

STATE OF VERMONT  
ENERGY GENERATING SITING POLICY COMMISSION  
DELIBERATIVE SESSION #6

March 28, 2013 - 9 a.m.  
Catamount Conference Room, National Life  
Montpelier, Vermont

Commission Members

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

CAPITOL COURT REPORTERS, INC.  
P.O. BOX 329  
BURLINGTON, VERMONT 05402-0329  
(802) 863-6067  
E-MAIL: [Info@capitolcourtreporters.com](mailto:Info@capitolcourtreporters.com)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Also present:

- Anne Margolis, DPS
- Linda McGinnis
- Secretary Deb Markowitz, ANR
- Commissioner Chris Recchia, DPS
- Kim Fried
- Nancy Fried
- John Lewendowski
- Charlie Pughe, GMP
- Robert Dostis, GMP
- David Mullett, VPPSA
- Billy Coster, ANR
- Judith Dillon, ANR
- Karen Horn, Vt. League of Cities and Towns
- Kathleen Iselin
- Geoffrey Hand, Esq.
- Ann Rademacher
- Asa Hopkins, DPS

1                   CHAIRMAN EASTMAN: Good morning. Here  
2 we are for whatever number deliberative  
3 session for the Energy Siting Commission. I  
4 did just E-mail Tom. Tom Bodett. He is in  
5 Chicago. He's actually guest hosting "Wait,  
6 Wait Don't Tell Me," this week, and they  
7 tape tonight. They tape on Thursday nights.

8                   MS. McCARREN: Did you hear him last  
9 Saturday?

10                  CHAIRMAN EASTMAN: No, I didn't hear him  
11 last Saturday.

12                  MS. McCARREN: Last Saturday was really  
13 good. He had comments about the Lu Lu Lemon  
14 yoga pants. I can't repeat it.

15                  CHAIRMAN EASTMAN: Well today -- tonight  
16 he's hosting. He was a panelist last week.  
17 Tonight he's hosting, so he's been out there  
18 all week. We did get comments from him  
19 though, and he will be back for our next  
20 meeting.

21                  So we are here today until about 4, and  
22 Chris is on his way, so that means we are  
23 only down one. Let's see, and sorry  
24 everybody about the postponement last week.  
25 I hope no one showed up. It was the day

1 before -- took us a whole day to decide to  
2 cancel something, but that's all right.  
3 Anne was too busy with S30 anyway.

4 So that means that we are here today all  
5 day, and we will have our first public  
6 hearing on draft recommendations next week,  
7 April 3, in Rutland. The public hearing  
8 will be from 5 to 7 at the what's now called  
9 the Rutland Intermediate School. It's on  
10 Library Avenue in Rutland. It's the old  
11 high school. We will be meeting -- we have  
12 scheduled time from 1 to 4 in the Fourth  
13 Floor Conference Room at the Asa Bloomer  
14 State House Office Building which is right  
15 downtown.

16 And then that means what we have done is  
17 we have rescheduled -- we have postponed  
18 tomorrow's public hearing until April 8. So  
19 we will have a second public hearing, this  
20 will be the one that will be handled through  
21 the interactive television sites, and that  
22 will be from 5 to 7. So that's up -- that's  
23 also up on the Web site.

24 And then we have a deliberative session  
25 scheduled for April 9 here in Montpelier.

1 Another session scheduled for April 16. And  
2 hopefully the presentation to the  
3 legislature and Governor on April 25. And I  
4 understand Anne's reserved Room 11. What  
5 time?

6 MS. MARGOLIS: We have it for the whole  
7 day.

8 CHAIRMAN EASTMAN: We are not going to  
9 take the whole day.

10 MS. MARGOLIS: We can decide what time.

11 MS. McCARREN: Not that she has an  
12 opinion.

13 CHAIRMAN EASTMAN: No, I do have an  
14 opinion about this. I think that we should  
15 talk with the Governor's office and with  
16 legislative liaison as well, you know, to  
17 figure out what time would they like a  
18 presentation from us. And what do you  
19 think? A couple of hours? And as many of  
20 us get there as possible, but that's it? I  
21 mean it's not like -- it shouldn't take more  
22 than an hour to, here it is, and lay out  
23 some of the strong points, you know, in the  
24 process and let him ask his questions,  
25 right?

1                   Gaye, I'm looking at you only because  
2 you're a former legislator. And you know --

3                   MS. SYMINGTON: It will take as long as  
4 you make available.

5                   CHAIRMAN EASTMAN: So what do you think?  
6 I don't think --

7                   MR. JOHNSTONE: There's also when they  
8 tend to be in session, but by end of April  
9 that can be a lot of time they're in  
10 session; right? On the floor I mean.

11                   MS. SYMINGTON: Right.

12                   MS. MARKOWITZ: That's right.

13                   MR. JOHNSTONE: So it kind of depends on  
14 where they are in their cycle too, how much  
15 time they have available, is that fair?

16                   MS. MARKOWITZ: I know Shap is aiming  
17 from like May 8 as the wrap up which it will  
18 probably go a little bit longer than that.  
19 But that's early.

20                   CHAIRMAN EASTMAN: We could do this  
21 early in the day. We could do it at 8  
22 o'clock.

23                   MS. SYMINGTON: That's kind of typical.

24                   MS. MARKOWITZ: Oh, it is typical?  
25 There you go. It feels early.

1 CHAIRMAN EASTMAN: That's because they  
2 are not out yet. Just because they are  
3 aiming --

4 MS. SYMINGTON: First week of May.

5 CHAIRMAN EASTMAN: -- is supposed to be  
6 the time to get out.

7 MS. MARKOWITZ: I still have  
8 psychological scars from when you guys went  
9 into June.

10 MS. SYMINGTON: I think only one year,  
11 that was civil unions.

12 CHAIRMAN EASTMAN: Should we try to do  
13 it early in the day before they -- like at 8  
14 o'clock?

15 MS. MCGINNIS: Why don't we just talk to  
16 Louis, and we will organize it based on what  
17 they think.

18 CHAIRMAN EASTMAN: Great, because I'm  
19 available all that day. And somebody else  
20 better be available too.

21 MS. SYMINGTON: My only comment is that  
22 I think it's very hard for leadership to  
23 predict what time. You know, what is going  
24 to work. And I think that's a time when  
25 you're likely to have a lot of conference

1 committees going on so that, you know, there  
2 will be a lot of legislators who are  
3 available, but the committee chairs may not,  
4 so it's hard to predict.

5 MS. MCGINNIS: Why don't we just say  
6 that for now all the Commissioners need to  
7 leave that date open.

8 MS. MCCARREN: I'm available.

9 MS. MCGINNIS: And we will talk to Louis  
10 and find out what they suggest. But based  
11 on our last conversation with Louis, that  
12 can change very rapidly, so be flexible.  
13 And we will let you know as soon as they  
14 have anything concrete to propose. Okay.

15 CHAIRMAN EASTMAN: Yeah.

16 MS. MCGINNIS: Let's do it that way.  
17 And we will try for the morning, if that's  
18 possible. But if it's not possible, we will  
19 just go with what they say is best because  
20 it's going to be a crazy period.

21 CHAIRMAN EASTMAN: And I don't have a  
22 preference. I just do want you to -- I can  
23 be pretty flexible, or I am flexible on  
24 these issues.

25 MS. MCGINNIS: You are.

1           CHAIRMAN EASTMAN: Not body wise. Okay.  
2           So here we are. And what I have in front of  
3           me, which I think is great, is another draft  
4           packaging of recommendations that's now up  
5           to four pages with a little -- with one  
6           paragraph on the fifth page, that's the next  
7           generation of what we were working from. I  
8           then have a document that is just our  
9           consolidated comments meaning, you know,  
10          recommendation by recommendation, where we  
11          thought we were from the past time. And we  
12          have received, you know, written comments  
13          from the Agency of Natural Resources, from  
14          REV and Annette Smith that has periodically  
15          been providing written comments. She didn't  
16          respond to the recommendations per se. But  
17          what Linda has done is then taken this four-  
18          page document and made another document  
19          that's like 21 pages that actually is the  
20          comments from those three entities or people  
21          trying to, you know, apply them in the  
22          appropriate location for our purpose-- for  
23          our discussion purposes today.

24                 MS. SYMINGTON: It also includes the  
25                 Department of Health.

1           CHAIRMAN EASTMAN: The Department of  
2 Health is in there too?

3           MS. MCGINNIS: I was going make one  
4 change, ANR is included with the rest of the  
5 Commissioners.

6           CHAIRMAN EASTMAN: Excuse me, thank you.

7           MS. MCGINNIS: So the Commissioners and  
8 ANR are all in one document. And those are  
9 sort of your comments around the table. The  
10 second document is from third parties. And  
11 it includes Regional Planning Commissions;  
12 REV; Annette, VCE; Anne Ingerson from the  
13 Wilderness Society and a woman from the  
14 American Lung Association who has specific  
15 health comments to make. Those are the five  
16 that are included.

17          CHAIRMAN EASTMAN: Great. So we have  
18 got three. I'm working from three documents  
19 here. Okay. So we should try and get  
20 through this today to see where we are and  
21 what we think of people's comments, and I  
22 know that some of this may be redundant.  
23 But I myself have gone back and looked at  
24 Act 250 versus Section 248 and those kinds  
25 of things, and so for the record there may

1 be some things I want to say so people can  
2 understand why I choose one versus another.  
3 Because there really were some reasons, and  
4 I probably didn't articulate them because  
5 they were in my head.

6 So do we just start on the  
7 recommendations, or do we want to go on this  
8 first? On the first page of the draft  
9 recommendations, draft packaging of the  
10 recommendations, we have got introductory  
11 paragraphs, which we also commented on. So  
12 -- which is where we talk about keeping the  
13 process at 248 -- well we say until  
14 rulemaking and statutes are in place. And  
15 we do not favor moving the siting to Act 250  
16 regulations or other similar proposals in  
17 the interim.

18 MS. McCARREN: My comment was I think  
19 that is irrelevant at this point. And I  
20 would move to take out that last sentence.  
21 Because I think what happened in the  
22 legislature this week pretty much resolved  
23 that issue. Right?

24 MS. SYMINGTON: Well I don't know that's  
25 -- speaking as a former House Member, there

1 is only one member, one body of the  
2 legislature.

3 MS. McCARREN: There you go. Very fair.

4 MS. SYMINGTON: But I also think the  
5 question of Act 250 has been on our agenda  
6 regardless of whether the legislature --

7 MS. MARKOWITZ: I think you're referring  
8 just to the interim, the reference to the  
9 interim.

10 MS. McCARREN: Right. All I'm saying --

11 MS. SYMINGTON: I see.

12 MS. McCARREN: Yes, whether we recommend  
13 that.

14 MS. MARKOWITZ: Were we asked to make a  
15 recommendation with respect to something  
16 interim?

17 CHAIRMAN EASTMAN: No. But it was just  
18 that we have, depending upon what we decide,  
19 I mean we have got a process currently, and  
20 it takes time to get to the next stage.  
21 What do we have, you know, what do we think  
22 happens? But this is the only place I think  
23 we mentioned Act 250. So can I just clarify  
24 why I think we stay with Public Service  
25 Board? Here's why.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. JOHNSTONE: You're the Chair. You can do whatever you want.

CHAIRMAN EASTMAN: I know, I know. But I looked at this again, because -- so I was trying to think about this process. And if I were the diva, and had all the power in the world, how I would come up with something? And so and for me there are, you know, the decisions and choices that need to be made and they need to be made by somebody at a certain time, and so the issue is for me when and where, you know, who kind of thing.

So the thing about Act 250 and having administered it and been on the board, it's not that I don't love it. Act 250 has nine different commissions, District Commissions, with three members each. Members are appointed for four-year terms. A chair is appointed for a two-year term. So there is a possibility of every two years just that the decision making power on the District Commission can change. So in effect, a new a change in administration means that you can change the majority of the decision

1 makers in the Act 250 process like that.  
2 Okay. Not that it's necessarily ever  
3 happened, but that's a possibility. Unlike  
4 the Public Service Board, and in fact, when  
5 the Public Service Board was created I do  
6 remember this conversation.

7 MS. McCARREN: Me too.

8 CHAIRMAN EASTMAN: It's a three-member  
9 body. One for the whole state. They have  
10 six-year terms, and in fact six-year terms  
11 were chosen precisely so that, and they  
12 stagger the terms, so that if there is a  
13 change in administration the Board can  
14 automatically change with it. It was one to  
15 try and keep the process from turning  
16 quickly on political decisions. Okay?

17 So for me, now I then know that in the  
18 '80s the legislature took over most of the  
19 Act 250 criteria to 248. Not everything. I  
20 went back this morning and reread what's not  
21 over there. And I'm not so sure I'm  
22 concerned about what's not over there, other  
23 than, you know, conformance with regional or  
24 town plans, you know, that kind of language.

25 So and I also looked at some of the

1 other things that are now statutorily  
2 available in Act 250, and I'm not sure are  
3 statutorily in 248, and maybe we want some  
4 of those things to go. But for me, I'm  
5 still on the side of one body dealing with  
6 these issues because it's -- it is of  
7 statewide significance and of statewide  
8 importance. And so I'm for one body.

9 Now how we have them operate is for me  
10 -- maybe more things need to go from Act  
11 250, maybe not. Maybe some of the processes  
12 have to go from Act 250, more of them, maybe  
13 not. But I still think it ought to be one  
14 body. And so I also then went on and looked  
15 at so as we go through this I'm still  
16 thinking about the issue of -- because  
17 actually my husband participates a lot in  
18 248, and we had the conversation this  
19 morning about statutory parties at Act 250  
20 versus 248. And he referred me to the  
21 statute for 248 where a lot of -- a lot of  
22 state agencies are mentioned. But then only  
23 ANR specifically is mentioned as having  
24 statutory parties. And I don't know when  
25 that provision was added. But as John said,

1 for a number of years, all people who  
2 participated in 248 assumed that any of  
3 these named state agencies who were required  
4 to receive copies, they always assumed they  
5 were statutory parties. And so many people  
6 are operating under that assumption,  
7 although he's not so sure that the Board is.  
8 So if we want to be sure that Ag gets to  
9 participate, you know, gets to be a  
10 statutory party easily or the Department of  
11 Health gets to be a statutory party easily,  
12 we may want to recommend that something like  
13 that happen to clarify the language in 248  
14 section (a). Okay?

15 Because I do think that potentially for  
16 siting issues there are issues beyond ANR  
17 and the Department. There really may be  
18 health issues or Ag issues or things like  
19 that. And one of the things Act 250  
20 criteria that doesn't go over to 248 is the  
21 criterion related to ag soils. So I think  
22 we would at least want to be sure that the  
23 Agricultural, you know, Agency has a seat at  
24 the table when they think they need to.

25 MS. MCGINNIS: That would include

1 Regional Planning Commissions as well?

2 CHAIRMAN EASTMAN: Yeah. And maybe we  
3 need to say this statutorily because I do  
4 know that there are different practices  
5 between Act 250 and 248. And 248, and  
6 Louise is a former chair of the Board, you  
7 know does many more things via precedent  
8 than 250 does. I don't think I ever  
9 remember saying this was a precedential  
10 thing when I was writing decisions in Act  
11 250. So by precedent or by practice they  
12 sometimes do things, and maybe if we really  
13 want them to be sure they are doing it,  
14 maybe we ought to recommend that it be at  
15 least rulemaking or statutorily then.

16 Sorry, but I think that because it seems  
17 to me that some things do change. And I  
18 think that RPCs and the affected state  
19 agencies ought to be given party status when  
20 they think they are affected, meaning I  
21 don't want it to be a process where if you  
22 say you're a statutory party at 248 and you  
23 don't have an interest, you then have to  
24 play. That's just too expensive. But if  
25 there is an issue with health, or there is

1 an issue with ag soils, or there is an  
2 issue, I want them to be able to play.

3 MS. McCARREN: I don't think being a  
4 statutory party requires you to play. It  
5 just gives you a right. So I'm good with  
6 that. I support the decision making staying  
7 at the PSB. My nitpick was just the editing  
8 of that last sentence. That's all.

9 CHAIRMAN EASTMAN: I just wanted to put  
10 on the record because people have said we  
11 made the decision too quickly relative to  
12 not using Act 250. I don't think I made my  
13 decision quickly, maybe I didn't articulate  
14 it. There are real reasons for me in terms  
15 of to keep some, you know, anyway, for  
16 reasons I said.

17 MS. MCGINNIS: Just for clarification,  
18 in the revised draft which is the one that  
19 will go out for public hearing comment,  
20 would you like me to incorporate language  
21 that addresses this issue of Act 250 and the  
22 Public Service Board and why we are staying  
23 with the Public Service Board, up here  
24 rather than as Louise is saying, that last  
25 line that does not favor moving to in the

1 interim.

2 MR. JOHNSTONE: I personally don't think  
3 we need to justify everything we are talking  
4 about in here or this will become a hundred-  
5 page tome. I think it's important for folks  
6 to be able to speak on issues like this that  
7 call to them, that they want to be clear  
8 about them, and it's on the record. We have  
9 got, you know, it's out there now. But if  
10 we are going to go through that with every  
11 line here, and actually write them down that  
12 way, we will have an unusable document.

13 CHAIRMAN EASTMAN: Right.

14 MR. JOHNSTONE: I think what we just did  
15 was a great way to handle those things  
16 personally.

17 MS. MCGINNIS: Just to let you know,  
18 I'll be asking for clarification for that  
19 throughout the day, what things you want  
20 included and what things you don't want  
21 included.

22 MR. JOHNSTONE: That's great.

23 MS. MARKOWITZ: I agree with Louise.  
24 It's probably not necessary to reference  
25 interim since our task isn't really to look

1 at interim. We are looking at what the big  
2 solution is. That's just a matter of  
3 editing, so if the rest of the Commissioners  
4 are comfortable with it, I'm comfortable  
5 with it as well and just have it be, you  
6 know, it recommends moving quickly to  
7 implement the following package.

8 MR. JOHNSTONE: I'm good with that.

9 CHAIRMAN EASTMAN: Gaye, you started to

10 --

11 MS. SYMINGTON: Well I think the  
12 question -- maybe then there is a different  
13 place to put it. But we had an awful lot of  
14 testimony early on about, you know, we  
15 should -- there should be a moratorium.  
16 There should be a delay. And I do think  
17 that it's appropriate to express the fact  
18 that we don't think that that is  
19 appropriate. Whether it belongs here or  
20 not, that's neither here nor there, but it  
21 seems to me that was part of the discussion.

22 I was also going to say, I think that  
23 part of the reason that we didn't spend a  
24 lot of time on the discussion of Act 250 is  
25 there wasn't -- we weren't disagreeing. We

1 were all there. And so we went on to other  
2 things. And I think we are spending more  
3 time on the stuff that we are trying to work  
4 out among ourselves. And I don't think --  
5 for much the same reason that Scott  
6 suggested, we don't write everything down, I  
7 think we don't need to -- I think it's  
8 appropriate to focus on the places that we  
9 disagree and to move on when we find  
10 ourselves in agreement. It doesn't mean we  
11 are not considering or thinking as we go  
12 along.

13 CHAIRMAN EASTMAN: Yeah, and as I say,  
14 we had some comments, you know, responding  
15 to our draft, and I wanted to just clarify  
16 for people there was -- there is Act 250  
17 process and decision-making process and then  
18 there is Act 250 criteria. And so I may  
19 have a lot more -- you know, may want some  
20 of the process and some of the criteria  
21 over, for instance, Act 250 statutorily  
22 authorizes District Commissions to actually  
23 authorize District Coordinators to sign, to  
24 actually issue a permit, you know, in the  
25 minor application process. They also have



1 back in the '80s and being on the Board in  
2 the '80s and then being Secretary in the  
3 early '90s when people were not happy at all  
4 with Act 250, my concern is that for similar  
5 reasons, for not the language of the  
6 statute, but for how it was operating, and  
7 so I think that what I want the state to  
8 know, and maybe I should wait and repeat  
9 this when Chris is here, my concern is that  
10 along with Louise, and I know Gaye has, you  
11 know, talked about things, for me there has  
12 got to be more transparency in the process.  
13 And if that doesn't happen, I think you're  
14 going to be back here two years from now,  
15 three years from now and you're going to  
16 lose it in the -- in that process.

17 And you know, and yes, there was a vote  
18 at the Senate that was 16-14. But you know,  
19 there was a vote at the Senate that was 16-  
20 14. So that's what you're seeing. You've  
21 got, you know, so I guess that goes to my  
22 statement too that, and that will got -- I'm  
23 sorry I'm doing this, but I think it's  
24 important that I get how I'm thinking about  
25 these things.

1 I, like Deb and Scott and all of us, you  
2 know, we have been there; right? The  
3 legislature adopts policies, goals,  
4 objectives and then we are left to implement  
5 them. And for me, and I always believe  
6 this, and I had the same thing when I had to  
7 take over in the early '90s, there was a lot  
8 of stuff that we had said we wanted to do in  
9 Vermont that wasn't getting done, and for me  
10 it's not done until it actually gets  
11 implemented.

12 And it's a state responsibility in  
13 Vermont to make sure that things get  
14 implemented. It's not a municipal  
15 responsibility, it's not a regional  
16 responsibility. In Vermont municipalities  
17 only get to do what the legislature asks  
18 them to do. And so I think that you can't  
19 have adopted those goals and these policies  
20 and then not take responsibility at the  
21 state level for being sure they can go  
22 someplace appropriately and leaving it to  
23 somebody else. You know, to make ad hoc  
24 decisions, that's not fair to the, you know,  
25 to communities out there. So that's why I'm

1 coming to you need something else. And it's  
2 either got to happen at the state or it's  
3 got to happen somewhere. So --

4 MR. JOHNSTONE: So Gaye, if I -- just to  
5 see what works, because I hear you. And  
6 what I'm wondering is because the sentence  
7 before it is in place --

8 CHAIRMAN EASTMAN: I think it's there.

9 MR. JOHNSTONE: If we were to add the  
10 word "and" after the word place at the end  
11 of that sentence and strike everything from  
12 there through the word rather, so it says  
13 Act 250 remain in place until rulemaking  
14 statutorily in place, and recommends moving  
15 quickly to implement the following package.  
16 It essentially says we don't recommend  
17 moving it to Act 250.

18 MS. SYMINGTON: That's fine.

19 MR. JOHNSTONE: I think, and I don't  
20 know if that works for you or if you want  
21 that reference.

22 MS. MCGINNIS: Yeah, I think that is  
23 fine.

24 MR. JOHNSTONE: Does that work for you  
25 also, Louise?

1 MS. McCARREN: It does, but again it's  
2 contingent upon. I think we can fix the  
3 problems, make -- by incorporating some of  
4 the 250 good things. But I think the  
5 decisional authority stays with the PSB.

6 MR. JOHNSTONE: Got you.

7 CHAIRMAN EASTMAN: Okay. So then the  
8 next five bullets are just sort of  
9 clarifying what our charge is. So we get on  
10 to item one, increased emphasis on planning.

