

STATE OF VERMONT
ENERGY GENERATION SITING POLICY COMMISSION

December 19, 2012 - 1 p.m.
Pavilion Auditorium
Montpelier, Vermont

Commission Members

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1 MS. EASTMAN: Good afternoon. My name
2 is Jan Eastman. I'm Chair of the Energy
3 Generation Siting Policy Commission and this
4 is information session number five. Today
5 we're going to be hearing from Tom Stanton who
6 is -- I want to get these organizations --

7 MS. MCGINNIS: From NRRI.

8 MS. EASTMAN: From NRRI, and he's done
9 great work across a number of states looking
10 at wind siting primarily.

11 MS. MCGINNIS: And that's the National
12 Regulatory Research Institute out of D.C.

13 MS. EASTMAN: Thank you. Then we're
14 also going to hear from Rhode Island, from New
15 York, and from Maine, and finally this
16 afternoon we're going to hear from David
17 Mullett who is the General Manager from the
18 Vermont Public Power Supply Authority. If you
19 remember, we didn't hear from him previously,
20 but we heard from the Maine Public Utilities
21 Commission and what we discovered from that
22 presentation was in fact the environmental
23 work is all done by their corresponding Agency
24 of Natural Resources. So that's who we've
25 asked to present today.

1 So status on site visits. Early in the
2 process of getting them set up. It's likely
3 we'll be doing site visits on January 23rd,
4 January 30th, and February 12th, and we'll
5 follow those by public hearings.

6 One thing I want you all to think about
7 as Commission Members, and let us know if you
8 have a preference, we were thinking we might
9 try to do the site visits from 2 to 4 in the
10 afternoons and then do we want public hearings
11 starting at 5 until 7 or start at 6 and go
12 until 8. I will tell you when we go up to the
13 Northeast Kingdom there's not that many places
14 to find to eat so we might want to go for the
15 earlier time, but that's something for us to
16 think about.

17 For those of you in the audience I think
18 within the next week or two when the site
19 visit and public hearing process gets firmed
20 up there will be a notice of that that's
21 published and you can go on the web site,
22 you'll see it in the newspapers, because our
23 next meeting won't be until January 11th, and
24 at that meeting in the morning we've got
25 morning presentations from two citizens

1 groups, and I'm really looking forward
2 especially to hearing from people who are
3 dealing with generation that we haven't heard
4 so much about, and we have legislators who are
5 going to testify before us, and then, as I
6 said at the last meeting, as of about noon
7 that day this presentation format is going to
8 change, and the afternoon of the 11th we're
9 going to move into a different room where the
10 Commissioners are sitting around a table and
11 we're inviting some people who we think can
12 offer us expertise in the areas that we have
13 questions about.

14 So right now it's not totally firmed up,
15 but we're looking on the afternoon of the 11th
16 to hear from the Chair of the Public Service
17 Board who wants to talk about what the current
18 process is and some suggestions he has about
19 things; from Mike Dworkin who used to be at
20 the Board but is now at the law school, and
21 then VELCO and ISO want to come in and talk
22 about possibilities because electric
23 generation has real ramifications for the
24 transmission side of things. So they want to
25 be sure we understand sort of the sandbox that

1 we're playing in. Okay.

2 And then we've got time scheduled for
3 January 15th, the morning of January 15th, and
4 at that time we're probably going to hear from
5 the Agency of Natural Resources about
6 suggestions they have for, you know, changes
7 or what they like, what they don't like.
8 Perhaps the Agency of Agriculture has some
9 issues that they might like to address, and I
10 know that we asked VELCO to come back in and
11 talk about their community engagement process
12 that they have for transmission facilities.
13 Tom, you talked about that.

14 MR. BODETT: Right. We've been through
15 that.

16 MS. EASTMAN: You have been through
17 that. So that's where we are right now.

18 MS. MCGINNIS: And Jim Sullivan from the
19 Regional Planning Commission again.

20 MS. EASTMAN: As we talk about things
21 like community engagement or that kind of
22 thing I would like to have Jim in the room.
23 All right.

24 So we're going to try this on the
25 afternoon of January 11th in a meeting space

1 over the Department of Public Service. It
2 will be, you know, it will be tight, but
3 that's what we're going to go for and we'll be
4 sitting around the table. All right.

5 MR. FRIED: Jan, are the p.m. meetings
6 going to be open?

7 MS. EASTMAN: Everything is open.

8 MR. FRIED: So we can sit in but not
9 participate?

10 MS. EASTMAN: Here's the thing. For
11 instance, when we -- and maybe in the first
12 one -- we're still taking in a lot of
13 information in the first one, okay, I think
14 probably the afternoon of the 11th and the
15 morning of the 15th, because what we're trying
16 to do is now some questions that we have let's
17 get the information out on the table before we
18 start really talking about possibilities,
19 although I will say that perhaps by the
20 afternoon of the 11th you'll start to see us
21 talking about all the things that we may have
22 heard. Doesn't mean it's a recommendation.
23 It means here are things we've heard and start
24 to put some pros and cons to things as we go
25 through.

1 So I think from me how this is going to
2 work, and remember we're doing this all in the
3 open so I haven't talked to my fellow
4 Commissioners, somebody may be in the room and
5 I may have a question for them because I know
6 they know something. So I may turn around and
7 say didn't you tell me about x? What about
8 that?

9 So it isn't that it will be totally
10 closed off, but it will be us talking more in
11 conversation and trying to learn in that way
12 because basically what we figured out is most
13 of us we think we learn that way. So I just
14 want to say the format will change from
15 hearing from somebody for 20 minutes or half
16 an hour and then asking a few questions. It
17 will be more conversational I think. Okay.

18 Anything else before we get started
19 today? Thank you. So, Tom, are you there?

20 MR. STANTON: Yes. Yes. I'm here.

21 MS. EASTMAN: Thank you so much for
22 doing this and thanks also for getting us the
23 presentations in advance. I found it very
24 useful to be able to look at everything. So
25 you're up.

1 MR. STANTON: Okay. Thank you very
2 much. I really appreciate the opportunity to
3 participate and I did read all the transcripts
4 from the previous meetings so I have a sense
5 of what is being discussed and hope that my
6 presentation will prove helpful.

7 I want to, first of all, say that the
8 National Regulatory Research Institute is an
9 organization that was founded by the National
10 Association of Regulatory Utility
11 Commissioners in 1976. They felt that they
12 needed their own independent objective
13 research organization. So that was founded by
14 the regulators from all over the country, and
15 we're funded by dues that are paid by the
16 different states as part of the bylaws of the
17 national association.

18 My own background is in journalism and
19 communications, and then I subsequently went
20 to work for the State of Michigan as a field
21 energy efficiency and renewables manager where
22 I worked for 32 years. Then that was followed
23 by retirement from the State of Michigan and
24 switching over to work for NRRI in 2010, and
25 now I'm going onto my slide number two.

1 In 2011 we received some grant funding
2 that came from the Department of Energy to do
3 a project on wind energy siting and zoning to
4 review what was being done in all 50 states,
5 and our client for that was primarily the
6 State of Minnesota. They were engaged in
7 trying to understand best practices for wind
8 siting and zoning so they engaged us to do a
9 survey.

10 Doing the survey turned out to be a
11 great deal of work and more complicated than I
12 thought it was going to be because it was
13 difficult to track down the information from
14 the 50 states, and then we had to go through a
15 process of making sure that we were correctly
16 understanding what we were reading and
17 verifying that information, and we tried to do
18 that with representatives from each of the
19 states.

20 On my second slide you'll see the link
21 to the full report which is on that NRRI web
22 site, and today I wanted to give you a very
23 brief summary of some of what we found in that
24 report, and some ideas of best practices.
25 Primarily now it will be about wind energy

1 siting and zoning, but I'll try to make sure
2 I'm also referencing all different types of
3 energy generation if I do that, and then I
4 made a few observations about the process
5 going forward in Vermont based slightly on my
6 reading of the transcripts so far.

7 Moving on to the third slide, this is
8 excerpts from what we call our big table, and
9 the big table is these 15 columns times 50
10 states trying to summarize in one place the
11 essence of the information about the siting
12 and zoning practices. I've included the
13 states in the northeast near you. I think
14 you're hearing from all of those states, and I
15 left Michigan on this list because I live in
16 Michigan and I've got my basis of experience
17 here in Michigan, and so I know more about
18 this for the State of Michigan than I do any
19 other state really.

20 As you'll see the second column lists
21 the number of megawatts that have been
22 installed capacity. That was as of about the
23 end of 2011 according to the Wind Energy
24 Association. The authority in each state,
25 whether it is state siting and zoning as being

1 the primary authority, or like for Michigan
2 and New York local authority is primary and
3 state authority is secondary.

4 The third column lists P for primary and
5 S for secondary and talks about who is that
6 state authority. I'll mention more about that
7 in the next slide.

8 If the state has got a special statewide
9 energy siting legislation like Connecticut or
10 Michigan, I put a Y in that fifth column. In
11 Michigan the emphasis there was on
12 investigating the best areas in the state for
13 wind energy siting, and then a process which
14 ended up with the Public Service Commission
15 determining a primary wind development zone
16 and that translating into expedited
17 transmission siting for that zone.

18 Then the sixth column talks about the
19 primary rules for decision making in the state
20 where normal rule means basically that the
21 local government is taking all the decision
22 making authority except what is explicitly
23 granted to the state through the state
24 constitution or through legislation, and
25 Dillon's rule is something like the opposite

1 of that where the state government retains all
2 the decision making authority except what has
3 been explicitly managed through local
4 government.

5 When I was investigating this I thought
6 that might end up being really determinative
7 of whether the wind energy siting was done by
8 state entities or local government, but it
9 turned out to be nowhere near as effective a
10 determinant as I thought it might be. I guess
11 what -- by and large what that means in the
12 different states like in Maine or New
13 Hampshire where they have Dillon's rules they
14 have already designated state authority for
15 wind energy siting and zoning, or perhaps also
16 state authority for all different kinds of
17 large energy facilities.

18 If the state has published evaluation
19 criteria, there's a Y in column 7. If they
20 have published voluntary siting guidelines,
21 there's a Y in column eight. The W in column
22 eight for New York indicates that they also
23 have voluntary guidelines for wildlife
24 protection. So I put a W there.

25 If the state has published ordinances

1 for local governments' guidance on wind energy
2 siting and zoning, that has a Y in column
3 nine. Setback standards, only Rhode Island
4 had established setback standards of the
5 states that are listed in this table before
6 you, but Massachusetts and New York both have
7 model standards about setbacks that can be
8 used, but they are not required. The same for
9 sound studies and sound standards.

10 The local ordinance, column number 12,
11 is a list of the numbers of local ordinances
12 that were discovered by American Wind Energy
13 Association and National Renewable Energy
14 Laboratory Study that was done in 2011. They
15 have tried to identify all of the local
16 government ordinances that had been passed in
17 all the different states of the country and
18 they have put it into a data base.

19 If there's a renewable portfolio
20 standard, the M means it's a mandatory
21 standard and the G means it's a goal, and I
22 don't know if that situation has now changed
23 for Vermont from when I originally did the
24 survey. My impression is that Vermont's
25 standard is now more mandatory than it was,

1 and I'm sorry if I don't understand that
2 perfectly, but all the other states that are
3 listed here all have some kind of a mandatory
4 renewable portfolio standard.

5 They have in column 14 variations on the
6 team of trying to make sure their renewable
7 portfolio standard works to support in-state
8 development of resources, and recalling that
9 policy there's another NRRI paper about
10 policies for renewable energy and whether some
11 kind of an effort to make sure resources get
12 built.

13 The last column REZ stands for renewable
14 energy zones, and right now may have begun in
15 the -- only one of the states that has such a
16 thing where there was statewide legislation
17 that caused the state to go through a process
18 of identifying the zone and that zone was
19 approved by the Michigan Public Service
20 Commission.

21 The RGOS is for the Regional Generation
22 Outlet Study, and that's something that the
23 midwestern independent system operator has
24 been doing now for over two years trying to
25 understand all the different states' standards

1 for renewable energy and how they will affect
2 needs for transmission.

3 Let's go on to page four now. Here's
4 just a very high level summary of what we
5 found in our survey. 26 states have the
6 primary authority with the state government.
7 22 states have the primary authority with the
8 local government. Only two states have
9 explicitly shared authority between the state
10 and the local government, and that's Florida
11 and Iowa. In all those other states there are
12 many circumstances where the state government
13 has primary authority for systems that are
14 larger than a given certain size.

15 The last point on this slide shows you a
16 little bit about that. Those range as small 1
17 megawatt in Connecticut to five megawatts in
18 Ohio to as large as 300 megawatts in New
19 Mexico and 350 in Washington State.

20 Whether or not they have state siting
21 and zoning authority 23 states plus the
22 District of Columbia do require a certificate
23 from the Public Utilities Commission like a
24 Certificate of Public Convenience and
25 Necessity that will determine that a power

1 plant is needed and therefore eligible for a
2 utility to go ahead with construction.

3 11 states have got some energy facility
4 siting authority that is separate from the
5 state Public Utilities Commission and that
6 includes several of the states that we were
7 looking at.

8 So onto slide five we found 27 states
9 have published lists of criteria that they
10 will use in doing wind park siting, but only
11 two of those states published not only a list
12 of criteria but the standard they would use.
13 For all the rest of them have published
14 criteria, but they don't say exactly what the
15 standard will be under which they will judge
16 that criteria.

17 Ten states have published voluntary
18 guidelines. Five states published model
19 ordinances. Mandatory setback and sound
20 standards were found in only three states, and
21 model setback and sound standards in six
22 states, and while we were doing our survey I
23 also reported that six states were in the
24 process of updating or refining their
25 practices mostly in response to legislation

1 that had passed in 2011.

