance, again this comes from what
21 information I have on overseeing some of the
22 Cow Power work, that as a result of those,
23 the permits, the Public Service Board has
24 actually gotten more enmeshed in the
25 day-to-day operations of the farms and it

1 probably is helpful for them to be. And
2 it's forcing farms to either be out of
3 compliance or to sort of change their whole
4 farming practices in order to accommodate
5 the fairly strict -- strict is not the word,
6 but more set-in-stone requirements in the
7 permit.

8 And I would suggest considering that
9 there may be opportunities similar to how
10 landfill power generation is overseen by the
11 Public Service Board where the waste
12 management is separate from the power
13 generation, I think it could be a similar
14 process set up for farms. I know there will
15 be other, more detailed comments provided in
16 writing on that issue.

17 CHAIRMAN EASTMAN: You have one.

18 MS. LEVINE: That is my last slide. One
19 minute. It's just a summary.

20 Strengths, I really appreciate the
21 professionalism and the independence and the
22 evidence-based decision making from the
23 Public Service Board, but there clearly
24 needs to be broader opportunities for public
25 engagement because the public very much

1 feels shut out in that process. Thank you.

2 CHAIRMAN EASTMAN: Thank you very much.
3 So questions from Commission members now for
4 any of the --

5 MR. JOHNSTONE: Can we bring them up
6 near the mike?

7 CHAIRMAN EASTMAN: Or we can take the
8 mike to them.

9 MR. JOHNSTONE: Whatever you want.

10 CHAIRMAN EASTMAN: Questions?

11 MS. SYMINGTON: I have a couple
12 questions. And one I think is for Gil and
13 Sandy. Gil, I just want to follow up on
14 your comment. You recommended the
15 preference to a class of projects based on
16 their ownership, if I understood you right.
17 And I was going to ask you where that was
18 coming from, and then I wonder if Sandy
19 answered it in the -- in her suggestion that
20 we balance the bearing of burdens and
21 bearing of costs.

22 Are you suggesting that by having
23 community ownership and community -- the
24 power being generated for local use that
25 that adds value and provides that benefit or

1 balance, or could the two of you speak more
2 to that? I haven't really thought of that
3 aspect. And maybe we are talking about the
4 same thing.

5 MR. LIVINGSTON: I hate to hold Sandra
6 responsible for what I have to say. I had
7 nothing more in mind than community being a
8 principle design framework for much of what
9 we do creatively, and that around energy and
10 around resilience, that supporting energy
11 generation that's at that scale should
12 receive special attention.

13 And so it could be ownership, but
14 independent of ownership, as an organization
15 we are much more focused on communities
16 being the beneficiary and reducing the
17 burdens for the class of projects that do
18 that, whether it's group net metered or it's
19 municipally-owned or commercially-owned
20 operation, but with a direct client
21 relationship with the bigger community.

22 Do you want to put words in my mouth?

23 MS. LEVINE: No. I think I may have
24 answered a little bit of what Gil was
25 talking about, and I guess from my

1 perspective it was a little bit more of
2 recognize clearly there are burdens and
3 benefits. They are being borne by different
4 people. And if you look at projects that do
5 not seem to generate a lot of opposition,
6 they tend to be projects where there are
7 significant public -- either public benefits
8 or that the benefits of the project will
9 bring -- fall in the same community that's
10 bearing the burdens.

11 So figuring out some better way to
12 balance those through -- I mean
13 possibilities of power contracts, through
14 ownerships, through greater use of public
15 resources or expanding the resources that
16 are available, and just -- I think that
17 would be helpful.

18 MS. SYMINGTON: My other question has to
19 do with biomass facilities. A number of you
20 work in forestry or at least three of you, I
21 think. And I'm curious about whether the
22 environmental considerations of Section 248
23 adequately address the impact of biomass
24 generation, electric generation on the
25 health of the forests.

1 Could you speak to that? I'm looking at
2 I guess Gil, Brian, Will, I don't know.

3 MR. SHUPE: We probably don't know yet.
4 One of the concerns that I would have gotten
5 to had I had a longer presentation is we
6 rely on ANR, but we don't have a lot of
7 established policies or rules, and they are
8 changing. And it would be good for them to
9 develop through rule making or some other
10 more transparent process what their position
11 is on some of these natural resource
12 impacts.

13 With regard to biomass it seems as
14 though we are figuring it out in the
15 regulatory process without a lot of guidance
16 from anybody. Now that is one of our
17 concerns.

18 MS. McCARREN: I'm going to ask you the
19 same question I asked before, maybe using
20 different words. But my experience is that
21 public policy is public policy, and it is a
22 short-term summation of our political and
23 public will and that it changes. And it's
24 -- it probably will change, and it always
25 changes.

1 So how do you -- how do you put that up
2 against a contested case proceeding? And I
3 won't paint the extreme -- oh sure I will,
4 I'll be a little controversial. The
5 contested case proceeding and the due
6 process protections that are embedded in
7 that really are sort of, you know, similar
8 to any kind of judicial process and at its
9 extreme a criminal process.

10 So okay. We have got the public policy
11 that is now being expressed, but we also
12 have this very rigorous -- you've got these
13 other 10 criteria. And how do you think
14 from a process point of view, where do you
15 guys come down on that?

16 MR. BURNS: I'm not certain that I have
17 the full understanding of the question, but
18 I guess, you know, our position is that
19 you've got to consider the policies of the
20 state as it exists right now even if they
21 changed in the future. That what the plan
22 is, for instance, the state's long-term
23 energy plan as it exists today should be
24 important in the process. And important
25 meaning that priorities should be given to

1 those projects that actually advance the
2 state toward those goals and indeed toward
3 those climate reduction goals as well.

4 MS. McCARREN: Okay. Great. But let me
5 just push you a tiny bit on that. We have
6 another 10 criteria in 248.

7 So in your view, would the current state
8 of public policy preempt the other criteria?
9 Give you an example. One of the criteria is
10 effect on stability and reliability of the
11 grid. Just to pick something non
12 controversial.

13 MR. BURNS: Well as Brian suggested the
14 criteria themselves perhaps need to be
15 updated given the fact that they do not
16 consider climate implications. So whether
17 we preempt, I'm not sure that I would say
18 that they preempt, but -- and so there is --
19 I may not have the magic bullet answer, but
20 I think that to suggest that they not be
21 considered, that the state's goals, you
22 know, I mean when we are talking about
23 siting and approving or considering the
24 approval of energy projects and not to give
25 particular weight to the state's considered

1 long-term energy plan makes no sense to me
2 at all. It just has to be in there.

3 And in part because this is such a
4 critically important, vitally important
5 public matter. You know, so it's -- I can't
6 give you the specific, you know, answer, I
7 guess, except that I think that some
8 weighted preference towards those projects
9 that advances towards those goals would be
10 important.

11 CHAIRMAN EASTMAN: Other?

12 MR. WIQUIST: I was going to say that
13 the -- I think that the 250 criteria should
14 be given more weight in the 248 process than
15 it is now. And that it should be probably
16 binding like it is for the 250 process or
17 something similar.

18 You know, in Act 250 we made important
19 choices in our state as to what guidelines
20 we needed to live up to in terms of
21 development. And energy projects are
22 exempted from that. And specifically, as I
23 said, the 25,000 foot high elevation, that
24 was a choice that was made that the Club
25 wished for. And I think it's a sound

1 choice. I think that we all are happy that
2 that choice was made.

3 And I don't think 248 -- I don't know.
4 I wasn't there at the time, but --

5 MS. McCARREN: Before you were born. I
6 don't mean to get personal.

7 MR. WIQUIST: I don't think for the 248
8 -- I don't think Section 248 envisioned
9 creating a loophole through which basically
10 energy projects would be exempted from that
11 standard that is so key to the 250 process.
12 I think part of it is that we can do
13 development, but we should make sound
14 choices. And I think that's what the
15 Commission is looking at.

16 CHAIRMAN EASTMAN: Tom has got a
17 question.

18 MR. BODETT: To change the subject if
19 you want to follow up --

20 MR. SHUPE: Can I really quickly say I
21 think we have multiple public policies or
22 public policy goals. And we would like to
23 see greater clarity around how that
24 balancing act -- how do you define the
25 public good relative to those different

1 policies. We agree a Comprehensive Energy
2 Plan should be an important consideration.