11 MR. COSTER: Could I just make a quick  
12 comment? I thought she was going down to  
13 item number one or bullet one.

14 MS. MCGINNIS: You're on bullet one, or  
15 are you going to recommendation one? Sorry.

16 CHAIRMAN EASTMAN: I was going to  
17 recommendation.

18 MR. COSTER: On the last bullet we had a  
19 conversation with Public Service Department  
20 staff.

21 MR. JOHNSTONE: Are you on update  
22 environmental protection, that inset bullet  
23 arrow thing?

24 MR. COSTER: Correct.

25 MR. JOHNSTONE: Thank you. Can you show

1 her where we are?

2 MS. MARKOWITZ: If you look on the red  
3 you'll see ANR is recommending -- we change  
4 the bullet categories from five to six in  
5 order to separate environmental guidelines.  
6 And then it's written out on the next page  
7 you'll see in blue.

8 CHAIRMAN EASTMAN: Change five to six.

9 MS. MARKOWITZ: You turn your page  
10 you'll see the blue. I think that's what  
11 you were about to talk about.

12 MR. COSTER: That was our initial  
13 thought is that, you know, trying to put  
14 guidelines related to health and safety and  
15 with environmental stuff gets complicated.  
16 We put in a lot of words in our draft.

17 After talking with DPS staff yesterday I  
18 think we would be okay leaving it with just  
19 one bullet but being clear who has  
20 responsibility for the different guidelines,  
21 and understanding that we might not just be  
22 capable of developing some of these  
23 guidelines because of the state of existing  
24 science, capacity and whatnot, so you know,  
25 we go ahead and do an exercise to see what's

1 necessary, what we can do in the short term,  
2 what would be a little bit longer of a task.

3 And for those impacts that can't be --  
4 we can't develop guidelines for right now,  
5 we would still remain with Board precedent  
6 and a case-by-case analysis. So the same  
7 sentiment that is there, we just want to put  
8 a little bit more clarity in. We might not  
9 be able to develop guidelines for everything  
10 within the first year of this policy.

11 CHAIRMAN EASTMAN: How long will it take  
12 you to come up with what those categories  
13 are and which things you can do quickly and  
14 which things you can't?

15 MR. COSTER: We could do that by the  
16 next meeting.

17 CHAIRMAN EASTMAN: I don't disagree with  
18 your statement generally you leave it to  
19 Board precedent or case by case. Definitely  
20 case by case. I want to be sure if there is  
21 something so critical that we don't want it  
22 to be precedent. We want to say something  
23 and still be case-by-case. That's all.

24 MS. MCGINNIS: Just to add to that it's  
25 not just ANR that will be doing that. It's

1 also the Department that's going to be  
2 putting together a same list of some of what  
3 those more tricky items, that would be  
4 blasting, setbacks, noise. They are going  
5 to try and categorize those that they feel  
6 they have enough information on to do  
7 guidelines; those where they still feel like  
8 they need to continue with precedent before  
9 establishing guidelines. So they are going  
10 to try and get that to you as well.

11 CHAIRMAN EASTMAN: Okay.

12 MR. JOHNSTONE: And the piece for me  
13 that you've added here that I don't think  
14 was in the original that I think we should  
15 chat more about is I still am wanting to  
16 understand better, and maybe it's embedded  
17 in here and I read over the top of it is  
18 where the presumption line falls. I'm  
19 absolutely there on --

20 CHAIRMAN EASTMAN: This isn't about  
21 presumptions yet.

22 MR. JOHNSTONE: He's added it here  
23 essentially. Unless I misread this just  
24 now. Let me just find it again.

25 PSB defer to these procedural

1 guidelines.

2 MR. COSTER: Yeah, and I think --

3 MR. JOHNSTONE: So for me I'm there when  
4 there is statutory authority. I'm there  
5 when it's rulemaking that goes through an  
6 open and transparent process. And last time  
7 I think I raised I really want to understand  
8 your guideline process, what is the  
9 opportunity for public input. How open and  
10 transparent is it really. So that in  
11 addition to the science issues you're  
12 raising, has there been an opportunity for  
13 that sort of input so that the precedence is  
14 a reasonable thing to do.

15 And I need to understand more about that  
16 to be honest, just me. Others may see it  
17 differently.

18 MS. MARKOWITZ: No, that's right. We  
19 actually had a good staff conversation about  
20 it to see where their comfort levels were  
21 with it.

22 CHAIRMAN EASTMAN: As I understood it --

23 MR. JOHNSTONE: I know it goes somewhere  
24 else. He's added it here. That's why I'm  
25 raising it.

1 CHAIRMAN EASTMAN: Thank you for  
2 catching that. Because for me I wasn't even  
3 thinking about that there. I figured we  
4 would have that conversation when we got  
5 down to the issue of what we have got in our  
6 recommendations of rebuttable presumptions  
7 on permits. That's as far as we have gone.

8 MS. MCGINNIS: I think what Billy is  
9 suggesting is we are not putting any of the  
10 changes that ANR --

11 MR. JOHNSTONE: I misunderstood. I'm  
12 sorry.

13 MS. MCGINNIS: We are not using any of  
14 the changes that they have suggested in this  
15 particular bullet. This is what I've  
16 understood, because we are going to replace  
17 it with greater clarity on stating that ANR,  
18 DPS, and DOH at this stage and any other  
19 related agencies that need to, are going to  
20 establish what they feel they can have  
21 guidelines on, that will be publicly  
22 available, lay person terminology, et  
23 cetera, et cetera, on the Web site.

24 MR. JOHNSTONE: Great.

25 MS. MCGINNIS: What they feel still

1 needs to continue with precedent until which  
2 time we have enough information that you can  
3 establish guidelines.

4 MR. JOHNSTONE: Great.

5 MS. MCGINNIS: That's how I'm going to  
6 draft it if you guys are okay with that. We  
7 can get to this conversation later.

8 CHAIRMAN EASTMAN: There is two things  
9 about guidelines. Let's not confuse them.  
10 We have talked about guidelines for the sake  
11 of having guidelines to have more  
12 transparency and clarity. Then there is the  
13 second issue of permits/guidelines and do  
14 they have a greater weight. So we are not  
15 talking about the second issue here.

16 MR. COSTER: Correct.

17 CHAIRMAN EASTMAN: We are just talking  
18 about the fact that we want to recommend  
19 that there actually be guidelines for  
20 greater transparency so people know what's  
21 going on.

22 MR. COSTER: Just to clarify, in this  
23 initial bullet the reason -- the only reason  
24 the difference was brought up was around  
25 procedural guidelines saying that if we

1 require a study the Board should back that  
2 up. We are going to take all that stuff  
3 out.

4 MR. JOHNSTONE: I didn't think you were  
5 trying to slip one through or anything.  
6 Don't worry about that.

7 So I do think, Linda, the thing I would  
8 have you add is what Jan is talking about.  
9 I wouldn't want it to get watered down to  
10 the point of guidelines are kind of a cool  
11 thing and all the departments and agencies  
12 will figure out when they get a chance.  
13 What we are really saying is guidance is  
14 important, and then if you want to add the  
15 time lines that you're hearing from the  
16 agencies of when and how far those might be  
17 able to be done, that's great. Because  
18 that's clarifying at that point.

19 Your point is you're actually saying we  
20 think guidance is an important component and  
21 ought to be developed as soon as possible,  
22 wherever possible, something like that. May  
23 not be the right words.

24 MS. McCARREN: I agree with that. Can I  
25 go back -- sorry. Done?

1 MR. JOHNSTONE: Yeah, I'm done.

2 MS. McCARREN: I want to go back because  
3 under the first paragraph we have two, four,  
4 five bullets. And I have comments on some  
5 of those. Are we going to come back to  
6 those?

7 CHAIRMAN EASTMAN: No, no. I want to do  
8 that if you've got comments on these,  
9 because this is just -- this was Linda's  
10 attempt to just consolidate our charge.

11 MS. McCARREN: She's done a great job.  
12 It's really fun to sit here and pick her  
13 work apart.

14 MS. MCGINNIS: Totally fine.

15 MS. McCARREN: The first one, it says  
16 RPC and towns' carry -- energy plans carry  
17 greater weight. I am going to put out on  
18 the table and propose language that says  
19 must be in conformance with. And that's  
20 very different than more weight. I mean  
21 it's one variation of more weight.

22 CHAIRMAN EASTMAN: You know what? Maybe  
23 you're right.

24 MS. McCARREN: Do you want to hang on to  
25 that for a bit?

1                   CHAIRMAN EASTMAN: I think maybe we  
2 should go through the recommendations and  
3 come back to this, and then we will see how  
4 it gets worded.

5                   MS. McCARREN: Fair enough. I have  
6 something on every one of these.

7                   CHAIRMAN EASTMAN: Let's go through the  
8 recommendations, and then we will come back  
9 to how we talk --

10                  MS. MARKOWITZ: Talk about the charge.

11                  MS. McCARREN: I'm going to treat these  
12 first five bullets as summaries.

13                  MS. MCGINNIS: That's exactly what it  
14 is.

15                  CHAIRMAN EASTMAN: Executive summaries.  
16 People can see here's where we think we are.

17                  MS. McCARREN: I'm good with that.  
18 Okay.

19                  CHAIRMAN EASTMAN: So the first  
20 recommendation then right, Linda, then says  
21 -- it's the one that says; the DPS, the  
22 Department shall develop a road map for  
23 meeting state goals and statutory targets  
24 through scenario planning to determine mix  
25 of in-state and out-of-state renewables, the

1 anticipated mix of technologies and the  
2 broad parameters for cumulative impact.  
3 This planning should use available tools to  
4 incorporate environmental considerations as  
5 well as economic transmission and load  
6 analysis.

7 So right, we want the Department to plan  
8 more.

9 MS. McCARREN: Okay. I'm trying to  
10 figure out how to say this in the right way.  
11 Because I was worried that at the last  
12 meeting, and I kind of gnawed on this and  
13 wasn't very articulate about it, I totally  
14 support more analysis and planning, and to  
15 Gaye's point about what the Gund Institute  
16 is doing, and building on the work that Asa  
17 provided us. I support that. And that is  
18 providing a picture, a view for the state of  
19 what would be the land use ramifications for  
20 various scenarios. I support that.

21 Where -- what I don't support is the  
22 Department unilaterally making a decision  
23 that carries -- a decision about how much  
24 renewable generation needs to be in state.  
25 That is different from the existing

1 statutory scheme which Anne, thank you, Anne  
2 Margolis, gave us a summary of. I don't  
3 know if that makes any sense to you guys,  
4 but that's my concern.

5 My concern is that the statute needs to  
6 control, and I have a concern that an agency  
7 would be able to expand or change the amount  
8 of in-state renewables. And I'm trying to  
9 say that because I know last time I probably  
10 didn't articulate that very well. I totally  
11 support planning and scenario planning, I  
12 agree with it. But I'm very, very concerned  
13 that we not say to the Department,  
14 Department, you go forth and make a decision  
15 about actually how much renewable has to be  
16 in state when that is different from what  
17 exists in the statute.

18 CHAIRMAN EASTMAN: Okay.

19 MS. McCARREN: Is that clear enough?

20 CHAIRMAN EASTMAN: Yeah.

21 MS. McCARREN: I'm still getting the  
22 same looks.

23 CHAIRMAN EASTMAN: No, no.

24 MR. JOHNSTONE: I think there is a way  
25 to deal with that. I think, you know, I

1 think we put -- and maybe the words are  
2 slightly wrong, Louise, but it's really  
3 helpful for me.

4 CHAIRMAN EASTMAN: It says statutory  
5 targets.

6 MR. JOHNSTONE: Says statutory targets  
7 and the word "and" is there. So but and  
8 you're nervousness is really about the  
9 former, any administration setting state  
10 goals.

11 MS. McCARREN: It says determine. It  
12 says determine the mix. It may be offer  
13 alternative planning scenarios for mixes.

14 CHAIRMAN EASTMAN: Can I -- yeah. Look,  
15 I don't disagree with what you're saying.  
16 When -- I mean I could even say for meeting  
17 statutory goals and targets. And then  
18 you've got statutory defining both goals and  
19 targets. Okay? That means statutory means  
20 the legislature made this decision and the  
21 Department has to play with it.

22 Now when we get to how intensive or  
23 rigorous or specific the statute plan is,  
24 here's where I'm going to push back. For me  
25 it depends upon what we decide. I strongly

1 believe that we need to have some planning,  
2 strongly believe that. And reading Act 250  
3 again this morning, the legislature believed  
4 that in 1969 when they said we would have a  
5 statewide plan to go along with this  
6 permitting process. And we are now in 2013  
7 and all that stuff I read today about the  
8 statewide land use and development plan, of  
9 course, is no where.

10 MS. McCARREN: Okay. I think we can fix  
11 this problem. All right, because I support  
12 planning and I support scenario planning.  
13 All right. And but what I am opposed to is  
14 the word determine the mix. Scenario  
15 planning to determine.

16 CHAIRMAN EASTMAN: Here's the thing,  
17 Louise. I've got to tell you here's where I  
18 am now. And because how in-depth the state  
19 has to be really depends upon what weight we  
20 are all going to be willing to give Regional  
21 Plans from my perspective. If Regional  
22 Plans -- see I'm a believer that you're  
23 going to have more luck planning on a  
24 regional basis then you will on a state  
25 basis. Okay? I believe that. But I think

1 that planning has to be determinative. If  
2 people are willing to plan for and provide  
3 for these facilities, to reach the goals,  
4 then I think they, you know, the region  
5 should have a say, and it should be  
6 determinative. If we are not going to go  
7 there, then guess what? Then I think the  
8 state has a responsibility to actually start  
9 to determine some of this.

10 Because what happens instead is the  
11 state or nobody on behalf of the state is  
12 going to decide that. Somebody else coming  
13 in and proposing a plant is going to decide  
14 where it goes. Now so for me it's like I'm  
15 willing to say we put a lot of emphasis on  
16 the regions and make it determinative, or  
17 let's have a process like VELCO does for  
18 transmission planning that the state  
19 department has to do for generation. I  
20 don't think it's fair to leave it to  
21 communities having to fight over things once  
22 a project is proposed.

23 MS. MCCARREN: I think we are talking  
24 past each other. Let me try it again. I  
25 think we are talking past --

1 CHAIRMAN EASTMAN: Yeah.

2 MS. McCARREN: What I'm trying to say  
3 here is I support scenario planning. I  
4 support planning. What I don't support is  
5 that that planning will make a decision  
6 about how much -- how many renewables,  
7 quote, in quotes, must go in state, that is  
8 different than the statute. And these can  
9 live -- these can live together. Okay?  
10 Because we have the statute. We could also  
11 have planning scenarios that say all right,  
12 let's say we want to go beyond what the  
13 statute requires for in-state renewables,  
14 then here's what it would look like. Okay,  
15 and I'm fine with that.

16 Where -- what I can't support is the  
17 notion that either a Regional Planning  
18 Commission or the Department could make a  
19 binding determination as to how many  
20 renewables had to be in state. Am I making  
21 any sense?

22 CHAIRMAN EASTMAN: Yes, you're totally  
23 making sense, but my point is then who  
24 decides? Somebody's going to decide that,  
25 or it's going to be decided for us. Okay?

1 So that's my point.

2 I go back to all of this. All of these  
3 things are about choices, and who is going  
4 to make them. And are they going to be made  
5 by people within Vermont, or are they going  
6 to be made by somebody else who may have all  
7 the best interests at heart or whatever. So  
8 the issue is who decides that. If not the  
9 Department or the regions, is it the  
10 legislature? Do you want the legislature to  
11 actually specifically decide that?

12 Now in the past when I worked for the  
13 administration that wasn't a legislative  
14 role. Legislative role is to come up with  
15 here are the goals and objectives, but it is  
16 actually the responsibility, with all due  
17 respect for Deb and Chris, to represent the  
18 public interests and make some decisions.  
19 Somebody's got to make some choices. Now  
20 they don't do this in a vacuum. They do  
21 this in a very public way with a public  
22 process and everything like that, but  
23 somebody makes the choice.

24 If you make no choices then there is --  
25 then it's going to be decided on a

1 case-by-case basis, and I think for 90  
2 percent of the proposals that's great  
3 because there aren't going to be huge  
4 impacts or anything like that, but for 10  
5 percent of the proposals, and I'm speaking  
6 from experience in Act 250, there will be  
7 impacts upon people, and so who's -- who  
8 decides that? Is it just at that point when  
9 the actual proposal is made, or do you let  
10 other people have influence earlier?

11 MS. McCARREN: Let me try it again. I'm  
12 trying to be more articulate about my issue.

13 I think the planning should say here are  
14 the best locations for renewables. It's a  
15 land use issue. And here are the various  
16 scenarios. And as planners we want these to  
17 come forth in these locations. I support  
18 that.

19 CHAIRMAN EASTMAN: Yeah.

20 MS. McCARREN: What I do not support is  
21 the notion that there would be a mandatory  
22 minimum amount of generation beyond what the  
23 statute has said that is created by  
24 planning. All right?

25 I think planning says, you know, and

1 give you an example, if for some reason a  
2 town or a region wants to create its own  
3 incentives for renewables, and those  
4 renewables come forth and they want to  
5 locate in that town, and that produces a lot  
6 of in-state renewables, so be it. That's a  
7 good thing. What I'm trying to avoid and  
8 what I can't agree to --

9 CHAIRMAN EASTMAN: You don't want them  
10 directing more.

11 MS. McCARREN: That's right.

12 CHAIRMAN EASTMAN: For instance, if in  
13 the planning process you found just by  
14 planning you said here are good locations,  
15 and then when it ultimately got laid out it  
16 gave more than enough --

17 MS. McCARREN: If you lay out the good  
18 locations, and the developers have a  
19 financial interest in developing a renewable  
20 in those locations, and that produces more  
21 than the statutory amount of in-state  
22 renewables, I'm happy with that.

23 CHAIRMAN EASTMAN: Me too.

24 MS. McCARREN: But what I can't agree to  
25 is this notion that the Department will

1 determine, if I -- am I making any sense?

2 MS. MCGINNIS: You're making absolute  
3 sense, and I think there is a fundamental  
4 disagreement on a couple of points. I think  
5 that needs to be laid on the table.

6 Number two, Chris has a departmental  
7 position on this, and he says he's going to  
8 be here in 10 minutes. So I'm wondering if  
9 we should --

10 MS. MCCARREN: Famous 10 minutes.

11 MS. MCGINNIS: If we should maybe defer  
12 because this is a pretty -- I mean they had  
13 a lot of discussions on this. And I do  
14 think that there is a fundamental --

15 CHAIRMAN EASTMAN: I think we are closer  
16 than you think. You and I.

17 MR. JOHNSTONE: I think you are too.  
18 Listening to it.

19 MS. MCCARREN: Do you want to go out in  
20 the parking lot?

21 CHAIRMAN EASTMAN: We don't even have to  
22 go to the ladies' room which is how Molly  
23 Beattie and I used to do it. We used to go  
24 to the ladies' room.

25 MR. JOHNSTONE: So the administration

1 does need to implement the policies of  
2 statute.

3 MS. McCARREN: Absolutely.

4 MR. JOHNSTONE: And that's really what  
5 we are talking about. And on regular  
6 planning cycles the way this is worded at  
7 least, I don't read it to say it necessarily  
8 means that there is a ton of in-state  
9 renewables. It means that to do good solid  
10 planning based on the best information that  
11 there is of our region, of where electrons  
12 could come from and determine for that next  
13 planning cycle how much may need to come  
14 from out, how much may need to come from in,  
15 as a planning tool back to the region so  
16 they know how much the area needs to get  
17 opened up as a way forward.

18 And so I don't think it means to be as  
19 declarative there shall be all of it in  
20 state, which is, I think, what you're  
21 nervous about.

22 MS. McCARREN: Here's what -- the word  
23 choice is determine. If you --

24 MR. JOHNSTONE: It says the mix of in  
25 and out.

1 MS. McCARREN: That's what it says.  
2 Determine the mix of in and out. If it was  
3 to demonstrate --

4 MS. MARKOWITZ: Or to suggest.

5 MS. McCARREN: Planning is really doing.

6 MR. HOPKINS: Determine targets.

7 CHAIRMAN EASTMAN: Can I -- I'm with  
8 Linda. Here's the problem too. Because I  
9 happen to know, Linda told me what they  
10 talked about. I think 1, 2, 3 and 4.

11 MR. JOHNSTONE: Don't disclose.

12 CHAIRMAN EASTMAN: I think 1, 2, 3 and 4  
13 means we have got to wait for Chris. What  
14 I'm saying is I want planning. If it's not  
15 going to happen determinatively at the  
16 regional level, I'm going to be talking to  
17 Chris to push back. It's got to happen  
18 someplace. I don't think it can be left.

19 MS. MARKOWITZ: Let me ask everyone to  
20 keep in mind too that what the goal is is to  
21 -- because we are not changing the market  
22 nature of the process; right? Still  
23 developers come in with ideas of  
24 developments they think make sense on a  
25 whole lot of levels, this being one of them,

1 but only one of the factors.

2 We are just trying to channel the market  
3 in ways that we think is more consistent  
4 with public policy.

5 CHAIRMAN EASTMAN: What we are trying to  
6 do is do everything we can to control our  
7 own destiny and not have it determined by  
8 FERC.

9 MS. MARKOWITZ: That's right, or just by  
10 chance, who happens to have a willing seller  
11 and a willing buyer of a particular parcel.  
12 So that being said, you know, the word  
13 determine, you know, I'm less married to.  
14 You know, because really we are not changing  
15 that fundamental market nature. So we will  
16 wait for Chris. This may be a way --

17 MS. McCARREN: Does Chris know we are  
18 all waiting for him?

19 MS. MCGINNIS: Yes. Anne just told him.

20 CHAIRMAN EASTMAN: This is the problem.  
21 I mean all this stuff triggers -- a lot of  
22 this for me comes from --

23 MR. JOHNSTONE: It's all linked.

24 CHAIRMAN EASTMAN: It is all linked.

25 MR. JOHNSTONE: That's the problem.

1 MS. SYMINGTON: We need a bathroom  
2 break.

3 CHAIRMAN EASTMAN: Can we do the  
4 simplified tier system? Is that something  
5 that we can talk about?

6 MR. JOHNSTONE: Do we need Chris?  
7 You've talked to him.

8 CHAIRMAN EASTMAN: I haven't talked to  
9 him. I talked to Linda. She said you're  
10 going to have to talk. Can we talk about  
11 that? Or can we not talk about anything?

12 MS. MCGINNIS: How about -- well I can't  
13 --

14 MS. MCCARREN: I'll just say about the  
15 simplified tier system, I gave that a great  
16 deal of thought. I love the idea. What I'm  
17 still, and I think, Scott, you raised the  
18 same issue that I had, I'm very concerned  
19 about the movement among tiers because I'm  
20 really very, very concerned that it's going  
21 to create a whole industry, a whole  
22 separate, you know, kind of fighting da, da,  
23 da.