2 Going onto slide six, this is a summary
3 of the recommendations that I made in my paper
4 based on my reading of all the literature I
5 could find on wind energy siting and zoning,
6 and I think that these are applicable to any
7 kind of energy facility siting. Not just
8 wind. The first one is that hopefully the
9 procedures are going to be clear and
10 predictable and transparent to help everyone
11 understand the process and the timing of that
12 process, and that all the interested parties
13 would then have a good opportunity to
14 participate in that examination by knowing
15 when is the right time to participate and what
16 are the desired pieces of information that
17 would come into the process at each step in
18 the process.

19 Number two is to establish a
20 presubmission consultation as a one-stop shop
21 for the developer. The efforts, if you want
22 to site a power plant, can benefit greatly
23 from an opportunity to sit down with some of
24 the regulatory bodies and understand the
25 process that they will have to go through and

1 so forth, and that's very often done at the
2 environmental regulators rather than the
3 energy rate regulators to help people
4 understand all the different kinds of permits
5 they might need for stormwater construction,
6 air quality, and so forth.

7 Number three, identify and map the
8 constrained and preferred zones, and I'm going
9 to come back to this again later. To the
10 extent that it's possible to show people on a
11 geographic information system what areas are
12 being excluded from development, what areas
13 need to be avoided or whether there's special
14 need for caution, and what areas are preferred
15 I think that will help everybody, the
16 developers and everybody else, understand the
17 goals of the state and being able to focus
18 their attention on the preferred areas for
19 development.

20 Number four, including those preferred
21 development zones in transmission plans,
22 starting the modeling and planning for
23 interconnections in the preferred development
24 zones as soon as those zones can be
25 identified. In Michigan part of our

1 experience is the area of this unit shows the
2 best promise for wind energy development is in
3 the thumb part of Michigan where the land is
4 generally very flat and the wind comes across
5 the Great Lakes and blows across that area.
6 The transmission needs to be rebuilt there in
7 order to support new wind energy, and the
8 studies showed that rather than doing it on a
9 piecemeal basis one upgrade at a time as the
10 wind energy was being developed, it made a lot
11 more sense to understand the resource
12 available in that area and rebuild the
13 transmission only once so that now the
14 transmission is being rebuilt now to support
15 several thousand megawatts of wind energy
16 development that can take place in that area,
17 and that shows up as being a less expensive
18 route rather than rebuilding it for the first
19 couple wind farms and having to rebuild it for
20 the next one and again for the next one.

21 Number five, preparing and making
22 available guidelines for the participants that
23 will make everybody know what the process is
24 and what their role can be in terms of
25 participation, and providing information about

1 each decision as it gets made step by step so
2 that everybody can follow along with that.

3 Number six, preparing and making
4 available for the local siting and zoning
5 officials the guidelines and checklists and
6 model ordinances, and in many states that will
7 apply to at least some of the decisions about
8 some of the power plants based on usually some
9 size threshold. Above a certain size it
10 becomes state authority and lower level is
11 local authority.

12 Number seven, trying to ensure that the
13 sequence that is presented to developers for
14 obtaining permits and approvals will meet
15 their requirements that will allow development
16 of suitable projects. There have actually
17 been some circumstances where the procedures
18 get built up one step at a time and it can
19 make it very, very difficult for developers to
20 do what they need to in order to achieve a
21 successful project if the timing and the
22 sequence doesn't work for them.

23 Also, I'm a big believer that trying to
24 make the project process work so that local
25 consultation can take place early in the

1 process will be very important to success in
2 the long run, and I think that making sure
3 that the sequence works to encourage that
4 local discussion is very helpful.

5 MS. EASTMAN: Tom, you've got about
6 three minutes left.

7 MR. STANTON: Okay. Going onto slide
8 seven, these are the criteria that we reviewed
9 and gave some guidelines to in the report. I
10 thought it was too much to summarize all that
11 for you today, but you can look in the report
12 and you'll see the guidance that I provided
13 for each one of those subject areas.

14 When I look at Vermont on slide eight I
15 see similarities to a lot of other states;
16 that you have the same kind of issues that are
17 being affected in many, many other states,
18 and, you know, make your challenges similar to
19 what's going on.

20 Slide nine, something too that makes
21 your challenges maybe different from other
22 states include rather small land parcels,
23 mountainous terrain, and your long history of
24 dispersed populations that have a very strong
25 sense of place and very strong ideas about

1 what they do or don't want to see in their --
2 built in their towns.

3 On slide 10 I tried to let you know
4 things that I saw in the process that probably
5 takes place in Vermont that make a lot of
6 sense to me and are helpful to the process.

7 Slide 11, some more details about
8 timelines and timeliness in the process.
9 Again, stressing this idea of getting the
10 public involvement early in the process, if at
11 all possible, having there be certainty and
12 clarity and transparency in the timelines. I
13 did believe it's more important than whatever
14 the absolute timelines are, you know, just
15 making sure everybody knows, understands what
16 the timeline is and they have a chance to
17 participate if they wish.

18 And then the last bullet on this slide
19 making sure that energy regulatory process
20 leads to the best development process, and
21 this is an area that I've studied some and I
22 really want to do another paper on this
23 subject, especially with wind energy systems,
24 but also to some extent with biomass energy
25 systems and hydro. There's been a history

1 where sometimes the energy regulatory process
2 for approving a contract encourages the
3 developers to work in a kind of stealthy mode
4 where they come and try to lock up the land to
5 be able to develop their project before making
6 any kind of details about the project public,
7 and so then when it does become public then I
8 think the public rightly or wrongly has this
9 feeling like the developer's been operating
10 under the radar and maybe haven't done all the
11 homework that they should have done.

12 If the energy regulatory process can be
13 changed to encourage the developers to work
14 with the local communities on their process,
15 you can have a much less contentious process,
16 and I do think there's some evidence of that
17 already in places that have a feed-in tariff,
18 give everybody the tariff to work on a
19 development with some assurance that they will
20 be able to get a contract for it if they are
21 able to complete the project, and it works
22 better for this purpose rather than a
23 competitive bidding process where developers
24 want to go through everything that they need
25 to do in order to create a paper resource

1 before they know whether or not it can be
2 built, and I think that leads developers to
3 want to compete with one another about the
4 same general land area and creates a lot more
5 contention in the process as they go forward.

6 The final slide is continuation on this
7 idea that I do believe you can use
8 geographical information system to convey a
9 great deal of critical information and that
10 would be helpful to everybody. I've given
11 here three different links to places where
12 some GIS mapping is already going on. I think
13 the EISPC energy mapping project, as I
14 understand it, contains approximately 165
15 different GIS layers already. I've been
16 working with a team from the Great Lakes Wind
17 Collaborative on the Great Lakes Wind Atlas,
18 and they have been trying to gather together
19 all the publicly available GIS data and put it
20 all into one data base.

21 Vermont has already started one through
22 this Vermont Renewable Energy Atlas, and just
23 today I stumbled across another one from
24 London, England. They have started to put
25 together a heat map of London and I can send

1 you the link to that. That one is designed to
2 help them process for and encourage district
3 heating to some extent, which I think might
4 also be a strong part of the long range future
5 for Vermont.

6 So that's my prepared remarks and happy
7 to try to answer any questions.

8 MS. EASTMAN: Thank you. Questions.
9 Tom.

10 MR. BODETT: I have -- Mr. Stanton, this
11 is Tom Bodett. I have a couple questions
12 relating to the local authority.

13 Now in Michigan I know they have very
14 strong county governments. Is it local, is it
15 municipalities, or is it counties, or can it
16 be either/or both?

17 MR. STANTON: It can be either. We had
18 I believe the number is 1850 local units of
19 government, which are either townships or
20 municipalities. If the townships have not
21 done anything about siting and zoning, then
22 that authority can reside at the county level,
23 but if the townships have taken on siting and
24 zoning responsibility, then it's at the
25 township level, and I do believe in some

1 circumstances there can be sort of a joint
2 master plan between the county and the local
3 government and maybe some shared authority.

4 For the most part it takes place at the
5 township level. That there are probably a
6 dozen counties where the local government has
7 taken it on and it resides with the county.

8 MR. BODETT: And my second question is
9 about the mapping of these renewable energy
10 zones. Has that been completed or has it
11 begun?

12 MR. STANTON: Yes. It has been
13 completed and you'll find on the Michigan
14 Public Service Commission web site a great
15 deal of detail about that.

16 MR. BODETT: How long ago was that done?

17 MR. STANTON: In 2010, maybe 2009 and
18 2010, and I think the process was finalized in
19 2011. Michigan State University Land
20 Institute did the GIS mapping for that project
21 and I think they learned a great deal from
22 that GIS project. They were able to identify
23 exclusion zones and make that information
24 readily accessible to anybody looking at the
25 maps.

1 MR. BODETT: Did you see a reaction at
2 the township and county level to those maps in
3 terms of local zoning efforts?

4 MR. STANTON: I think to some extent
5 yes, but the local townships and counties in
6 the area that was identified were already very
7 well aware that their geography was being
8 targeted by wind developers. So I'm not sure
9 how much of a difference it made that that was
10 identified as the state's primary zone for
11 wind energy development.

12 The transmission build out is taking
13 place in such a way that they have tried as
14 much as possible to use the existing
15 transmission corridors and then just get
16 access to a wider corridor because it's going
17 to carry more but build double circuit
18 basically along the same route that already
19 existed, but that would minimize land use
20 changes.

21 I haven't followed in a great deal of
22 detail what's happened since the wind energy
23 zone was identified. One thing that I do know
24 is that a group of landowners in one of the
25 counties went out on their own to solicit a

1 wind developer so that they would have much
2 more control over the design of wind
3 production in their part of the county, and I
4 think that's an interesting and exemplary idea
5 that either local government could do or any
6 group of landowners can do to make sure this
7 development takes place in a way that they
8 prefer.

9 MR. BODETT: Thank you.

10 MS. EASTMAN: Other questions? Chris.

11 MR. RECCHIA: This is Chris Recchia. I
12 might follow up on Tom's point. So just on
13 the property ownership and the exclusion
14 versus go ahead zone did you see resistance
15 from private property owners feeling that they
16 were either included or excluded without their
17 permission or without their kind of desire and
18 then see how property values might be affected
19 by that? Any indication from anyone on how
20 that worked?

21 MR. STANTON: Well I think the numbers
22 of property owners who are basically against
23 wind development are a rather small percentage
24 of the total population, and they are quite
25 vocal and they are invariably educated from

1 the internet on every reason possible that
2 somebody might not want industrial sized wind
3 energy development in their area.

4 I don't know. I don't believe that the
5 exclusion zones got down to the level where
6 people who opposed the development would be
7 able to identify their particular location.
8 One of the things that was done, for example,
9 was to say we shouldn't build within so many
10 feet of the road. So they used the GIS later
11 that showed the road and would exclude
12 development up to whatever it was, 1250 feet
13 from the road.

14 Similar with houses, they looked at
15 excluding all the lands within a given
16 circumference around each home or each
17 residence, and I know they looked at that a
18 couple different ways just to be able to
19 assess what difference it would make to the
20 total capacity that could be built out in the
21 area, but they were trying to do macrositing.
22 They were trying to do on a more macro level
23 where are the areas that you would either have
24 to exclude for one reason or another or areas
25 where a lot of caution would be required if

1 any development were to take place.

2 MS. EASTMAN: Anything else? Thanks,
3 Tom. I too find it fascinating. It sounds
4 like in Michigan the state plans and locals
5 have to implement.

6 MR. STANTON: Yes. That's right, in
7 this particular wind energy resource
8 development, and that was primarily an effort
9 to try to coordinate the transmission going
10 out to make sure we would end up with sort of
11 the least cost transmission.

12 On the other hand, they have renewable
13 portfolio standards.

14 MS. EASTMAN: Okay. Thank you. Thank
15 you very much.

16 MR. STANTON: If you have further
17 questions, please feel free to get ahold of me
18 any time.

19 MS. EASTMAN: I'm sure we will. Thanks
20 so much, Tom.

21 MR. STANTON: Thank you.

22 MS. EASTMAN: Thank you. So next we
23 have Rhode Island and we have Nick -- is it
24 Ucci, Nick?

25 MR. UCCI: Ucci.

1 MS. EASTMAN: Yes. Ucci.

2 MR. UCCI: Happy holidays everyone and
3 I'm afraid my presentation will be rather dull
4 compared to the last one.

5 So how we're getting through this slide
6 two is this disclaimer; if you ask me for my
7 opinion, it really doesn't mean anything.

8 And slide three. So in Rhode Island the
9 utilities siting board has jurisdiction over
10 alteration of a major energy facility, and we
11 serve as the primary permitting and licensing
12 authority for the entire state. That doesn't
13 mean, as I'm sure you've seen in other
14 jurisdictions, it does not have to go to, for
15 example, local building inspectors or get
16 building permits in a local community. It's
17 simply that, you know, those decisions are fed
18 up to the state energy facility siting board
19 essentially as advisory opinions, and we
20 ultimately have the final say in those.

21 The next slide, slide four, begins to
22 define essentially what our jurisdiction is.
23 We have some things listed here that either
24 don't apply or are probably not practical in
25 our highly urbanized state, but the primary

1 ones here are authority for generation of
2 electricity 40 megawatts or more, transmission
3 lines 69 kV or greater, gasification treatment
4 and transfer of LNG. We have no nuclear power
5 in Rhode Island you may be surprised to learn,
6 but, you know, there's a few more things
7 listed there on slide four and slide five, but
8 the big ones are really generation over 40
9 megawatts and the transmission over 69.
10 That's where virtually all of our activity and
11 recent history has been.