3 MR. BODETT: Yeah. My question concerns
4 the sort of the universal concern about
5 intervener funding and how that might be
6 accomplished is the question that I have.

7 I know we heard from one other state, I
8 believe it was Connecticut, who provided I
9 think it was \$25,000.

10 CHAIRMAN EASTMAN: To municipalities.

11 MR. BODETT: To municipalities. I guess
12 there is two parts of the puzzle here.

13 What kind of funding, would any of you
14 have ideas on what the numbers might be?
15 And what status would you need to obtain in
16 order to qualify for it? Those are nagging
17 questions that keep going through my head.

18 CHAIRMAN EASTMAN: And I do want to -- I
19 understand. I do know that people could
20 make a request. It's just not granted very
21 often.

22 MR. WIQUIST: I would think that
23 organizations like the ones sitting here
24 that offer public benefits should be --
25 quasi-public institutions, you know, from

1 the Green Mountain Club perspective we
2 worked for 102 years to create something
3 that is open to the public and not just to
4 our members, for the state. And so I think
5 we are as close to a public institution as
6 it could be, that's not actually a part of
7 the government.

8 So I think, you know, those entities and
9 also something for the public intervention
10 costs. I don't know what stipulation, what
11 criteria you would have for that, to cover
12 an individual or a neighbor their cost.
13 That should be, I would think, logically
14 included.

15 And in terms of the actual cost, the
16 Club spent 42 thousand dollars to engage in
17 the last -- in Lowell, and so I would think
18 that, you know, that really cost us, and it
19 might be cheaper in other cases, but it
20 might be more expensive in other cases.

21 CHAIRMAN EASTMAN: Thank you very much.
22 We are going to take a 10-minute break
23 because some people have to feed the meter.
24 So I know that's not in -- 10 minutes from
25 now. My iPad says 1:45. So that would be

1 1:55. Thank you.

2 (Recess was taken.)

3 CHAIRMAN EASTMAN: Okay. So next up we
4 have perspectives from towns. And today we
5 have representative of Windham, Newark and
6 Craftsbury. And I have been asked -- it's
7 not that other towns weren't invited and
8 aren't interested. It's that they couldn't
9 be here today. We will be doing public
10 hearings, as I say, and as we get into the
11 process of deliberating, as we need more
12 advice from communities, we will hear that.

13 I too live in a very small town, so when
14 towns talk about the issue of how do you do
15 things when you don't have a staff, I get
16 that. And when you have to notice hearings
17 so people can get together, we get that. So
18 Mary Boyer is here from Windham.

19 MS. BOYER: Right here.

20 CHAIRMAN EASTMAN: Sorry Mary. You
21 guys. Very good. I'm very happy. Thank
22 you. And thanks for coming so far. We will
23 get to you. We will come down to you
24 though. Okay?

25 MS. BOYER: Do you promise?

1 CHAIRMAN EASTMAN: Yeah. I'm coming to
2 Windham.

3 MS. BOYER: Fabulous. We welcome you
4 with open arms. And Windham thanks you for
5 having us come and providing us with the
6 opportunity to speak for ourselves.

7 And I am Chair of the Select Board in
8 Windham, have been for five years. So I'm
9 up for re-election this year. And Windham
10 has been approached not once but twice with
11 industrial wind development. And we are --
12 so we have the benefit of the liability of
13 having that experience.

14 When this recent developer approached
15 us, the Select Board and Planning Commission
16 decided that we needed to focus our efforts
17 using someone who could do our research for
18 us and be our grunt person and be our
19 liaison with our attorney, and I have that
20 person with me today. And he's going to
21 give you our thoughts on the topic at hand.
22 This is Heath Boyer.

23 MR. BOYER: The gentlemen in the room
24 will appreciate what a rare moment it is for
25 a wife to yield her time to her husband.

1 Thank you.

2 MS. BOYER: You're welcome. Make it
3 good.

4 MR. BOYER: My name is Heath Boyer. I'm
5 a resident of the town of Windham. I have
6 served the town as Commissioner to the
7 Windham Regional Commission since 2007. I
8 sit on both the energy and the project
9 review committees. I currently serve as
10 volunteer staff grunt to the Windham Select
11 Board and Planning Commission for purposes
12 of a siting issue of our own and for the
13 revision of our town plan.

14 Because the town is awaiting disposition
15 of a Section 248 process it's not
16 appropriate for me to argue or comment on
17 that at this time. The written filings are
18 complete. No hearings are anticipated, and
19 if you care to see the correspondence, it's
20 all at the town Web site at Windhamvt.
21 info.

22 Fittingly the core of the case is about
23 the place of town plans and energy siting
24 and the question of due consideration.
25 Because we are in the midst of the process I

1 will take some liberties with the template
2 we have been provided.

3 I'm also old enough that I have to
4 confess an age-related disability. I am
5 Power Point impaired.

6 MR. JOHNSTONE: Good for you.

7 MR. BOYER: So you have to deal with
8 text, and I will read my remarks. Am I
9 audible?

10 MEMBER OF THE PUBLIC: Yes.

11 MR. BOYER: Regarding number one of the
12 siting approval practices, we really have no
13 useful observations at this time regarding
14 agencies' permitting or time lines.

15 Regarding number two, we share the
16 concerns of many towns regarding the absence
17 of clear, strict and relevant siting
18 guidelines with respect to things like
19 setbacks and noise and light pollution, and
20 ecological issues like slopes and soils and
21 stormwater and groundwater and wetlands and
22 habitat.

23 Regarding public participation, we are
24 hopeful that this Commission can find ways
25 to give greater prominence to legitimate

1 concerns of the public.

2 Regarding protection of lands,
3 environmental and cultural resources, we
4 believe that these concerns are at the very
5 heart of most town plans, and so their
6 importance cannot be overstated. In many
7 ways these issues are the core of what
8 Vermont means to its citizens and to our
9 visitors and should be a special concern in
10 siting decisions.

11 Regarding monitoring compliance, like
12 everyone we are learning from experience.
13 Since we are in new territory the principles
14 are clear, penalize violations and pay
15 prompt attention to unintended consequences.

16 In summary, so far the 246 process for
17 us has been challenging, expensive, but
18 orderly and reasonable. While the
19 Commission is charged with looking at siting
20 all kinds of energy, our particular interest
21 and knowledge is in wind.

22 In 2005 we began a process that resulted
23 -- which ended in a withdrawal of a project
24 that -- on its merits, but not before the
25 town of Londonderry and Windham had spent

1 almost \$200,000 combined.

2 The balance of our comments are offered
3 on behalf of all small towns who are now or
4 may be faced with extraordinary changes in
5 their natural, social and economic
6 environments resulting from the sudden and
7 speculative development of energy projects.
8 At risk of being accused of NIMBYism or
9 being against everything, I would propose
10 that we are not so much against anything as
11 we are deeply committed to getting it right
12 or as close to right as we can get it.

13 The real cost of time, the real time
14 costs and the opportunity costs of mistakes
15 are just simply too great. The people of
16 Vermont are fortunate to have the
17 opportunity represented by this Commission.
18 Your work is as necessary as it is timely.
19 Thank you for serving.

20 Looked at in one way our state
21 Comprehensive Energy Plan is like an
22 architect's rendering. You have the job of
23 helping to produce the engineering drawings.
24 That said, I would suggest with respect to
25 no small amount of sympathy, that your

1 charter as a Commission starts in the wrong
2 place.

3 Today the development of new generation
4 is primarily a site-driven process directed
5 by private interests and extravagant tax and
6 financial incentives. In essence, a single
7 landowner with a good location in
8 partnership with a developer with deep
9 pockets can change the landscape of an
10 entire region. To the extent that detailed
11 energy planning plays a role in these cases
12 so far, it appears to be a minor one.

13 The system is a wrenching departure from
14 tradition because it is the product of the
15 deregulation of electrical utilities. A
16 principal goal of deregulation was to
17 unleash the capital markets and make more
18 investment dollars available for the former
19 regulated industries and related
20 technologies. In accomplishing that goal,
21 we have significantly empowered developers
22 of merchant power and unintended
23 consequences that we have largely
24 disempowered the public by changing the
25 nature of the regulatory process.