24 CHAIRMAN EASTMAN: So I think they have  
25 got a new proposal that helps prevent that.

1 MR. JOHNSTONE: We need Chris.

2 CHAIRMAN EASTMAN: Yeah.

3 MS. McCARREN: I think I'm going to the  
4 ladies' room by myself then.

5 MS. MCGINNIS: I think this is actually  
6 worth a discussion.

7 CHAIRMAN EASTMAN: I'm with you too on  
8 that.

9 MS. McCARREN: I'm very concerned about  
10 that.

11 MS. MCGINNIS: Everybody had some  
12 concerns on the ability to move between the  
13 tiers. And the Department has put together  
14 a draft which -- I mean I suppose we can  
15 make some copies of it. But the notion that  
16 they are looking at now they are still  
17 thinking about the ability -- the whole  
18 reason behind the idea of the screening  
19 coming from the Department was the ability  
20 to provide incentives for those projects  
21 that would have less push back from  
22 communities or would be more community  
23 oriented to have the ability to go through  
24 an expedited process. So that if you had a  
25 project that was say, you know, three

1 megawatts but nobody seemed to have any  
2 problems with it, maybe it was a big solar  
3 field an entire community had said this is  
4 what we want, then it could go through an  
5 expedited process and not have to be at a  
6 tier two level. That was the idea.

7 MS. McCARREN: My response to that would  
8 be if you had such a project, that would be  
9 a great thing, right. The Department and  
10 the Board have the tools today through a  
11 case manager -- well --

12 MR. JOHNSTONE: All linked.

13 MS. McCARREN: They have the tools today  
14 to have something move right on through;  
15 right? I mean they do. And again,  
16 unintended consequences of a great deal of  
17 litigation and fighting over where things go  
18 is a huge concern of mine. And I think to  
19 your point if you -- if there was a project  
20 that had a great deal of community support,  
21 it could still be in the middle tier and  
22 move right on through.

23 MS. MCGINNIS: Excuse me. Just to give  
24 you the second round of what they were  
25 developing. The second round is actually --

1 because I know there was also some concern  
2 among all of you about the distance between  
3 500 kilowatts and 15 megawatts in tier two.

4 MS. McCARREN: It's big.

5 MS. MCGINNIS: That was a big distance.  
6 And so in this second option that they are  
7 working on they have divided that up. So  
8 that the second one there would be a tier  
9 two, that would go up to five megawatts.  
10 And then the next level would be from five  
11 megawatts up to say 15 megawatts. And what  
12 would change at each stage would be greater  
13 and greater public notification, time for  
14 public notification, and overall time lines,  
15 expectation for the determination --  
16 acceptance of the project to the overall  
17 time line. So there was a graduated  
18 approach.

19 CHAIRMAN EASTMAN: But no slipping  
20 between.

21 MS. McCARREN: And I'm not sure that 15  
22 is the right number. I mean we sort of  
23 threw those numbers out to be chewed upon.  
24 And I have no like wonderful insight that  
25 any of those numbers are correct.

1 MS. SYMINGTON: REV had some suggestions  
2 that matched the tiers to other regulations  
3 and ISO. I thought that might be useful to  
4 consider. And then --

5 MS. MCGINNIS: The REV one is in the  
6 third parties' document.

7 CHAIRMAN EASTMAN: Here I am, just  
8 trying to get to it. Well they go 500 to  
9 five. Only they want then five to 25;  
10 right?

11 MR. JOHNSTONE: They want an extra tier.

12 CHAIRMAN EASTMAN: They want five to 25  
13 as opposed to five to 15. So that's -- I  
14 mean both going to -- the Department is  
15 going to four tiers, and REV is going to  
16 four tiers, but the difference is 15 and 25.  
17 How many megawatts again is Sheffield?

18 MR. HOPKINS: 40.

19 MS. MCGINNIS: And Georgia Mountain is  
20 10.

21 CHAIRMAN EASTMAN: And that's four  
22 turbines? How many turbines at Georgia  
23 Mountain?

24 MR. JOHNSTONE: Four.

25 MR. LEWENDOWSKI: They are 12. They are

1 three megawatts they said.

2 CHAIRMAN EASTMAN: Okay. Thanks.

3 MS. MCGINNIS: So just to make a  
4 clarification, and I'm wondering if you guys  
5 just want to have copies of the proposal  
6 that the Department is looking at right now.

7 CHAIRMAN EASTMAN: I would really like  
8 that.

9 MS. SYMINGTON: My suggestion wasn't  
10 that we adopt wholeheartedly REV's  
11 suggestions, but my suggestion was I thought  
12 they referenced other points at which things  
13 change in the regulatory process.

14 CHAIRMAN EASTMAN: Exactly.

15 MS. SYMINGTON: You know, that we should  
16 parallel those.

17 MS. MCGINNIS: The differences there is  
18 that REV references the five megawatt level  
19 because it corresponds with ISO's trigger  
20 for regional interconnection. So that's  
21 what they were saying.

22 The Department has used -- let me look  
23 at it again. It's the 2.2 megawatts. I  
24 said five megawatts earlier. They used the  
25 2.2 simply because as the upper level of the

1 second tier. The first tier would still be  
2 500 kilowatts and below. A second tier  
3 would be from 500 kilowatts to 2.2  
4 megawatts, and that's just because it's  
5 parallel with what's currently happening  
6 under standard offer.

7 And then the third one would go from 2.2  
8 to 15 megawatts, so very similar to the tier  
9 two that we are really talking about. And  
10 then the last one would be 15 megawatts and  
11 above. And with each one there is a  
12 graduated and increasingly important public  
13 engagement process involved.

14 CHAIRMAN EASTMAN: And the thing about  
15 our 2.2 is that's already something that we  
16 are doing.

17 MS. MCGINNIS: Yes.

18 CHAIRMAN EASTMAN: I'm a believer if  
19 there are some things you can keep, keep it.

20 MS. SYMINGTON: And what are the  
21 department's feeling on the question of the  
22 met towers having a different consideration  
23 if they are not above a certain amount and  
24 if they don't involve lights?

25 MS. MCGINNIS: They didn't respond to

1 the REV one on that.

2 MS. McCARREN: Standard offer is 2.2.  
3 The first 15 megawatts are done, signed up  
4 for. So the Department is going to, as I  
5 understand it, fundamentally reconfigure the  
6 way that the standard offer is done. I only  
7 put that out because the 2.2 may be less  
8 important because --

9 MR. HOPKINS: The Board has issued an  
10 order for redesign of the standard offer  
11 process going forward. The thresholds are  
12 established in statute. The 2.2. And so  
13 that's a fixed deal.

14 The only question going forward is how  
15 different projects are selected for a  
16 limited number of megawatts each year.

17 MS. McCARREN: Okay.

18 CHAIRMAN EASTMAN: So 2.2 is already  
19 established then.

20 MS. MCGINNIS: That was the reason the  
21 Department was going with that was because  
22 it made it simpler and cleaner to go with  
23 something that's already in the statute.

24 MR. JOHNSTONE: So I'm just curious if  
25 we are waiting for Chris on this, and if

1 there is -- if you have a written proposal  
2 that covers some of these, would it make any  
3 sense to actually get those and have a few  
4 minutes to read it while he gets here? As a  
5 process thing. I mean I don't mind  
6 continuing to discuss, but if we are always  
7 going to be looping back to --

8 MS. MCGINNIS: The tiers because it's  
9 all related.

10 MR. JOHNSTONE: If that's acceptable.

11 MS. MARGOLIS: I just E-mailed Penny to  
12 ask for some copies.

13 MS. SYMINGTON: One question I have, I  
14 wrote my comments before reading your paper  
15 on community-owned projects. I don't know  
16 if that's something we need Chris for that  
17 discussion. Just interest in --

18 MS. MARKOWITZ: Let's talk about that.

19 MS. SYMINGTON: -- incenting, or you  
20 know, providing emphasis to or asking for  
21 more --

22 MR. JOHNSTONE: Yeah. And I would just  
23 offer while we get it, the point isn't even  
24 that I know that I even support everything  
25 that I wrote there. But more that it -- we

1 haven't really talked about this piece very  
2 much.

3 CHAIRMAN EASTMAN: Yeah, and I really  
4 liked it.

5 MR. JOHNSTONE: And I think there is a  
6 role for how we create the conditions to  
7 incentivise the behavior and the types of  
8 projects for those that want it, in the  
9 solutions of meeting -- the CEP meeting  
10 statutory goals. And so I'm not wedded to  
11 any of these. It's a long way of saying  
12 there is nothing here, there is no pride in  
13 authorship. If there is something we want  
14 to throw overboard --

15 MS. MCGINNIS: So Scott, I wanted to  
16 understand when you sent this one how this  
17 would be used within the tier system. Is  
18 this as a replacement for screening, or is  
19 this to be used within the screening?

20 MR. JOHNSTONE: It could -- could  
21 potentially go either way. At one point we  
22 were talking about the second tier as a  
23 community tier that you would gain those  
24 benefits of process because it had community  
25 endorsement. And at times we have talked

1 about we need to have a way to make things  
2 simpler in all tiers if you meet certain  
3 criteria.

4 And I thought the community screening  
5 could potentially play that role as well, so  
6 whether you're a tier two or tier three, or  
7 even if there is a tier four, now tier one  
8 is pretty simple already. So it could apply  
9 either way. And again I'm not wedded to  
10 which way it's used. If the idea of trying  
11 to find a community energy project is of use  
12 and utility --

13 CHAIRMAN EASTMAN: Well I think it is  
14 only because I actually wanted -- I mean we  
15 listen to those, you know, there are at  
16 least a hundred towns that have their  
17 energy, you know, groups. And to the extent  
18 that people are really trying to do  
19 something, and you know, and they do all  
20 like this, how can we make it easier?

21 MS. SYMINGTON: For me when I look at  
22 the definition, I think it needs some work.  
23 Because I think Georgia -- if you were to  
24 have a Georgia Mountain where the town voted  
25 for it, that would qualify as a community

1 project. And I thought there was some sense  
2 -- or what I have been understanding people  
3 to be looking for is -- in other words, that  
4 having the owner of the project, the  
5 generator rather, pay the town doesn't --  
6 isn't what people are looking for. What  
7 people are looking for is are we getting the  
8 power? Do we own it as a community?

9 CHAIRMAN EASTMAN: That's what it says  
10 though. The community has a fiscal stake in  
11 the project.

12 MS. SYMINGTON: What does fiscal stake  
13 mean?

14 CHAIRMAN EASTMAN: Directly I think  
15 means they own it.

16 MS. SYMINGTON: It doesn't say that to  
17 me.

18 CHAIRMAN EASTMAN: It did to me.

19 MR. JOHNSTONE: That's what I was  
20 intending.

21 MS. SYMINGTON: Lowell has a fiscal  
22 stake --

23 CHAIRMAN EASTMAN: Right, but they don't  
24 own it.

25 MR. JOHNSTONE: We should be more clear.

1 I used that term because I didn't think  
2 necessarily that a town would need to be a  
3 hundred percent owner.

4 MS. MARKOWITZ: Could say ownership  
5 interest.

6 MR. JOHNSTONE: Yeah. Some level,  
7 threshold, of ownership interest, which  
8 would signal that a town was generally  
9 behind this thing. And was bought in and  
10 had done their own due diligence in their  
11 town and through their appropriate channels  
12 and all of those sort of things.

13 MS. SYMINGTON: But remember, Lowell did  
14 all that and voted, you know, overwhelmingly  
15 for it. And has, you know, the project on  
16 the cover of their town report. And yet I  
17 don't think that that project is what I'm  
18 thinking of with this kind of community  
19 energy project, in that it's not the power,  
20 you know, it's not directly owned by or --  
21 it's not the power that is going to folks,  
22 it's a payment. And --

23 MR. JOHNSTONE: They don't have an  
24 ownership interest, so I don't think they  
25 qualify. And one of the things I tried to

1 do in the size of community, again numbers  
2 can change, criteria can change. If it  
3 makes sense, is there is also this idea that  
4 I want to put out of a project can be large  
5 enough that even if it's a community, the  
6 definition of community has to change; that  
7 a bigger project is not just the host  
8 community but the surrounding communities.

9 Because projects can get of a size that  
10 we have heard that just because Lowell  
11 continues to support it and thinks it's  
12 wonderful and wants it on their town meeting  
13 cover, that some abutting communities don't  
14 feel they were very well treated in the  
15 process. And sure, abutting community of a  
16 10 megawatt can feel aggrieved too, but  
17 you've got to pick numbers. Where is the  
18 right number? I don't know. But there is  
19 something in there I thought that where you  
20 actually change the definition of community,  
21 Gaye, at least is what was in my head.

22 CHAIRMAN EASTMAN: And then you've got  
23 in here with this it does have to be  
24 consistent with the town plan and with the  
25 regional plan.

1 MS. McCARREN: I'm going to throw out  
2 the notion that this may not be necessary.  
3 Okay. Because --

4 MR. JOHNSTONE: It's okay.

5 MS. McCARREN: Just because the real  
6 incentives, right, are going to probably be  
7 both financial, and the real incentives will  
8 probably also be community interest. So I'm  
9 just throwing the counter notion out that if  
10 you have all of these good things, then does  
11 it need even more incentive and special  
12 treatment, or wouldn't something like a  
13 community supported as you describe, Scott,  
14 wouldn't it just more easily go through any  
15 process.

16 MR. JOHNSTONE: Absolutely.

17 MS. McCARREN: And so I do have this  
18 concern about creating so much process and  
19 labyrinth, and I love the idea of community  
20 supported. I'm not --

21 MR. JOHNSTONE: I understand.

22 MS. McCARREN: But I don't think that --  
23 the real incentives for a community to do  
24 this are going to be either legwork and  
25 community support or a financial incentive.

1           CHAIRMAN EASTMAN: That's what he's got  
2 over here for -- on the next page he  
3 actually talks about funding -- I mean  
4 that's right. You actually --

5           MR. JOHNSTONE: Funding and process.  
6 And part of my thought is that I doubt there  
7 is very many communities. My thoughts on  
8 that, Louise, were I don't think there is a  
9 lot of communities that would take all the  
10 fiscal risks themselves. They all need a  
11 partner.

12          MS. McCARREN: Sure.

13          MR. JOHNSTONE: So how do you change the  
14 opportunity cost paradigm? How do you  
15 slightly change the fiscal issues that --  
16 for that partner that encourage them to work  
17 with the community and go through the  
18 additional process on the front end to get  
19 the support? And so what are some of the  
20 carrots to get those actors to actually try  
21 to work with the community, and to frankly  
22 give some of the ownership share to the  
23 community. That's what I was trying to -- I  
24 thought it would take sweeteners to get that  
25 sort of good behavior. Maybe I'm wrong.

1 MS. McCARREN: I don't know enough --

2 MR. JOHNSTONE: That's what I was trying  
3 to get at.

4 MS. McCARREN: I have this concern about  
5 building a process that is so complicated.  
6 Enough said. That's my view.

7 MR. JOHNSTONE: I get it.

8 MS. SYMINGTON: There is something  
9 though now that is in the way of creating  
10 these kinds of projects, this kind of  
11 community-owned project. And so whether  
12 it's getting those things out of the way or  
13 providing additional incentive, but it's  
14 really, you know, I've watched communities  
15 try to do this kind of work, and it's just  
16 overwhelming even for a pretty small  
17 project.

18 MS. McCARREN: And yet we heard from the  
19 Town of Waterbury, which was very exciting,  
20 but if -- what do you think is in the way?  
21 I mean in Charlotte it was people didn't  
22 want it at the end of the day. Right? The  
23 town owned -- there was a proposal for a  
24 town-owned solar system. And it simply got  
25 voted down.

1 MS. MCGINNIS: I have talked to the  
2 Waterbury people because I thought that was  
3 a pretty exciting and inspiring kind of  
4 approach.

5 MS. MCCARREN: Right.

6 MS. MCGINNIS: And I asked them  
7 specifically what they think is in the way,  
8 and I have had some discussions with GMP on  
9 the things that they think are in the way.  
10 And we are still trying to resolve that in  
11 terms of so I can articulate it to get it  
12 out, but I'm going to try to articulate some  
13 of the things they think is in the way and  
14 correct me if I am wrong on this.

15 One is the overall for net metering  
16 right now we have 150. Right? So it's the  
17 actual capacity. You know, so in terms of  
18 the pricing and all that sort of thing, but  
19 the major thing that they brought up is if a  
20 community would like to earn a little money  
21 off of a project and invest say some of  
22 their savings into a project that they know  
23 has a long-term anticipated return, there is  
24 no way under the current system to be able  
25 to make money off of a net metering kind of

1 project. Because you only do it up to the  
2 amount that you actually use.

3 And so they were saying one of the  
4 incentives would be to try and figure out a  
5 way in which we don't have to have the  
6 current price structure that's in net  
7 metering. We just want to be able to earn  
8 something. And the utilities or the  
9 legislature or whoever wants to decide what  
10 the price is going to be, we just want to  
11 have something that we can earn off of a  
12 project that we are investing in. And that  
13 would get more people to invest in that  
14 project. So at least in our discussions  
15 with them, that was the big issue. But I  
16 may be stating that wrong.

17 MR. HOPKINS: I just wanted to put one  
18 other thing in which is that in the process  
19 there is conversations about the redesign of  
20 the standard offer for this go-around we  
21 thought about, but on the time line we were  
22 on couldn't figure out how to do something  
23 that would have given precedence, bonus,  
24 something, in the -- trying to determine  
25 which standard offer projects got funded to

1 do exactly this kind -- got contracts, to do  
2 exactly this kind of thing.

3 We just, you know, in the process of  
4 trying to resolve the big picture of what a  
5 whole new project looked like, we couldn't  
6 have a band width to figure out what's the  
7 exact screening criteria for this thing to  
8 determine, you know, what the right, all of  
9 this stuff that's on front page of this  
10 proposal.

11 But it was definitely in the  
12 conversation, and we anticipate being able  
13 to go back in the standard offer process on  
14 an annual basis. That's the point of this,  
15 to refine the process and try to figure out  
16 how to make it better so that you could have  
17 something like the folks in Waterbury put in  
18 a good proposal, and still they would have  
19 to compete under that, you know, you can't  
20 just say well you have to pick us even  
21 though we are charging you a dollar a  
22 kilowatthour. You still have to be able to  
23 figure out how to make a good project.

24 CHAIRMAN EASTMAN: Okay. So what I'm  
25 hearing though, Asa just tells me, and even

1 what Louise and I were talking about  
2 earlier, if a community -- tell me why. If  
3 the community wants to do, you know, wants  
4 to move to renewables, and the community  
5 actually wants to move to renewables, and  
6 they have to compete to move to renewables?

7 MS. McCAREN: No, no. What he's  
8 saying, and this may be a bit -- I'm  
9 basically -- what I'm hearing is that the  
10 Department currently is looking at these  
11 issues as part of the ongoing standard  
12 offer.

13 MR. HOPKINS: And the Board and other  
14 stakeholders.

15 CHAIRMAN EASTMAN: I know, but what I'm  
16 saying is we want renewables in this state,  
17 and even Louise said if we get more because  
18 people want them, right Louise? That's what  
19 you said; right?

20 MR. JOHNSTONE: All of us said.

21 CHAIRMAN EASTMAN: But that's my point.  
22 But, you know, so the whole thing is when  
23 somebody is proposing something, and it is,  
24 you know, community supported, and I know  
25 they have got to go through a process.

1 MR. HOPKINS: At what cost.

2 MS. McCARREN: Yes. And the avoided  
3 cost right now. So if I'm in a town, and  
4 I'm producing this electricity, and right, I  
5 am receiving whatever the retail rate is, in  
6 effect, because I'm avoiding that -- paying  
7 that -- those kilowatthours. And that's I  
8 think it's 15 cents for Green Mountain, it's  
9 15 or 16 cents.

10 Now whether or not more than that is  
11 needed, you're working on that in the  
12 standard offer process. Right? And the  
13 state has already decided that five  
14 megawatts more a year, Asa, if I'm getting  
15 this right, should be added to that process.  
16 And so it's there.

17 MR. HOPKINS: The question is -- in this  
18 conversation is one, you know, there are  
19 different ways to do it. You could imagine  
20 this would require a statutory change, but  
21 you could imagine something where projects  
22 that met some threshold and whose costs were  
23 somehow reasonable could go outside the cap  
24 to be beyond the five megawatts per year.  
25 Right?

1           So that there are other ways to think  
2           about how to make this possible. But at the  
3           same time if the town wants to make money  
4           doing this, the people they make money from  
5           are the rest of the ratepayers. And so you  
6           can't just say the town wants to make money,  
7           and in order to do that they need to be paid  
8           a dollar a kilowatthour instead of 15 cents  
9           a kilowatthour. And you can't just say well  
10          that sounds great, go for it to everyone  
11          because that would cost --

12           MS. MCGINNIS: Unless the rate at which  
13           they are being paid doesn't have others. I  
14           mean you could have a much lower rate.

15           MR. HOPKINS: Right. But how do you --  
16           the idea is that you would use a  
17           market-based mechanism of some sort to  
18           determine what the appropriate rate is.  
19           Given some bonus for being community-owned  
20           or whatever.

21           MS. MCCARREN: There really, I mean if  
22           you were to be the Town of Waterbury and  
23           install renewables and use it for a town  
24           load, right, you're avoiding whatever that  
25           number is, 15 or 16 cents a kilowatthour,

1 right, Asa?

2 MR. HOPKINS: If it's solar you're  
3 actually getting 20 cents a kilowatthour.

4 MS. McCARREN: All right. And there is  
5 no limit on that. I don't think.

6 MR. HOPKINS: If you're displacing a  
7 town load, you have enough different meters,  
8 and 500 kilowatts each, but you could --  
9 roughly speaking you could make it work.

10 The challenge comes with what Linda  
11 talked about. The town would actually like  
12 to essentially invest in this as a profit-  
13 making enterprise and be an independent  
14 developer as if they are not really  
15 independent because they are representing  
16 their town.

17 But then, you know, at that point they  
18 become a developer like any other developer.  
19 And we want to give them some credit and  
20 bonus potentially, but how to do that in a  
21 fair way.

22 MS. MCGINNIS: I think that's what Scott  
23 is trying to get at.

24 CHAIRMAN EASTMAN: Isn't it interesting.  
25 I mean in fact there are municipal -- there

1 are municipal utilities now --

2 MR. HOPKINS: That's a separate question  
3 of the utility itself, you know, if  
4 Burlington Electric wants to just build  
5 something in Burlington, is it automatically  
6 a community energy project as far as this  
7 goes? Maybe.