12 Speaking of that, slide six, I've been
13 here four and a half, almost five years now,
14 and in this time I suppose there really has
15 not been much activity. We have had some
16 transmission line reconductors. We have had
17 some 345 kilovolt transmission work before us.
18 We've actually got a case before us now which
19 is part of the New England east-west solution
20 that you may be familiar with through the
21 ISO-New England footprint. We have had a
22 couple of fairly large transmission lines.
23 One that spans north-south Rhode Island about
24 22 miles, and the one before us now actually
25 sort of connects Massachusetts through Rhode

1 Island into Connecticut to help facilitate the
2 flow of power between eastern part of New
3 England and the western part of New England.

4 We also have some transmission
5 interconnection of generation facilities that
6 met that 69 kilovolt threshold. So that was
7 fairly non-controversial, but that came before
8 us as well.

9 We haven't had generation in very recent
10 memory. I went back and looked and I think
11 the last generation docket we had was 14, 15
12 years ago.

13 Slide seven I speak to our composition.
14 The board is a three-member board by statute.
15 It's chaired by the Public Utilities
16 Commission Chairperson. Also serving on that
17 on the board is the Director of our Department
18 of Environmental Management and the Director
19 of our Statewide Planning Program. Board
20 members and staff are not paid separately. It
21 would be nice if we were, but we are not.

22 And slide eight, folks like myself we
23 have no dedicated staff. Staff is essentially
24 a two-person operation. It's myself. I serve
25 as the Commission's principal policy analyst

1 and I sit on all electric dockets. I'm a
2 point person for all regional energy and a
3 variety of other things. So I simply
4 moonlight as coordinator of the siting board.

5 We also -- our Chief Legal Counsel of
6 the Public Utilities Commission is also the
7 legal counsel for the siting board. So when
8 we have a case before the siting board as we
9 do now, myself, legal counsel, and the PUC
10 Chair we recuse ourselves from any related
11 Commission matters.

12 Slide nine gives a very brief indication
13 of what's required in an application when a
14 proponent wants to build or alter an existing
15 transmission line of a generation facility.
16 Our rules are really specific what's required.
17 They reflect the law, everything from site
18 plans and project costs to life cycle
19 management, as well as a requirement to
20 demonstrate that the proponent has studied
21 alternatives, and it is estimated, the
22 projected costs. That is required under our
23 laws.

24 And slide 10 describes the process.
25 Essentially a proponent makes an application

1 with me as the coordinator. I review that to
2 ensure it's consistent with the requirements
3 of the law. We'll docket it and we'll have a
4 preliminary hearing within 60 days so that the
5 Board can designate agencies that must file
6 advisory opinions. We usually generally give
7 them about six months to do that. I'll have
8 more on that in the next slide.

9 We also require one public hearing in
10 every community impacted by a proposal. So a
11 transmission line that runs through four or
12 five cities and towns we have to have a public
13 hearing in each one of those towns at least
14 once during the course of dealing with this
15 docket. Those hearings are fully open to the
16 public. We post them in the newspaper and
17 give folks plenty of advanced notice they can
18 plan to participate. Generally at those
19 hearings the proponent will make a
20 presentation, begin hearings, describe the
21 project, describe the overview of the
22 potential impact to that community, and then
23 the public can sort of react to that and share
24 their thoughts.

25 Slide 11 speaks more to which agencies

1 we designate for advisory opinions to be
2 utilized in our decision making process.
3 Essentially all those political bodies that
4 have responsibility over building inspections
5 and planning boards who oversee the variances
6 and the permitting at the local level, they
7 are usually designated along with the General
8 Counsel.

9 The Public Utilities Commission, and I
10 think this was raised in the previous
11 presentation, the Public Utilities Commission
12 is designated as an advisory agency to
13 determine the need of the facility. They have
14 their own set of hearings and issue discovery,
15 and then issue orders that represent their
16 advice to the siting board.

17 Similarly for -- on slide 12 the
18 statewide planning unit for the state they
19 must address the socioeconomic impact and
20 compare the proposal to the goals of our
21 statewide guide plans, and then we have a
22 whole host of other agencies that in one way
23 or another projects may make entering the
24 jurisdiction; historical preservation,
25 environmental management, Department of Health

1 because of the EMS issue in particular, the
2 Department of Transportation certainly when
3 you have transmission lines crossing over the
4 roadways, et cetera.

5 Slide 13 cut out a couple of exceptions
6 primarily where our authority intersects with
7 federal permitting functions under delegation
8 of federal law such as the Clean Water Act.
9 So in those cases our State Department of
10 Environmental Management retains their
11 exclusive jurisdiction over that. Similarly
12 we have a Coastal Resources Management
13 Council. Those of you who know Rhode Island
14 well we have quite a bit of coastline and we
15 have a specific agency that deals with those
16 coastal issues. They too retain limited
17 authority over some of their permitting
18 functions when an application intersects with
19 that specific authority.

20 Slide 14. Once we've receive those
21 advisory opinions within six months we
22 schedule a series of final hearings which
23 commence within 45 days after the advisory
24 deadline depending on the issues at play. We
25 have those hearings. We'll issue a letter

1 within 120 days from that final hearing, and
2 ultimately our decisions can be appealed to
3 the State Supreme Court as long as it's done
4 within 10 days of ratification of the order.

5 So one of the things that I just want to
6 bring up is that all of these hearings that
7 I've discussed they are essentially -- all of
8 them are public. I know that's one of the
9 concerns of your commission. At least in my
10 experience and our jurisdictions everything is
11 very open. Unless there's a specific issue
12 that has -- that involves critical energy
13 infrastructure information where individuals,
14 unless there's a confidential issue the -- by
15 the applicant, essentially we have an open
16 door policy. Anybody can sit in the room,
17 listen. We usually solicit comments.

18 If anybody is in the room while we have
19 a stenographer there, if somebody wants to
20 step up to the microphone even before or after
21 the hearing and give their thoughts, we're
22 more than happy to take that information under
23 advisement. So it's a fairly transparent job
24 process. All the materials as well are posted
25 on our web site where possible and hard copies

1 made available here at our office.

2 The next two slides, 15 and 16, briefly
3 describe a couple of expedited processes we
4 have in place primarily for short power lines.
5 The first is less than a thousand feet. It's
6 -- again, the applicant can make a filing if
7 not an alteration to a major facility, and
8 three bullet points there provide the details
9 as to the timeline. It's very, very short in
10 comparison to a normal review.

11 On the subsequent page on the power
12 lines less than six thousand feet very similar
13 process except there's a few more
14 requirements. We have to hold a public
15 hearing. They have to provide more indepth
16 analysis such as speaking to the EMF impact of
17 the proposed line. At the end of the process
18 if the Board believes it's still an alteration
19 to a major facility, then we put all that into
20 a normal docket and we go through the full
21 time frame and the full process.

22 And slide 17 that just sort of repeats
23 some of the points I made just a moment ago.
24 All our hearings are open. We have to have
25 one public hearing in every community that's

1 impacted. We're very open about having, you
2 know, soliciting comments and getting all that
3 information out on the internet where
4 possible.

5 Slide 18 we have the ability to purchase
6 materials and hire consultants whether it be
7 legal or expert witnesses, and generally we
8 can seek recovery for that through the project
9 applicant. So essentially those costs can be
10 assumed in the total project cost. We also
11 have the ability to establish fees for
12 application, et cetera, but I can tell you
13 that we do not have a fee schedule in place.
14 To my knowledge there never has been one,
15 although the authority does exist there in the
16 law.

17 And post licensing on page 19, generally
18 our licenses are issued conditionally assuming
19 that the applicant receives all of its
20 appropriate federal licenses. Our consultant,
21 although to my knowledge we have not --
22 certainly in recent memory we have not, but we
23 can have a consultant be at a plant, for
24 example, during the construction phase and
25 initial start-up phase to show everything is

1 working as it was intended and all permits are
2 being maintained, and of course we can always
3 hold suspension hearings, cease and desist
4 orders, you know, whatever it takes to ensure
5 that a facility that we've licensed is
6 operating according to the law.

7 So I told you that it would be boring
8 because, you know, we really haven't had a lot
9 of activity in recent memory. Again, we're
10 highly urbanized. Most of the activity that's
11 occurring here is small scale renewable
12 generation that falls below our threshold and
13 some major transmission work and 345 kV work
14 that's associated with New England
15 reliability.

16 So those are the important dockets
17 before us, but by and large, you know, it's
18 not the most active siting board in New
19 England, but we do exist, and I think that our
20 process and our law has some real strength in
21 it, and that the rule and law are very
22 defined. The applicant should know going into
23 the process what's expected of them, deadlines
24 requiring the application, all very clearly
25 laid out which is real -- there's really not

1 much room for debate there, and the fact that
2 we had a transparent process and we've
3 recently had a case where that was very
4 important to the Board.

5 We actually had the EMF issue. We had
6 one community of the six that the line
7 impacted that had some deep concerns about the
8 impact that the line would have in terms of
9 their health, community health, and it
10 actually spurred the Commission -- the Board,
11 excuse me, to hire an outside expert witness
12 and to conduct additional survey research on
13 EMF impacts. So it's a later process, but it
14 gives you more information and that probably
15 would not have occurred without the public
16 input. So, you know, I would urge your
17 Commission to keep that in mind as you develop
18 your own processes.

19 And in terms of weakness, if we were to
20 have a period of robust activity, we have a
21 lot of utility scale renewable generation, for
22 example, that would fall under our
23 jurisdiction. You know we really don't have
24 the staff here dedicated to handle a large
25 work load where you might have two or three

1 docket open at once or that, you know, there
2 were significant issues that came up in an
3 application. Obviously we're not equipped for
4 that here because we have such limited
5 resources.

6 So, again, I'm not sure that's a problem
7 that some of the other states face, but it's
8 one that we face here.

9 MS. EASTMAN: Thank you. So, Nick, then
10 just clarify for me how much generation,
11 electric generation, do you have in-state?

12 MR. UCCI: I believe we have around 1800
13 megawatts. We have 99 percent gas fired
14 generation. There's some units that are dual
15 fuel, but they are all gas fired.

16 MS. EASTMAN: Okay, and so you approved
17 those years ago?

18 MR. UCCI: Those were approved long
19 before my time.

20 MS. EASTMAN: Right, and so now it's
21 smaller scale, below 40 megawatts, renewables
22 mainly?

23 MR. UCCI: Right. Primarily wind. You
24 know we have great potential for offshore
25 wind, but, you know, it's likely that might be

1 outside our jurisdiction depending where they
2 place it.

3 MS. EASTMAN: And so then it's local
4 municipalities at the municipal level that is
5 reviewing the projects?

6 MR. UCCI: Right. So then it's setback
7 variances and building inspections and local
8 and state building codes that would sort of
9 govern that construction project.

10 MS. EASTMAN: And who does environmental
11 reviews? Is it your state environmental
12 agency or do you let the federal government do
13 the environmental reviews?

14 MR. UCCI: No. The State Department of
15 Environmental Management would have that
16 purview.

17 MR. RECCHIA: Just to follow up on that
18 does that mean that the state DEM in that case
19 is reporting to the Commission since your
20 Commissioner is on there anyway, but -- and
21 they are issuing the permits, or, I'm sorry,
22 is the DEM issuing the permits but they can be
23 reviewed and overturned by the Commission, but
24 for the federal ones is what I'm talking
25 about?

1 MR. UCCI: Well there's specific mention
2 in state law giving the Environmental
3 Management jurisdiction over certain
4 resources, certain permitted resources. They
5 retain that jurisdiction, but, you know, again
6 because we have the director head on the board
7 the issues usually end up sort of falling into
8 one another. I mean we sort of know
9 generally. The Department of Environmental
10 Management has already conducted a lot of
11 their review so we kind of know where they
12 stand whether or not there's any critical
13 issues based on the project.

14 MS. EASTMAN: Thank you. Anything else?
15 Thank you very much, Nick.

16 MR. UCCI: Thank you. Take care.

17 MS. EASTMAN: We now are going to take a
18 10-minute break, and so it's just 2:02 so
19 we'll come back at 2:12 please, and then we're
20 going to hear from New York, Maine, and
21 Vermont Public Power Supply.

22 (Recess.)

23 MS. EASTMAN: Sorry if people were
24 confused. We introduced Chris Recchia a
25 couple of meetings ago. He's the new

1 Commissioner of the Department of Public
2 Service, and so he and Deb Markowitz, as the
3 Secretary of Natural Resources, are members
4 non-voting.

5 COMMISSIONER MARKOWITZ: Ex-officio.

6 MS. EASTMAN: And we do want them at the
7 table with us because they are probably
8 responsible for whatever we might suggest, and
9 as we said not all of our Commissioners were
10 going to make every meeting, and so Scott
11 Johnston and Louise McCarren were not able to
12 be here today so they will review the
13 transcripts as we go along. Okay. So thank
14 you.

15 So from New York and thank you to the
16 very first meeting we were at where a very
17 nice woman in the public suggested we go to
18 New York, and I've driven by some of your
19 facilities. So today we have Jim Austin, Andy
20 Davis, Tina Palmero, and Tammy Mitchell from
21 the New York Department of Public Service to
22 talk about their process, and thanks so much
23 for putting together your materials, and I do
24 understand that you have just made some
25 changes so we're anxious to hear how far down

1 the road we should go with you.

2 MR. AUSTIN: Well, first of all, thank
3 you for the opportunity. This is Jim Austin.
4 Right now Tina and Tammy are not present in
5 the room. They will be in a couple minutes,
6 but Andrew is going to do the presentation
7 anyway. Also, we've been joined by Pam Carter
8 who is with our Public Information Office and
9 they have a large role in interacting with the
10 public. So she's a great addition to the
11 group.

12 With that we'll turn it over to Andy who
13 is really the brains of the operation and has
14 experience both in our old what we called it
15 Article X which expired at the end of 2002 and
16 also had a very large hand in developing our
17 current law and regulation. So with that I'll
18 turn it over to Andy.