1 Historically the Public Service Board
2 members were guardians of a quintessentially
3 adversarial process which in general served
4 the public well. It wasn't perfect, but few
5 things are. The process required regulators
6 to base their decisions on behalf of the
7 ratepayers on detailed justification for the
8 investment decisions that would affect the
9 availability and quality and economics of
10 the services they provide.

11 The cases for new generation always
12 began with a demonstrated need. Some
13 utilities felt the process was arduous and
14 meticulous, too much so, but it was the
15 system imposed on them in return for the
16 convenience of operating as monopolies in
17 return for the -- as long as they fulfilled
18 the necessities of providing the service.
19 When the electric power and the telephone
20 industries were deregulated that adversary
21 system was largely dismantled. It exists
22 today in rate cases.

23 In essence, what was formerly a
24 regulated public service with all the
25 protections inherent in that structure is

1 now being driven in Vermont by a frenzy of
2 development activity that can only be
3 compared to oil field wildcatting or gold
4 rush prospecting. The public is cast now in
5 the role of annoying third party to the
6 dialogue between developers and regulators.
7 We are annoying, because we feel we must
8 fill a role for which we are neither
9 qualified nor empowered, a role which is
10 today stripped -- it's a role which is today
11 largely vacant because the regulatory
12 process has been so stripped down that the
13 regulators are constrained by their reduced
14 charter and tight budgets. Their work is
15 demanding. They seem to do it well and with
16 good intentions, but the role of public
17 advocacy as we once understood it is left to
18 the public itself; the annoying and in its
19 understandable fear and grief and anger and
20 frustration sometimes belligerent public.

21 Many of us hope that the appointment of
22 this Commission signifies a recognition that
23 the public good requires a rebalancing of
24 our system to restore some level of expert
25 advocacy to the public side of the debate.

1 Looked at through a lens of deregulation and
2 the public process, we believe in the
3 central task of this Commission is to
4 examine the imbalance and to discover where
5 equitable corrections are possible.

6 The public, I know, is concerned about
7 climate change and believes in renewable
8 energy. We see particularly my generation
9 that we have been careless with our use of
10 energy and the environment. We want to be
11 part of the solution. But we want to do it
12 in ways that do not repeat or compound the
13 mistakes of the past. We have questions,
14 and we know the answers to many of those
15 questions will not be found in the
16 promotional literature of developers or the
17 talking points of the lobbyists.

18 MS. BOYER: Can I interrupt you? Can we
19 beg the Commission's indulgence for him to
20 complete just another half page?

21 CHAIRMAN EASTMAN: How long is it going
22 to take?

23 MS. BOYER: Half page.

24 MR. BOYER: I'm sorry. I didn't realize
25 I was out of the time. The answers are --

1 we have questions and we know the answers to
2 some of these questions. We think we do.
3 But they are emerging from communities
4 around the world as we gain more experience
5 with the utility-scale renewable energy.
6 And the early lesson for us is that we need
7 a process that not only corrects old
8 problems but anticipates and avoids new
9 ones.

10 We would propose a process that involves
11 a pre-application protocol, a separate
12 docket, where all new utility-scale
13 generation is tested against need and
14 alternatives. It should not be unduly
15 burdensome. It would be, however, a burden
16 that we should bear if we are to avoid
17 sacrificing more of our environment than we
18 will save by adopting inappropriate
19 technologies.

20 Renewable energy is not a one-size-fits-
21 all solution. I have a list of questions
22 that are examples of what I refer to. I
23 won't go through them. It's -- I will
24 summarize.

25 Today it's largely the public, the small

1 town officials, the volunteers, the
2 activists, who are trying to get attention
3 to these issues. Because it has been only
4 the public, the annoying public, often those
5 issues seem to us not to get the serious
6 attention they deserve.

7 We hope this Commission can help bring
8 parity to those discussions.

9 CHAIRMAN EASTMAN: Thank you. Will you
10 leave us your copy?

11 MR. BOYER: Yes, I do have a copy. I'll
12 give it to Anne.

13 CHAIRMAN EASTMAN: Thank you very much.

14 MR. BOYER: Thank you for your time.

15 CHAIRMAN EASTMAN: Next we have Mark
16 Whitworth from Newark Planning Commission.

17 MR. WHITWORTH: I agree with everything
18 he said.

19 MEMBER OF THE PUBLIC: God bless you.

20 MR. WHITWORTH: First of all, I want to
21 thank you for the opportunity to share our
22 concerns here today. And I would like to
23 start with the vision statement from our
24 town plan. This vision statement predates
25 my involvement with the Planning Commission,

1 and I think this vision statement has
2 probably been in the town plan as long as we
3 have had a town plan.

4 It says that Newark is a rural town with
5 a beautiful natural setting, woodlands, open
6 fields, hills, scenic vistas, clean water
7 and air, clean streams, pristine ponds make
8 Newark a unique and pleasant community to
9 visit and live in. The environment is clean
10 and healthy.

11 It is these characteristics which the
12 town of Newark intends to protect and
13 preserve. We hope we don't have to change
14 that statement. Newark lies between Burke
15 Mountain and Island Pond. It's the
16 northern-most county -- town in Caledonia
17 County; population less than 600. Like most
18 small towns served by unpaid volunteers. No
19 full-time employees. We have got one paved
20 road. No commerce, no industry, no post
21 office, no traffic lights, no traffic. We
22 like it that way.

23 We and our neighboring towns Brighton
24 and Ferdinand have been targeted by an out-
25 of-state developer who has leased lands from

1 out-of-state property owners, and they are
2 seeking a Certificate of Public Good to
3 place four met towers on our ridgelines.
4 Their ultimate goal is to place 35 to 40
5 industrial wind turbines on our ridgelines.
6 We don't know how big they are going to be.
7 It seems to me that each project that comes
8 along is bigger than the last, but I bet
9 they are going to be about 500 feet tall.

10 The project property includes the Bull
11 Mountain tract which is part of a 113,000
12 acre largely unfragmented forest. It is a
13 vital wildlife corridor connecting two
14 conservation areas, the Seneca Mountain
15 uplands and the Nulhegan river wetlands.

16 This area is home to rare, threatened
17 and endangered species including American
18 Marten, Canada Lynx and Bicknell's Thrush.
19 One of the met towers is a few hundred feet
20 from a cliff where peregrine falcons nest.

21 Portions of the project property are on
22 conservation lands, conservation lands
23 administered by the Vermont Land Trust. The
24 project property is very close to federal,
25 state and municipal and private conservation

1 lands. This area is a treasure, and it's
2 our job to protect it.

3 Here's a map. You can see the project
4 area outlined in yellow, and you can see
5 those various blocks of conservation lands
6 on the outskirts of it. It is Nature
7 Conservancy, the Silvio Conte National
8 Wildlife Refuge, there are three wildlife
9 management areas. There are various private
10 conservation lands, municipal conservation
11 lands. Just off to the west off the map is
12 the Willoughby state forest and Lake
13 Willoughby.

14 I was pleased to hear a little while
15 ago Ms. Cadwell and her advice that
16 developers work with neighbors. After
17 having worked for months with our state
18 agencies, the developer that's targeted our
19 town informed us of their plans the day
20 after town meeting day. They are already on
21 a first-name basis with the regulators. We
22 didn't know the difference between the
23 Department of Public Service and the Public
24 Service Board.

25 They have taken every opportunity to

1 compress the time frame, to bulldoze this
2 through, to exclude participants, to limit
3 the discussion, and bully and intimidate the
4 towns. From the outset it has seemed to us
5 the developer has been trying to pull a fast
6 one on us. Yeah. Our developer was one of
7 the ones that complained about the lengthy
8 permit process. Their failures have doubled
9 the time that their permit process is going
10 to take.

11 The reaction of the town was outrage.
12 They misconstrued our town plan and claimed
13 that it supported their project. It does
14 not, and the town and individuals in the
15 town formed a citizens group. That citizens
16 group along with town officials and
17 additional individuals began to hold
18 informational sessions. Chris and Anne, you
19 were at some of those sessions. We think
20 that -- we don't think that you'll find a
21 better informed town than ours.