8 MR. JOHNSTONE: It meets the test.

9 CHAIRMAN EASTMAN: But what if Waterbury  
10 wanted to create their own --

11 MS. McCARREN: Electric Department.  
12 There's a whole statute that allows them to  
13 do that.

14 CHAIRMAN EASTMAN: Exactly. I mean they  
15 could do that.

16 MS. McCARREN: Here he is.

17 MR. JOHNSTONE: And you know, going  
18 beyond standard offer, what other things  
19 encourage that could compete at market rate  
20 otherwise? If we are going to have projects  
21 that are going to show up and the merchants  
22 are going to go to where they think they can  
23 find the easiest path in the current model,  
24 and the easiest path leads them to towns  
25 that really don't want this, can we design a

1           notion while we are here to figure out the  
2           broader, fairer siting process? The idea  
3           here was if we can have the right incentives  
4           so that the path gets cleared with  
5           communities that actually would like to be  
6           part of the solution, it seems a lot easier  
7           path to me.

8           CHAIRMAN EASTMAN: Yeah.

9           MR. JOHNSTONE: And then if the siting  
10          process can then embrace that, you send an  
11          interesting signal to the market. And those  
12          people looking for the easiest path, you  
13          change the easiest path. It may take 10  
14          years which is why you've got to have a good  
15          siting process in place for that transition,  
16          but if you use all the knobs and levers and  
17          tools that we have at our disposal to signal  
18          the market in new ways, we could get a much  
19          easier, less contentious process.

20          That's why I thought it should be part  
21          of the dialogue, and my intention was  
22          purposefully beyond standard offer.  
23          Standard offer is one tool that can be used  
24          but there is other -- many of the projects  
25          that we have talked about aren't standard

1 offer projects. And many that get proposed  
2 aren't. And wouldn't it be better if those  
3 were done in communities that desired to be  
4 part of that solution.

5 MS. McCARREN: Scott, I support the  
6 notion conceptually that from a process  
7 point of view -- there should be the  
8 community-supported projects from a process  
9 point of view, should have an easier time in  
10 the process. I support that conceptually.  
11 I question whether or not we can actually  
12 build something that would make that happen.

13 MR. JOHNSTONE: Sure.

14 MS. McCARREN: Where I don't support it  
15 at this point is going beyond the standard  
16 offer in terms of providing additional  
17 financial incentives. Because I think as  
18 Asa pointed out, other ratepayers pay for  
19 that. And that is beyond I think our --

20 CHAIRMAN EASTMAN: Wait a minute though.  
21 The standard offer -- I just want to clarify  
22 again, because a community could create an  
23 electric department.

24 MS. McCARREN: Of course they could.

25 CHAIRMAN EASTMAN: So that would be

1 outside the standard offer, Louise, right?

2 MS. McCARREN: Sure.

3 CHAIRMAN EASTMAN: So that's what I'm  
4 saying is, so why just within the standard  
5 offer -- I agree on the issue of who pays.  
6 But I know that, you know, within a  
7 community, the community's, you know,  
8 paying; right? Burlington Electric  
9 ratepayers.

10 MS. McCARREN: Taxpayers.

11 CHAIRMAN EASTMAN: Taxpayers pay, right?  
12 And then they have made a choice on how they  
13 want to do that. So I'm just saying I don't  
14 see why we limit it to the standard offer or  
15 why you would limit something to the  
16 standard offer.

17 I understand about the money stuff. You  
18 know the standard offer has some pluses, you  
19 know, regarding that. But if somebody  
20 actually wanted to do something --

21 MS. McCARREN: I don't have any problem  
22 if a community wants to create its own  
23 electric department, and its taxpayers want  
24 to do that. That's fine. If the town wants  
25 to become an investor in a generation

1 project as an investor, I don't have any  
2 problem with that. That's all good.

3 But then it becomes a town's decision  
4 whether it wants to invest, you know, in any  
5 other number of things it wants to invest  
6 in. I'm okay with that.

7 MR. JOHNSTONE: The other thing just to  
8 think about that I put out there, it's  
9 dollars from different sources, and I get  
10 that. And you know, we can have a debate  
11 about the philosophy of where dollars come  
12 from. But I also don't know that we need an  
13 economist to help us with this. But in my  
14 head, my working model was providing  
15 incentives to get the behavior we want does  
16 not necessarily cost the ratepayers more  
17 money. Right now all the money is going to  
18 the lawyers. Right? And if we --

19 CHAIRMAN EASTMAN: I wish.

20 MR. JOHNSTONE: You're not involved in  
21 the process.

22 CHAIRMAN EASTMAN: Oh, yeah I am.

23 MR. RECCHIA: There is a whole 'nother  
24 project where the money is going to lawyers.

25 MR. JOHNSTONE: We hear about all the

1 dollars going from all the parties, right?  
2 In these contested cases. If you ended up  
3 with them all like this that work and  
4 because there was some financial incentives,  
5 the money going into the incentives to get  
6 the behavior we want could be the same or  
7 less than what we are spending in contested  
8 cases. So it doesn't necessarily cost the  
9 ratepayers more money.

10 MS. MCCARREN: I understand what you're  
11 saying, and I conceptually like the idea of  
12 community based having an easier procedural  
13 thing, but I'm concerned.

14 MR. JOHNSTONE: That's fine.

15 CHAIRMAN EASTMAN: So where are you on  
16 this?

17 MS. SYMINGTON: I'm a little lost -- I  
18 mean I generally support the concept. I'm  
19 not sure I understand the way it's worded or  
20 where it fits.

21 MR. RECCHIA: For my benefit, I  
22 apologize for coming in late. Can you tell  
23 me where you are?

24 CHAIRMAN EASTMAN: We are just talking  
25 about Scott's idea of this community energy

1 projects.

2 MR. JOHNSTONE: We were waiting for you  
3 for everything else.

4 MS. SYMINGTON: Part of what I had in  
5 mind, I think I'm talking about smaller  
6 projects. I had understood this to be  
7 smaller than what I think this is in terms  
8 of, you know, I wasn't thinking of a town  
9 utility. I was more thinking, you know,  
10 when you have -- Middlebury has a project  
11 that's at their police department and  
12 Shelburne has talked about, you just --

13 MR. JOHNSTONE: It's that too.

14 MS. SYMINGTON: And part of what's in  
15 the way is just I don't know if this counts  
16 as your financial -- not wanting this as a  
17 financial -- additional financial resource.  
18 Is there a way that the Clean Energy  
19 Development Fund could have a fund that  
20 could be a revolving fund so that, you know,  
21 some additional -- up to \$12,000 is made  
22 available for just the legwork it takes to  
23 put a process together, that then once it's  
24 approved it gets rolled into the cost of the  
25 project, and is paid for, and they pay back

1 the fund. But the community group or entity  
2 isn't at risk of, you know, of being out  
3 that amount of money if the project doesn't  
4 go through.

5 CHAIRMAN EASTMAN: Who is managing the  
6 fund? The Clean Energy Fund?

7 MS. MARKOWITZ: The Department.

8 MR. JOHNSTONE: We need Chris.

9 CHAIRMAN EASTMAN: Because I always  
10 think about the Vermont Community Loan Fund.  
11 We invest money there to support community  
12 projects, and to me that's again the kind of  
13 thing that I think we should be encouraging,  
14 you know, us in Vermont to invest in Vermont  
15 and things we care about. So for me  
16 enhancing all of those kinds of  
17 opportunities, you know, is a good thing. I  
18 totally agree, to, you know, to leverage.  
19 And it can be private investors who only  
20 want a very small, you know, return on their  
21 investment. So I bet it's harder to invest  
22 private dollars with the Department.

23 So I'm also -- again I think there is a  
24 lot of private money that people would be  
25 interested in investing to encourage this

1 kind of work to go on. And so if it can't  
2 happen through the Department fund, maybe it  
3 could happen -- maybe we could ask the, you  
4 know, encourage the Vermont Community Loan  
5 Fund to add these kinds of projects  
6 potentially to their portfolio. I think  
7 they are doing --

8 MS. SYMINGTON: Well the communities are  
9 doing the projects. It's just that up front  
10 risk that's hard.

11 CHAIRMAN EASTMAN: They have got to get  
12 the money somewhere. But if we can't get it  
13 from public dollars, we might be able to get  
14 some investment in these projects from  
15 private dollars.

16 MR. JOHNSTONE: So what you're talking  
17 about I tried to specifically included in  
18 this second bullet on your ideas with the  
19 CEDF. The notion was we only talked about  
20 the bigger projects mostly since we started  
21 chatting about this, but really was -- there  
22 is a wide array of community projects, the  
23 ones you talk about fit as well. And that  
24 was some of what I was thinking about with  
25 CEDF there.

1 MS. McCARREN: I think -- I support what  
2 Gaye said. I support either funds of money  
3 that are dedicated to get projects going at  
4 a community level. There is nothing wrong  
5 with that. That's all good stuff. But  
6 what's in front of us is whether we change  
7 the process here and --

8 MS. MCGINNIS: Should we go back to the  
9 first stuff that we needed Chris on?

10 MS. McCARREN: Do we need a break so  
11 Chris can --

12 MR. RECCHIA: Run.

13 CHAIRMAN EASTMAN: I think we ought to  
14 -- are we done with this? I mean I don't  
15 think we are done with this.

16 MS. MARKOWITZ: Do we want to figure out  
17 what we want to do with this?

18 CHAIRMAN EASTMAN: Yeah, I sort of think  
19 I want to figure out what we are doing with  
20 this before, because we are leaving too many  
21 things. I think that we ought to -- okay,  
22 I'm usually --

23 MS. McCARREN: Why couldn't a community  
24 do a 248(j)? Right? It could. Couldn't  
25 it? It could do that.

1 MS. MCGINNIS: Say again.

2 MS. MCCARREN: A (j). Community could  
3 basically say, look, we voted on this. It's  
4 small. It's under whatever that number is.  
5 We like this. And we are going to apply  
6 under 248(j).

7 My point is if there is that kind of  
8 support, I would be shocked if the  
9 Department didn't support that. Shocked.

10 MR. RECCHIA: Shocked and amazed, yeah.  
11 So I mean as a concept I think this is  
12 valuable, and we should include encouraging  
13 figuring out a way to do this. I don't know  
14 if we can -- this level of specificity, I  
15 think Scott has got a good brain and put it  
16 all down, would make the rest of the report  
17 look very general if we went to this level  
18 of specificity with this.

19 CHAIRMAN EASTMAN: But I think we ought  
20 to say something about this.

21 MR. RECCHIA: Yeah. I think --

22 MS. MCCARREN: We could say we  
23 encourage.

24 MR. RECCHIA: Community-supported --  
25 community-supported projects be given a

1 smoother path forward.

2 CHAIRMAN EASTMAN: And I think Gaye is  
3 right. I think once -- I mean Linda has  
4 been talking to people about what's holding  
5 these things back. And once we figure out  
6 where it is, I mean if we could address  
7 those issues. And if part of it is  
8 financial resources to do the up front work,  
9 you know, because they can't put it at risk,  
10 if we can use like revolving loan fund  
11 monies that are public, or as I say, I think  
12 that there are people who would support that  
13 on a private level too.

14 I think there are -- which to me means  
15 the Vermont Community Loan Fund. And I  
16 don't know if they have to change their  
17 bylaws or they probably don't.

18 MS. McCARREN: I think we have an  
19 existing statute on the process point which  
20 is 248(j), and maybe we simply say we  
21 support and encourage the Department for  
22 community projects to use that that way.

23 MR. RECCHIA: So --

24 MS. MCGINNIS: Except you may be  
25 changing 248(j) and the tiers.

1 MR. RECCHIA: You may change 248(j) or  
2 other appropriate tiers.

3 MR. JOHNSTONE: I do think we should --  
4 we probably won't in the document -- go to  
5 the specificity of defining community  
6 projects. I put it out there because I  
7 thought you wouldn't know what I was talking  
8 about without that. Part of the charge  
9 could be also define that.

10 MS. MCGINNIS: Right. What I could  
11 potentially do in the longer report is have  
12 a box of here are some of the things to  
13 consider when the Department is looking at  
14 how to encourage community projects.

15 MR. RECCHIA: Exactly.

16 MS. MCGINNIS: So I can just have a box  
17 that highlights some of these ideas and says  
18 the Department needs to think -- look at how  
19 to reduce barriers to entry because I think  
20 that those are -- there are some heavy  
21 barriers to entry for community-owned  
22 projects, but also look at incentives. And  
23 I can give some examples of what those two  
24 might be. And then the Department would  
25 have to figure it out. Is that -- are

1 people okay with that?

2 MS. McCARREN: I don't support financial  
3 incentives that are paid for by other  
4 ratepayers beyond the existing standard  
5 offer.

6 MR. RECCHIA: In order to accommodate  
7 that, I don't think we need to go that far.  
8 I think we could say, you know, look at what  
9 the barriers are. And if there are  
10 financial barriers, we will have to deal  
11 with that in a different venue. Is that  
12 okay?

13 MS. McCARREN: I'm fine with that. And  
14 you've got five megawatts a year in the  
15 standard offer.

16 CHAIRMAN EASTMAN: And I'm still saying  
17 if we are trying to encourage this, we want  
18 to -- it's beyond that.

19 MR. RECCHIA: It's beyond that.

20 CHAIRMAN EASTMAN: Potentially, but  
21 that's up to the communities to decide, not  
22 us. But you know --

23 MR. RECCHIA: There are lots of ways to  
24 help communities get the resources they need  
25 to advance this without necessarily coming

1 back to ratepayers. I mean I just think of  
2 there are lots of organizations that are  
3 willing to support a community's planning or  
4 analysis of this, and then an RP, I won't  
5 say free, but it's, you know, it's  
6 relatively cost neutral for the community to  
7 explore what development potential there  
8 might be, if they have some definition of a  
9 project in mind.

10 MR. JOHNSTONE: Well just if -- thank  
11 you. This was for me like your Act 250 one.  
12 And I just tend to be a writer in my  
13 approach. So for me the need to get this  
14 out was around -- so everything about siting  
15 ends in -- our dialogue is always about the  
16 troublesome projects and how to design a  
17 process to deal with what we are having  
18 trouble with.

19 MR. RECCHIA: Right.

20 MR. JOHNSTONE: So for me getting the  
21 ideas on the table of well how about all the  
22 stuff that we would like to have happen so  
23 we didn't have to deal with the trouble, was  
24 what kept boiling in my head. And for me  
25 I'm a writer, so thus the specificity.

1 MR. RECCHIA: We really appreciate that.  
2 Thank you.

3 CHAIRMAN EASTMAN: I'm with you on that  
4 because I still don't think we know all the  
5 potential for things to happen more easily.

6 MR. RECCHIA: Right.

7 MR. JOHNSTONE: Right. So I appreciate  
8 the chance to at least have the conversation  
9 wherever it goes.

10 CHAIRMAN EASTMAN: So Chris is here. Do  
11 we want to go back to tiers first, or do we  
12 want to go back to one? One or tier?

13 MS. MCGINNIS: To the beginning. Go  
14 through logically through the whole thing.

15 CHAIRMAN EASTMAN: We are going to go  
16 back to the planning first.

17 MR. JOHNSTONE: When we get to that --

18 CHAIRMAN EASTMAN: We will take time out  
19 to read it. We are at item one. We are at  
20 item one which is the planning. We are back  
21 to planning, because Chris needs to be here  
22 for the planning conversation.

23 MS. SYMINGTON: So can I -- so what we  
24 have is a back and forth between -- I think  
25 we had a back and forth going on between

1 Louise and Jan.

2 MS. McCARREN: Everybody else.

3 MS. SYMINGTON: No, I don't think so.

4 And I wonder if --

5 MS. McCARREN: Let me see if I can  
6 summarize it.

7 CHAIRMAN EASTMAN: I really think we  
8 need to hear from Chris, because I think the  
9 reason for the back and forth is because I  
10 think of where the Department may now be on  
11 the role of regional planning.

12 MS. SYMINGTON: Okay. What I was going  
13 to try was to see if I understood the back  
14 and forth, because I found myself agreeing  
15 with Louise more than Jan. So and I was  
16 surprised by that. And so I thought that  
17 either I misunderstood or -- anyway.

18 This is about, you know, further down  
19 the -- further on where we -- a lot of the  
20 discussion further on is predicated on the  
21 role of a plan. And for some of us  
22 confidence in sort of reaching into relying  
23 more on the RPCs relies on there being some  
24 statewide plan that is more specific than  
25 the Comprehensive Energy Plan. And so

1 that's where this is coming from is talking  
2 about the Department shall develop a road  
3 map, using this notion of scenario planning,  
4 and I think there wasn't discomfort with  
5 that.

6 MR. RECCHIA: Right.

7 MS. SYMINGTON: It's this notion of  
8 determinant. And does the word determine  
9 mean that we are in a sense creating binding  
10 requirements for in-state/out-of-state  
11 balance that in effect overrides or takes  
12 the place of statutory guidelines in that  
13 respect. And we don't want to be creating  
14 new statute -- new guidelines that become--  
15 that go further than has been established in  
16 statute.

17 On the other hand, we do want to have  
18 something that is determinative enough in  
19 terms of planning at least to provide the  
20 comfort that there is more than -- that we  
21 are not just turning this over, this process  
22 over, to towns to decide whether they are in  
23 or out.

24 MR. RECCHIA: Okay. So I think the word  
25 determine is a little too strong as well.

1 Because I feel like -- I see what your point  
2 is about not providing another regulatory  
3 structure that is outside of rulemaking and  
4 statutory making that imposes on towns a  
5 responsibility that they otherwise wouldn't  
6 have. But not to use Scott's good work from  
7 the previous discussion, but I turn this  
8 around too and look for ways to make this a  
9 positive thing for towns and communities to  
10 engage in a positive way toward helping meet  
11 the energy goals that we have.

12 So I think the scenario planning is  
13 important, and I think that there is not  
14 going to be one answer, there is not going  
15 to be one recipe for how to do it or where  
16 to do it. And so I don't think we are going  
17 to get to the point no matter how hard we  
18 try, that we would get to the point to say  
19 town X, you should do this project to this  
20 level and/or within a region even.

21 So I would prefer that it be recommend a  
22 mix, and that there is likely to be more  
23 than one scenario in which, you know, people  
24 again spinning this in a positive way, that  
25 towns look and say, oh, you know, we could

1 do this solar project or we could do this  
2 wind project or we could do this hydro  
3 project, or we could do this. You know, we  
4 are not interested in electrical stuff. We  
5 want to concentrate on the transportation  
6 piece or the thermal piece and do district  
7 energy system for a community, and just let  
8 the electricity go wherever it may.

9 And I want them to be able to have that  
10 flexibility and to actively participate in  
11 that. So I think this is a reasonable  
12 thing. I understand the need for more  
13 specificity in terms of what a mix might  
14 look like so that everybody can evaluate how  
15 they would feed into doing, if you may, if I  
16 will, their fair share, but I don't think we  
17 will get to the point or should we of  
18 imposing on a particular region or town  
19 you're responsible for this number of  
20 megawatts. So that's just kind of where I  
21 am, and what's your guys' reaction to that?

22 MS. McCARREN: I totally support  
23 scenario planning. I think it's really very  
24 important, and what the Gund group is doing.  
25 So that people can see as best as we can let

1           them see, the ramifications of these policy  
2           decisions and what the state would look like  
3           if we were all wind or all solar or  
4           whatever. And I think I really support that  
5           a lot.

6           My issue was the use of the word  
7           determine, because I read that to mean that  
8           the Department would make the decision, a  
9           controlling decision, about how much of --  
10          how much in-state renewables were required.  
11          I think that's a bad idea. We have already  
12          got statutory obligations which we need to  
13          meet, but who knows. There might be an out-  
14          of-state renewable that fits our needs  
15          really well. And we don't want to exclude  
16          that.

17          So I think -- I don't think we are that  
18          far apart.

19          CHAIRMAN EASTMAN: I totally agree with  
20          what's -- I agree with what Gaye said. I  
21          agree what he says. I agree with what you  
22          say.

23          MR. RECCHIA: I haven't seen any  
24          daylight yet.

25          CHAIRMAN EASTMAN: The whole thing is

1 going to come when we come down to the  
2 regional planning economics and what their  
3 role is and how determinative their plan is  
4 in the process. That's where we have got to  
5 go to. Because for me this is why I say I  
6 think planning is critical to this process,  
7 and I don't think you can -- this is what I  
8 keep saying. I think it's critical for some  
9 planning to go on, and for the state, you  
10 know, to play. Meaning not just state  
11 agencies but people, okay? But people in  
12 Vermont. And I think that that's fair.

13 So the issue will be though then how  
14 determinative is -- right now the 248  
15 statutorily says that a project has to be in  
16 conformance with your plan. Okay?

17 MR. RECCHIA: Yeah.

18 CHAIRMAN EASTMAN: It says that. So I'm  
19 happy -- so for me, the more you get  
20 specific, the more we are weeding things  
21 out. All right. Now go down to RPCs  
22 though, and right now what we have got is  
23 the RPCs then do planning. And I think that  
24 depending upon if their plan was then in  
25 conformance with your plan --

1 MR. RECCHIA: And somebody has got to  
2 determine that.

3 CHAIRMAN EASTMAN: Somebody has got to  
4 determine that. But then theirs would be  
5 dispositive, so that the planning that got  
6 done at the regional level which communities  
7 participate in, I mean I know you do a  
8 public process for your plan. But then the  
9 regions do a public process that gets a  
10 little more specificity about where things  
11 go from now. It's not just scenarios. Now  
12 there is some, oh, well here's where the sun  
13 is, the sun's out on the southeast slopes,  
14 so we will save that kind of thing. I don't  
15 know exactly what it is. So long as they  
16 are in conformance with your plan then it  
17 would, as with Act 250, be -- a project  
18 would have to be in conformance with the  
19 Regional Plan.

20 MS. McCAREN: But here's maybe where we  
21 are -- where I'm not quite with you. If all  
22 the RPCs did energy planning, it's possible  
23 and they said from a land use point of view  
24 where are the best locations for renewables?  
25 And they did that planning, it's possible

1 that the sum total of all of that for across  
2 the state would be 20 times our needs, just  
3 I made that number up. Just pulled it out  
4 of the air.

5 So I like that idea which says, okay,  
6 all you RPCs you look around your regions,  
7 you do your planning about best locations  
8 from a land use point of view, that then  
9 goes to developers who say, oh, look at  
10 that, you know, there is -- I've got all  
11 these choices. Why would we predetermine or  
12 limit in any way what an RPC could do?

13 MR. RECCHIA: Right.

14 CHAIRMAN EASTMAN: I'm not limiting.

15 MS. McCARREN: I think we are talking  
16 past each other.

17 CHAIRMAN EASTMAN: What they have to do  
18 is their plan has to be in conformance with  
19 the Department plan. It has to fit the fact  
20 that they have goals that they are trying to  
21 meet. So there has got to be some  
22 connection between actually -- I mean we  
23 were always proposing that there is some  
24 interconnection between various levels. So  
25 for me, if the Department has done its next

1 role of planning, and the regions then plan,  
2 and the Regional Plan is in conformance with  
3 your plan, okay, which means, you know, you  
4 look at them all, you look at them all as a  
5 whole, and you say oh, yeah, I can approve  
6 this because it gets us to where we need to  
7 be or beyond, then fine. But then I say,  
8 you know, if municipalities have  
9 participated, and people have participated,  
10 then the projects ought to get the same --  
11 sorry, I think that a project should then  
12 have to be in conformance with the Regional  
13 Plan.