19 MR. DAVIS: Thanks. The slides I sent
20 along were fairly dense, I know, but we wanted
21 to give the whole context because this Article
22 10 is new and just wanted to make sure that
23 you got the picture and that folks who were at
24 the session today could still look at this
25 information and understand what we're doing.

1 The law was passed in 2011 which
2 recreated the state siting board.

3 MR. AUSTIN: Second slide. The general
4 description and context for energy generation
5 siting.

6 MR. DAVIS: We went through about a year
7 long rulemaking process to adopt the
8 regulations. They were adopted at the end of
9 July or the first of August this year. The
10 siting board has responsibility for siting
11 generating facilities of 25 megawatts or more.
12 That's for all types of generating facilities.

13 There's a question about opt-in
14 provision, and Article 10 does allow projects
15 that have been in or are in other state or
16 local review process to opt in to Article 10,
17 and I'll talk a little bit about a couple of
18 projects we have seen opt in already.

19 Generating facilities otherwise not
20 jurisdictional that were sited and purely for
21 industrial use they can opt into the siting
22 law also, and then minor additions to existing
23 power plants or repairs, maintenance, major
24 upgrades of those facilities can opt in to
25 Article 10 also.

1 Currently we've got two projects in the
2 early development stage. They are in the
3 public involvement stage prior to the project.
4 A third project filed a notice today that it
5 intends to participate in the process. That's
6 an Iberdrola project that has been stalled in
7 another review, and since we just started the
8 program no megawatts have been approved under
9 this law.

10 The next slide, process number two, I
11 thought it would be helpful to get the
12 background. I'm going to talk about Article X
13 which, as Jim described, was the predecessor
14 siting board law. That was passed in the 80's
15 and it had a sunset provision that it expired
16 at the end of 2002. It applied to 80
17 megawatts or larger facilities. The current
18 Article 10 built on many of the provisions of
19 Article X, and that's why I thought it would
20 be helpful to give a little bit of background
21 here. It included public involvement
22 requirements, intervenor funding requirements,
23 and a couple of other provisions that are
24 included in Article 10, the current law, and
25 under that statute we've looked at quite a few

1 projects. 24 were proposed. They were gas
2 plants. There was a major peak activity
3 period of 1998 to 2006 where we had lots of
4 work stacked up. That statute resulted in 13
5 projects being certified. Seven of those were
6 actually built totaling 4500 megawatts. Six
7 of the other facilities were certified but not
8 built. That was nearly another 4500
9 megawatts. Two applications withdrew in the
10 middle of the process and two certificates
11 were denied, and, as I said, Article 10 built
12 on and includes many provisions of Article X.

13 What happened in between. After Article
14 X expired, the general environmental review
15 process in New York State we call SEQRA, State
16 Environmental Quality Review Act, which is the
17 guidance program and procedures for all kinds
18 of environmental projects that have potential
19 to have significant impact are reviewed. So
20 under that statute both of the power plants
21 that were introduced in the state in the
22 interim between Article X and Article 10, it
23 means the municipality acted as the lead
24 agency, and that includes coordinating the
25 environmental impact statement and public

1 review process.

2 Other permitting agencies acted as
3 involved agencies. So they are commenting,
4 intervening, providing expertise, and doing
5 their individual jurisdictional permitting
6 authority review under the SEQRA program. All
7 individual and local permits restrictions are
8 maintained. There's no override with one
9 agency by another.

10 Overall in that nine-year period between
11 Article X and Article 10 there were about 20
12 gas fired plants' environmental impact
13 statements reviewed. There was 32 wind energy
14 projects reviewed. Those reviews resulted in
15 the siting of over 1400 megawatts of wind in
16 the state which are now in operation. That
17 involved 17 projects ranging in size from 7
18 megawatts to the largest project at 320
19 megawatts.

20 Several wind projects stalled during the
21 SEQRA process for one reason or another.
22 There were lots of reasons. Some were
23 cancelled. Overall there was around a
24 thousand megawatts of wind energy that never
25 made it through SEQRA or just died on the vine

1 more or less, and the reasons for that I can
2 talk about if you ask me later.

3 I'll move to the next slide which is the
4 siting approval practice Article 10. Number
5 one, the siting board is comprised of --
6 permanent siting board comprised of the chair
7 persons of five New York State agencies
8 including the Public Service Commission, the
9 Department of Environmental Conservation,
10 Department of Health, Economic Development,
11 and Department -- and the New York State
12 Energy Research and Development Authority.

13 The permanent siting board decides
14 policy matters. They decide -- they adopt the
15 rules. They adopted the law -- not the law,
16 the Legislature, but if there were changes to
17 the rule, that would be done by the permanent
18 siting board. If there's a modification to a
19 project after it's been approved, then those
20 changes go back to the permanent siting board.

21 For an individual project, individual
22 siting board is established which is comprised
23 of the permanent board, the five board members
24 or their designees, and two ad hoc members who
25 are residents of the host municipality where

1 the facility is proposed to be sited. Those
2 are the rules and they have a process for how
3 the municipality nominates and how those
4 nominees are reviewed and approved.

5 Then you asked for how is our siting
6 process staffed. The Department of Public
7 Service, of which we are members here,
8 employees, we are the staff of the Public
9 Service Commission. Typically for the siting
10 cases there's five staff from five different
11 divisions are involved including our
12 environmental office, our engineering, and
13 electricity office, the consumer affairs
14 office, General Counsel, and the Office of
15 Administrative Hearing and Alternative Dispute
16 Resolution.

17 DEC staff on a project also includes an
18 associate hearing examiner and their
19 environmental justice unit where that review
20 is required.

21 Public Information Office is also
22 involved in the process. State level permit
23 issuance is coordinated with other agencies.
24 The Department of Environmental Conservation
25 retains the jurisdiction to issue federally

1 delegated air, water, and resource
2 conservation recovery act permitting
3 requirements.

4 The statute establishes a timeline for
5 review, a deadline for decision of 12 months
6 from the date of complete application. That
7 deadline can be extended with an applicant's
8 consent.

9 Moving to the next slide, practices
10 number two. Your outline asked for
11 information about the standard criteria and
12 standards. The law and rules do not have
13 particular criteria and standards in terms of
14 setbacks, noise levels, those types of issues
15 which I know you're interested in, but the law
16 and the rules establish what is required in an
17 application. Part of that may have required
18 an evaluation -- detailed evaluation of what
19 is called for in local ordinances, and there
20 is a provision for the Board to waive unduly
21 restrictive requirements.

22 Siting guidelines are not detailed. As
23 I said a moment ago, there's no setback
24 standards specified. There is a detailed look
25 at the local law requirements. We look at

1 vendors' standards in terms of manufacturer's
2 recommended setbacks of wind turbines. We
3 look at IEEE certification and their
4 recommendation. The law and the rules do have
5 study protocol for early coordination and
6 detail on bird and bat studies specifically.

7 The appeals process and authority is to
8 the New York State Supreme Court after a
9 request for reconsideration -- after request
10 for reconsideration by the planning board is
11 acted on.

12 In terms of expedited processes the
13 Board decisions, as I said a moment ago, are
14 typically within 12 months of the complete
15 application. We see that as an expedited
16 process over what can happen in other
17 processes.

18 There are the public involvement plan,
19 which is required before an application is
20 filed, that has a schedule of about 150 days
21 minimum before an application. There is the
22 provision in the rules that allows for
23 curtailment of that process for someone with a
24 project that's been active and ongoing prior
25 to and it's up to date and thorough prior to

1 their nomination in Article 10, and/or
2 existing plant, minor projects that involve
3 existing plant additions or modifications.
4 The siting board decisions by statute is
5 supposed to have them within six months of a
6 complete application. So there are some, you
7 know, means to shorten those timelines.

8 Public participation is an important
9 requirement in the program. It's actually
10 required. There's the public involvement plan
11 is required. The first step in taking off
12 that involves a draft plan, the staff reviews
13 and comments on the applicant and revises its
14 plan accordingly, and a final plan that
15 involves establishing contacts with all kinds
16 of stakeholders; municipalities, agencies,
17 local groups, landowners, and anyone that's
18 interested in the project or geographic
19 region.

20 The next step after the public
21 involvement plan is a preapplication scoping
22 phase where the draft scope is filed and then
23 public reaction and stakeholder reaction can
24 occur.

25 There are public statement hearing

1 requirements. Shortly after an application is
2 filed and the public can participate in
3 several ways, whether it be by this monitoring
4 proceeding, asking to be notified of new
5 information as it's filed, and actually
6 intervening as a party, and then another
7 important component of the public
8 participation is funding for municipalities
9 and local parties.

10 An applicant is required to submit funds
11 for experts and legal representation for the
12 development of a record that involves an
13 upfront fee with a proposed scope of study of
14 \$350 per megawatt up to a cap of \$200,000 for
15 a really big project. That comes with the
16 proposed scope.

17 There's additional -- once the scope is
18 completed and an applicant goes off and
19 develops the application, upon filing the
20 application another intervenor funded payment
21 is required of \$1,000 per megawatt with a cap
22 of \$400,000. Those funds are administered by
23 the hearing examiners. There's two hearing
24 examiners assigned to the case. One is from
25 -- as I said earlier, one is from the

1 Department of Public Service and then
2 associate examiner from the Department of
3 Environmental Conservation. They look at
4 proposals by intervenor groups to access money
5 and decide what are issues worth examining,
6 how that money will be spent, who that will be
7 being paid to, for what reason, and what kind
8 of schedule. I'll talk about recommendations.

9 MS. EASTMAN: Hold on just a second. We
10 just had a question. So just clarify the
11 hearing examiners one is from the DEC and one
12 from the DPS?

13 MR. DAVIS: Right.

14 MS. EASTMAN: And you've only got three
15 minutes, but I really want to hear what you
16 have to say, don't you, guys? I mean this is
17 the closest we've got to somebody who has gone
18 through this, so keep going for us please.

19 MR. DAVIS: I can either talk faster or
20 you give me more time.

21 MS. EASTMAN: And if I know you, you can
22 probably do both. You can talk fast and I can
23 allot more time.

24 MR. DAVIS: Well I like to talk slowly,
25 but municipality involvement; municipalities

1 are parties upon filing their notice of
2 interest. If a municipality wants to enforce
3 any local laws, it must participate, but the
4 statute bars them from any chance of
5 enforcement, and then municipalities, as I
6 said earlier, nominate the two ad hoc siting
7 board members. So they have a few key roles
8 or several key roles, and we've seen good
9 active involvement in those prior cases as
10 well as these pending cases in Article 10.

11 In terms of alternative dispute
12 mechanism on the next slide, we anticipate
13 that some dispute mechanism -- dispute
14 resolution is involved in rounding the various
15 interests in the project scope that studies
16 methodologies and content and working with
17 various parties that might be competing for
18 the limited cost of intervenor money so they
19 can get parties to work together, have common
20 interests and work together, and that's been a
21 successful ADR application in Article 10 --
22 Article 8 cases in the past, and we -- as I
23 said earlier, the Judge assigned to our case
24 is actually from the Office of Administrative
25 Hearing and Alternative Dispute Resolution.

1 This agency has made big efforts to
2 actually promote arbitration, mediation,
3 whatever types of mechanisms are appropriate
4 to getting parties to resolve cases, and we
5 have had a lot of our transmission siting
6 cases fall under a different statute of
7 Article 7. The majority of the cases any more
8 are actually settled through active
9 involvement. So we've got a lot of history
10 there. Success in that program.

11 Settlement proceedings. Procedures can
12 be enacted at any time in a case by requesting
13 a separate settlement judge being assigned to
14 a case. We've got a separate set of policy
15 and guidelines that apply to Commission
16 proceedings which would be available in an
17 Article 10 case. And funding availability I
18 talked about.

19 Just another bit of experience of
20 generation out of those Article X proceedings,
21 although the cases that were certified, about
22 a third of them had involved settlement
23 agreements of one or more of the issues. A
24 couple of the cases those settlements were
25 comprehensive to all issues and others were

1 limited to one or more issues. It depended on
2 the circumstance and the interest of the
3 parties. And so, yes, ADR works.

4 Some of the pros and cons I've listed
5 here can be helpful in resolving complex cases
6 and help parties gain benefits they might not
7 otherwise when they are in a litigation mode,
8 and, on the other hand, these ADR proceedings
9 can drag on and extend the review period a
10 little bit or a lot. It depends on how
11 patient folks are and what they see as
12 potential gains and participate.

13 A couple of downsides and concerns we
14 have heard about from parties is how they
15 manage concurrent settlement and litigation
16 proceedings in one -- on a case at a time or
17 that could be occurring at the same time, and
18 then how they participate in settlement and
19 still maintain some funding, that intervenor
20 money, for potential litigation later on. So
21 those are a couple of the issues we've seen
22 with implementing the ADR.

23 Environmental permits. You know, I
24 think I've talked about the federally
25 delegated permits. The 401 water quality is

1 delegated actually to the state, not to the
2 DEC. So the Planning Board or the Department
3 of Public Service has authority to issue those
4 401 water quality certifications. The siting
5 board's action to deny a permit or a
6 certification would actually override proposed
7 permits by DEC or actually issue permits. So
8 it's superseding authority.

9 There's cumulative impact assessment.
10 The law actually requires all the various
11 components of the project which could include
12 other transmission, communication facilities,
13 water lines, steam lines, gas lines, sewer
14 lines, you know, all the types of support
15 utilities that go into a major gas fired plant
16 or the gathering lines for a wind plant,
17 that's all captured under the Article 10
18 rubric with the exception of really the
19 transmission lines which stays with Article 7
20 program, but the -- there has to be a
21 cumulative look at what's the impact of
22 everything altogether that's supposedly
23 constructed here.