22 We amended our town plan to clarify its
23 support for appropriately scaled renewables
24 and to clarify our opposition to the
25 industrialization of the town. We held a

1 special town meeting to vote on the town
2 plan. It was about three to one in favor of
3 our new town plan. This is not just a few
4 vocal opponents like we heard about last
5 week. Oftentimes developers come in with a
6 blueprint, and they have a play book on how
7 to divide the town. It hasn't worked on our
8 town. These folks have galvanized our town.

9 We have established a legal defense fund
10 to enable us to protect our rights, to
11 protect our interests.

12 Highlights of the process. We are
13 dealing with two -- section 246. It's about
14 met towers. They have told us we can't talk
15 about turbines. Our friends in Island Pond
16 have said this is like talking about the
17 tracks and ignoring the oncoming train. The
18 Public Service Board has limited discussion
19 to a small set of issues while ignoring some
20 really important issues. There are rare,
21 threatened and endangered species at three
22 of the sites. We can't talk about
23 aesthetics. We can't talk about orderly
24 development of our region.

25 The Public Service Board does not

1 recognize our amended town plan. The town
2 plan will be recognized should turbines be
3 proposed. The Public Service Board has not
4 acknowledged that the call for a moratorium
5 made by the Northeastern Vermont Development
6 Association which passed the board by a vote
7 of 39 to 3. The developer has failed in its
8 submission, its application three times.
9 And three times they failed to notify all of
10 the adjoiningers. Right now the PSB is
11 overlooking those statutory requirements.
12 They made a good enough effort.

13 The process does not allow consideration
14 of developer fitness. We want to know why
15 this project serves the public good. Do we
16 need this additional electricity? No. The
17 Northeast Kingdom in 2013 will produce 35
18 percent more electricity than it consumes.
19 Can we move it to where the power might be
20 needed? No. VELCO has told us that in our
21 part of the state the transmission
22 infrastructure can't accommodate another
23 utility-scale generation facility. Will it
24 reduce greenhouse gas emissions? No. Only
25 four percent of Vermont's greenhouse gas

1 emissions come from electricity. In fact,
2 this electricity might displace other
3 renewables already on the grid.

4 We are concerned that Vermont operators
5 can sell renewable energy credits to --
6 maybe to coal plants in Ohio and contribute
7 to the acid rain problem here. Will it
8 lower our energy bills? We know it won't.
9 These contentious projects are a
10 distraction. They give renewables a bad
11 name. They are delaying meaningful work
12 that we could all agree on. We could be
13 reducing our greenhouse contributions right
14 now.

15 This project is not about energy. It's
16 not about greenhouse gas. This project is
17 about enriching a few at the expense of
18 many. We really need a process here that
19 first considers the necessity of a project
20 and never loses the sight of the public
21 good. The public good are the people in
22 Vermont.

23 I have a number of recommendations.
24 You've heard most of them already. I will
25 be delighted to provide those to you later.

1 Thank you.

2 CHAIRMAN EASTMAN: Thank you very much.

3 (Applause.)

4 CHAIRMAN EASTMAN: Next up we have
5 Farley Brown and Susie Houston from
6 Craftsbury. Craftsbury Planning Commission
7 and Craftsbury Select Board.

8 MS. BROWN: Good afternoon. Thank you
9 so much for giving us the opportunity to
10 speak with you this afternoon. And we
11 really appreciate all the work that the
12 Commission is doing trying to better
13 understand the siting of energy projects
14 around the state. And specifically hearing
15 from the towns in terms -- that have been
16 working with a lot of these projects that
17 are being sited in our general areas, in our
18 location.

19 My name is Farley Brown. I serve on the
20 Planning Commission in Craftsbury. I have
21 been serving on the Planning Commission for
22 close to eight years now. I also serve as a
23 co-chair of the Conservation Commission in
24 the town. And we have been in place for
25 seven -- about seven years now.

1 With me is Susan Houston, who is on the
2 Craftsbury Select Board. And Susie will
3 speak shortly or throughout the presentation
4 as well. I do want to apologize up front.
5 I received the template yesterday and I
6 started to use it, and then I deviated a
7 little bit so --

8 CHAIRMAN EASTMAN: It's fine.

9 MS. BROWN: Okay. And I deviated by
10 putting in some pictures and actually
11 probably a picture you've seen already of
12 the town of Craftsbury. And I really want
13 to start off by telling the story of
14 Craftsbury, who we are, and what we value in
15 Craftsbury. And really what Craftsbury --
16 what our community means to us, what our
17 town means to us, in terms of our landscape
18 and how our landscape really defines who we
19 are.

20 Craftsbury has -- at this point we have
21 1,200 people living in town. We are almost
22 as many people who live there in the turn of
23 the century. We actually had more people
24 living in Craftsbury in the late 18 hundreds
25 than we do right now. At one point we did

1 have more cows than we did people. But now
2 we are definitely kind of up on the rise
3 again with the people.

4 I actually am going to read from a few
5 of the letters that we submitted to the
6 Public Service Board over the past two
7 years. And I will go through the time
8 frame. We have gone through the Section 248
9 process as a town as we participated and
10 gained party status in the Community Wind
11 Project through GMP over in the Lowell
12 Mountains.

13 We mentioned up front through our motion
14 to intervene to the Public Service Board
15 that Craftsbury is basically -- we value our
16 view shed. In our town plan we define
17 ourselves by our landscape, our working
18 landscape. And also we value the
19 surrounding landscape as well. We believe
20 in -- we have political boundaries of a
21 town, we also believe in ecological
22 boundaries of an area. The town's primary
23 economic resources, relatively healthy,
24 unspoiled landscape.

25 In many respects the town personifies

1 the entire state featuring prominent and
2 previously untrampled ridges, mountains and
3 cultivated valleys. The increasing
4 importance of recreational travel as a
5 significant economic factor in the town must
6 be acknowledged. One is only to look at the
7 increasing -- at the increase in facilities
8 for catering to this need, bed and breakfast
9 operations, recreational facilities,
10 catering, to self-propelled activities, a
11 small college dependent on our existing
12 landscape, and the town's increasing
13 presence in travel brochures as a
14 destination for a commercial touring
15 operation.

16 Briefly what the town looks like is
17 important to local economy, and -- local
18 economy. Craftsbury Commons has actually
19 been one of the most photographed areas, and
20 you can actually see pictures of Craftsbury
21 Common and Craftsbury in some of the more
22 prevalent airports around the world.

23 MS. McCARREN: You know where it is? If
24 you go through customs and immigration in
25 Vancouver, British Columbia, I've done that

1 many times. And that's where it is.

2 MS. BROWN: Very nice. I've seen
3 actually on place mats too in other states
4 as well. Craftsbury Common, my home town.

5 Anyway. So I am going to go through
6 just real quickly -- through our time line.
7 And I think it's important to go through the
8 time line only because it will help for us
9 to show the process that we went through, a
10 little town that knew nothing -- I think the
11 gentleman from the Newark presentation
12 mentioned we didn't know the difference
13 between -- some of us did -- between Public
14 Service Board and the Department of Public
15 Service, but there were a lot of acronyms
16 that were out there that was all new to us.

17 So in the -- the Select Board did hear
18 from Green Mountain Power back in 2009. But
19 this really didn't become a public issue or
20 we didn't understand the size of the project
21 until the spring or early spring of 2010.
22 The Planning Commission submitted a letter
23 to the Public Service Board in April in
24 which we said that there was a general
25 concern of the shortage of facts by the GMP

1 in the letter of intent that might impede
2 our ability to make a reasoned and fact-
3 based assessment of the risks, we the town,
4 are being asked to take for the public good.

5 So we did -- the Planning Commission did
6 make mention that we intended on being
7 involved in the process at that time.
8 During July we felt that it was important to
9 actually begin to collect information. And
10 I'm going to just clarify here, that when I
11 speak of -- about we, we mean -- we at this
12 point I mean the Conservation Commission.

13 In Craftsbury the Planning Commission
14 got the ball rolling, in talking with the
15 Select Board, the Select Board recognized
16 that we needed a source of information or we
17 needed somebody to gather information for us
18 or -- and it sounds like in Windham they are
19 fortunate that Mr. Bove (sic) is actually
20 that person who is able to gather that
21 information.