14 MR. RECCHIA: Okay. So let's take that  
15 in steps.

16 MR. JOHNSTONE: The thing I would add,  
17 just to add that, I'm right with you,  
18 Louise, if we find over-subscription  
19 opportunity. It's where if the opposite is  
20 true, which is because energy is too hot to  
21 handle, and so the regions all punt, and we  
22 can't keep the lights on, in that way which  
23 is, of course the lights would really stay  
24 on, I get that. But the default would be so  
25 now we are going to be using natural gas

1 plants, which maybe we could argue if it's  
2 true cost -- if its direct cost is good, if  
3 you value externalities, you know, the  
4 equations get different, we can have a long  
5 debate about that. But without doubt in  
6 that scenario we would be -- our Regional  
7 Plan could be headed towards -- towards non  
8 conformance with legislative goals around  
9 climate and energy. And we will have  
10 deferred to these Regional Plans if we give  
11 them the authority without any check and  
12 balance to the state plan.

13 MR. RECCHIA: Can I address that point?

14 MR. JOHNSTONE: And ability to  
15 implement. That's where you would lose me.

16 MS. McCARREN: Okay. Let's hear Chris  
17 on this.

18 MR. RECCHIA: Let me throw out a concept  
19 and see if we have agreement on this or not,  
20 because this is key to me, is that the  
21 Regional Plans need to do something, and  
22 that we would need to review the energy  
23 component of that. We in the Department  
24 would need to review the energy component of  
25 that and decide whether it is in conformance

1 with the state plan. If you agree with that  
2 concept, then I am okay with the concept of  
3 this being we recommend a suite of measures,  
4 or a several scenarios that people can  
5 choose from, the Regional Planning  
6 Commissions go and do that, I think we have  
7 to be in a position where we can evaluate  
8 whether we are under or over-subscribed, and  
9 whether this works or not. Then I'm okay  
10 with this.

11 MR. JOHNSTONE: I'm okay with that.

12 CHAIRMAN EASTMAN: See for me it is, as  
13 I say, I mean the problem is I reread Act  
14 250 this morning.

15 MS. McCARREN: How many cups of coffee  
16 did you have?

17 CHAIRMAN EASTMAN: I don't drink coffee.

18 MR. RECCHIA: I had three statutory  
19 volumes out on my desk last night. It made  
20 the lawyers really nervous.

21 CHAIRMAN EASTMAN: I see the things that  
22 haven't ever happened from Act 250 and all  
23 these other things. Planning I really  
24 believe we need, and I believe the only way  
25 we are going to get everybody at the table

1 and make it really work is if it then has  
2 teeth. Otherwise, why would you play?

3 MR. RECCHIA: So here's the other follow  
4 up that I have. You know, when we get down  
5 to further issues about supporting the  
6 Regional Planning Commissions, supporting  
7 their participation in the PSB process. The  
8 teeth are in my mind that they have the  
9 plan, they have it approved, and then they  
10 can participate, and that enables them to  
11 participate at the Public Service Board and  
12 get 50/50 funding or a share for funding.  
13 And all of that feeds I think together in --

14 CHAIRMAN EASTMAN: Exactly.

15 MR. RECCHIA: -- in providing the right  
16 incentives to participate in the right way.

17 CHAIRMAN EASTMAN: And the plan -- and  
18 we change the criteria if it meets all of  
19 those things that the Regional Plan could be  
20 dispositive.

21 MR. JOHNSTONE: Can I try something?  
22 Because actually it may make you  
23 uncomfortable. That's purposely why I'm  
24 doing it.

25 MS. McCARREN: I'm not understanding

1 this. So I'm listening.

2 MR. JOHNSTONE: What I'm hearing is I  
3 think Jan and I are saying the same thing,  
4 there is a determinative piece, but it isn't  
5 about the list that's here. The Department  
6 does have a role in their implementation of  
7 statute to determine that that whole thing  
8 could keep our overall system working. But  
9 I don't think the list is here.

10 I think it's to determine conformity  
11 with the state plan and statutory goals.  
12 That's really what they are determinative  
13 about, and the rest is the planning process  
14 underneath it.

15 MS. SYMINGTON: To me the other piece in  
16 this planning process is the consideration  
17 of cumulative impact. Because I don't see  
18 how you do that project by project.

19 CHAIRMAN EASTMAN: Right.

20 MR. RECCHIA: Right. I mean the timing  
21 of the Regional Plans coming in has to be  
22 where they can be evaluated concurrently.  
23 Right. And that's going to be a challenge  
24 too.

25 CHAIRMAN EASTMAN: Maybe what we want to

1 do is something simpler. Maybe we want to  
2 say and -- sorry, we may just want to say  
3 that it's their energy components that  
4 you're approving. Not the whole --

5 MR. RECCHIA: Please oh, yeah. No.

6 CHAIRMAN EASTMAN: Let's just be sure we  
7 are talking about the language. But let's  
8 be sure that we want different language and  
9 we don't want it to be in conformance with  
10 the Regional Plan. We want it to be in  
11 conformance with the energy component of a  
12 Regional Plan.

13 MR. RECCHIA: Right. There is no  
14 disagreement with me.

15 MS. McCARREN: I'm not quite sure I  
16 completely understand this. Okay. Because  
17 it may be my -- the way I kind of view the  
18 world is so fundamentally different. Let me  
19 just give you a fundamental example.

20 What if Addison County looked around and  
21 said, you know, we could host a hundred  
22 megawatts of solar because we have got all  
23 this great flat land, and it's farm land, et  
24 cetera, et cetera. All right. And pick  
25 another town that's really mountainous, make

1 it up. And it's really not a good place,  
2 right. So that would say to me that each  
3 region looks at what it's got, its  
4 inventory --

5 CHAIRMAN EASTMAN: Exactly.

6 MS. McCARREN: -- and says okay, let's  
7 make some decisions about where --

8 CHAIRMAN EASTMAN: At the regional level  
9 what we can do.

10 MS. McCARREN: From a planning point of  
11 view. And it's not limited by some  
12 statement from the Department that says you,  
13 Windham, are responsible for X.

14 CHAIRMAN EASTMAN: He's not telling  
15 Windham that. What he's saying is he's  
16 coming up with a plan that has some more  
17 specificity, here are some possibilities and  
18 here's what our required goals are so we  
19 need as a state to get here. He's then  
20 saying, or he says the regions go out and do  
21 their work and they all come back to him,  
22 those comments come back to him, and he  
23 looks at them all and says, oh my heavens,  
24 Addison can do that. Isn't that great? So  
25 because so and so choose they couldn't, it's

1                   okay, it all will get done.

2                   MR. RECCHIA: It enables us to do a  
3 couple things. We are not imposing on  
4 anybody what those choices are. They have a  
5 range of things. We can evaluate the  
6 cumulative impacts. We can evaluate the  
7 cumulative contribution to our energy goals  
8 in that context, and we don't have to impose  
9 on anyone a particular scenario.

10                  CHAIRMAN EASTMAN: It's going to go  
11 beyond generation.

12                  MR. JOHNSTONE: Except if you're short.

13                  MS. SYMINGTON: The other piece that  
14 came up -- that came up in the comments --  
15 in either Anne Ingerson's or Annette's  
16 comments, I'm not sure which, there could be  
17 a town that says we really don't want  
18 generation. We are going to do X to super  
19 incent or create a structure so that we are  
20 using less. And that we are -- our  
21 generation, our contribution through the  
22 plan is through.

23                  CHAIRMAN EASTMAN: Tons of reductions.

24                  MR. RECCHIA: I recognize that this  
25 group is about the electrical generation.

1 But always in my mind is that that's only a  
2 piece of this puzzle. And I need towns to  
3 be able to feel like, okay, we want to do a  
4 district energy system, or we want to do  
5 deep retrofits and get our efficiency down.  
6 We want to reduce our energy by 30 percent.  
7 Right. And I want that to count. I want to  
8 be able to add that and subtract that and  
9 count that.

10 MS. SYMINGTON: It is energy though.

11 That uses energy too.

12 MR. HOPKINS: The challenge from someone  
13 who is going to have to implement this  
14 potentially, sorry, is it is going to come  
15 from -- you talk about conformance with the  
16 energy part of the Regional Plans. Well as  
17 Gaye is just getting to, dense downtowns,  
18 you know, all the kinds of things about land  
19 use that are the whole plan --

20 CHAIRMAN EASTMAN: I think I'm wrong  
21 about that.

22 MR. HOPKINS: -- end up having to come  
23 back to conformance.

24 MR. RECCHIA: I agree. I think we need  
25 to see the whole plan. But we are reviewing

1 it from an energy --

2 MR. JOHNSTONE: Perspective.

3 MS. SYMINGTON: Conformance.

4 MR. RECCHIA: With an energy lens on it.  
5 So we might look at are they encouraging  
6 downtown development. How does that count  
7 toward the energy picture? I'm not  
8 disagreeing with you guys, but I don't want  
9 to be reviewing whether someone is choosing  
10 a particular project because the economic  
11 development components of it are going to  
12 create X number of jobs.

13 CHAIRMAN EASTMAN: I understand. We  
14 have the issue of you reviewing and  
15 approving the energy component. The issue  
16 is what do we have as the determinative  
17 factor in a 248 process. Is it conformance  
18 with the Regional Plan, or is it conformance  
19 with the energy component of the Regional  
20 Plan?

21 MR. RECCHIA: I think it's conformance  
22 with --

23 CHAIRMAN EASTMAN: The Regional Plan.

24 MR. RECCHIA: Regional Plan. And if  
25 they are writing energy components that we

1 have reviewed and approved that are  
2 inconsistent with other parts of the plan,  
3 then God bless somebody who can figure that  
4 out. But --

5 CHAIRMAN EASTMAN: Yeah.

6 MR. RECCHIA: It should be consistent.

7 MS. MCGINNIS: I'm sorry. I just want  
8 to make sure I understand what I'm going to  
9 write.

10 CHAIRMAN EASTMAN: What we are asking  
11 for, what we are suggesting here is just  
12 what we were talking about, that the  
13 Department does its planning. We have all  
14 got consensus around that. And then the  
15 regions do planning. The regional energy  
16 component of a Regional Plan has to be in  
17 conformance with the state DPS plan, okay.  
18 But that when you get to 248, and you get to  
19 what is the -- what's the criteria that's  
20 being reviewed in 248, the last language is  
21 that it's the project that is to be in  
22 conformance with the Regional Plan whose  
23 energy component has been approved by DPS.  
24 Now --

25 MR. RECCHIA: So there are some -- okay.

1 Maybe this is as far as we can go with this  
2 one right now.

3 CHAIRMAN EASTMAN: The whole thing is,  
4 you're right. We don't know because we  
5 haven't planned yet whether you're going to  
6 have -- whether you can meet it all.

7 MR. RECCHIA: Right.

8 CHAIRMAN EASTMAN: You're right. But  
9 what you get to do, which we don't get to  
10 do, is we are talking about only electric  
11 generation siting. The energy component of  
12 a plan is much broader than that. It  
13 includes a lot of things. And so there are  
14 more choices for people. And what we are  
15 asking is everybody to play.

16 MS. MCGINNIS: Just to add, the Regional  
17 Planning Commission, Jim and Chris Company  
18 couldn't be here today, but they are both  
19 very interested in this discussion and  
20 provided comments. They repeatedly say we  
21 need to make sure that as we are talking  
22 about this, the electric portion is a part  
23 of the broader energy plan that they have to  
24 do. And this -- they will be juggling  
25 between what are the overall energy goals

1 which is linked to what Asa just said in  
2 terms of how the state is going to meet its  
3 overall goals and statutory targets. So  
4 I'll change this to make sure it's within  
5 that context.

6 MS. McCARREN: I have two overriding  
7 concerns. The first is that beyond what now  
8 exists in the statute, there should be no  
9 more or no further requirement that  
10 renewables -- requirement, a mandate --  
11 renewables have to be in state. They may  
12 happen in state for all kinds of wonderful  
13 reasons. That's number one.

14 And number two, from a land use point of  
15 view I still -- I strongly believe that from  
16 a land use that is where should projects go,  
17 right, both from Gaye's point a cumulative  
18 impact, that that decision needs to be made  
19 at the regions and the towns. Those are my  
20 two concerns.

21 CHAIRMAN EASTMAN: Well what -- I  
22 believe what we are saying, we are getting  
23 -- you're getting half of what you want.

24 MS. McCARREN: Oh.

25 CHAIRMAN EASTMAN: Because what we are

1 saying is that it will be a Regional Plan  
2 including all of its land use decisions that  
3 a project will have to be in conformance  
4 with. We are not saying conformance with a  
5 municipal plan. We haven't gone that far.  
6 What we are saying right now is that yes,  
7 that it would be dispositive. It would have  
8 to be in conformance with a Regional Plan if  
9 it meets all this.

10 And I -- here's the other thing, as I  
11 say, that in Vermont only the legislature  
12 can authorize municipalities to do  
13 something. And so the Department cannot  
14 expand what they require of a municipality  
15 to do until the legislature does that.

16 MR. RECCHIA: And that speaks I think to  
17 your first point. If I may just to address  
18 that, which is, you know, whether it should  
19 be any more mandates or not. That's not  
20 even our purview here. That's the  
21 legislature. And --

22 MS. McCARREN: Yes.

23 MR. RECCHIA: So I think --

24 MS. MCGINNIS: And the legislature does  
25 have a mandate of 25 percent of all energy

1 from in state by 2025.

2 MR. JOHNSTONE: She is okay with that.

3 MS. MCGINNIS: They would be working  
4 within that. To make clear, that's part of  
5 what they would be working within.

6 MS. MCCARREN: That's number one. With  
7 respect to the towns, my view is not that  
8 you would create a burden for a town, but if  
9 the town set out, and I mean if a town  
10 through its own processes provided a plan  
11 which accommodated renewables, that needs to  
12 be honored. That's my point.

13 MR. RECCHIA: The Town Plans feed into  
14 the Regional Plans, and the region gets to  
15 decide, and they do all the time now whether  
16 a Town Plan is in conformance with the  
17 Regional Plan or not. So I think that also  
18 sorts itself out.

19 MR. JOHNSTONE: Not quite as Louise is  
20 suggesting.

21 CHAIRMAN EASTMAN: Now we are saying if  
22 we go down that road and the Regional Plan  
23 is now in conformance with, you know, the  
24 regional energy component is in conformance  
25 with the state plan, and a local plan,

1 here's -- and so I'm willing to go here.  
2 Because here's the interesting thing about  
3 how 248 refers to -- I also reread that this  
4 morning. Dangerous.

5 MS. McCARREN: What time did you get up?

6 CHAIRMAN EASTMAN: It's dangerous when I  
7 actually read things. It's really  
8 interesting the language 248 uses about  
9 local plans which is why I think this is  
10 part of the disconnect for towns and the PSB  
11 because it only talks about land  
12 conservation.

13 MR. HAND: Yes.

14 CHAIRMAN EASTMAN: Right? So there is a  
15 very little interesting thing. Isn't that  
16 interesting. Sorry. It's a nuance that I  
17 think is important. So I've got to think  
18 about this. Because if we have gone that  
19 far and the regions come up with this, and a  
20 municipal plan is actually in conformance,  
21 with relatively -- energy planning piece is  
22 in conformance with a Regional Plan, then  
23 why not?

24 MR. RECCHIA: Well what's the  
25 difference? I mean if -- so the Regional

1 Plan has to consider this range of things  
2 which I think is the appropriate scale at  
3 which to do this. You wouldn't ask every  
4 town to --

5 CHAIRMAN EASTMAN: Totally.

6 MR. RECCHIA: -- to do something.

7 MS. McCAREN: Don't have to.

8 MR. RECCHIA: So the region seems -- we  
9 all seem comfortable that the region is the  
10 right scale at which to do this planning.  
11 Then that energy component is reviewed and  
12 considered consistent with our state plan.  
13 Municipal plans have to be consistent with  
14 the Regional Plan, and if they are, then  
15 it's a de facto, it is, you know,  
16 essentially implementing the local municipal  
17 plan.

18 CHAIRMAN EASTMAN: So but are we going  
19 to say that it then -- that the project then  
20 has to be in conformance with the municipal  
21 plan?

22 MR. RECCHIA: I don't think you need to  
23 say that. I don't think you should say that  
24 unless the municipal plan has been approved  
25 by the Regional Plan for its energy

1 component.

2 CHAIRMAN EASTMAN: But if we say that --

3 MR. RECCHIA: And requires another  
4 circle.

5 CHAIRMAN EASTMAN: If they do that --

6 MR. RECCHIA: Why are we torturing  
7 ourselves over this?

8 MS. MARKOWITZ: I don't think it's  
9 necessary to go --

10 CHAIRMAN EASTMAN: It is what people are  
11 asking for. People are asking for more  
12 voice, and that municipal plans -- I know we  
13 hadn't gotten there. Now we are talking  
14 like this.

15 MR. RECCHIA: You're getting there.

16 CHAIRMAN EASTMAN: We are getting there.  
17 Now the thing I would argue is that again we  
18 are talking about we are only here for  
19 siting. But really the energy plan's about  
20 a whole lot of stuff. So again, you look at  
21 this that it's -- I guess -- I live in the  
22 Kingdom too everybody back there. But I  
23 want to avoid a place where there is 52  
24 towns and having 49 say no to everything and  
25 leaving it to three to carry it on. That to

1 me isn't, you know, isn't conformance.

2 I mean it's this issue of we have got to  
3 all look at what we have got to do on a  
4 regional basis.

5 MR. RECCHIA: So I would hope that the  
6 Regional Plans -- Regional Planning agencies  
7 would say no, that's not -- those town plans  
8 are not in conformance.

9 MS. MCGINNIS: What Louise was saying is  
10 that every town would have to say something  
11 in their Town Plan about what they are  
12 doing.

13 CHAIRMAN EASTMAN: If they wanted their  
14 Town Plan to go -- again, they would have to  
15 do local to region, what region has done  
16 region to state. And it gets approved --  
17 their municipal plan energy component is  
18 found to be in compliance with the Regional  
19 Plan which we already know is now in  
20 compliance with the state plan. So why  
21 isn't it --

22 MS. MCCARREN: Jan, if a town chooses  
23 not to have any kind of plan and no zoning  
24 and not -- can it also not participate in  
25 the regional?

1                   CHAIRMAN EASTMAN: It can not  
2 participate.

3                   MS. McCARREN: It can just not  
4 participate. So I don't know what that  
5 means.

6                   MR. RECCHIA: It means they're not going  
7 to be protected from a project coming in and  
8 proposing something.

9                   MS. McCARREN: That's fine. If the town  
10 chooses not to.

11                   MR. JOHNSTONE: So I think if you play  
12 this out, if we go to the regional -- the  
13 local plan issue.

14                   CHAIRMAN EASTMAN: Well I wasn't going  
15 there before.

16                   MR. JOHNSTONE: Just to play out a  
17 scenario here. I think you're going to be  
18 sending people back through lots of  
19 scenarios. Because you're going to fall  
20 short.

21                   MR. RECCHIA: It's too level of detail.

22                   MR. JOHNSTONE: Meeting targets in that  
23 process, I'll just guess that. That's how  
24 it feels to me. And so -- and you're going  
25 to have as -- through whatever time cycle

1 that we have you do this process, and  
2 expectation with the regions, it means  
3 you've got to line up, you know, as many as,  
4 you know, a couple hundred different plans  
5 all at the same moment in time instead of  
6 the regions.

7 CHAIRMAN EASTMAN: He's not --

8 MR. JOHNSTONE: I'm just trying to put  
9 out some of the challenges of trying to pull  
10 that puzzle together.

11 MR. RECCHIA: I just do not think it's  
12 necessary. I think people are getting what  
13 they need and what they want in the context  
14 of the Regional Plan, and that's a level of  
15 detail that is reasonable to go to.

16 MS. MARKOWITZ: And that was starting to  
17 be my point is that it achieves, I think  
18 what the goal is, of folks that we have  
19 heard from, and the goal that we have  
20 articulated around the table without the  
21 complexity of trying to -- the process  
22 complexity of getting alignment of town  
23 plans.

24 CHAIRMAN EASTMAN: So could I -- I would  
25 like -- I don't disagree. I'm willing to go

1 with, you know, with the state plan to the  
2 RPC, what we talked about. What I would  
3 like -- and not down to a statement that the  
4 project has to be in conformance with  
5 municipal plan, you know, an approved  
6 municipal plan.

7 However, can somebody tell me why right  
8 now 248 requires that a municipal plan be  
9 given due -- something due consideration.

10 MS. MCCARREN: The term town, yeah.

11 CHAIRMAN EASTMAN: It's only the land  
12 conservation piece, why is that? And why  
13 can't we amend that language that, you know,  
14 a plan that's been approved, you know,  
15 approved municipal plan gets due  
16 consideration? Why is it just the -- I mean  
17 if -- see, actually by specifying land  
18 conservation, we are limiting, you know, for  
19 the people who actually go do energy  
20 planning. That seems nuts to me.

21 MR. RECCHIA: The answer is that if you  
22 take a step back and look at okay, we are  
23 potentially imposing these projects, because  
24 they are in the public good, global public  
25 good on particular places. And I think it

1 was -- on the face of it I think it was to  
2 say we can do that and still recognize that  
3 towns' conservation lands are particularly  
4 sensitive or set aside for particular  
5 purposes, and try and accommodate that in  
6 the PSB process.

7 CHAIRMAN EASTMAN: Can I just -- I'm  
8 going to read this to you because I don't  
9 think that's what it --

10 MR. COSTER: What section?

11 CHAIRMAN EASTMAN: What is it?

12 MR. HAND: (b) (1).

13 CHAIRMAN EASTMAN: (b) (1).

14 MR. RECCHIA: I should have brought the  
15 statute.

16 CHAIRMAN EASTMAN: Okay. With respect  
17 to an in-state facility. Okay. With  
18 respect to natural gas. The line shall be  
19 in conformance. Not be in conformance with  
20 the adopted municipal plan, wait a minute.  
21 Is it that one?

22 MR. RECCHIA: Let me recognize that this  
23 is about transmission and pipeline, gas  
24 pipelines and generation facility as well.

25 CHAIRMAN EASTMAN: The Board shall --

1 (b) (1) looks like it's just gas  
2 transmission.