24 The rules don't give a lot of detail on
25 cumulative impact assessments other than for

1 air permit, air emissions, and for visual
2 impact. There is some detail in our rules on
3 those two categories, but otherwise I envision
4 it relying on the terms of scope that's
5 developed according to the project.

6 In terms of monitoring compliance, the
7 next slide tells a little bit about that. Our
8 agency and our office we have compliance
9 people that are field based spending a lot of
10 time looking at construction. You know,
11 making sure there's compliance with
12 certificate terms and detailed instruction
13 plans.

14 DEC staff monitors, by its field staff,
15 compliance of the environmental permits the
16 state issued, and then there can be local
17 enforcement as requested by a municipality and
18 delegated by the siting board, and often that
19 could be building permits for actually a
20 building involved in a project, although that
21 can be administered under the state code
22 otherwise.

23 Compliance is contingent with all permit
24 conditions. Other state agency staffing is
25 available. Our Department of Agriculture and

1 Markets is very active in monitoring.
2 Although they don't have jurisdiction per se,
3 they are very interested in seeing
4 agricultural land mitigation measures to
5 protect the long term viability of farmland,
6 productive soils. So they are out there
7 looking at construction activities pretty
8 regularly.

9 Strengths and weaknesses of the program
10 on the next slide. Just in kind of
11 summarizing some of the key provisions in
12 Article 10, the schedule and timing
13 requirements are specified. Early, active,
14 and ongoing public involvement opportunities
15 are required. Intervenor funding enables that
16 local participation, public involvement, and
17 participation. There's environmental justice
18 provisions to address minority and low income
19 group concerns, and we've actually been
20 pushing a couple projects that focus on that
21 right away in their public outreach plan that
22 are the first step in a main project
23 development.

24 Public policy goals are included in the
25 planning board's consideration. There's

1 flexibility in the law -- or in the rule.
2 Excuse me. The rules go on for 150 pages, but
3 there's a lot of room in there to deal with
4 the specifics of a project. It's not all line
5 by line not every aspect of every project is
6 dealt with in detail in those rules. So we
7 rely on that scoping phase to tailor the
8 review to a project. And then what some see
9 as the major strength is the ability of the
10 siting board to override unreasonably
11 restrictive local laws.

12 Weaknesses, as I said, we don't have
13 specific impact standards in the law or the
14 rule. Some -- we got a lot of push back on
15 the draft rules from -- particularly from
16 project developers on well what are the
17 setbacks, what's the noise limits, and we
18 didn't go there in the rule. So that's, you
19 know, a perceived weakness by some.

20 And as the slide indicates, we just
21 don't have the experience with these new rules
22 to see how it plays out as a project goes
23 through the process. We have a pretty good
24 idea because we've tried building what we've
25 learned from the old Article X experience, but

1 time will tell.

2 And recommendations, on the last slide,
3 I talked a little bit about administering the
4 intervenor funding. It can't be a free for
5 all. There's got to be specified use for
6 qualified representation. How is the money
7 going to be used? What is it going to be used
8 for? Who is going to be doing the work and
9 what are their qualifications and what kind of
10 product are they going to be delivering? And
11 then the money is keyed to that schedule.
12 It's not all handed over. You can be handing
13 -- it's administered as deliverables are
14 produced, and those deliverables are reviewed
15 for content, thoroughness, and meeting up with
16 what the proposal for the use was. It's just
17 responsible use of that money. So there will
18 be competition among various intervenors for
19 that funding and it's got to be handled right.
20 So that's my recommendation on intervenor
21 money.

22 Public access information. A web site
23 with access to all the electronic files I
24 think is pretty essential. I took a look at
25 the PUC's site and I see they are working at

1 getting access to everything. There's a lot
2 of information there, but there's a lot of
3 public comments that do not seem to be popping
4 up. So I think people want to know what's
5 being said by who and they want to see their
6 voices out there being seen and heard by all
7 too.

8 And then for folks that aren't accessing
9 electronic data we rely on local libraries who
10 are maintaining copies of -- hard copies of
11 applications and supplements and all the key
12 documents from proceedings. I think there's
13 an educational component there where a meeting
14 with the local librarian to say this is
15 upcoming, here's -- this is going to be
16 updated, is there a place to put this kind of
17 information, and most of the librarians I have
18 ever dealt with have been very receptive to
19 that and happy to provide the public service.

20 This information we all -- our rules
21 also require service on the municipality and
22 usually a couple copies of things in each
23 municipality, but somebody maintaining that is
24 kind of key to keeping that accessible to
25 anyone who would want to look at it, and then

1 as I thought about ADR, alternative dispute
2 resolution, is really helpful in a lot of
3 cases and some kind of flexibility in your --
4 in a program to allow that to be used at
5 various steps in the process is really
6 helpful. Doesn't always work, but it's worth
7 trying.

8 And then one other recommendation that
9 worked for us was, as we worked the new rules
10 for Article 10, we used a public outreach
11 program for that initiative. We opened it up;
12 who was interested, what's your interest, who
13 are you, what's your interest, and we got most
14 of these through electronic mail. We got a
15 hundred, over a hundred or two hundred, I
16 forget how many, individuals and groups that
17 expressed interest. We identified and broke
18 them into several categories and worked with
19 them as kind of focus groups on different
20 areas of interest, and then took a lot of
21 their comments and feedback and then assessed
22 that all in refining the draft rules into the
23 final state, and there's a lot -- it was
24 helpful to have all that information and
25 summaries of what those work groups came up

1 with because it really showed the balancing
2 between competing interests and how the rules
3 were devised and finalized.

4 So, you know, for every person
5 complaining about the details in the rules
6 there's hundreds that like that. So it was a
7 helpful process, and we suggest taking a look
8 at that. It might help in your program, and
9 with that here for questions.

10 MS. EASTMAN: Thanks very much. Deb,
11 you had a question?

12 COMMISSIONER MARKOWITZ: I have a couple
13 questions actually. An appeal of the decision
14 of the Board goes to the Supreme Court which I
15 understand is really your trial level court;
16 is that correct?

17 MR. DAVIS: It's the Appellant Division
18 of the State Supreme Court.

19 MR. AUSTIN: You're correct. The Court
20 of Appeals is the higher of two courts. The
21 Supreme Court is the lower of the two courts.

22 COMMISSIONER MARKOWITZ: Right. So it's
23 the trial court, and so the question is, is it
24 an on-the-record review or is it de novo? Are
25 you presenting evidence fresh on the appeal?

1 MR. AUSTIN: Well, first, what has to
2 happen is the applicant has to ask the Board
3 to reconsider it. After that it becomes ripe
4 for our standard procedure for review of
5 action data which is Article 78, and then
6 that's just the standard -- it's not public
7 service law. I think it's the executive law.
8 I can find that out for you. Article 78.
9 That's the process by which people can
10 challenge.

11 COMMISSIONER MARKOWITZ: We have that
12 same uniform civil procedure and so it's -- it
13 sounds to me like it's an appellant decision,
14 meaning it's based on the record that was
15 developed by the Board. They don't develop a
16 fresh record.

17 MR. AUSTIN: That's correct.

18 COMMISSIONER MARKOWITZ: The other
19 question is when you talk about municipalities
20 being able to participate and nominate two ad
21 hoc members to the board, are you referring
22 only to the municipality that's actually
23 hosting the facility or would you consider
24 impacted communities as well? And what if
25 there's a facility that is affecting more than

1 one -- like for a wind farm, for example, it
2 could reach more than one -- it could be built
3 in an area that is a cluster of more than one
4 municipality.

5 MR. DAVIS: That's a good question. The
6 law actually specifics that the ad hoc
7 nominees are from the municipality where the
8 facility is located -- proposed to be located.
9 It does not identify the issue you're raising.

10 The way we're reading it is basically
11 every town involved can nominate two people to
12 serve and then the decision making. If it's
13 within more than one municipality, then the
14 decision on who is going to serve is made in
15 the Senate. It's just that's the way the law
16 set it up. There's no -- it doesn't specify,
17 you know, there's going to be two ad hoc
18 members, not four or six, depending on how
19 many municipalities the project is in. It's
20 just two seats.

21 COMMISSIONER MARKOWITZ: And then as a
22 corollary, as I understand it the
23 municipalities would be qualified to receive
24 intervenor funding, and did you also limit
25 those -- that municipality to the host

1 community?

2 MR. DAVIS: I don't believe it is. No.
3 As you raised there could be impacts on
4 another municipality right next door, or if
5 there's some way they can demonstrate some way
6 they are impacted, then I would say they can
7 request intervenor money and be eligible.

8 MS. EASTMAN: Because your intervenor
9 money isn't limited to municipalities?

10 MR. DAVIS: That's correct.

11 MR. AUSTIN: It is 50 percent. 50
12 percent is earmarked for municipalities.

13 MR. DAVIS: Although physically host.

14 COMMISSIONER MARKOWITZ: And then my
15 final question has to do with the one year
16 timeline for decision making. I'm assuming,
17 and please correct me if I'm wrong, that it's
18 one year after the application is complete,
19 and one of the things that I've observed in
20 our process is even after the application is
21 complete the project may change as the result
22 of frankly negotiations with -- I'm with the
23 environmental agency -- the environmental
24 agency over environmental impact.

25 So, for example, well down the road they

1 may change the way they are siting a
2 particular part of the facility to avoid undue
3 adverse impact to a particular environmental
4 concern. How does that work in the context of
5 the one year timeline? So this is changes in
6 scope or changes in design of the project
7 midway.

8 MR. DAVIS: Depending on the scale and
9 impact of the change there's actually a
10 provision to -- a reopener or actually
11 additional intervenor money might be required
12 and then a schedule. There's an extension
13 also.

14 MR. AUSTIN: Also there's a back door of
15 where push comes to shove the applicant were
16 to make the board -- occasionally they agree
17 to an extension when new material facts or
18 revisions to the project happen. They
19 recognize additional time was needed and --
20 but obviously they prefer an extension to a
21 rejection.

22 COMMISSIONER MARKOWITZ: Thank you.

23 MR. BODETT: I had a question about the
24 waiver provision for local codes. How is it
25 decided what is an unduly restrictive or

1 unreasonable local code? Who makes that
2 determination?

3 MR. DAVIS: Well the application has to
4 propose why the applicant received it as such.
5 There's a couple criteria based on the state
6 of existing technology, the cost to consumers,
7 the cost to comply with the code or those
8 standards. So there's a couple showings that
9 have to be made, and then that's evaluated in
10 the -- as part of the evidentiary record, and
11 then the siting board has to make that
12 decision. It's a balancing act between
13 impacts and practicality and, you know, are
14 there good reasons to uphold those? Has the
15 municipality upheld the law itself in staff
16 actions or deny?

17 There's a whole host of factors that
18 will be considered, but takes it up to the
19 siting board in their final decision. If they
20 do waive provisions, they have to issue an
21 opinion stating why they are waiving each
22 particular piece of it.

23 MR. BODETT: And just that piece of it,
24 that waiver, could that be challenged
25 separately from the overall scope of the

1 project or would that have to be a challenge
2 to the entire application?

3 MR. AUSTIN: I'm going to have some
4 lawyer respond to you and get back to you.
5 I'm sure there's probably some severability,
6 but I'm not a hundred percent sure. So what
7 I'll do is I'll ask counsel that question and
8 get back to Ann if that's okay.

9 MR. BODETT: Appreciate it. Thank you.

10 MR. DAVIS: Believe it or not there's no
11 lawyers in our room. We invited them, but
12 they wouldn't come.

13 MS. EASTMAN: We have a couple more
14 questions before we move on. Gaye.

15 MS. SYMINGTON: So can you talk about
16 the public policy goals that are -- you say
17 are considered in the process? What kind of
18 goals? Do you mean like environmental
19 protection goals or do you mean like x percent
20 of power overall coming from one -- from a
21 renewable power or climate change kinds of
22 goals?

23 MR. DAVIS: There's provisions in the
24 state energy plan. There's bonus initiatives
25 for renewable energy. There's the

1 environmental justice issue, and I think you
2 got it the way you phrased the question. Yes.

3 MS. SYMINGTON: So those get baked into
4 the criteria?

5 MR. DAVIS: I'm sorry.

6 MS. SYMINGTON: So those Comprehensive
7 Energy Plan goals get this -- gets to the
8 question.

9 MR. AUSTIN: The -- one of the findings
10 the Board has to make is it's consistent with
11 the state energy plan.

12 MS. EASTMAN: Chris.

13 MR. RECCHIA: A quick question on the
14 intervenor funding piece. First of all, I
15 just want to confirm that's new under Article
16 10 or was it carried over from Article X or
17 the sequela in between?

18 MR. AUSTIN: It was required under
19 Article X.

20 MR. RECCHIA: Okay. So you have a lot
21 of experience with it at this point.

22 MR. AUSTIN: Yeah. That's why I kind of
23 dwelled a little bit on administering that
24 money. That came from experience.

25 MR. RECCHIA: Great.

1 MR. AUSTIN: It was a significant
2 revision. The old Article X has a prohibition
3 on using the funds for attorneys.

4 MR. RECCHIA: I think we should do that
5 across -- just kidding.

6 MR. DAVIS: The current law allows for
7 the use the money for attorneys, but it can't
8 be used to challenge a decision. You can't
9 sue the Commission.

10 MR. RECCHIA: Okay. So my real
11 question, now that I know you have a lot of
12 experience with this, is the hearing examiners
13 that make the decision about how to spend the
14 money, who to spend it on, if one of the
15 intervenors disagrees with those decisions, is
16 that appealable or does that become part of
17 the decision? Like what's the process to
18 resolve that?