22 And Craftsbury has the Conservation
23 Commission, and specifically we had one
24 dedicated individual on that Conservation
25 Commission who without his work we wouldn't

1 as a town have been able to participate to
2 the level that we did, and we as a community
3 would not be as informed as we are. Anyway,
4 so we -- several of us from the Conservation
5 Commission did go to a workshop at the
6 Public Service Board to gather more
7 information, a workshop that Green Mountain
8 Power is putting on, and we gathered this
9 information and then started putting on
10 informational sessions or meetings
11 ourselves.

12 And we held a meeting and Craftsbury,
13 the towns of Irasburg and even later on
14 Johnson, said we need more information as
15 well. So people -- other communities were
16 gathering information and came to us. In
17 August we also put in a motion to intervene,
18 actually the Select Board did, based on the
19 criteria of historic, economic and aesthetic
20 concerns. And then we started our first
21 round of discovery questions.

22 At this point I remember sitting around
23 at the table as citizens thinking how do we
24 do this? You know, our questions, you know,
25 are they silly? We were getting some advice

1 pro bono from a lawyer, but at that point we
2 definitely felt like we were the new kid on
3 the block. September we, you know, we were
4 at the point with our first response, and
5 also the Public Service Board did hold its
6 one and only public hearing at that time in
7 Lowell graded school. And few people had --
8 people had an opportunity to speak, but few
9 people did because they were not informed
10 enough about the project. And so there was
11 still information that needed to be
12 gathered.

13 We continued on with our second
14 response, and through the process and at
15 this point we hired an expert to help us
16 gather information and to create an argument
17 based on the criteria that we were really
18 focusing on which at that point was the
19 aesthetics. We also were able to at that
20 point hire a lawyer, the Select Board said
21 go ahead -- gave us the, us, again the
22 Conservation Commission, the green light to
23 move forward. We hired a lawyer. But at
24 that time in our town budget we did not have
25 a line item for this particular funding. So

1 we as a town were -- our hands were tied.
2 The Select Board's hands were tied in terms
3 of how to fund hiring a lawyer and an expert
4 in this process.

5 So they gave the go ahead to actually
6 raise funds privately, privately, to help
7 fund the expert and the attorney at that
8 time as needed. In January we -- the expert
9 went through surrebuttal testimony. We got
10 involved in the technical hearing, and then
11 I ran out of room on the slide, but
12 basically at that point there was -- the
13 Certificate of Public Good was granted to
14 Green Mountain Power.

15 There was in the early part of the
16 summer the landowner actually -- there was a
17 cut -- he cut in an area that was -- that
18 went against the certificate, and so there
19 was -- the town asked to be involved in the
20 process to ensure that mitigation that was
21 being put into place, the mitigation plan,
22 that we had the right to have a say, and
23 that we were denied that right in the end,
24 but to have a say in the public hearing.
25 Again a lot of time put into that.

1 I'm going to turn it over to Susan. At
2 this point when we start talking about
3 public participation and representation,
4 strengths and weaknesses, you know, again at
5 this point the strengths are only that --
6 through Section 248 that the process is open
7 for towns to participate. If you -- and for
8 individuals if you actually gain intervener
9 status once, you know, you actually put in
10 the motion to intervene.

11 But anyway, so the idea of how can the
12 public go ahead and be involved or how is
13 the public opinion in evidence brought part
14 of the deliberative process.

15 I'm going to turn it to Susan to talk a
16 little bit more about some of the thoughts
17 of the Select Board.

18 CHAIRMAN EASTMAN: Where are we on time?

19 MS. WHITE: So we have done 11 minutes,
20 but we have got 20 minutes total for this.

21 CHAIRMAN EASTMAN: Great. Thank you.

22 MS. HOUSTON: I'm Susan Houston. Think
23 New York not Texas. It's Houston, not
24 Houston.

25 CHAIRMAN EASTMAN: Sorry.

1 MS. HOUSTON: That's all right. When my
2 family moved to Craftsbury a fair number of
3 decades ago there was a strong Houston
4 family contingent. And we were Houston and
5 my kids were always called Houston. The day
6 came on Monday morning assembly in public
7 school when some of the Houston kids were
8 called Houston, and apparently I was told by
9 many teachers my two kids stood up and said
10 we made it. We were finally part of the
11 Craftsbury community.

12 So I'm a Select Board member of
13 Craftsbury, and even though you've seen the
14 iconic picture of Craftsbury Common all over
15 the world in airports and many places and a
16 lot of those pictures remember do have the
17 Lowell Mountain in the background, still we
18 are a small town, a small board, Select
19 Board. There are three members still on our
20 Select Board. We have not expanded to five
21 like so many other small towns.

22 So being a small town, of course we know
23 very well how to deal with roads, culverts,
24 barking dogs, issues like that. We are well
25 versed. We have worked with these for

1 decades if not several hundred years. What
2 we do not know is how to deal with these new
3 energy projects.

4 We are volunteers as all of the Select
5 Board members are. But we are very good at
6 doing our homework, and we would like to
7 have time to do that homework, to find out
8 what we can advise for our town's people.
9 Our small towns sadly in Vermont are
10 extremely fragile, as we know, and our
11 residents are made to feel quite irrelevant
12 now because there are so many outside forces
13 that tell us what to do. So we are unable
14 to sort of keep the integrity of our towns
15 and to make our citizens feel engaged and
16 relevant. And of course these new energy
17 projects coming down the pike are just
18 enhancing those unfortunately throughout our
19 town.

20 I wanted to come with a good positive
21 piece because we have so many wonderful
22 recommendations, and I have a recommendation
23 that worked for our town in another aspect,
24 but I can easily see how it would work for
25 some energy projects. Our town went through

1 a school crisis, like unfortunately so many
2 other towns. It's what I call death by a
3 thousand cuts. The schools have an issue,
4 now they are taking away the post offices,
5 where are people going to gather and
6 assemble and see each other? All these
7 little towns are being chopped at. But our
8 town sort of got up off the floor and said,
9 okay, we are having school issues here.
10 Let's figure out a way that we can have a
11 civil discourse about how to -- what we want
12 to do as citizens for our schools, what kind
13 of future do we see here.

14 You may not know this, but I'm going to
15 advertise this, fortunately our town is the
16 -- I hope I have this correctly, the oldest
17 standing K through 12 school district in
18 Vermont in its original building and the
19 most energy efficient now. I hope that's
20 correct, because that's what the School
21 Board tells me.

22 So that was what happened after this
23 process. What we did as citizens, and
24 fortunately we had a ring leader who said
25 I'll take on this project, which is key for

1 towns. You've got to have somebody who
2 bubbles up and says I'll do this. I have
3 the time, all that kind of stuff. We went
4 through the collaborative process. That
5 takes time. Give us time. It took a year,
6 it went into 18 months. Dealing with this
7 type of thing, we are willing to do it, we
8 have people who will do this. But just give
9 us time where we understand what is
10 happening so with the collaborative process,
11 you engage your citizens. They have felt
12 irrelevant, you make them feel relevant.
13 They become stakeholders. They know that
14 their voice is being heard and not
15 disregarded.

16 Sometimes in these other issues we have
17 been with, with the wind project, it's we
18 are invited to speak but we know that we are
19 not listened to. And the collaborative
20 process you agree that you are going to put
21 your time into this.

22 And so this is the recommendation which
23 I don't think has been out there yet, so I
24 hope that it will be recorded, to just give
25 us time and let our citizens feel that they

1 are stakeholders. Get our citizenry back
2 engaged with their towns, because it's not
3 just being engaged with this process, but
4 it's re-engaging people so then they become
5 volunteers on their town committees and they
6 serve on their school boards, and they do
7 all those things instead of feeling
8 disenfranchised with our towns. We become
9 part of our towns again, because we have a
10 voice that is appreciated and respected.

11 So I just wanted to put that
12 recommendation out that we really -- give us
13 time, and then the Select Board which is
14 very interested in understanding and
15 learning, but as I said, we know a lot about
16 roads and culverts. We don't know about
17 wind projects. We want to know. We want to
18 make the right decisions. And so that is my
19 recommendation. And now back to Farley.

20 MS. BROWN: Only to say that the role of
21 the town, the Regional Planning Commission,
22 we wanted to put this up here to reiterate
23 that the role -- the town obviously really
24 has a strong role in this process as should
25 be. And the process really has caused for

1 us over two years a really stress on the
2 town because of the lack of time, the lack
3 of resources, and it's also just been very
4 confusing. So it's the lack of information.