3 MR. HAND: (b) (1) before the Public  
4 Service Board issues a Certificate of Public  
5 Good as required under subsection A of this  
6 section it shall find, purchase investment  
7 or construction, one, with respect to in-  
8 state facility not unduly interfere with the  
9 orderly development of the region with due  
10 consideration having been given to the  
11 recommendations of the municipal and  
12 Regional Planning Commissions, the  
13 recommendations of the municipal legislative  
14 bodies, and the land conservation measures  
15 contained in the plan of any affected  
16 municipality.

17 MR. RECCHIA: They didn't want you  
18 putting a transmission corridor through a  
19 wildlife area, or at least they want you to  
20 be paying attention and thinking about it  
21 before you did that.

22 CHAIRMAN EASTMAN: So --

23 MS. MCCARREN: The issue as joined now  
24 in this state is that the Public Service  
25 Board has interpreted the statutes and the

1 energy plan as mandating that renewable --  
2 mandating that the PSB make decisions in  
3 support of renewables even over the  
4 objections of a town. That's the current  
5 status of the interpretation.

6 MR. RECCHIA: Take renewables out of the  
7 equation.

8 MS. McCARREN: Fair enough.

9 MR. RECCHIA: And say, you know, the PSB  
10 has always been in the position of -- for  
11 energy facilities --

12 MS. McCARREN: Yes.

13 MR. RECCHIA: Of making that  
14 determination.

15 MS. McCARREN: Okay. But what I believe  
16 is different now, this is part of my  
17 fundamental philosophy here, is that the  
18 notion of the public good should be retained  
19 for large projects. And that's why we came  
20 up with the 15 megs. Don't know if that's  
21 the right number. But because what we are  
22 dealing with today is large numbers,  
23 potentially large numbers of very dispersed  
24 projects, the issue morphs from in my view  
25 that public good concept which absolutely

1 applies to transmission lines to a land use  
2 issue which I believe belongs at the local  
3 level. And I know you guys don't agree with  
4 me.

5 CHAIRMAN EASTMAN: Unless it all goes up  
6 through this conformance thing, I don't  
7 agree with you, Louise.

8 MS. McCARREN: I know you don't. It's  
9 okay.

10 CHAIRMAN EASTMAN: But I'm really now  
11 getting really curious about this. So you  
12 give due consideration to the  
13 recommendations of the municipal.

14 MS. McCARREN: Where are you? 248?

15 CHAIRMAN EASTMAN: 248(b)(1). Yeah.  
16 You give due consideration to the  
17 recommendations of the municipal and  
18 Regional Planning Commissions and the  
19 recommendations of the municipal legislative  
20 body, and then it's just one piece of the  
21 plan that's considered. But what pray tell  
22 are municipal and Regional Planning  
23 Commissions and legislative bodies  
24 commenting upon if it's not things that are  
25 in their plan? I guess I'm not talking now

1 about the municipal plan being dispositive,  
2 sorry.

3 MR. RECCHIA: You're talking about  
4 comments from the Planning Commission.

5 CHAIRMAN EASTMAN: I'm talking about  
6 shouldn't the plan be what informs -- I mean  
7 again, the, you know, the legislative body's  
8 elected, municipal Planning Commissioners  
9 are appointed, but don't we want them making  
10 -- shouldn't it be the municipal plan that's  
11 controlling, not the individuals that are in  
12 power at any given time?

13 I'm sorry. I mean it's the plan that  
14 went through -- if there is a plan, it went  
15 through an adoption process at the local  
16 municipality and it had a vote. And it had  
17 some conversation. I'm sorry. I just think  
18 this is interesting. Yeah. You've got to  
19 help me here. I'm desperate, and I'm  
20 looking over here at Karen.

21 MR. HAND: Offer a couple of comments.  
22 This is an interesting comparison with Act  
23 250 as well where you're looking at plans.  
24 I think in my experience before the Board  
25 generally the Planning Commission and the

1 towns are often offering comments that are  
2 connected to their plans. They may not all  
3 be connected to the plans, but they may be  
4 saying we have certain provisions with  
5 respect to scenic areas and so we have  
6 concerns with aesthetics. They are often  
7 connected, but not always.

8 I have always thought perhaps in Act --  
9 Section 248 it's more appropriate to take  
10 those because it's asking for the  
11 recommendations of those bodies. And Act  
12 250 it's always struck me as very weird  
13 because they are just conformance with the  
14 plan.

15 CHAIRMAN EASTMAN: Right, and then these  
16 people are parties.

17 MR. HAND: You often end up getting  
18 testimony about what the plan says, but it's  
19 really the job of the Board or in that case  
20 the District Commission to determine what  
21 the plan says. So you get this sort of  
22 strange expert testimony on this is what the  
23 plan says when the plan is there in plain  
24 language to speak for itself.

25 I actually think 248 it's almost a

1 little more appropriate because of the  
2 language right now for the Town Plan to be  
3 reviewed and for the bodies, the municipal  
4 or, you know, regional bodies to come in and  
5 say this is our recommendation with respect  
6 to this plan.

7 CHAIRMAN EASTMAN: I understand right  
8 now it's only the land conservation measures  
9 of the plan --

10 MR. HAND: That's right.

11 CHAIRMAN EASTMAN: -- that affects  
12 anything. And maybe I need to say, and  
13 again it's only due consideration, I'm not  
14 talking about giving it more weight, Chris.  
15 What I'm talking about though is saying that  
16 maybe it ought to be, and maybe it's not  
17 transmission, maybe we only change this  
18 relative to generation siting, but it ought  
19 to be the whole Town Plan that gets us a  
20 little bit to -- I'm not saying it's  
21 dispositive, but I am saying to the extent  
22 that a town has gone to the effort to plan,  
23 okay, has a plan that's been approved by a  
24 Regional Planning Commission, which means it  
25 is going to be in conformance, you're

1 getting to the issue, then it means they  
2 have at least considered some stuff. I  
3 think it ought to be at least considered.

4 I mean I don't think it should be just  
5 the land conservation portion of the plan.  
6 Sorry.

7 MR. HAND: There are a couple of  
8 interesting Board decisions that if you're  
9 interested in this land conservation piece  
10 you could look at, particularly the ones  
11 that involve long transmission lines.  
12 Because they actually look at many different  
13 Town Plans and address each of those sort of  
14 unique areas with respect to whether that's  
15 what they are supposed to be looking at or  
16 not. Just for some historical context. So  
17 that the Commission understands kind of how  
18 the Board has approached it.

19 CHAIRMAN EASTMAN: So wouldn't this --  
20 isn't this so nutty an expectation?

21 MR. JOHNSTONE: No. I think it's fine,  
22 due consideration so long as it's also  
23 consistent with the Regional Plan. I'm  
24 right with you.

25 MR. RECCHIA: I didn't understand where

1 you were going before. If you want to say  
2 due consideration of the entire plan --

3 CHAIRMAN EASTMAN: Yeah. That's all I'm  
4 saying, for generation siting that's all I'm  
5 saying. I mean, sorry. It's not zoning.

6 MR. JOHNSTONE: I do think it has to be  
7 consistent with the Regional Plan because  
8 not all are found that way. I do think  
9 there has to be that linkage.

10 MS. MARKOWITZ: And that, I would think,  
11 is sort of the biggest change is due  
12 consideration -- is making the Regional Plan  
13 more presumptive if it's gone through the  
14 approval process.

15 MR. JOHNSTONE: Right, exactly.

16 MS. McCARREN: Due consideration exists,  
17 and it's not adequate in my opinion. It  
18 needs to be -- that needs to be in  
19 conformance with.

20 MR. JOHNSTONE: Yup.

21 MS. MARKOWITZ: Well that's the thinking  
22 for the Regional Plans.

23 MR. RECCHIA: So there. I would  
24 disagree. I think let's do medium steps  
25 here.

1           CHAIRMAN EASTMAN: That's all I'm  
2 suggesting. And Gaye, you may not be  
3 there. But --

4           MS. SYMINGTON: I'm having a hard time  
5 following the distinctions. Sorry.

6           CHAIRMAN EASTMAN: I didn't know this  
7 until I read it; I read it myself this  
8 morning. Because everybody has been talking  
9 -- we have been hearing about conformance  
10 with the Town Plan, conformance with the  
11 Regional Plan, and that it's now not  
12 dispositive. But actually when I looked at  
13 the language in 248 I think part of the  
14 problem why Newark was disappointed in the  
15 decision that the Public Service Board  
16 issued is because the statute doesn't talk  
17 about the Town Plan. It talks about only  
18 the land conservation measures of the Town  
19 Plan. Okay. So I think that that's the  
20 issue.

21           I mean I'm not talking about -- sorry --  
22 about it being dispositive, but I am saying  
23 that I think for generation siting that, you  
24 know, the Public Service Board ought to at  
25 least look at a Town Plan that has been

1 properly adopted and properly approved, and  
2 that means it's --

3 MS. SYMINGTON: And is consistent with  
4 the Regional Plan.

5 CHAIRMAN EASTMAN: Right. You can't get  
6 approved unless it's consistent with the  
7 Regional Plan. I think it ought to be the  
8 whole plan.

9 MS. McCARREN: It says comma and.

10 CHAIRMAN EASTMAN: No. But it talks  
11 about recommendations. It talks about  
12 recommendations from the municipal and  
13 Regional Planning Commissions and  
14 recommendations from the legislative body  
15 and the land conservation portion of the  
16 Town Plan.

17 The Town Plan is only the land  
18 conservation measures. So yes, so in Act  
19 250 the criteria only relates to the plan  
20 and the municipal Planning Commission,  
21 Regional Planning Commission and legislative  
22 body of the town are parties.

23 Here nobody is a party, but they can  
24 make recommendations. And the only piece of  
25 the plan that 248 considers of the local

1 plan is the land conservation measures.

2 That's how the statute reads.

3 MS. FRIED: That was the big push to go  
4 to Act 250 so those other things would be  
5 considered.

6 MR. JOHNSTONE: Could I ask if she's  
7 willing, Karen has probably looked at this a  
8 hundred times and to give any kind of  
9 clarification? I don't know if you're able  
10 to speak to this or not. I just thought it  
11 would be useful since you represent these  
12 towns.

13 MS. HORN: Well we, as you can see, I've  
14 read it a few times. Highlighted it. We  
15 were reading it that the recommendations as  
16 you say of municipal and Regional Planning  
17 Commissions, the legislative bodies, comma,  
18 and land conservation measures contained in  
19 the plan of any affected municipal who might  
20 not be the host municipality.

21 CHAIRMAN EASTMAN: I think we need to  
22 clarify this language.

23 MS. HORN: I think that -- I'm not an  
24 attorney, but it seems to me that you're  
25 talking about municipal plans generally, and

1 then just in particular, if you're an  
2 affected municipality, land conservation  
3 plans.

4 CHAIRMAN EASTMAN: I don't read it like  
5 that. I really think we need to clarify  
6 this language.

7 MR. HAND: As a practical matter, I  
8 think the Board does look at the plans and  
9 parties offer testimony on all relevant  
10 components of the plans. There may be  
11 energy section plans. There may be portions  
12 related to the zoning districts and how  
13 these are defined.

14 In my experience the Board looks at  
15 those and gives those due consideration,  
16 with a particular focus on the land  
17 conservation measures, but I think you will  
18 see in the dockets they are looking at a  
19 good portion of the Town Plans, and Regional  
20 Plans overall.

21 CHAIRMAN EASTMAN: I don't like this  
22 language.

23 MR. RECCHIA: We are spending a lot of  
24 time on an issue that isn't where we spent  
25 most of our time. I think the Regional

1 Planning Commission concept I think we need  
2 to get that down and solid. And maybe we  
3 can come back to this or something. Or --  
4 but I don't think this feels like a small  
5 piece.

6 CHAIRMAN EASTMAN: I'm happy for due  
7 consideration of a municipal plan. If it's  
8 an approved plan which means it's in  
9 conformance with the Regional Plan.

10 MR. RECCHIA: Okay.

11 MR. JOHNSTONE: And I'm good with going  
12 that far. I would stop short of what you're  
13 after, Louise. I get it. I hear you. But  
14 I would go that far as well.

15 MS. SYMINGTON: What does due  
16 consideration mean?

17 MS. McCARREN: That's the problem.

18 CHAIRMAN EASTMAN: It's not dispositive.

19 MS. SYMINGTON: What does dispositive  
20 mean?

21 CHAIRMAN EASTMAN: It means that you  
22 won't win on it.

23 MR. JOHNSTONE: Necessarily. But it  
24 gets considered as part of the dialogue.

25 MS. SYMINGTON: It's not deferential.

1 You consider it.

2 MS. MCGINNIS: But the whole point that  
3 Chris was making earlier, if the Town Plan  
4 is in conformance with the Regional Plan,  
5 and the Regional Plan is dispositive, then  
6 if A then B then C. So it is dispositive if  
7 it is in conformance with the Regional Plan;  
8 correct?

9 CHAIRMAN EASTMAN: No, it won't be  
10 dispositive.

11 MR. JOHNSTONE: Not as their voice.

12 MS. MCGINNIS: Not as theirs, but de  
13 facto it is.

14 MR. RECCHIA: As they are interpreted  
15 through the Regional Plan, yes.

16 MR. JOHNSTONE: So we get dispositive  
17 for the regional if they play ball. The  
18 towns get due consideration in and of  
19 themselves. And if they have played ball  
20 with the regions, through the region's voice  
21 they get a stronger voice.

22 And that seems to be the logic that  
23 holds it together for me at least.

24 MR. RECCHIA: And to me.

25 CHAIRMAN EASTMAN: Yeah.

1 MR. FRIED: Just state a comment before  
2 you leave the subject of municipal plans. I  
3 think that the Siting Commission it's a  
4 very, very important subject where municipal  
5 plans have a factor in, and you have a big  
6 opportunity right now to send a message to a  
7 lot of planners certainly in the Northeast  
8 Kingdom, but I guarantee you planners in  
9 other places of the state that are right now  
10 looking at their plans strictly as a  
11 defensive mechanism, okay, is how do we  
12 protect ourselves from a generation site  
13 that is going to overwhelm our town. What  
14 is the language that the Board needs to  
15 hear, and how specific, feet and inches, and  
16 what legal support we need, okay, to protect  
17 ourselves.

18 Rather than plans always being a  
19 positive tool for towns, it's becoming a  
20 defensive tool, and I think it's a great  
21 opportunity the Siting Commission has is to  
22 send a message to planners all over the  
23 state, that working with your regional  
24 bodies, your regional planning groups, we  
25 can get this on more of a positive tack.

1 MR. RECCHIA: I think we are doing it.

2 MR. FRIED: And have some real impact,  
3 especially on something that's so critical  
4 as energy.

5 CHAIRMAN EASTMAN: Thanks.

6 MR. RECCHIA: And I think that the right  
7 incentives here, by asking them to plan and  
8 do this and participate, that I think it's  
9 pretty obvious that if you said we are  
10 interested in this type of project to  
11 participate in energy component of our plan,  
12 that that becomes a lot stronger before the  
13 Board and through our process in guiding a  
14 project than -- and guiding developers  
15 frankly, than saying we don't want this, we  
16 don't want that. So I think we are already  
17 building in those type of incentives.

18 CHAIRMAN EASTMAN: Okay. All right. So  
19 item three we have now talked about. RPCs  
20 will they have -- well do we want them to  
21 have formal party status?

22 MS. McCARREN: I think, yes, I do, but I  
23 don't think that's where the action is, to  
24 repeat myself from before, the action is  
25 what -- the action really is what weight.

1           CHAIRMAN EASTMAN: Right, so and I think  
2 they should be dispositive. That if they do  
3 all of this work, if the Regional Planning  
4 Commission energy component is in  
5 conformance with the Department's plan,  
6 right, then the Regional Plan -- then the  
7 project needs to be in conformance with the  
8 Regional Plan.

9           MS. MCGINNIS: I was going to suggest  
10 this wording to see if everybody is okay  
11 with it. The RPC shall have automatic  
12 formal party status once their energy plans  
13 have been completed and approved by the  
14 Department, as in conformance with state  
15 goals and statutory targets. And their  
16 plans shall be dispositive in the siting  
17 process.

18           CHAIRMAN EASTMAN: You know what I would  
19 do? I'm sorry. I think that I would go to  
20 the Act 250 language. Which is, right, that  
21 the project has to be in conformance with  
22 the Town Plan. Just use everything else  
23 relative to Act 250; came right out of Act  
24 250.

25           MR. RECCHIA: Town Plan?

1           CHAIRMAN EASTMAN: Excuse me. Regional  
2 Plan. Has to be in conformance with the  
3 Regional Plan, but all the other language  
4 came right out of Act 250. So I think we  
5 want to use the same language because we  
6 want it to have the same effect.

7           If we use different language I know at  
8 least 10 lawyers who will argue we must have  
9 meant something different. I do.

10          MR. RECCHIA: Do you really think, Jan,  
11 are we at the stage where we are drafting  
12 language that's going to be statutory  
13 changes, or are we making recommendations in  
14 general?

15          MR. JOHNSTONE: But it has to be close  
16 enough to know --

17          CHAIRMAN EASTMAN: I want to use the  
18 words conformance with because that's the  
19 language in Act 250. And that's what we are  
20 saying we want.

21          MR. RECCHIA: Okay. The piece that was  
22 important to me was completed and approved  
23 by us.

24          CHAIRMAN EASTMAN: And that's important  
25 to me. And then conformance is the next

1 step.

2 MS. MCGINNIS: Okay. There is two  
3 conformances. One is the Regional Plans  
4 shall be in conformance with statutory  
5 goals.

6 CHAIRMAN EASTMAN: No. The regional  
7 energy component of the plan is in  
8 conformance with the Department of Public  
9 Service's plan. The Department of Public  
10 Service's plan has to be consistent with  
11 statutory goals. Sorry.

12 MS. MCGINNIS: That's fine. That's  
13 great.

14 CHAIRMAN EASTMAN: That's the way it  
15 works. The Department has to be in  
16 conformance with the legislature and the  
17 statutory goals. The regions then have to  
18 be -- the energy component, that's all Chris  
19 wants to approve, has to be in conformance  
20 with the State Department of Public Service  
21 plan, period. And then if that happens,  
22 then the project has to be in conformance  
23 with the Regional Plan.

24 MR. RECCHIA: Okay. Just one  
25 clarification, slight clarification, I hope.

1 On what we are looking at when we approve a  
2 plan. We are approving the energy component  
3 of the plan.

4 CHAIRMAN EASTMAN: Yes.

5 MR. RECCHIA: But I'm looking at the  
6 whole plan to see where various energy  
7 components are.

8 MS. SYMINGTON: Yeah. It isn't like if  
9 something is completely affecting energy --

10 MR. RECCHIA: Thank you.

11 MS. SYMINGTON: -- but it's under a  
12 title that has some other name on it --

13 MR. RECCHIA: Like height or --

14 MS. SYMINGTON: -- like land use.

15 MR. RECCHIA: Or aesthetics.

16 CHAIRMAN EASTMAN: You said you didn't  
17 want to approve the whole plan.

18 MR. JOHNSTONE: You don't want to become  
19 the Council Commissions for ACCD.

20 MS. SYMINGTON: The portions that affect  
21 energy.

22 MR. RECCHIA: Just clear, okay, so we  
23 are in agreement.

24 MS. McCAREN: I don't agree with this.  
25 And but I don't know which card to hold up

1 because I won't make my arguments again.

2 CHAIRMAN EASTMAN: I thought this is  
3 what you talked about this morning.

4 MS. McCARREN: We talked about a lot of  
5 things this morning.

6 MR. RECCHIA: Let me lean over.

7 MS. McCARREN: Get some good vibrations  
8 from it. I'm not sure I understand what it  
9 means to be in conformance with the  
10 Department's energy plan. I'm not sure I  
11 understand what that means. I have a  
12 concern about the consolidation of power at  
13 the Department over land use with respect to  
14 siting generation. Because if I understand  
15 this, that could, not with you, Chris, but I  
16 mean this is not personal to you guys.

17 MR. RECCHIA: No, I get it.

18 MS. McCARREN: That could result in  
19 that. And I can't support that.

20 CHAIRMAN EASTMAN: Can I ask you then,  
21 where would you -- who would you want to be  
22 doing that work?

23 MS. McCARREN: I'm not sure I understand  
24 what that work is.

25 CHAIRMAN EASTMAN: The work is you've

1 got a Department plan that's implementing  
2 the statutory goals, just say that's all it  
3 does. The Department plan, you know, doing  
4 the statutory goals. But the Department of  
5 Public Service doesn't do land use planning,  
6 the regions do. So the regions are then out  
7 there dealing with all energy issues and all  
8 land use issues and coming up with a plan.

9 Okay. And then it's got to go back and  
10 be in conformance with something to be sure  
11 that what the regions do actually can meet  
12 the goals. Somebody has to decide that,  
13 Louise. Somebody does. So who would you  
14 rather have it be than the Department of  
15 Public Service?

16 In the old days when we were doing Act  
17 200 planning there was actually a group  
18 established that was the council of  
19 whatever, who decided if Regional Plans if,  
20 you know, were consistent with state plans  
21 and all. That hasn't worked. But even they  
22 believe and now Regional Planning  
23 Commissions have to decide if municipal  
24 plans are in conformance with the Regional  
25 Plan for them to be approved and get little

1 treats. Okay. So somebody needs to make  
2 that decision.

3 MS. McCARREN: I'm going to reserve on  
4 this issue because I want to think through  
5 what it means to give an agency, right, with  
6 a deranged Commissioner --

7 MR. RECCHIA: Right.

8 (Laughter.)

9 MS. McCARREN: -- this kind of control  
10 over land use for generation siting. So I'm  
11 just going to reserve right now, so I want  
12 to understand what this means.

13 CHAIRMAN EASTMAN: I just want to say  
14 this is exactly what I was thinking about  
15 this morning too. I mean it is the issue, I  
16 believe that somebody has to decide somehow,  
17 that we are on the right road. I like this,  
18 but for me I think it is the Department of  
19 Public Service. I don't think it's the  
20 Agency of Housing and Community Affairs,  
21 because they don't know what's going on with  
22 energy planning. I don't think it ought to  
23 be the Public Service Board. You know, you  
24 could have it be that this is all  
25 determined, you know, when a project -- and

1 I don't think it ought to be the Public  
2 Service Board because I don't think they  
3 know, you know, all those various issues.  
4 So I don't know who else it goes to.

5 MR. RECCHIA: Let me say two sentences  
6 about this, and then we will stop.

7 MS. McCAREN: About the deranged  
8 Commissioner?

9 MR. RECCHIA: Yeah. That is that the  
10 conformance is not determined based on the  
11 deranged Commissioner's opinion at the time.  
12 It is based on the plan. The plan like it  
13 or not, like the policy or not, the plan is  
14 developed -- was developed over the course  
15 of a year.