19 MR. DAVIS: It's the judge's decision.
20 The hearing examiner has the final say.
21 Period.

22 MR. RECCHIA: And that's not appealable
23 anywhere. Okay.

24 MR. DAVIS: I don't believe it is.

25 COMMISSIONER MARKOWITZ: Except under

1 Rule 78 probably, right?

2 MR. RECCHIA: This is why we do need
3 lawyers in the room.

4 COMMISSIONER MARKOWITZ: So that under
5 the Civil Procedures Rule 78 any action of the
6 state government -- it's the same as
7 Vermont's.

8 MR. AUSTIN: You can apply for arbitrary
9 capricious decisions. I think the law gives
10 the hearing examiner a tremendous amount of
11 latitude to decide how the funds are extended.
12 I'll add that to the list.

13 MR. RECCHIA: We may be able to answer
14 it the other way around. In all your
15 experience have you had a case where someone,
16 an intervenor, has felt like the decisions of
17 the Hearing Officer and the use of the
18 intervenor funding did not enable them to get
19 a fair shake understanding the project and
20 participate?

21 MR. DAVIS: I think there might have
22 been -- you know, there was some
23 disgruntlement because everybody wants their
24 piece of the pie, but my summary from being
25 involved in all the old cases was I heard more

1 than once well I'm not thrilled with the final
2 decision, but we were dealt with fairly in the
3 proceeding.

4 So I don't really recall there being a
5 serious problem with that. You know there's
6 got to be some give and take on both sides and
7 an intervenor group has to recognize that I'm
8 interested in issue X and so is my neighbor.
9 Then you know what. Our interests are common.
10 We might not overlap a hundred percent, but
11 there's ways to say okay, there's ways for our
12 interests to be addressed without us both
13 getting the money.

14 MS. EASTMAN: Thank you very much. We
15 really appreciate it. Thanks so much and I'm
16 sure we'll be back in touch.

17 MR. AUSTIN: I'll get answers to those
18 two questions and respond to Ann.

19 MS. EASTMAN: Thank you very much.
20 Thank you. So next up we have Mark Bergeron,
21 the Director of Land Resource Regulation for
22 the Maine Department of Environmental
23 Protection. Mark, have you been listening?

24 MR. BERGERON: Yes, I have.

25 MS. EASTMAN: Thank you for waiting.

1 Sorry about that, but this is a program that
2 New York seems to be addressing a lot of the
3 issues that we've been asked to look at. So I
4 wanted to really hear from them.

5 MR. BERGERON: Sure. Absolutely.

6 MS. EASTMAN: Thanks for waiting and now
7 we're very interested in you because you seem
8 to have a different way of doing this than the
9 other New England states in that you're not
10 using a contested case process for one thing.

11 MR. BERGERON: Right. Exactly. It's
12 been nice to hear about how some of the
13 different states do it and how Maine does it.

14 MS. EASTMAN: So go ahead.

15 MR. BERGERON: Great. I also have with
16 me this afternoon Earl Hamilton. He's one of
17 our project managers here at DEC. He is
18 currently reviewing a wind energy project, but
19 we also have him designated as our wind
20 representative. So when questions come in
21 from the public in general about a project or
22 which project may be affecting a certain
23 community, we turn that over to Earl.

24 I want to kind of put through my side
25 fairly quickly, but get to some more questions

1 at the end. The first slide deals with the
2 review thresholds. Since the 1970's we have
3 had a law on the books called a Site Location
4 of Development Act or the Site Walk Act. Back
5 in 2007 the Legislature had expanded on that
6 with the Wind Energy Act and it left us -- the
7 Legislature wanted to encourage wind
8 development and expedite the permitting
9 process. So currently in Maine all wind
10 energy development projects are reviewed by
11 the DEP in terms of siting and environmental
12 impacts.

13 In terms of other energy generation
14 facilities, we haven't seen a lot of new ones.
15 Wind is kind of the new kid on the block in
16 the last five years or so. That's been where
17 the bulk of our new development has been. We
18 also do have some hydro power generation laws.
19 We haven't permitted any new dams in a number
20 of years. That's mainly been revisions or
21 amendments or changes to existing hydro power
22 facilities, but we have had a couple small
23 hydro power facilities or hydro power
24 capabilities added to existing non-hydro power
25 dams so those have been slightly interesting.

1 We are also pretty proud of the fact
2 that this year we permitted the first grid
3 connected tidal energy project in the United
4 States. Small demonstration project on the
5 coast of Maine. I think it's about a 600 kW
6 project and it's been in the water for a
7 number of months, and from what we've heard
8 everything is going very well with that
9 project. So we may see more of that type of
10 project in the future.

11 You can see some of the overall number
12 of energy generation sites and total megawatts
13 installed here in Maine. One of the things
14 that isn't in our docket quite yet but is at
15 least being talked about is offshore wind.
16 Rhode Island had mentioned that earlier.
17 There's at least one company talking about
18 building a grid scale project offshore, but
19 we're only in the very early discussions of
20 that process with that company at this point.

21 The number of projects, energy
22 generation projects, that we see each year
23 varies. It's one to five projects. We
24 actually have a number of wind energy
25 development applications in the board now. So

1 we're dealing with those, and as you can see
2 we've approved over 95 percent of those.

3 In terms of other energy projects in
4 terms of biomass or gas or those type of
5 things, we don't have separate environmental
6 laws for that other than our typical air
7 quality and water quality sort of things. If
8 the project itself is big enough to trigger
9 site law, which is three acres of an area or
10 structure, then we review those developments
11 under the site law as well.

12 On slide number 3 -- actually slides 3
13 and 4 I'm going to skip through fairly quickly
14 because these have to do with the Maine Public
15 Utilities Commission permitting process. That
16 is separate from the DEP approval process. As
17 you can see there's no real kind of
18 coordination between the two. There are two
19 separate and distinct approvals. What the PUC
20 mainly looks at is the long term power sales
21 contracting requirements, those type of
22 things, and then certainly on the DEP end what
23 we look at are the siting and environmental
24 impacts. Occasionally we do consult with them
25 on a purchase agreement or tangible benefits,

1 those type of things, but typically they are
2 two independent processes.

3 Skipping ahead to slide number five, the
4 public participation, as soon as an
5 application comes in the door from an
6 applicant and is deemed complete that
7 information is open to the public, and we do
8 accept comments from the public at any point
9 in time during the review process.

10 For site law and wind energy projects we
11 generally have a six-month statutory review
12 for those type of processes -- projects. So
13 neighbors or any interested persons can send
14 us comments at any time. What we do is we
15 have a project manager assigned to each of
16 these developments that coordinates the review
17 of the information gathered in response to
18 each of the comments.

19 What we do to support the public is get
20 the information out there to the public as
21 soon as we hear about projects. We do that in
22 a couple different ways. We do have a web
23 site on the PUC's web site that lists the
24 overview of the wind energy development. It
25 also has a link to a site where somebody can

1 view all of the application materials
2 electronically online.

3 In addition to that, we also do our
4 copying of the application materials to the
5 municipality or close community so that
6 members of the community can view hard copies
7 there.

8 As part of the public participation
9 process there's a couple different avenues.
10 If a public hearing is not scheduled for one
11 of these projects, then -- wind energy
12 project, we have what we call two public
13 comment sessions, which sounds like similar to
14 New York's you -- actually I think it was
15 Rhode Island's public hearing process where
16 the Department, the applicants give an
17 overview of the project and the attendees at
18 the comment session provide comments for input
19 to the project.

20 For wind energy projects we have two of
21 those comment sessions, and we -- the
22 Commissioner or Deputy Commissioner usually
23 attends the session.

24 MR. HAMILTON: I would like to interject
25 here -- this is Earl -- at the public comment

1 sessions we -- it typically would start the
2 public portion at four or five o'clock in the
3 afternoon, but before that we would be there
4 for several hours ahead of time to provide
5 opportunities for one-on-one meeting and
6 discussion with members of the public who
7 might be uncomfortable making their statements
8 in a public forum. So we try to be as
9 available as we can for anybody who might have
10 something to say.

11 MR. BERGERON: In terms of the cost of
12 participation of the project, with any large
13 or unique project that the Department reviews
14 we can have a provision called a special fee
15 project status where we can essentially bill
16 applicants for all the staff time, experts,
17 outside experts, consultants that are being
18 used, and expenses associated with that
19 project. We usually have requested that for
20 the majority of the wind energy projects that
21 we've seen to date, and we request information
22 from the applicant upfront so that they are
23 aware of it that they will be invoiced for
24 those services.

25 In terms of the role of towns and

1 regional planning commissions, Maine does not
2 have any specific regional planning
3 commissions other than an organization called
4 the land use planning commission which
5 administers laws and ordinances in the
6 unorganized territory of Maine, generally the
7 northern third or northern half of the State
8 of Maine. There are no townships or
9 plantations or just kind of organized
10 territories.

11 So in the past the land use planning
12 commission has overseen the state and to some
13 degree in this level planning review. Just
14 starting this year with some recent
15 legislation the Department is now reviewing
16 site projects and wind energy projects
17 statewide. So now the Department of
18 Environmental Protection is reviewing those
19 larger projects in the northern territory and
20 not the land use planning commission.

21 In terms of the role of towns, the towns
22 may have their own local permitting processes
23 in terms of stormwater impacts, road
24 construction. Some towns may have local
25 ordinances and we coordinate with those. If

1 there's any conflicts between state and local
2 ordinances, usually the local standards apply.
3 Towns may be automatic parties to our process,
4 but again we keep them in the loop. We extend
5 them the application materials, and that
6 affects Maine.

7 One of the roles, kind of a secondary
8 role, of a town is part of the standards
9 includes what we call legal benefits. So
10 proponents of a community, which is either a
11 town, county, or Native American Tribal
12 territories, those communities receive either
13 direct financial contributions or other
14 physical improvements. Some applicants have
15 paid to upgrade roads and towns. Some have
16 offset property tax payments. Some applicants
17 have provided annual costs to permanent
18 residents in the town to offset their energy
19 costs.

20 So the standard is fairly flexible in
21 terms of allowing the applicant to come up
22 with different types of benefits, but that
23 isn't a requirement of the Department.

24 Slide number six, alternative dispute
25 mechanisms. We often, throughout the review

1 process of the application, we'll receive
2 comments or concerns or complaints from either
3 citizens of the host community or other
4 citizens, and if we make the -- if we think
5 the comment is valid or we're concerned
6 enough, we'll forward that to the applicant.
7 So oftentimes there's kind of a back and forth
8 discussion or negotiation between the
9 Department and potentially the interested
10 person and the applicant.

11 A lot of times in the review process we
12 can handle that information informally right
13 with the project manager or DEP staff. As it
14 sounds like in other states, any final
15 decision by the Department is appealable. We
16 have a citizen board and environmental
17 protection associated with DEP or the Maine
18 Superior Court.

19 All the wind applications that have been
20 issued to date -- for the wind that have been
21 issued to date have been appealed to the Board
22 and the Court, and we just denied one wind
23 application about a month ago and that denial
24 was also appealed to the Board of
25 Environmental Protection by the applicant. So

1 we'll be proceeding ahead with that appeal
2 next year.

3 I would like -- I mentioned comments are
4 received at pretty much any time until we
5 issue the permit and that decision is
6 appealable in terms of who pays for those
7 comments. Appeal costs are shared. The
8 applicant will pay for the Department's
9 Attorney General's fees dealing with the
10 appeal, but the applicant will also likely
11 hire their own attorney to represent their
12 case, and then the appellant either represents
13 themselves or sometimes they hire attorneys as
14 well. So the appeal costs can be shared.

15 We think the appeal process works pretty
16 well in terms of either the applicant or an
17 appellant's being able to appeal the decision
18 to the Board, but I suspect it would be hard
19 to -- some opponents of the project they would
20 say that there's -- that the process isn't
21 sufficient enough.

22 Slide number seven, in terms of which
23 environmental permits are required, there's a
24 number listed here. Again, our site law is
25 for projects greater than three impervious

1 areas. We also have Natural Resource
2 Protection Act which deals with wetland
3 streams, wildlife habitat, those types of
4 things, and we also have stormwater permits
5 for new impervious areas. Those type of
6 things.

7 Wind projects. Again, as a result of
8 this new legislation, wind projects in the
9 unorganized territory that used to be handled
10 by the land use planning commission, the DEP
11 is now the lead agency in that. So the land
12 use planning commission gives us what we call
13 a certification of their standards. So they
14 review some of their municipal level type
15 standards in terms of allowable zoning,
16 setbacks, those type of things. The MWDCA
17 provides that to us as part of our approval
18 process.

19 In terms of conditions we do often have
20 a number of conditions associated with each
21 project, whether it is certification that
22 stormwater facilities are being maintained,
23 followup in terms of marking permanent markers
24 on the ground, those type of things.

25 All permits have to be issued -- all

1 state permits have to be issued before
2 construction can begin. In terms of
3 cumulative impact of multiple projects, we
4 don't have any current standards for that at
5 this point. It's been raised by applicants
6 and the state has considered that to some
7 degree, but we don't have any specific
8 standard because as we started to get more of
9 these wind projects they are starting to bump
10 into each other a little bit more. So I
11 suspect that may be a growing concern as we
12 move forward with the traditional wind
13 project, and we think at least from the
14 Department's standpoint that the Wind Energy
15 Act and our site walk and all the other
16 applicable environmental laws that we go
17 through that we do address all the
18 environmental concerns associated with these
19 projects.

20 Slide number eight again talked about a
21 little bit in terms of monitoring compliance.
22 We do have compliance testing required by the
23 licensee. Noise. We do have specific noise
24 standards in our rules that wind energy
25 projects have to follow. We also have

1 standards for bird and bat mortality. We
2 often require licensees to do post-
3 construction mortality studies to see if there
4 are any significant impacts to the bird and
5 bat population in the area. Then we review
6 any mitigation techniques for either noise or
7 bird and bat impact.