5 So those are the three key things, time,
6 money, information. So to reiterate.

7 MS. HOUSTON: I want to add one more
8 piece. I think the important piece about
9 everybody being a stakeholder is you make
10 sure, of course, all the parties are
11 invited. I mean for us it would have been
12 Green Mountain Power would be there. Not
13 just our town, because we know this is a
14 regional piece, so we'd invite a lot of
15 neighbors, of course, to come to this. And
16 I think the key would be no lawyers in this
17 first part of the deal. So you can have
18 this civil discourse and you're not -- it's
19 not being filtered. So that to me would be
20 an important piece here is true civil
21 discourse. Sorry about that.

22 MS. BROWN: Okay. The other
23 recommendations that we have, I know they
24 have been discussed already. And Craftsbury
25 does not have zoning. We are one of the few

1 towns still up in the Northeast Kingdom that
2 we have -- just barely have a town plan.
3 But now we -- but we have been looking at
4 other towns. We have been following Newark.
5 We have been following Windham's situation
6 and other communities, so we now -- some of
7 the recommendations we have looked over. We
8 have been following what the Vermont League
9 of Cities and Towns have been -- has been
10 recommending as well.

11 So again, we definitely -- we strongly
12 support these recommendations based on our
13 experience. And that's it.

14 CHAIRMAN EASTMAN: Great. Thank you so
15 much. Questions?

16 MR. BODETT: I've actually a question
17 for all three municipalities. You said you
18 decided to raise the funds privately for
19 this. Now was that the town itself raising
20 funds from private organizations, or was it
21 a private fund?

22 MS. HOUSTON: It's a private fund.

23 MR. BODETT: And the question I had for
24 Windham was I believe you said that there
25 was \$200,000 spent. Where did you guys get

1 that money?

2 MR. BOYER: It was a combination of
3 things, Tom. It was for both towns. And
4 Londonderry actually bore the greater brunt
5 of that expense because frankly they got
6 involved much earlier than Windham did. And
7 they raised their money privately through a
8 (1) (C) (3) called The Friends of Green
9 Mountain, and the Town of Windham just had
10 to eat it. Our Select Board stepped up and
11 wrote the checks.

12 CHAIRMAN EASTMAN: It's taxes.

13 MR. BODETT: It just went into your
14 general fund?

15 MR. BOYER: That's correct. We used two
16 different attorneys; a town attorney and an
17 environmental attorney.

18 MR. BODETT: You didn't need a special
19 town article to spend that money?

20 MR. BOYER: The Select Board budget was
21 written in such a way that they had the
22 funds and chose to spend it.

23 MR. BODETT: Okay. That answers my
24 question. Thank you.

25 CHAIRMAN EASTMAN: Other questions?

1 Thank you. Thank you very much.

2 We have one more presentation this
3 afternoon. Just another legal perspective
4 from Gerry Tarrant from Tarrant, Gillies,
5 Merriman & Richardson.

6 MS. McCARREN: Difference is I get to
7 dye my hair.

8 MR. TARRANT: That's not -- is that the
9 only difference?

10 MS. McCARREN: I think so. Gerry and I
11 know each other for --

12 MR. TARRANT: It's nice to see you.
13 When do we begin?

14 CHAIRMAN EASTMAN: Now. Thank you.

15 MR. TARRANT: Okay. So I don't have an
16 overhead. I apologize.

17 I did attempt to address the issues that
18 were identified for me, and I also presented
19 to you more of a discussion paper at the
20 end. Because I think the issues go beyond
21 just the questions that you raised. But if
22 you would like me to go through the
23 questions that you raised, I can do that.

24 I'm sure you've heard a lot of testimony
25 by now. And I suspect that everything

1 you've heard is true. Like many things,
2 it's the perspective one has. And everyone
3 has their own perspective and their own
4 interests. Some are public interests.

5 I guess I'm going to say that at the
6 beginning it kind of reminded me of a
7 situation back when I was coming out of law
8 school and I had my first office, and I
9 wanted my diploma hung. And these two
10 friends said they would hang it for me. And
11 I came in the next morning, and I told them
12 I wanted it right next to the door, and I
13 sat down, and they were good friends, and
14 they were talking away.

15 And then they started to argue. And the
16 argument got hotter and hotter, and I said,
17 "For goodness sakes, it's just hanging a
18 picture. What's the difficulty?"

19 And they both said simultaneously, "He
20 doesn't know how to do it."

21 And I said, "Well, what's the problem?"

22 And they said, "You have to hang it at
23 eye level."

24 And Art was a 65-year-old economist who
25 was very short, and John was a 25-year-old

1 lawyer who was very tall, and they both had
2 different heights, and they were both right.
3 According to my estimation, it should be eye
4 level. But they had different perspectives.
5 And one wanted it here and one wanted, and
6 they wouldn't budge. And we finally
7 resolved it by putting it in the middle.

8 The fact is there are a lot of different
9 perspectives here. So what I'll do is I'll
10 go through your questions, but then I would
11 like to talk about what I see as the real
12 problem. And I don't think it's the Public
13 Service Board. I think it's the systemic
14 issue.

15 So we will start with authorizing
16 agency, the Public Service Board. I think
17 the Board does a very good job when it deals
18 with these kinds of issues. It gets handed,
19 as you know, enormous problems, and many of
20 them are unsolvable. But it becomes more
21 difficult when the directions are not as
22 precise as they could be.

23 Historically we had looked at Section
24 248 under the criteria of 248(B). And it
25 was pretty clear. The first thing you

1 looked at 20 or 30 years ago was, was there
2 a need. If you didn't have a need, it never
3 went beyond that.

4 The second question was if there was a
5 need, is this the least-cost approach, was
6 it prudent. And if they didn't have the
7 least-cost approach you either opposed it or
8 you said it was imprudent. And you had a
9 deduction from the regulated utility. It
10 was pretty easy.

11 The third issues were it had to
12 obviously be reliable and stable in terms of
13 the electric system, and then you got to the
14 environmental issues. If it was one of the
15 transmission lines, you had to work around
16 the problem. Never before in the history of
17 248 have we come in where there wasn't a
18 need, where costs didn't matter. And the
19 location apparently wasn't really a big
20 consideration.

21 Today you can have a project that costs
22 11 or 12 cents a kilowatthour when the
23 energy on the market is three and-a-half or
24 four cents. And it will get approved
25 because it's renewable energy. And we all

1 know what that means. It's going to reduce
2 carbon. You can have the project that comes
3 in, and it's not needed in Vermont, and it
4 gets approved. Why? Because it's renewable
5 power. Because it reduces carbon.

6 You can have a project that comes in
7 that's not firm, and it gets approved. Why?
8 Because it's renewable power.

9 You can put a project that's costly, not
10 needed, not firm, in the worst location in
11 the state, and it gets approved. Why?
12 Because it's renewable power. And we can't
13 close our eyes to that.

14 The Public Service Board is dealt with
15 those cards, and they have to make a
16 decision, and they have to make a decision
17 when the legislature says we expect so many
18 renewable power projects to be built by
19 certain years, and those years are
20 milestones and they are coming up quickly.
21 So the Public Service Board in one of the
22 attachments I think I had was the Lowell
23 case where they say right up front, we have
24 obligations and milestones. Everybody else
25 is focused on 248(B). And there are these

1 milestones.

2 Now how they are quantified, how they
3 are assessed, I don't know, but I know they
4 -- the Board and the department are not
5 unaware of those. So the process is
6 entirely different than what it was created
7 to be. It's entirely different even if it's
8 a regulated utility. A regulated utility
9 can come in and ask for a project that
10 really isn't needed, isn't firm, is three
11 times the cost of other power. But because
12 of federal incentives and subsidies and
13 federal tax credits and RECs, and the RGGI
14 program, and the SPEED program, these
15 policies have overwhelmed Section 248 and
16 the Public Service Board is blamed for it.

17 Now are there ways to deal with that? I
18 think there are. I think the Agency has to
19 have an up-front recognition of what is
20 acceptable and what isn't. And I think we
21 better understand that there have to be
22 really tightened environmental standards.
23 Otherwise federal tax credits are going to
24 run our state. And we are going to lose the
25 best thing that we have, our environment.