16 CHAIRMAN EASTMAN: With public input.

17 MR. RECCHIA: It was developed with 30  
18 public meetings. 9,000 comments responded  
19 to. And it's only good, you know, it's  
20 going to be updated every three to five  
21 years. You get an opportunity to revisit  
22 this. That may make people nervous or make  
23 them happy, I don't know. But it's not a  
24 Commissioner decision that the plan or the  
25 policy of the plan is implementing. It is

1 broader than that. And if the statutory  
2 authority -- if you're uncomfortable about  
3 the policy, the place to take that up --

4 CHAIRMAN EASTMAN: Is in the  
5 legislature.

6 MR. RECCHIA: -- is in the legislature  
7 or rally the people who come to the meetings  
8 and review the draft plans and provide  
9 comments on it.

10 MS. McCARREN: I have two somewhat  
11 conflicting issues. One is developers  
12 should be able and are entitled to some land  
13 use guidance. And I think that's really  
14 important for them.

15 I also believe strongly that towns  
16 should be able to provide guidance or more  
17 on land use issues in their towns with  
18 respect to renewables. So those are the two  
19 kinds of things I'm concerned about. I just  
20 -- I'm not sure you get -- let's say you get  
21 a Regional Plan just hypothetically, Chris,  
22 and let's say we will pick on Addison  
23 County, right? And it says, you know, all  
24 existing farm land is available for solar  
25 development.

1 MR. RECCHIA: What I would do with that  
2 is I take it to the Agency of Agriculture,  
3 take it to ACCD, take it to transportation,  
4 and get their input on this, and go back to  
5 the region and ask a lot of questions. But  
6 it's why I would need to see all the  
7 components of the plan.

8 CHAIRMAN EASTMAN: And can I say --  
9 well, that's okay. I'm not going to say  
10 this here. I'm going to wait until we get  
11 to the party status issue and the other  
12 confusion right now, sorry, because of the  
13 way the statute is written, and some  
14 specificity, and who ought to be at the  
15 table participating, even though we don't  
16 have a Siting Commission, who from the state  
17 ought to be at the table actually  
18 participating when we are siting an electric  
19 generation facility.

20 MS. McCAREN: Let me flip it over on  
21 Chris. What if a region says there shall be  
22 no wind development above 2,000 feet. I'm  
23 making this up. And it comes to you. What  
24 do you do?

25 MR. RECCHIA: I look at the plan in the

1 context of, okay, so what are they doing?  
2 How many megawatts, or what are they doing  
3 to contribute to the energy plan? I'm  
4 considering it in the context of the other  
5 regions, which again I hope are coming in  
6 contemporaneously so that I can make this  
7 assessment, and I see whether we are making  
8 it or not. And if we are not making it,  
9 well let's start with the positive. If we  
10 are making it --

11 MS. McCAREN: You're over subscribed.

12 MR. RECCHIA: I'm over subscribed. It's  
13 like, hey, you guys did a great job on the  
14 biomass or the hydro or the solar, and so we  
15 are going to accept that, it's fine.

16 And by the way, these other communities  
17 said they are happy with whatever, wind, it  
18 doesn't matter. If they are under  
19 subscribed, and I've got them all before me,  
20 and I look and see what the mix is, and you  
21 know, challenge people to reconsider  
22 components of this to get back up to where  
23 we need to get to.

24 But you know, it's not going to be --  
25 you will never be in a position to say, no,

1 you need four more wind towers in order to  
2 meet your quota. That is not what we are  
3 doing.

4 MS. SYMINGTON: Wouldn't you also say  
5 what -- where did this come from? You know,  
6 if it came from an area, you know, let's be  
7 hypothetical, but it isn't all that  
8 hypothetical, that is already generating a  
9 lot of renewable power, where there are view  
10 sheds from significant, you know, assets,  
11 you know recreation assets of the Long  
12 Trail, where there is limitations imposed  
13 because of the current status of the grid  
14 relative to demand within that region, and  
15 you know, so as opposed to someone saying no  
16 --

17 MR. RECCHIA: Nothing over 2,500 feet.

18 MS. SYMINGTON: I think you have to, if  
19 you're listening, there is all of this going  
20 on -- there is all of that going on that's  
21 going to feed into the discussion. So you  
22 may end up saying, yes, because this part of  
23 the state really is more appropriate and has  
24 more room for a greater weight.

25 MR. RECCHIA: Yeah. And the Regional

1 Planning Commissions are great at explaining  
2 their rationale for those things. So I  
3 don't think it would be -- I was trying to  
4 think of Louise, her example, but I don't  
5 think they would have a statement that said,  
6 no, nothing above -- without a two or three-  
7 page explanation why.

8 CHAIRMAN EASTMAN: Explanation why.  
9 That we have already done this, this and  
10 this, and this is all we have left, so we  
11 want to preserve this last special place. I  
12 mean I can come up with language.

13 MS. MCGINNIS: Or that we are also  
14 contributing to goals by significant  
15 efficiency measures or other things.

16 MS. McCARREN: I'm just not with you  
17 guys. I'm really sorry.

18 CHAIRMAN EASTMAN: I thought you were at  
19 this point.

20 MS. McCARREN: No. Because what we did  
21 -- you should have stayed away.

22 What we just did is give the Department,  
23 an agency of the State whose Commissioner is  
24 a political appointee, we just gave that  
25 Agency complete control over where electric

1 generation siting goes in this state, and I  
2 am not there with you guys.

3 CHAIRMAN EASTMAN: And I don't think  
4 that's what we did. We are asking them to  
5 look at the conformance with the Regional  
6 Plans. What we are doing is giving the  
7 general location down to Regional Planning,  
8 I believe, and what I'm going to say to you  
9 again is who does decide that? And that's  
10 the point. If it's not going to be the  
11 legislature, I guarantee you the legislature  
12 is not going to be determining land use  
13 planning and where things are going.

14 So then the legislature, to get the next  
15 phase of work done, has possibilities. They  
16 can authorize the State Agency to implement  
17 their goals and objectives, or they can  
18 authorize some other level of government to  
19 do it. And so sometimes they authorize  
20 municipalities to make decisions, sometimes  
21 they authorize RPCs, and sometimes they  
22 authorize -- who's got real power? She  
23 does. Because she has got every  
24 environmental permit going.

25 MS. SYMINGTON: Another deranged

1 Secretary.

2 CHAIRMAN EASTMAN: Another deranged  
3 Secretary.

4 MR. JOHNSTONE: A long line of deranged  
5 Secretaries.

6 CHAIRMAN EASTMAN: A long line of  
7 deranged Secretaries.

8 MS. McCARREN: And it's better than a  
9 deranged Chair of the Board.

10 MR. RECCHIA: So really I think it is  
11 important to compare this to -- to compare  
12 your nightmare scenario to where we are  
13 right now. And where we are right now is  
14 the deranged Commissioner can determine what  
15 the public good is in isolation. I don't  
16 have to pay attention to what's going on in  
17 the region or, you know, I can interpret the  
18 plan and direct staff to go into the Public  
19 Service Board with a particular position on  
20 a project.

21 I mean it seems a lot better than that.

22 CHAIRMAN EASTMAN: And for me what it  
23 seems like is right now this isn't happening  
24 anywhere until you get to an actual project.  
25 And then it's too late to deal with some of

1 the things. So for me I would rather have a  
2 deranged Commissioner than, you know, a  
3 private entity.

4 Now I do think he's got guidance because  
5 he's got a plan that has to be consistent  
6 with the goals and that went through all  
7 this process. I can remember getting a  
8 phone call, Deb, you must have had these  
9 from people saying -- actually from  
10 legislators saying, here's what I want you  
11 to do today. And I go well I can't do that,  
12 I'm bound by this process. Well this is  
13 what I want.

14 MS. MARKOWITZ: Yesterday -- I said  
15 you're not really asking me to disregard the  
16 rule of law; are you? And they said oh no.  
17 Oh no. I just want you to do -- the  
18 problem.

19 CHAIRMAN EASTMAN: And what I said is I  
20 can't make decisions like that. I have to  
21 do it in conformance with what the  
22 legislature has told me and think about it.  
23 You may like me, but you might not like the  
24 next person sitting here. So if I am going  
25 to behave -- so I think that's the

1 protection, is that the legislature creates  
2 the bowl that the agencies play in.

3 MR. JOHNSTONE: And to take a step  
4 beyond that. Think about it more from so  
5 let's play out the scenario with a kind of  
6 rogue Commissioner, I won't go to deranged.

7 MS. McCAREN: All right.

8 MR. JOHNSTONE: Frankly, the next  
9 legislative session they are going to be  
10 called on the carpet. And all of us that  
11 have sat in those sorts of seats carry that  
12 around and know that, you know, you don't  
13 want to be called into that position very  
14 quickly. And if your boss tells you to go  
15 ahead and do it anyway because of some  
16 political agenda they have, then the voters  
17 will decide whether you get to keep doing  
18 that.

19 MR. RECCHIA: Yeah. And those  
20 conversations that Deb was talking about  
21 with the rule of law, those occur every day.

22 MR. JOHNSTONE: Exactly.

23 MR. RECCHIA: Across the board from  
24 citizens to legislators, to other interest  
25 groups to our boss. And we have the same --

1 strike that. Have the same conversation.

2 CHAIRMAN EASTMAN: I have a concern. I  
3 think process has to work. And that's what  
4 I'm -- that's my other basic concern here.  
5 You've got the legislature that's  
6 established some statutory goals and  
7 procedures. We have got a job to help get  
8 it actually done. And so that means that we  
9 have got to have a process that works. And  
10 we can't have the legislature doing all the  
11 specificity so they have got to give the  
12 authority to somebody somewhere to do it.  
13 And so I always come back to that, is that  
14 the Regional Plans have to be in conformance  
15 I think with the state plan and somebody has  
16 got to determine that.

17 MS. SYMINGTON: And the state plan --  
18 isn't there guidance, I'm trying to  
19 remember, as to how you create a state plan.

20 MR. RECCHIA: Sure.

21 MS. SYMINGTON: You can't just have a  
22 sole deranged --

23 MR. RECCHIA: And how frequently it  
24 needs to be updated.

25 MS. MCGINNIS: It's a legislature thing.

1 You have to do it.

2 MS. SYMINGTON: And there is a public  
3 process, all of that. It can't just be you  
4 and your deranged staff.

5 MR. RECCHIA: My staff is never  
6 deranged, but can't just be me.

7 CHAIRMAN EASTMAN: Yeah, it's great fun.

8 MR. COSTER: Can I make one observation?

9 MR. RECCHIA: As long as it's not about  
10 --

11 MR. JOHNSTONE: If you dare to weigh in.

12 MR. RECCHIA: Whether I'm deranged or  
13 not.

14 MR. COSTER: I would just want to jump  
15 on the deranged bandwagon and suggest this  
16 is done in conjunction with ANR since it is  
17 largely a land use planning exercise, so  
18 while you're determining whether the  
19 distribution and generation is sufficient to  
20 meet the state's goals, it would be good to  
21 formally check with the ANR to make sure the  
22 deployment is appropriate.

23 CHAIRMAN EASTMAN: If I'm going to do  
24 that, I'm going to add Ag and Health.

25 MR. RECCHIA: Consulting with other

1 agencies, as appropriate.

2 MS. SYMINGTON: But the determination  
3 lies with the Department of Public Service.

4 MR. RECCHIA: I think the determination  
5 has to be the determination.

6 MR. COSTER: That's fine. That's  
7 totally fine.

8 CHAIRMAN EASTMAN: Okay. So we got  
9 beyond three. On four we are talking about  
10 the planning costs, because there will be  
11 costs to planning. I don't know how we are  
12 going to get general funds in today's world.

13 My concern was I do think there ought to  
14 be some sort of annual fee, however, for you  
15 know, renewables. And I think that part of  
16 that annual fee ultimately should support  
17 this planning process that is generic.  
18 Sorry, I won't go to the well too often.  
19 But I think we have got to go to the well  
20 once.

21 MR. RECCHIA: So it strikes me that you  
22 could be relatively silent on the source of  
23 funds for the initial fees, but acknowledge  
24 that, you know, that it should be covered.

25 CHAIRMAN EASTMAN: Yeah.

1 MR. RECCHIA: And then the annual  
2 updates and other things based on the filing  
3 fees is a level of specificity that I think  
4 is appropriate and doesn't get you into too  
5 much trouble.

6 CHAIRMAN EASTMAN: Yeah. Because I  
7 didn't know if there was some way to front  
8 the cost and recover it in the first couple  
9 of years for the first round or something.

10 MR. RECCHIA: There might be other  
11 sources of funding.

12 MS. SYMINGTON: There is no such thing  
13 as general funds. If we were to say that,  
14 then we might as well say it's an unfunded  
15 mandate. It isn't going to happen and the  
16 whole thing falls apart. I think we have to  
17 very strongly say without some funding this  
18 is entirely meaningless document because  
19 RPCs cannot just do this.

20 MS. McCARREN: I agree that they need to  
21 be -- if they are going to undertake this,  
22 they need to be properly funded. We did  
23 talk about --

24 CHAIRMAN EASTMAN: We will get to the  
25 funding stuff.

1 MR. RECCHIA: Initial RPC planning costs  
2 estimate 25 to 30,000 per region must be  
3 funded.

4 MR. JOHNSTONE: I agree with that. And  
5 I think I also really agree with the notion  
6 it can't be general funded, and I may be  
7 one, but Louise knows, I think better than  
8 I, we are talking about energy projects that  
9 are -- do not create de minimis value.  
10 There is a lot of money in this system, and  
11 you know, and revenue to developers will  
12 rightly tell us that the margins are tight.  
13 And I hear that, there is a lot of money in  
14 this stuff. The dollars that flow and the  
15 impacts, whether it's through the filing fee  
16 for new generation or whether it's frankly  
17 something you normalize back on the rates  
18 with ratepayers, and if the price of  
19 planning needs to be normalized, there is  
20 lots of things that get normalized back into  
21 the rates that is appropriate, to have a  
22 well functioning system that is predictable  
23 and understandable and makes sense.

24 So long as the costs aren't crazy and  
25 onerous, there is money in the energy system

1 to do it right. Some systems are not that  
2 way. But there is plenty of money in this  
3 energy system to do this right.

4 CHAIRMAN EASTMAN: And I'm going to go  
5 back to what VELCO said. They said that by  
6 doing their planning they have saved costs,  
7 you know, on doing projects. And maybe that  
8 won't happen here. And I know it will take  
9 some, you know, lead time and all, but I  
10 agree I think it's got to be funded.

11 MR. RECCHIA: I can tell you that, you  
12 know, 25 to 30,000 a region, I won't name  
13 any specific cases, but I will tell you  
14 court cases that are ongoing right now, I'm  
15 chewing that up in a week.

16 MR. JOHNSTONE: I know.

17 MS. McCARREN: A day.

18 MR. RECCHIA: Possibly a day.

19 MR. JOHNSTONE: I understand. That's  
20 the point there is plenty of money in the  
21 system.

22 MS. MCGINNIS: What I did want to try  
23 and get at to be as transparent with whoever  
24 has to implement this afterwards, if we are  
25 saying it must be funded, we need to be

1 giving some ideas of the things we have  
2 discussed as potential sources of funds, and  
3 I've listed several of them here.

4 However, I was getting a sense that we  
5 know that we can't anticipate how many new  
6 projects are going to be filing in any given  
7 year. So you can't really depend on filing  
8 fees for the up-front cost, because you  
9 don't know if you're going to get four or if  
10 you're going to get 50 next year. Right.  
11 So that's a one off fee.

12 MR. RECCHIA: That is right.

13 MS. MCGINNIS: Then there is the idea of  
14 the franchise fee which is not the correct  
15 terminology I agree, and we have to figure  
16 out gross receipts tax. I'm not sure if  
17 that's the terminology we need to use. Is  
18 the legislature going to go up in arms  
19 against that?

20 CHAIRMAN EASTMAN: Why don't we just say  
21 we need an annual fee related to generation.

22 MR. JOHNSTONE: And require the Public  
23 Service Board to set it. They set all kinds  
24 of fees and processes.

25 CHAIRMAN EASTMAN: And tell them what

1 it's contingent to cover. We are not down  
2 at the end yet of what we think we want to  
3 annualize versus what might be project  
4 related. There aren't too many. We pared  
5 that way back from our first --

6 MS. MCGINNIS: The reason I was setting  
7 aside the Regional Planning costs, this is  
8 in talking to the Regional Planners too, as  
9 the up-front planning is going to be far  
10 more expensive than the annual planning;  
11 right?

12 MR. RECCHIA: Right.

13 MS. MCGINNIS: That's going to be about  
14 250,000 to three hundred thousand. We have  
15 to think kind of differently about how  
16 that's going to be funded, or maybe that's  
17 not our job.

18 CHAIRMAN EASTMAN: I think we just have  
19 to say it's got to be funded. This is why I  
20 want Chris to think about -- I think there  
21 is a way to maybe front that cost and then,  
22 you know, over -- this annual fee recover  
23 it. But push it out, that's all.

24 MR. RECCHIA: There are mechanisms that  
25 we can use to do that. All I'm saying is

1 that the piece that I got out of this  
2 paragraph when I read it was you wanted  
3 there to be a differentiation on the  
4 project, you wanted the up-front money to do  
5 the Regional Planning. Then you need annual  
6 fees. And two mechanisms to get there are  
7 the gross receipts tax that generators pay  
8 and the franchise fee you're proposing to be  
9 assessed for the merchant facilities.

10 MS. MCGINNIS: But just to let you know  
11 there is several people who asked that I  
12 take out the merchant part. And that the  
13 franchise fee or the annual fee be assessed  
14 to all generators, and I just wanted to  
15 throw that out on the table.

16 MR. RECCHIA: I don't know who suggested  
17 that. But I will argue that I think that  
18 you need to differentiate it. Because there  
19 are a bunch of people already paying in a  
20 substantial amount of money into this.

21 CHAIRMAN EASTMAN: Exactly.

22 MR. RECCHIA: And then the suite of  
23 people who aren't paying anything more than  
24 -- other than a small application fee.

25 CHAIRMAN EASTMAN: What I wish, and I

1 don't know what the amounts are, you know, I  
2 wish when you looked at what the people who  
3 were already paying in on an annual basis  
4 because, you know, they are paying a gross  
5 whatever, and you just did -- and you  
6 figured out what the portion of that tax  
7 that relates to that generation, you know  
8 what I mean, so we were getting at what is  
9 that direct issue there. So what's the  
10 comparable to a merchant facility. And boy,  
11 wouldn't it be nice if that came up to close  
12 to the amount of money we needed. Because  
13 that's fair and equitable.

14 And if we go beyond that it's almost  
15 like -- because I agree everybody -- I think  
16 we would have a constitutional problem.  
17 Don't we have to treat people fairly?

18 MS. MARKOWITZ: Well you can make  
19 distinctions, but you can't do it based on  
20 geography. You can do it based on whether  
21 or not they are already paying.

22 CHAIRMAN EASTMAN: I agree. That's what  
23 I mean. So in the first instance you bring  
24 them up to par. And then if you need more,  
25 you have to cover everybody. You've got to

1 go to everybody.

2 MS. SYMINGTON: Planning currently is  
3 paid for through the property transfer tax.

4 CHAIRMAN EASTMAN: But here's the  
5 problem. It's paid for through that. But  
6 all the transportation planning is paid for  
7 with federal transportation -- with  
8 transportation dollars. And so the RPC  
9 sources of funding is a variety of sources.  
10 And the property transfer tax is --

11 MR. JOHNSTONE: We are asking them to up  
12 their game.

13 MR. RECCHIA: I have no problem with  
14 paying to have them do a good energy  
15 component to their plans.

16 CHAIRMAN EASTMAN: And then for an  
17 application fee, again, I mean nobody is  
18 paying an application fee now. I don't know  
19 if everybody -- if we do this if everybody  
20 -- I just think that the costs of reviewing  
21 these applications to me ought to be paid by  
22 you know --

23 MR. RECCHIA: Yes. Well don't forget we  
24 have bill back and although staffing is not  
25 -- okay, it gets complicated, but I'll just

1 say that we do have the ability for things  
2 that are outside of the norm to be able to  
3 do bill back for, we require special experts  
4 to do that. So the applicant is paying for  
5 those costs.

6 CHAIRMAN EASTMAN: Yeah.

7 MR. RECCHIA: So --

8 CHAIRMAN EASTMAN: But I think the  
9 applicant should be paying for the basic  
10 costs of reviewing as well. What that  
11 takes.

12 MR. RECCHIA: Yeah. My experience with  
13 application fees is that they rarely paid  
14 for a substantial enough portion of the  
15 process that they are going through, and  
16 that there is not an appetite to have those  
17 application fees be high enough to actually  
18 support the program that they are doing. So  
19 right now --

20 MR. JOHNSTONE: I still wear some scars  
21 from that, Chris.

22 MS. MARKOWITZ: Some of the argument is  
23 we are all benefiting from it having just  
24 gone through that.

25 CHAIRMAN EASTMAN: By the time we get to

1 2014 and '15 you're all going to be  
2 struggling for dollars at the state level.  
3 You are going to be struggling if you're not  
4 already. And so as Gaye says, there are no  
5 general funds any more. And --

6 MR. RECCHIA: Right. Right now I just  
7 wanted to say coming from, you know, where  
8 it came from, right? From the Agency of  
9 Natural Resources' world with fee bills and  
10 all those things, I will say that I really  
11 like my budget. It works. I'm able to get  
12 the money that I need to do the work that  
13 people are asking us to do. And I would  
14 like to not mess that up in the process of  
15 fixing the other things we are doing.

16 MR. JOHNSTONE: Sure.

17 CHAIRMAN EASTMAN: But can I say how do  
18 we then get, as I say, but I want to be sure  
19 that the RPCs -- I mean --

20 MR. RECCHIA: I'll write them a check.

21 CHAIRMAN EASTMAN: No, and I'm happy.  
22 See this is all I want to know.

23 MR. RECCHIA: Assuming the legislature  
24 approves it. But yeah, the money the -- up-  
25 front money should be able to do that work.

1 MS. McCARREN: But it should not come  
2 from ratepayers. It should come from  
3 generators. And then we have this question  
4 of maybe some generators now already pay.  
5 But it needs to come from the generators.

6 CHAIRMAN EASTMAN: Yeah.

7 MS. MCGINNIS: My question is I just  
8 want to make sure that I'm understanding, so  
9 you don't want filing fees? Is that what we  
10 are saying?

11 MR. RECCHIA: I'm not saying anything  
12 about any of that.

13 MR. JOHNSTONE: He's talking about only  
14 DPS dollars. We are talking about the whole  
15 system dollars.

16 MS. MCGINNIS: I know. I just want to  
17 make sure I'm understanding correctly.

18 MR. RECCHIA: I was just reading this  
19 paragraph, that's all. I agree with it.

20 MS. MCGINNIS: You agree with the  
21 paragraph with filing fees?

22 MR. RECCHIA: Yes.

23 MS. MCGINNIS: I'll change the first one  
24 with must be funded.

25 CHAIRMAN EASTMAN: Wait a minute. Do we

1 want filing fees to applicants on a per  
2 megawatt basis, or I don't know. If we said  
3 we wanted filing fees for everybody, to the  
4 extent that -- to the extent that some of  
5 the generators are paying for the process  
6 already, if they are paying a gross receipts  
7 tax and that's covering things, is it  
8 enough, and I agree you have bill back. So  
9 I guess I want to hold in reserve what kind  
10 of fees we need when we get to the end of  
11 this and what has to be funded, and is there  
12 something that I ought to make you unhappy  
13 and tell you you need to do a filing fee.