8 One of the things I did want to mention
9 was that starting a few wind projects ago I
10 believe the applicants volunteered to set up a
11 1-800 number, toll free number, for a resident
12 who called in to register a complaint. So
13 even though that's not a state requirement I
14 believe a number of applicants have been doing
15 that, and that's generally been well received.
16 Keep those lines of communication open between
17 the applicant and residents, but it's also a
18 way for us to touch base as well to find out
19 if and how many of the complaints we're
20 getting.

21 We've actually -- in a couple of
22 licenses we've actually required that they
23 maintain these toll free numbers and that they
24 respond in a certain period of time either by
25 going out to the complainant's location and

1 going to the specific monitoring to see if
2 they can determine that they are in fact in
3 compliance or that they are not in compliance.
4 It goes both ways, but it's part -- we've
5 actually codified into the license so that we
6 have required them to notify us within a very
7 short period of time.

8 Monitoring we do both during
9 construction and post construction. We often
10 hire a third-party inspector to monitor
11 stormwater and erosion control measures during
12 construction, but again the applicant will
13 have post construction monitoring for noise or
14 bird and bat mortality.

15 The time period of those varies on the
16 project and location. Can be anywhere from up
17 to a year to the life of the project. In
18 terms of who pays for that monitoring, again,
19 through this special fee process that's run
20 through the Department or it's paid directly
21 by the licensee through their contractor.

22 In terms of the strengths and weaknesses
23 of our program, one of the things that I've
24 noticed listening to some of the other states
25 is Maine seems to be somewhat easy in terms of

1 -- at least in terms of all siting and
2 environmental impacts. EP is your one stop
3 shop. We have all the reviews here. So short
4 of PUC approval for the energy generation
5 portion of it or contractual portion of it,
6 the Department looks at all those, whether
7 it's noise, shadow flicker, stormwater,
8 wildlife impact, those type of things, and
9 that was one of the Legislature's requests
10 back in 2007 was that we expedite that process
11 so it was one stop shopping.

12 One thing that we have seen recently is
13 the statutory criteria we have for scenic
14 impact. We don't have any rules to go along
15 with that so there's not a lot of objective
16 criteria. It tends to be subjective which
17 makes it difficult sometimes because the
18 applicant will think one thing, the Department
19 will think another, and opponents may think a
20 third.

21 So that's one thing that we see as a
22 weakness that we may be able to try to better
23 quantify, but obviously, you know, scenic
24 impacts are one of those things that are
25 difficult because some people may like the way

1 something looks and some people may not. So
2 how do we quantify that, but based on our
3 experience we've been encouraging our
4 applicants to be open with residents and
5 concerned citizens. Get information out there
6 early and often. Do as many -- do as many
7 education efforts as they can early in the
8 process to either answer questions about the
9 process or maybe address some of the concerns.
10 So --

11 MR. HAMILTON: I wanted to just add one
12 thing we didn't really speak to here is
13 decommissioning. The State of Maine is very
14 concerned about the possibility of one of
15 these developers going belly up and leaving
16 this what to some might seem as a blight on
17 the landscape and no mechanism for renewal.
18 So we have required that applicants
19 demonstrate upfront they have the financial
20 capacity to decommission, one hundred percent
21 remove and restore a wind site.

22 Initially our requirement just sort of
23 allowed them to take a write-off, if you will,
24 for salvage value, but we kind of figured out
25 if we had to do these projects ourselves and

1 take on the decommissioning, we really don't
2 have anyway to utilize the salvage value to
3 pay for the actual decommissioning. So we
4 kind of removed that from the requirement. If
5 they can demonstrate that it is something that
6 we could do, we would probably accept it, but
7 this is still pretty fresh and so we haven't
8 done that yet, but we do feel it is very
9 important that at the beginning of one of
10 these projects before they build it they show
11 us how they would take it down after.

12 MS. EASTMAN: Thank you. Questions?
13 Chris.

14 MR. RECCHIA: Thanks. For the noise
15 monitoring that you do, do you have
16 qualitative criteria for noise or is it
17 quantitative?

18 MR. BERGER: We have maximum 42
19 decibels. Used to be 45. It was a very
20 recently enacted change in statute that
21 requires a maximum 42 decibels at a protected
22 location. Protected location is within 500
23 feet of a residence, non-participating
24 residence, or at the property line.

25 MR. RECCHIA: Thanks.

1 MS. EASTMAN: I have a question. You
2 said that you give public notice of the
3 projects once they are deemed complete. How
4 much time are you spending or is your staff
5 spending talking to applicants prior to that
6 determination being made?

7 MR. BERGERON: Well after they submit or
8 even prior to their submission?

9 MS. EASTMAN: Prior to their submission.
10 I mean generally here in Vermont, at least
11 when I was working for the Agency of Natural
12 Resources, there was a lot of conversation
13 that went on between agency staff and
14 applicants for major projects in advance of
15 any actual application being submitted. Does
16 your staff do that as well?

17 MR. BERGERON: Absolutely.

18 MR. HAMILTON: It depends a lot on the
19 project. A lot of times we're starting to
20 hear about projects a year or two out because
21 what applicants are doing is reaching out to
22 other state agencies in terms of wildlife
23 studies or protocols to make sure that when
24 they do those studies they have got as much,
25 you know, buy-in from those agencies as

1 possible to cut down on the amount of time
2 they might have to redo a study. So it may be
3 a year or two that we hear about a project.

4 Others sometimes the Agency hears a
5 month or two, but we're getting the word out
6 to applicants to say what we call meet and
7 greet meetings which are just informal, come
8 in and talk to us, what's your project, what
9 are you looking at, what do you have for
10 protected resources around it in terms of
11 lakes or natural features or state parks,
12 those type of things, so that we can try to
13 identify any issues.

14 MS. EASTMAN: And I'm curious. You have
15 got a lot of wind projects now. Are you
16 noticing that any local governments starting
17 to adopt ordinances so that people at least
18 have to come to them as well as you?

19 MR. HAMILTON: Yes. There are some
20 towns, not many, some towns have noise
21 ordinances that are more restrictive we have
22 to respect now. There are a few towns that
23 have adopted outright bans and that kind of is
24 a show stopper right there.

25 MS. EASTMAN: So if a town in Maine

1 adopts a ban, that's it? It trumps the
2 process?

3 MR. HAMILTON: That's correct, but the
4 thing is that the vast majority of these
5 projects are being proposed in the unorganized
6 part of the state where there is no local
7 government.

8 MS. EASTMAN: Understood. Can I just
9 clarify, though, that ban? I mean then in
10 Maine a town could adopt a ban against
11 biomass, gas, anything?

12 MR. HAMILTON: Correct.

13 MR. BERGERON: Yes.

14 MS. EASTMAN: So the local is going to
15 control in Maine over any state policy?

16 MR. HAMILTON: Unless the law can be
17 shown to be illegal somehow, yes.

18 MS. EASTMAN: Any other questions?
19 Thanks very much. We appreciate your time.

20 MR. BERGERON: Thank you.

21 MS. EASTMAN: Okay. Is David here?

22 MR. MULLETT: Yes.

23 MS. EASTMAN: Thank you for being
24 patient. When we get these other people on
25 the phone we do like to --

1 MR. MULLETT: Where would you like a
2 live witness with a half live voice?

3 MS. EASTMAN: How about over there so
4 everybody can hear you. Thanks so much for
5 coming. Thank you.

6 MR. MULLETT: Thank you very much. I am
7 David Mullett, General Manager of Vermont
8 Public Power Supply Authority. I would like
9 very much to thank the Commission for the
10 opportunity to appear and for the scheduling
11 accommodations that recognize the many hats
12 that I had to wear kept me from being here
13 sooner.

14 You will note from the relatively brief
15 remarks today and the handout that I provided
16 that our comments in some ways are relatively
17 limited and don't specifically address all of
18 the questions that are within the charge of
19 the Commission, and that's really a result of
20 reflection on what the VPPSA and the municipal
21 member systems' relative lack of experience
22 with the generating siting process here is in
23 recent years, and it seemed more respectful to
24 just offer a few reflections in areas of more
25 specific focus rather than perhaps be overly

1 opinionated in areas where we have not had a
2 heavy degree of involvement.

3 I will offer, because you as a
4 Commission have to weigh the biases of any
5 speaker and any organization, so I guess I'll
6 be candid about mine, although most of you are
7 well aware from personal appearance of my
8 limitations I suspect. My current role is the
9 change that occurred relatively late in my
10 career in 2010. Before that I practiced law
11 in Vermont for many years, including as
12 counsel for the Public Service Department and
13 Associate General Counsel of the Public
14 Service Board. So in 248 proceedings I have
15 done my best to represent the public interest,
16 taken the evidence as a Hearing Officer,
17 advised the Public Service Board, represented
18 developers from I guess gas plants to
19 individual net metering wind turbines, and
20 consulted many times with project opponents.

21 What really strikes me is, and what I
22 have just heard is, the importance of looking
23 toward other states. The breadth of
24 experience around 248 that many of us have is
25 often tied to a specific objective to secure

1 approval of this project. Stop this project.
2 The more holistic look you're taking is
3 extremely commendable and extremely helpful.

4 By way of history Vermont Public Power
5 Supply Authority is a joint action agency
6 founded by statute in 1979. Joint action
7 agencies there are about 65 throughout the
8 country. They enable small municipal and
9 cooperative electric utilities to work
10 together to maintain their local autonomy and
11 local individuality while achieving some
12 common goals and gaining some efficiencies of
13 scale.

14 Our 12 member system, you will see on a
15 list attached to the handout, we comprise
16 about 31,000 meters, about 7 percent of
17 Vermont electric load. Lyndonville is our
18 largest member system with about 5,400 meters.
19 Jacksonville I think is 620 or so, and that's
20 the smallest of the members.

21 One of the reasons that we have not had
22 a lot of Section 248 generation siting
23 involvement is really a great one and that's
24 very traceable to the importance of hydro
25 projects in municipal service territories in

1 Vermont. The VPPSA member systems became
2 entities I think between 1892 and 1936, if I
3 recall, and six of the entities have a total
4 of seven hydros. Swanton being a classic
5 example.

6 So Section 248 really does not come into
7 play with respect to those hydro projects both
8 because of their age and the federal control
9 over hydroelectric licensing. So the sort of
10 long history of renewable involvement through
11 hydro projects has left us with relatively
12 limited siting activity compared to many other
13 entities.

14 VPPSA acquired at the outset a 19
15 percent interest in the McNeil wood chip
16 facility in Burlington in around 1983/1984.
17 We were involved in the 248 process then. We
18 have a 40 megawatt peaking plant in Swanton,
19 Vermont which runs very little by the nature
20 of a peaking plant. That was the subject of a
21 248 effort that wasn't terribly controversial
22 in 2008 to 2010.

23 We did look at the East Mountain Wind
24 Project, evaluated that after it had been
25 rejected under the efforts of a prior

1 developer, but decided not to go forward with
2 that in 2010.

3 As I've noted in the materials, we've
4 really looked to some more general reflections
5 rather than drilling down in some of the areas
6 where our involvement has been limited, and I
7 think it's fair to say that really one of the
8 key strengths of the process now, which is not
9 perfect, it's a very, very difficult balance
10 and that's the -- I think that's the harsh
11 reality is the balancing of interests is very,
12 very hard in any kind of a generation siting
13 process.

14 The integrity and the staff quality at
15 the Public Service Board and the Department I
16 think has been unassailable. I've appeared
17 before the last four board chairs, lost a few
18 I still think I should have won, maybe won a
19 couple I should have lost, or disagreed with
20 some decisions, but the integrity of
21 application of the process I think has really,
22 really been unassailable on the Board's and
23 the Department's part, and that's a very, very
24 key point.

25 The statutory sections of 248, Section

1 (B) (1) incorporation of consideration of
2 regional, local plans, municipal body
3 recommendations is really important. Could
4 that be tightened up? Could we define due
5 consideration a little better? Perhaps.
6 Perhaps some of those terms I think are a
7 little bit vague, but it is a strength to have
8 a mandatory consideration of local bodies and
9 local plans.

10 The breadth of the Board's intervention
11 rule is another thing that has been a positive
12 process I think. Certainly does it make
13 proceedings a little bit more complicated? A
14 little bit longer? Yes. But the Board's
15 intervention rule is a very broad one, and the
16 only Vermont Supreme Court decision that I
17 recall I think was in the 1980's and actually
18 involved VPPSA, and Vermont Supreme Court sent
19 a case back to the Public Service Board and
20 said Board this is a liberal rule and you need
21 to let people in, and said that the Public
22 Service Board had made a mistake in not
23 letting some folks intervene in the VPPSA
24 financing proceeding. So I think as local
25 bodies, publicly owned non-profit bodies, I

1 think it's really important for all that the
2 Board's intervention rule remain liberal in
3 scope and liberal in application.

4 There are a few areas I think of
5 potential focus as part of the Commission's
6 charge here that we might think about, and
7 while individual generating projects often
8 result in very high emotion and very, very
9 strong sense of dispute, I think there's a
10 common -- some common areas that everyone
11 would benefit from looking at whether --
12 whether it was as a Public Service Board,
13 Public Service Department attorney advising a
14 client, or even just as a ratepayer, I think
15 there's a fundamental tension and fundamental
16 lack of clarity as to what we mean when we say
17 that as a matter of law the Public Service
18 Board decides the case on record; the sworn
19 testimony, the admitted exhibits, yet takes
20 into consideration public comment. Public
21 comment that's often very passionate, often
22 very, very well informed, very, very well
23 prepared, and I don't know at 55 years of age
24 and with 30 years of practicing law what that
25 means, and I think that's a very important

1 point. That it's very difficult to figure out
2 if you're a citizen with concern about a
3 generation project, whether you need to
4 formally intervene, whether your public
5 comment is making a difference, but what does
6 it mean to say on one hand we have to decide
7 the case on the record. The lawyer in me
8 likes that. People get sworn in, you get to
9 cross examine them, you get to question them,
10 but I think it's very unclear for all involved
11 in the process what does it really mean? How
12 do we think about it? How do we incorporate
13 what the public says when it's such an
14 important part of who we are as Vermonters and
15 such an important part of the process.