1 And it's going to go quick because we are
2 not a big state.

3 So you need to understand this. The
4 public doesn't understand it. The Public
5 Service Board and the department do. Now
6 one of the problems is the public doesn't
7 understand how the Board can make these
8 decisions, but they also don't understand
9 how the department can take their positions.
10 The department has the same standards, the
11 same goals, the same SPEED programs and the
12 same milestones they are looking at, and
13 they have renewable energy programs --

14 MS. WHITE: Three minutes.

15 MR. BODETT: That wasn't a question.

16 MR. TARRANT: Okay. Well I'll cut to
17 the chase. Last year I was flying to
18 Buffalo to see a friend. New York. And I
19 looked down and I saw hundreds, I think
20 literally, large wind turbines on flat farm
21 land along upper New York, south of the
22 lake. And an epiphany hit. This is what
23 wind advocates want. It's a win/win
24 situation. You get wind, you get clean
25 energy, and you have no massive ecological

1 destruction. And third, the farmers stay in
2 business, and in 40 years when you take
3 those giant machines out, their
4 grandchildren can have the opportunity to
5 continue that farming. It's a wonderful
6 program and it shows you that wind has a
7 place in this country.

8 I read an article that preceded the
9 recession when the subsidies came in, and it
10 talked about wind not being good when
11 mountains interrupted the wind flows. They
12 didn't know that there were going to be
13 hundreds of millions if not billions of
14 dollars available so that people could go up
15 on top of the mountains and build wind
16 towers there on the east coast.

17 I think that what we are looking at is
18 an electric industry that is not the
19 problem. So I want to have four points
20 here. The electric industry is not the
21 problem if carbon emissions is the issue.
22 Four percent of our carbon emissions come
23 out of the electric industry. Why? Because
24 the state, the Public Service Board, the
25 department and the utilities have recognized

1 the problem for decades.

2 Part of it is economic. We had
3 interconnection ties to New York, Ontario
4 and to Quebec. What we have done, we have
5 the ability to do because of our geography,
6 what New York and Minnesota and Texas great
7 plains can do with wind is something we
8 can't do.

9 We have addressed most of the carbon
10 issues from the electric industry already.
11 There is a diminishing return here to spend
12 the time and the resources and to have the
13 public unrest and the social unrest and
14 political unrest and the expense. The only
15 reason we are in this is because of the tax
16 credits.

17 Second, law of diminishing return.
18 Third, 96 percent of our carbons is produced
19 by home, building, heating, lighting,
20 transportation, and our industrial
21 processes. When somebody comes in with an
22 electric alternative energy project and they
23 say they can reduce carbon emissions, they
24 are reducing some percentage of four
25 percent. It's minuscule. We can do a lot

1 better.

2 We have a great project, a great program
3 in Vermont, Energy Efficiency. Let's double
4 it. We have ways we can be creative with
5 transportation. We can be creative with
6 home industry. We can address industrial
7 processes. We can save a lot and do a lot
8 instead of spinning our wheels and causing
9 massive ecological destruction.

10 There was a last point I wanted to make.
11 And I know I've attached in this some
12 numbers that show you the scale of Vermont
13 compared to other states. It's tiny. We
14 cannot resolve the carbon emission problem
15 globally or nationally or even regionally.
16 We can participate, but when you see the
17 numbers, we are a -- not even a thumbnail.
18 We are an eyelash. It would be like
19 somebody coming to me and saying there is
20 poverty in the world, Gerry, you've got to
21 solve it. I would love to. I would go
22 bankrupt within a minute.

23 And our state is going to go
24 environmentally bankrupt unless we get our
25 arms around this. Section 248 is not

1 inherently the problem. It's just that it's
2 been left on their doorstep and the
3 directions have been approve renewable
4 energy. And all renewable energy is not
5 created equally. And some states should
6 deal with it.

7 I have another idea here. And I know
8 it's less than a minute.

9 MS. WHITE: No, you're over time.

10 MR. TARRANT: RECs. People talk about
11 build here and sell your RECs. Well if we
12 really care about wind, have our people buy
13 RECs and invest elsewhere where there is no
14 ecological problems and we can subsidize
15 farming, and we can do it the right way.
16 Those are my thoughts.

17 (Applause.)

18 CHAIRMAN EASTMAN: Questions for Gerry.

19 MS. McCARREN: Well at least I didn't
20 fall off that time. Just the papers did.
21 Gerry, how -- you're a veteran of 248s. How
22 do you balance this stated public policy --
23 I've asked other questions the same way,
24 with the other criteria in 248? Because I
25 think, as you've noticed, public policy can

1 be very transitory. Today's public policy
2 may not be tomorrow's public policy, et
3 cetera.

4 So how do you recommend from a process
5 point of view that the department and the
6 Board -- now the department is inherently a
7 political animal because whoever the
8 Commissioner is is a political appointee.
9 But the Board in theory is judicial
10 appointees.

11 So how can we -- we have used the
12 contested case process, I'm sorry, I don't
13 mean to be rambling so much, we have applied
14 this contested case process. But how would
15 you recommend from a process point of view
16 that the Board balance the current public
17 policy versus its contested case and its
18 other 10 criteria in 248?

19 MR. TARRANT: Well you know, let's face
20 it. The Board's human. The Board reads the
21 papers, and the Board gets pulled over to
22 deal with SPEED programs and RGGI programs
23 and all these kinds of programs to improve
24 emissions and stuff. So they are aware of
25 this. They are not the advocate, but they

1 are aware that the legislature expects
2 certain things.

3 Somebody needs to -- look, I was told
4 when I was in state government that the
5 Governor's never wrong, and I was also told
6 -- you can disagree because -- but the
7 legislature was never wrong. And that's why
8 I brought up my story about John and Art.
9 They weren't wrong. They both were correct
10 as far as I could see. It was eye height
11 where you put the picture. They are right.
12 They need guidance.

13 The legislature and the Governor need
14 some guidance, and I'm really thankful that
15 you're here because I hope that you can
16 provide some guidance that carbon emissions
17 is the issue, the driving force here, and
18 that we can do this. It's not electric
19 utility industry.

20 The only reason we are doing this is
21 because of the federal tax credits. It's
22 the reason people are applying for these.

23 MS. MCCARREN: Okay. So at the end of
24 the day it's an inherently political act
25 what's going on. And I'm not saying that

1 negatively. It's a communal political act
2 that gets us to where we are.

3 MR. TARRANT: That's right.

4 MS. McCARREN: And therefore changing
5 the contested case process may not really
6 help us that much.

7 MR. TARRANT: Well or you change the
8 legislature -- the legislation such that the
9 Board and the department understand that
10 renewable energy is a tool, it is not an end
11 in itself. And the way the legislature has
12 written the statutes, as I see it, is it's
13 an end, approve these things and do it now,
14 and do it quickly.

15 And when you look at the other statutes,
16 the wetlands and that, they are just kind of
17 in the way. And really these things when
18 you take -- I should take the legislature
19 and the Governor over to Buffalo and if they
20 like wind invest in flat land farms in New
21 York. You can do that with RECs.

22 What I guess I'm saying is if we really
23 want to go after carbon, and that's what our
24 issue is, the Agency of Natural Resources
25 has to stand up, sit up, and they have to

1 take a lead and they have to say this is how
2 we can do it. The Public Service Board has
3 to start maybe disapproving a couple of
4 these for reasons that, Louise, when you
5 have a project that has 60 megawatts of non-
6 firm generation that runs sometimes and
7 doesn't run sometimes, and it's in an
8 ecologically sensitive place, and you don't
9 really need to address it, because you don't
10 really have emissions in the state from
11 electric energy, you've got to start saying
12 those hundreds of millions of dollars or
13 whatever it cost could have been spent
14 better in another way.

15 Now it's true we may not have access to
16 that money in other ways, but it means that
17 we have to start going to Peter Welch and
18 Bernie Sanders and saying let's get some
19 access to money for home heating methods,
20 and transportation methods, and lighting
21 methods. We are doing a wonderful job, for
22 every dollar spent with energy efficiency,
23 we get five bucks in return. It's a
24 wonderful return, massive return. There is
25 no ecological impact, but it's limited.

1 When they go to people's homes sometimes
2 it cost 10 or 20 or 30 or \$40,000 to
3 energize, to insulate homes. And people
4 don't have the money.

5 CHAIRMAN EASTMAN: Thank you. And
6 Gerry, I note that -- thank you for
7 providing the written information because I
8 see in here some, what I think are some good
9 suggestions, about -- depending upon, you
10 know, where power is going, you know,
11 changing the balance, you know, changing due
12 consideration to something else, maybe the
13 plans. Those kinds of things.

14 MR. TARRANT: I think that that needs to
15 be looked at really closely because when we
16 did that, and I can remember looking at that
17 in the legislature, everything basically was
18 state-regulated monopolies and captured
19 ratepayers.

20 Today it isn't that way. And state,
21 towns and Regional Planning Commissions need
22 a say in this.

23 CHAIRMAN EASTMAN: Thank you.

24 MS. SYMINGTON: Do you have that by a
25 PDF?

1 MS. MARGOLIS: Yes.

2 CHAIRMAN EASTMAN: We will get it.
3 Thank you very much. So that's it for
4 presentations for today. We are at 3
5 o'clock.

6 I would like to ask an indulgence to go
7 back to what we started talking about at the
8 beginning here. Just that our next meeting
9 is December 19 when we will focus on siting
10 practices from other states.

11 But we need to think about the format
12 that our deliberations are going to take,
13 specific issues that are missing from the
14 discussion today. And if there are -- or
15 people that you want to hear from, or issues
16 that you want to have addressed, today I
17 know we heard about cumulative impacts. I
18 found a way to raise the issue of what --
19 are there currently other community
20 processes being used in Vermont that we
21 might consider, you know, as a possibility
22 that -- of something that worked. We would
23 like to hear about.

24 MS. SYMINGTON: I have kind of -- in
25 terms of my running sort of laundry list,

1 some of the things I have questions about is
2 a couple of people have talked about the
3 Section 248(A), the telecom process, as a
4 process that tried to recalibrate this
5 balance. And I meant to ask this of the
6 groups, the environmental groups, that were
7 here earlier how they feel. Is that
8 working, and does it meet that balance.

9 And I would be curious to understand
10 what that process is. I know I have not --
11 I was involved in it, but I don't remember.
12 The cumulative impact question.

13 I would like to hear from, I don't know
14 who the right person is, but I think it's
15 someone like Michael Dworkin who does work
16 nationally. I think we are very focused on
17 what we see going on now. And I'm wondering
18 what's coming, and that I have no clue
19 about, and what should we be thinking about
20 in terms of what kinds of facilities are
21 coming. And one example is, I think
22 especially as there is more intermittent
23 power, that batteries and energy storage
24 becoming more of an issue.

25 So if you have a large energy storage

1 facility at the point that it's rereleasing
2 the power that's stored, is that considered
3 generation? And should we be trying to
4 understand that?

5 MR. RECCHIA: Why are you looking at me?
6 Give me until Monday.

7 MS. SYMINGTON: People understand this
8 better than I do.

9 Transportation. You know, there is -- I
10 am aware that our carbon footprint is not in
11 our electric grid, but the whole shifting of
12 the transportation, you know, the
13 transportation system, electrifying the
14 transportation system is clearly coming.
15 And if we are going to meet our goals as a
16 state and what is that -- what does that
17 mean, and what does that imply for this
18 process. Those are some of my questions.

19 CHAIRMAN EASTMAN: Okay. Anybody else
20 got -- just so we can start thinking about
21 what we are going to talk about in January.

22 MR. JOHNSTONE: Sure. So just a couple.
23 I would echo the cumulative impact style, to
24 learn a lot more about that. I think we
25 have heard a little bit about that from

1 people that are kind of enduring that, if
2 you will, and a couple in the state kind of
3 mentioned it in passing, but really
4 understand if anybody has come up with a
5 model of how to deal with that.

6 One of the things that kept coming to my
7 mind, when I was at ANR we were having
8 similar debates about cumulative impacts
9 about how the forest impacts was happening
10 all the time by subdivisions being created
11 just under the Act 250 criteria. And at the
12 time I was there we were in this debate how
13 do you deal with cumulative impacts. There
14 may even be non-energy examples of
15 cumulative impact dialogue that we could
16 bring into this discussion, and I have no
17 idea if ANR has solved, for example, that
18 issue, or if they are still talking about
19 it. That was more than a decade for me now
20 so I'm not current. That was one.

21 And the second area for me is we have
22 heard a very little bit about ag, and we
23 have heard a very little bit about biomass,
24 topical areas. And really I'm trying to
25 think about what else we have heard about.

1 Not much besides wind. And I'm happy for
2 all the wind input. I don't mean that as a
3 negative at all. It's really important.
4 But I'm interested in are there any siting
5 issues with any other sources that we should
6 be learning more about both for today and
7 going forward? And there have to be some
8 experiences out there that we could gain
9 from. So I'm interested in broadening the
10 discussion, not at the exclusion of wind,
11 but the supplemental.

12 CHAIRMAN EASTMAN: Thank you.

13 MS. SYMINGTON: Can we add nuclear to
14 your list?

15 MR. JOHNSTONE: Sure. I meant all.

16 MR. BODETT: And yeah, I want to second
17 that. The discussion about ag lands I know
18 how difficult it is under Act 250 on prime
19 ag lands and how that comes into play when
20 it's a solar field, and how that works under
21 our current process.

22 And certainly my flavor of the week is
23 this intervener funding issue. And during
24 the break I spoke with a gentleman who
25 described how some other states have done

1 that. And apparently California has a model
2 program that there is some debate whether it
3 works or not, but I would like to learn more
4 about that. Apparently Marc Mahaly, I hope
5 I'm pronouncing that right, president of
6 Vermont Law School, is somewhat of an expert
7 on this intervener funding, and I would love
8 it if we could hear more about that.

9 And then the other thing that comes up,
10 there has been a lot of testimony in our
11 last hearing and here about communities with
12 bad or at least trying experiences within
13 the 248 process in regards to wind.

14 And then there is Sheffield, the Town of
15 Sheffield, who we only heard mentioned in
16 the last, in a positive way, that they are
17 receiving some income from the project, and
18 we have not heard from anyone in Sheffield.
19 Now whether that means they are all
20 satisfied and happy or not, I don't know.
21 But I would love it if someone who was
22 involved with that process in Sheffield
23 could talk to us. Apparently their process
24 may have worked for them, and how did that
25 go. I would like to know.

1 MEMBER OF THE PUBLIC: All depends who
2 you talk to.

3 CHAIRMAN EASTMAN: Okay. I think that's
4 enough good ideas for right now.

5 MS. McCARREN: Just as a resident of
6 Charlotte I'm trying to go in front of the
7 Select Board in the next couple weeks and
8 ask them to participate because they had a
9 difficult local process problem. And I
10 think it would be enlightening to hear from
11 them. So I'm working on that in your
12 behalf.

13 CHAIRMAN EASTMAN: Okay. So it's 3:07,
14 so I guess we are out of time. We won't
15 have public comment today. Where is our
16 meeting on the 19th?

17 MEMBER OF THE PUBLIC: Here.

18 CHAIRMAN EASTMAN: Here. So we will be
19 back here. I think that's at 1 o'clock on
20 the 19th.

21 MS. McGINNIS: Yes. 1 to 4.

22 CHAIRMAN EASTMAN: And we will be
23 hearing from other states. Thank you very
24 much everybody.
25

1 (Whereupon, the proceeding was
2 adjourned at 3:08 p.m.)
3

4 C E R T I F I C A T E
5

6 I, Kim U. Sears, do hereby certify that I
7 recorded by stenographic means the Hearing re: Energy
8 Generation Siting Policy Commission Information Session
9 #4, at the Pavilion Auditorium, Pavilion Building, State
10 Street, Montpelier, Vermont, on December 6, 2012,
11 beginning at 12 p.m.

12 I further certify that the foregoing
13 testimony was taken by me stenographically and thereafter
14 reduced to typewriting and the foregoing 154 pages are a
15 transcript of the stenograph notes taken by me of the
16 evidence and the proceedings to the best of my ability.

17 I further certify that I am not related to
18 any of the parties thereto or their counsel, and I am in
19 no way interested in the outcome of said cause.

20 Dated at Williston, Vermont, this 10th day
21 of December, 2012.

22 _____
23 Kim U. Sears, RPR
24
25