16 I think that's an area that we need
17 frankly to scratch our heads about to listen
18 and learn from other states how they manage
19 this. Just in the last hour I've heard a
20 remarkable panoply of informality versus
21 formality, and it's something I just think we
22 need to think about. It bothered me from day
23 one frankly back when I had hair, but it's one
24 thing to really reflect on and say what does
25 it mean public when we say we're considering

1 what you have to say.

2 Second, I think some remarks overlap to
3 a high degree with the remarks that we just
4 heard from the folks in Maine. Aesthetics
5 tests, in particular, are very challenging. I
6 know that aesthetics experts, with due
7 respect, will opine there is an objectivity,
8 that you can at least have some degree of
9 objectivity around scenic or aesthetic tests.
10 I think it's very difficult, very, very
11 difficult to predict the outcome of the
12 aesthetics just based on a range of ways we
13 think about things as human beings, and to the
14 extent that the Commission's work and our
15 collaborative work beyond that can give
16 guidance to that it's a difficult one.

17 It was interesting to hear quantitative
18 and qualitative standards being adopted in
19 Maine around noise and around other issues
20 that perhaps we should look at. We might
21 fight like cats and dogs about what those
22 standards should be, but it's something that
23 potentially would help developers, help
24 everyone, help the regulatory community if we
25 did have some qualitative standards that made

1 some sense.

2 Aesthetics is tough. The Quechee test
3 and the way we think about aesthetics now
4 maybe invites the respectful consideration,
5 but still it's a subjective subject, if you
6 will, but I think that's one where we probably
7 need to sit down and think that through. Can
8 we learn from other states? Can we give some
9 sense as to what we mean when we talk about
10 undue aesthetic impacts?

11 Technology and facilitating public
12 participation through technology. I think the
13 current board has done an excellent job of
14 using Vermont Interactive Television, using
15 other resources to get a broader word out,
16 invite broader public participation, but it's
17 hard, and frankly, with due respect to
18 everyone, the Board's rules are pretty old.
19 We talk about notice given in newspapers. I
20 suspect I'm not the only household in this
21 room that doesn't subscribe to a newspaper in
22 today's world. We need to think about use of
23 social media, things that I don't always
24 understand, and I don't know what the future
25 looks like, but it may be time for an updating

1 of rules and process in ways that facilitate
2 public participation, and I think there's a
3 very strong overlap between public involvement
4 and small municipal utility concerns.

5 When you're in Jacksonville or in Barton
6 or Lyndonville you're part of a publicly owned
7 utility. Our member systems are non-profit
8 publicly owned utilities, and responsible
9 siting decisions, broad participatory
10 opportunities, recognition of diversity of
11 communities, and the importance of community
12 input I think is a very common interest and
13 one that we can and should use both updating
14 of rules and technology as well as we can to
15 just think about what's going to be an
16 iterative process forever.

17 We went 400 years with newspapers and
18 the evolution in social media in the last five
19 that probably exceeds that. So how we work a
20 predictability and necessity of rules and
21 process into this iterative future I think is
22 a tough one, but one we have to look at.

23 There is a place for alternative dispute
24 resolution. Used successfully in many
25 instances. I think the parameters of it have

1 to be crafted pretty carefully. In many
2 instances, just not, for example, to disclose
3 any past client confidences, but often for an
4 individual or an entity seeking to site a
5 generation project the first and quietest
6 piece of the work is acquisition of site
7 control. You don't want the word out until
8 you have been able to secure the option to
9 purchase the land, the lease of the land,
10 whatever. So that by the time something
11 becomes public word the key step, namely
12 location, has already in part been
13 established.

14 Every once in a while there's some
15 flexibility in that. I recall the Ryegate
16 wood energy plant started in Randolph and in
17 response to community concerns was able to
18 move to a different home, but oftentimes there
19 may be an inability to secure a different site
20 or to move a project. So we need to think
21 about the parameters of alternative dispute
22 resolution so that it doesn't become another
23 layer of complexity that's discouraging to
24 intervenors' participation and perhaps to
25 developers and utilities as well.

1 Again, those are just, I think, a few
2 areas of reflection based on what the
3 municipal experience has been. A very
4 difficult balance. One that we need to work
5 together on. We are glad -- I am glad to
6 participate in the work of the Commission
7 going forward and to answer any questions you
8 might have.

9 MS. EASTMAN: I have just got a couple.
10 You're 7 percent of Vermont's load?

11 MR. MULLETT: Yes.

12 MS. EASTMAN: What makes up your 7
13 percent? What sources of generation?

14 MR. MULLETT: It's really a mix and I
15 don't have the figures at hand. There was a
16 blend of hydroelectric, our McNeil interest,
17 Ryegate, and the VEPPI contracts, increasing
18 amount of standard offer and some market
19 contracts, as well general market contracts.

20 MS. EASTMAN: In a lot of places when
21 we've been looking at other states there can
22 be different processes for different
23 thresholds. Different processes for different
24 thresholds. So it's -- one thing I was
25 wondering is that something you think -- you

1 talk about alternative dispute resolution and
2 not wanting to make things harder, and I think
3 I agree with that, but then I think that if
4 it's a large project that's impacting a lot of
5 people how -- what do we put in place for
6 public participation there, whereas, it might
7 be easier if it were just something proposed
8 by Lyndonville for Lyndonville.

9 MR. MULLETT: Sure, and we see that
10 degree of gradation in some instances coming
11 into play. The first one that comes to mind
12 was with the first net metering statute which
13 recognized the conditional waiver or the
14 waiver of some of the 248 criteria.

15 We've seen that extension into standard
16 offer where someone who is the beneficiary of
17 a standard offer contract or net metering for
18 that matter doesn't have to take on the same
19 proof that the power is needed that someone
20 wanting to build gas plants in Bennington and
21 Rutland do.

22 So I think there is a lot of wisdom in
23 that gradation type -- gradation type way of
24 thinking about things.

25 I think municipals would be

1 beneficiaries of that because more and more as
2 we think about distributed generation, as we
3 think about the utility block in the standard
4 offer component of the SPEED program, there
5 may be places where Lyndonville, Morrisville,
6 Swanton could do things, and I would
7 completely agree that those should not have
8 the degree of review as a 400 megawatt gas
9 plant.

10 MS. EASTMAN: Questions? Thanks, Dave.

11 MR. MULLETT: Thank you again so much.

12 MS. EASTMAN: Thank you. So that's it
13 for presentations today. We talked earlier at
14 the beginning about our next meeting so I
15 don't know what else we need to talk about.
16 It's January 11th and the morning session
17 starting at 9 is in this room, and then by
18 noon we should be done and we can have lunch.
19 I was wondering if you could really get into
20 the State House cafeteria on January 11th, and
21 then we'll be moving over to a room in the
22 afternoon at the Department of Public Service,
23 and the staff is working on getting us the
24 people and we'll have some flexibility.

25 So that leaves us at 3:51. We made up

1 that time that I gave to New York. Not
2 talking now, but that was necessary for at
3 least me to understand what a neighboring
4 state has most recently done.

5 So public comment. If someone wishes to
6 comment -- sure.

7 MR. LEWANDOWSKI: Name is John
8 Lewandowski. I'm from Newark. This has been
9 brought up at a couple of meetings here, last
10 two meetings here. Was also brought up by a
11 couple of states. New York made reference to
12 minor transmission.

13 I believe it was Louise McCarren who
14 said that the Commission does not get into the
15 siting of transmission, which I understand,
16 but the siting of generation should strongly
17 consider transmission. How does New York
18 determine minor transmission? When you're
19 talking -- you could be 30 miles away from a
20 transmission connection point. Not a good
21 place to be because we're talking big dollars.
22 We're also talking major impacts on a lot of
23 people for transmission. So I truly believe
24 it should be something.

25 I mean Lowell came up with, after the

1 project had started, oh yeah, by the way we
2 forgot this 13 million dollars in transmission
3 costs that we forgot to talk about. Well it
4 would be nice if that's brought upfront, and
5 it also should be considered, especially
6 through an area like the Northeast Kingdom, in
7 particular, but the state in general because
8 this is a state that is a very scenic state,
9 and I mean in 2006 I believe it was National
10 Geographic said that this is an ecotourism --
11 number one ecotourism area in the country
12 Northeast Kingdom. Number nine in the world.
13 It is a very sensitive area.

14 As a matter of fact, the National
15 Geographic for December has an article in here
16 about a tree. It's the second largest tree in
17 the world. This tree, you can't see it from
18 there, but down here there's a dot. There's a
19 man up here. There's another red dot. That's
20 another man. This tree is 247 feet tall or
21 roughly one-half the size of an industrial
22 wind turbine.

23 MS. EASTMAN: Thanks.

24 MR. LEWANDOWSKI: I just think the
25 transmission should be taken into

1 consideration strongly.

2 MS. EASTMAN: Thank you.

3 MS. McISLIN: Good afternoon. I'm
4 Kathleen McIslin from East Haven and I have
5 brought a copy for you and e-mailed copies to
6 the rest of you, which I hope you will look
7 at, of this 80-page report prepared by GDS
8 Associates of Marietta, Georgia for the
9 Public Service Department, and finalized and
10 submitted to the Department in February of
11 2011.

12 This report basically says that Vermont
13 doesn't need any new electrical generation
14 between now and the year 2031, and that all
15 Vermont actually needs is the implementation
16 of energy efficiency measures and
17 conservation, and that even if Vermont were to
18 pay for all new appliances and all of that,
19 that Vermont over that period of time, which
20 is another 19 years from now, that Vermont
21 would save money. And so I'm going to bring
22 you this, and I hope that you will all really
23 look at it and give it a serious consideration
24 because I have some questions about it.

25 I don't know how much money the

1 taxpayers of Vermont dished out to pay for
2 this study, but I'm wondering how a study --
3 how this particular study has factored into
4 say, for instance, the formation of Vermont's
5 energy plan and the decision of whether to
6 grant a CPG or the decision of how to look at
7 the factor of need in Act 248.

8 I'm wondering if this is just a piece of
9 paper that's just flitting around somewhere
10 nobody has even looked at, and I would like a
11 response about that and we'll really
12 appreciate you taking a look at it.

13 MS. EASTMAN: We'll look at it, but we
14 didn't ask for it to be prepared, of course,
15 and we're looking at generation siting, not
16 what they looked at prior to putting policies
17 in the plan so --

18 MS. McISLIN: Well I think this is very
19 relevant.

20 MS. EASTMAN: We'll look at it. If it
21 helps us make a decision relative to the issue
22 we've been asked to look at, we'll do that.
23 Thanks. Anyone else today? Yes.

24 MR. FRIED: Hello. I want to thank you
25 for conducting these five hearings. I'm Kim

1 Fried from Newark. I'm the Chair of the
2 Planning Commission in Newark. I've been
3 fortunate to be able to attend these five
4 meetings, and I would say I've learned a lot
5 and my intention is to continue to learn,
6 but what I would like to talk about, and I see
7 no matter how general your charge is on
8 siting, the industrial ridge wind keeps coming
9 up, and today we heard a couple of our
10 speakers talk specifically about wind, and I
11 think that's the big issue that we're facing,
12 and in many cases probably the reason the
13 Commission is here.

14 Starting in your third hearing and right
15 through today there were many comments
16 concerning local town commissions,
17 municipalities, what we call the, in our part
18 of the state, town plans and regional plans,
19 and I can say that these plans are important
20 to the community, and they not only contain
21 planning, years of planning, in some towns
22 decades of planning, volunteered dedication
23 and vision statements of what our towns and
24 communities are all about. You heard from
25 Windham planners. You heard from Brighton,

1 Craftsbury, Newark. You heard from regional
2 planners, and today we heard discussions about
3 plans and how they are being used in places
4 like Maine, and I can tell you as a long term
5 planner I feel that the Section 248 and the
6 developers for ridgeline industrial
7 development are dismissing or nearly
8 dismissing our plans, and I would ask the
9 Commission, I've asked before and will
10 probably ask you again, to reconsider the
11 importance of the planning process in the
12 State of Vermont, and you have heard from many
13 different planners from the Northeast Kingdom
14 because it's the Northeast Kingdom right now
15 that is feeling the impact of these ridgeline
16 facilities, and you're hearing plenty from
17 planners, and I think we're looking to the
18 Commission to maybe correct the wrong that has
19 developed over the last couple of years in
20 terms of town and regional plans, and give
21 them the importance which they have had in the
22 past, and maybe restore some of the respect
23 and love we have for Vermont. Thank you.

24 MS. EASTMAN: Thank you. Thank you.

25 We're at 4 clock so we'll adjourn for today

1 and get back together in 2013. Thank you.

2 (Whereupon, the proceeding was
3 adjourned at 4 p.m.)
4

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

6 I, JoAnn Q. Carson, do hereby certify that
7 I recorded by stenographic means the Hearing re: Energy
8 Generation Siting Policy Commission Information Session
9 #5, at the Pavilion Auditorium, State Street, Montpelier,
10 Vermont, on December 19, 2012, beginning at 1 p.m.

11 I further certify that the foregoing
12 testimony was taken by me stenographically and thereafter
13 reduced to typewriting, and the foregoing 122 pages are a
14 transcript of the stenograph notes taken by me of the
15 evidence and the proceedings, to the best of my ability.

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

19 Dated at Burlington, Vermont, this 21st day
20 of December, 2012.

21 _____
22 JoAnn Q. Carson

23 Registered Merit Reporter

24 Certified Real Time Reporter
25