14 MR. RECCHIA: Well again I like this. I  
15 think this paragraph is fine. I only  
16 started this conversation because Linda said  
17 someone had suggested taking out the  
18 merchant generator piece which I think  
19 should stay in at the moment. But if you  
20 want down the road or even in this paragraph  
21 in the next iteration to list the type of  
22 things that should be paid for in your  
23 conception of, you know, what needs to be  
24 paid for, I'm amenable to that.

25 MS. MCGINNIS: I think actually it would

1 be helpful that I can add at someplace in  
2 here or at the end, a table that says at the  
3 end once we have decided on everything,  
4 these are the things that would have a  
5 marginal annual increase in cost, and these  
6 are the ones that would have an up-front  
7 cost.

8 And my guess is right now the only thing  
9 that's going to have an up-front cost is the  
10 regional planning costs. Everything else,  
11 if we go with the case manager, if we go  
12 with an improved Web site and on line  
13 document system or whatever it is, all of  
14 those would have annual increases, and  
15 perhaps the Web site thing would have  
16 another up-front cost.

17 So I could try and make a table that  
18 estimates --

19 CHAIRMAN EASTMAN: Then we have the  
20 issue of are we funding the RPCs to  
21 participate in the process. And maybe they  
22 can be funded with bill back. I don't know.  
23 I don't know. But is ANR --

24 MS. McCARREN: Bill back to whom?

25 CHAIRMAN EASTMAN: To an applicant, if

1 it's a project.

2 MR. RECCHIA: We are going to get to the  
3 point where they are parties to this, then  
4 there is an opportunity to do that.

5 CHAIRMAN EASTMAN: Yeah.

6 MR. RECCHIA: At some point.

7 MR. JOHNSTONE: For me we ought to keep  
8 the respective tools on the table, and I  
9 think we do need -- I hate to say -- we need  
10 to come back to the funding piece, but at  
11 the end when we really realize where we are  
12 landing, we have got to figure out what's  
13 appropriate for a filing fee, what's  
14 appropriate for bill back, and what's the  
15 role of franchise/gross receipts. And  
16 what's the right mix. And I know we have  
17 heard from many that they don't want all  
18 these different --

19 CHAIRMAN EASTMAN: I'm willing to let  
20 Chris tell me.

21 MR. JOHNSTONE: It may be that we come  
22 down to one. It may be there is appropriate  
23 rules for multiple. What we then need to  
24 understand, are we going to put such a  
25 burden on the system that we won't get any

1 generation, and how do we get it right?

2 So I'm sympathetic to some of the  
3 comments about, you know, you can't, you  
4 know, fee and tax society to death. I get  
5 that for all sectors, it's not just this.  
6 But appropriate costs using the right tool  
7 to cover cost in appropriate ways makes all  
8 kinds of sense to me.

9 MR. RECCHIA: Right. You said come back  
10 to this. You're not getting -- anticipating  
11 coming back to the point where we were  
12 saying the fee should be X amount.

13 MR. JOHNSTONE: No, no. I'm just saying  
14 to the point where we were starting the  
15 debate of which are we going to have, a  
16 filing fee or this or that. And I'm saying  
17 once we know what -- where we think the gaps  
18 are, if we are going to offer your table  
19 with the suite of what means annual, what is  
20 at the time of application, once we know  
21 what we are actually recommending for final  
22 issues --

23 MS. MCGINNIS: Right.

24 MR. JOHNSTONE: -- it's worth looking at  
25 that again. That's all I'm saying.

1                   CHAIRMAN EASTMAN: Here's the  
2                   specificity that I want by the time I get to  
3                   a final report. To the extent that I'm  
4                   recommending or participating in  
5                   recommending something that I believe --  
6                   really believe needs to happen, and that it  
7                   needs to be funded, then I need some  
8                   certainty that you, the Commissioner, you  
9                   know, think that there is resources to do  
10                  this, and you think part of it should come  
11                  from this and part of it should come from  
12                  this, or all of it should come from this.

13                  I don't need the exact figure, but I  
14                  need you to understand, you know, how to  
15                  build a budget, here's how much money we are  
16                  talking about, here's where it is in the  
17                  system. I think we want a little something  
18                  in the report about, yes, we know we have  
19                  said that some of this costs money. And we  
20                  at least considered how much in the ball  
21                  park that would be. And how it might  
22                  happen. Because you know --

23                  MR. RECCHIA: Okay.

24                  MR. JOHNSTONE: And if -- if I could add  
25                  on to that, and if there is the potential

1 for new costs that we are talking about, I  
2 don't want us to be afraid to say it and  
3 have it go down to the hill -- go down to  
4 the hill -- that sounds wrong, go to the  
5 dome, and have the presumption that  
6 everything is free, right? If that's not  
7 the case.

8 MR. RECCHIA: So I recommend -- I think  
9 that this paragraph covers several different  
10 concepts though.

11 MS. MCGINNIS: It does.

12 MR. RECCHIA: So I think the important  
13 thing what you were saying, Jan, I think is  
14 that if you see something that you think  
15 costs money or requires money, that we give  
16 a ball park figure as to what that would  
17 cost. And I think the rest of this  
18 paragraph was to try and indicate that right  
19 now the system seems to be unfair. There is  
20 a fairness issue here about merchant  
21 facilities versus the ones that pay into the  
22 gross receipts tax. And that you're asking  
23 that somehow that fairness -- that there be  
24 an equitable system.

25 CHAIRMAN EASTMAN: Well that's a place

1 to go.

2 MR. RECCHIA: Established. That's fine  
3 I'm getting all stuffed up. I apologize. I  
4 must be allergic to talking about money.

5 CHAIRMAN EASTMAN: Although I heard you  
6 say you could write a check.

7 MR. RECCHIA: I keep on having to remind  
8 myself that these are being transcribed. So  
9 I think there are mechanisms to pay for this  
10 that are fair, that are on the appropriate  
11 people, and we can get there.

12 I think the task of this Commission  
13 would -- I think is to how much money. And  
14 you've done that for the Planning  
15 Commissions, for example. That gives us an  
16 idea.

17 CHAIRMAN EASTMAN: Okay. We have gone  
18 on a long time. We are finished with this  
19 portion. Should we take a lunch break and  
20 come back?

21 MR. COSTER: It's noon right now.

22 CHAIRMAN EASTMAN: And come back and do  
23 the tiers. So maybe over lunch we could  
24 quickly look at the Department's couple of  
25 pages on tiers.

1 MR. JOHNSTONE: Is that this thing you  
2 handed out? Thank you. That would be  
3 helpful.

4 CHAIRMAN EASTMAN: How much time? At  
5 one or 12:45?

6 MR. JOHNSTONE: How long does it take to  
7 get through downstairs?

8 MS. MARKOWITZ: Depends on --

9 MR. RECCHIA: Now?

10 MS. MARKOWITZ: It's usually pretty  
11 fast. Every once in a while we are  
12 surprised, and they are missing a checkout  
13 person.

14 CHAIRMAN EASTMAN: Okay. Let's try if  
15 we all get back by 1 o'clock anyway.

16 (Recess was taken.)

17 CHAIRMAN EASTMAN: Are we ready for no  
18 more than 20 minutes on the tier issue so we  
19 can try and get through everything?

20 MR. JOHNSTONE: Yeah.

21 CHAIRMAN EASTMAN: So Chris, I think you  
22 ought to just present what your proposal --

23 MR. RECCHIA: I think the concept was we  
24 had three tiers before. Less than 500  
25 kilowatts, 500 kilowatts to 15 megawatts and

1 greater than 15 megawatts. There was a lot  
2 of discussion about tiers and appropriate  
3 placement and what the various things should  
4 be for those. So the suggestion was made by  
5 one of my staff who wrote this up of going  
6 to four tiers. And the size -- let's just  
7 do the capacity first. 500 KW or less. 500  
8 KW to 2.2 megawatts.

9 MS. MCGINNIS: I don't know if anybody  
10 can see it. I tried to do it visually.

11 (Holding chart)

12 MR. RECCHIA: 2.2 to 15 megawatts and  
13 greater than 15 megawatts. The  
14 notifications and CPG time frames changed as  
15 Vanna is showing us on the board. And on  
16 the last one there is a public engagement  
17 process built in as well.

18 MS. MCGINNIS: That's the one we talked  
19 about.

20 MR. RECCHIA: 150 days -- starting 150  
21 days before. And just to clarify that there  
22 is the concept still that applicants submit  
23 their application and propose a particular  
24 tier, but that the PSB decides what tier it  
25 is really in after getting the information.

1 And then I think the goal was, you know, to  
2 try and provide mechanisms for facilities  
3 that did more process or more work to try  
4 and perhaps meet other criteria that would  
5 enable them to move from one tier to  
6 another. But that is not -- I don't think  
7 that's a key component to this if that's  
8 what -- it turns out to be an issue.

9 MS. SYMINGTON: Can you -- this the  
10 notion of, you know, so here's the tiers  
11 based on capacity. But then we are going to  
12 place you where we want you. What  
13 contributes to that mushiness? That's a  
14 little weird.

15 MR. RECCHIA: Right. It is. There  
16 would be criteria that could move somebody  
17 from one tier to another, and I don't think  
18 those are --

19 MS. MCGINNIS: I think he was keeping  
20 the notion of being able to encourage  
21 certain projects or not -- to incent certain  
22 types of projects so that they could move to  
23 a lower tier. I think he's still keeping  
24 that notion in there.

25 MS. McCARREN: Who is he?

1 MR. RECCHIA: Ed McNamara of my staff,  
2 he just put this together to try and be  
3 helpful.

4 CHAIRMAN EASTMAN: So but this would  
5 be-- okay, here's what it basically is.

6 MR. RECCHIA: Yeah. Now if you want  
7 things -- if you want the Board to have  
8 discretion to move things from one tier to  
9 another, we should flesh out criteria for  
10 that in terms of either level of public  
11 interest or facility type. I don't know.  
12 There may be ways of, as Linda was  
13 describing, provide the reverse and say, you  
14 know, if you do X, Y and Z, you know, if  
15 it's a community project or whatever, it may  
16 be going into tier one or two instead of  
17 tier four even regardless of size. I don't  
18 know.

19 MS. McCARREN: And Chris, what -- help  
20 me understand the big differences between  
21 these tiers, among these tiers --

22 MR. RECCHIA: Yeah.

23 MS. McCARREN: -- if you would, because  
24 if I read this correctly they all still  
25 remain in theory contested cases.

1 MR. RECCHIA: That's right.

2 MS. McCARREN: And I see the timing  
3 difference, but where is the big like why  
4 does this matter?

5 MR. RECCHIA: Right. Well I'm not sure  
6 the difference between three and four tiers  
7 matters. But you know, 500 KW and below is  
8 net metering. And a small net metering that  
9 those folks up the street, down the street,  
10 down the block seemed inclined to want to  
11 see it go through a faster process. We have  
12 got up to 2.2 megawatts, then 500 to 2.2  
13 megawatts which is standard offer projects,  
14 to distinguish that size, and then between  
15 2.2 megawatts and 15 megawatts which the 15  
16 megawatts seemed to be a size factor that  
17 people felt like was between medium and  
18 large and large, and above 15 megawatts. So  
19 --

20 CHAIRMAN EASTMAN: But what happens  
21 under tier one, if there is no significant  
22 issue, then the permit issues. It doesn't  
23 have a hearing, it doesn't -- that's what it  
24 says.

25 MR. JOHNSTONE: And two. Same thing;

1 doesn't it?

2 MR. RECCHIA: Two, yeah, different time  
3 lines.

4 CHAIRMAN EASTMAN: Different time lines,  
5 but if there was no significant issue,  
6 permits issue and you don't go through.  
7 They file information, but in effect they  
8 wouldn't have hearings which is like a minor  
9 process at Act 250.

10 MR. RECCHIA: Right.

11 CHAIRMAN EASTMAN: And then tier three  
12 has stuff. And tier four has stuff plus  
13 public process. Plus a public engagement  
14 process specific to that project, so I think  
15 that's basically the differences. I mean I  
16 looked at -- I mean currently right now in  
17 Section 248(j)(1) authorizes easier process  
18 and (n)(2) authorizes easier process. It's  
19 interesting, in Act 250 the statute actually  
20 authorizes the program to decide on  
21 simplified procedures, okay. And also  
22 authorizes notices instead of application,  
23 and also authorizes the District Commission  
24 to actually authorize a District Coordinator  
25 to issue a decision without them even

1 issuing a decision.

2 MR. RECCHIA: Right. So for those who  
3 like Act 250 just recognize the District  
4 Coordinator is making a decision between  
5 minor and major and what goes from here and  
6 what doesn't.

7 CHAIRMAN EASTMAN: The Commission is not  
8 actually making --

9 MR. RECCHIA: And can actually issue a  
10 permit. So basically again the distinctions  
11 are the sizes have some line up with some of  
12 the existing programs that are out there.  
13 And the processes range from the low tier of  
14 just notice -- sorry, just filing it and  
15 then with -- and actually with land -- with  
16 notice to the various places. They have 15  
17 days, the PSB has to make a decision within  
18 30 days, up through the tier four with 150  
19 days public engagement process, prior to the  
20 90-day public notice period and recognize  
21 that everything right now is 45-day notice  
22 period.

23 MR. JOHNSTONE: So can you for tier one  
24 -- in my head definitely I have this  
25 question and maybe even tier two, so the

1 question I'm wondering about and would like  
2 to get more understanding of is do you know  
3 for legal purposes that they all need to be  
4 contested, and can you just explain that  
5 more because for tier one why a Hearing  
6 Officer or somebody else couldn't just make  
7 that determination. What is it about the  
8 legal process that requires it all to go  
9 back to the Board?

10 CHAIRMAN EASTMAN: That's not -- that's  
11 only required by the Public Service Board's,  
12 you know, rules. The contested case process  
13 requires notice and an opportunity for  
14 hearing. That's what a contested case  
15 process really is.

16 MR. JOHNSTONE: Why do we need that  
17 necessarily for tier one? That's what I'm  
18 asking. You're recommending it.

19 MR. RECCHIA: This is within the  
20 existing Board's -- existing Board's  
21 structure is that they treat all  
22 applications as contested cases.

23 MR. JOHNSTONE: I hear that. But you're  
24 recommending --

25 MR. RECCHIA: I don't necessarily agree

1 with that concept, so I'm not recommending.  
2 This is a framework that was trying to work  
3 with in the existing.

4 CHAIRMAN EASTMAN: Can I say --

5 MR. JOHNSTONE: Thank you.

6 CHAIRMAN EASTMAN: I don't think there  
7 is any magic about the non contested case  
8 process that makes things really any  
9 simpler. Okay.

10 MR. RECCHIA: Right.

11 CHAIRMAN EASTMAN: Sorry. Ask the  
12 Agency of Natural Resources. So for me it  
13 is I don't mind saying you still have a  
14 contested case process. All right. The  
15 issue is can you make it simplified like  
16 this. And not have hearings all the time  
17 just for the sake of hearings.

18 So for me I don't mind, here's the  
19 thing. I'm going to deal with the world as  
20 it is now for a moment. And what we have  
21 are Hearing Officers that were hired and  
22 trained to manage in a contested case  
23 process. They weren't hired and trained to  
24 manage, you know, something else. Okay?

25 So I think this is fine what we are

1 trying to do here. These are not the cases  
2 where a lot of people are concerned, and  
3 it's, you know, whatever, we want to zip  
4 these things through. This is why I say Act  
5 250 is a contested case process and they  
6 have gone so far as to say a District  
7 Coordinator can do X, Y or Z, so you can  
8 make things this simple in a contested case  
9 process without messing with their minds.

10 MS. McCARREN: Just a couple points.

11 One is on tier one, the 500 KW does not  
12 affect the net metering. In other words, if  
13 you're under 500 KW you're not entitled to  
14 -- you have to be under 150 KW. So this  
15 isn't going to affect prices.

16 MR. RECCHIA: Right.

17 MS. McCARREN: I agree that this should  
18 be -- and just so we all put this in  
19 perspective, why did we say 500 KW? Is it  
20 two solar trackers, something like that?

21 MR. COSTER: It's more than that.

22 MS. McGINNIS: It's more than that. The  
23 solar field that we visited, right? That  
24 was 2.1 and almost 2.2.

25 MR. RECCHIA: So a quarter of that.

1 MS. MCGINNIS: And that was 25 trackers.  
2 So a quarter of that. So six.

3 MS. McCARREN: I'm just trying to put it  
4 in size.

5 MS. MCGINNIS: Five trackers.

6 MR. COSTER: That was a 30-acre site, so  
7 you're looking at five acres.

8 MS. MCGINNIS: It was a 25-acre site.

9 CHAIRMAN EASTMAN: What you're talking  
10 about is me being able to net meter for me  
11 and a couple of other households in my  
12 field, right?

13 MS. MARGOLIS: Several houses, a bunch  
14 of houses.

15 MR. RECCHIA: Group net metering.

16 MS. MCGINNIS: It's the level that, for  
17 example, the Waterbury project that is the  
18 one they are proposing, they say there is a  
19 lot of towns that want 500.

20 MS. McCARREN: Right. I just want to  
21 put it in perspective. I don't understand  
22 why the Board has to make a determination on  
23 the tier. That seems odd to me. It would  
24 have to be by exception. I think you could  
25 self declare and that's it unless --

1 MR. RECCHIA: That's the intent. The  
2 sentence says petitioner would submit an  
3 application to PSB requesting review under a  
4 specific tier. But somebody has got to make  
5 the determination whether they applied for  
6 the proper tier. There is going to be a  
7 tendency for people to try and apply for a  
8 lower tier because the process is simpler,  
9 and we shouldn't allow that if the project  
10 is of such scale that it needs additional  
11 public review and comment.

12 MS. SYMINGTON: But isn't that a number?

13 MR. RECCHIA: You could do it as a  
14 number, or you can have other criteria that  
15 enable you to move it back and forth. And  
16 I'm good with whichever way the Commission  
17 wants to go.

18 CHAIRMAN EASTMAN: What I want to  
19 clarify is that when you say the Board,  
20 don't you mean the Board or their designee?

21 MR. RECCHIA: Or their designee, of  
22 course.

23 CHAIRMAN EASTMAN: So you mean the  
24 Hearing Officer.

25 MR. RECCHIA: Or the case manager.

1           CHAIRMAN EASTMAN:  So maybe that's what  
2 we ought to put though, the Board or their  
3 designee.  We don't want the Board having to  
4 make all of these decisions.

5           MR. RECCHIA:  Right.

6           CHAIRMAN EASTMAN:  The full Board.

7           MR. RECCHIA:  I think it's implied.

8           CHAIRMAN EASTMAN:  Understood.  You see  
9 how many people don't get that.  We are  
10 writing this for general consumption, so  
11 that's the only concern I have.  And I have  
12 gone to look at the statutes myself to say  
13 when can they do X, Y and Z.

14          MR. RECCHIA:  Yeah.

15          MS. McCARREN:  And Chris, there is no  
16 magic number, but what is the rationale for  
17 adding tier three?  I mean I know we kind of  
18 picked 15 megawatts.

19          MR. RECCHIA:  Right.

20          MS. McCARREN:  But --

21          MR. RECCHIA:  So I wasn't at the last  
22 meeting, and I apologize because I was in  
23 the legislature, and I would have rather  
24 been with you guys.

25          MR. JOHNSTONE:  You're on the record,

1 you do know that, right? Just to remind you  
2 again.

3 MR. RECCHIA: Thank you. Please keep  
4 reminding me periodically because I thought  
5 you guys wanted to go from three to four.

6 CHAIRMAN EASTMAN: No. I think the  
7 issue is, is that really tier one and two,  
8 if all goes well, will rarely have hearings.  
9 Tier three, you know, there is more  
10 significant projects. It's Georgia  
11 Mountain. We want people to be absolutely  
12 sure that they get to comment and everything  
13 like that.

14 MR. RECCHIA: Maybe you felt like you  
15 didn't need the public engagement process.

16 MS. McCARREN: I'm just saying why have  
17 tier three.

18 CHAIRMAN EASTMAN: Tier three is you've  
19 got some process, but you don't have the big  
20 public engagement process. So what we are  
21 proposing right now, what this proposes and  
22 what we proposed before, is that above 1,500  
23 megawatts in addition to all the planning  
24 you're doing, above 15 megawatts, 15  
25 megawatts -- I get my kilowatts and my

1 megawatts confused, you've got an additional  
2 public process.

3 MS. MCGINNIS: Well and actually above  
4 the 2.2 you're allowing for more time for  
5 the public to be notified and to respond,  
6 and you're allowing for a longer period of  
7 time, so that was the -- it's not that big a  
8 difference between the two, I agree. But it  
9 is --

10 MR. JOHNSTONE: Except the BEP.

11 MR. RECCHIA: That didn't kick in until  
12 after '15 anyway.

13 MS. MCGINNIS: She is asking why divide  
14 this. That's her question; correct?

15 MS. McCARREN: My question is why not  
16 get rid of three. The big difference -- the  
17 difference is --

18 MS. SYMINGTON: She is saying why divide  
19 these, I think.

20 MS. McCARREN: Yes, exactly.

21 MR. RECCHIA: So anything over 2.2  
22 should require a public engagement process?

23 CHAIRMAN EASTMAN: No, I don't think  
24 everything above 2.2 should require the  
25 additional public process that we are

1 suggesting for above 15. And I think we  
2 need for big projects an additional public  
3 engagement process around the particular  
4 location that I don't think you need for the  
5 smaller ones. So I want -- I like four.

6 MS. McCARREN: I don't have any problems  
7 with four. I'm just saying why don't you  
8 consolidate three and four and make rules  
9 four to apply. Because 15 megawatts is a  
10 pretty big project.

11 CHAIRMAN EASTMAN: Do you want an  
12 additional public engagement process for  
13 everything from 2.2 and up?

14 MS. McCARREN: Just to put this in  
15 perspective, I don't know the answer to  
16 that. But 2.2 is the size of that South  
17 Burlington solar that we saw.

18 CHAIRMAN EASTMAN: I don't think it  
19 needs an additional public engagement  
20 process.

21 MR. RECCHIA: And 150-day notice.

22 CHAIRMAN EASTMAN: And extra 150-day  
23 notice. I don't think a project that size  
24 does.

25 MS. MCGINNIS: 150 plus 90.

1           CHAIRMAN EASTMAN: I mean I think it  
2 needs, you know, -- well I can go with -- I  
3 mean what I like about this is I was still a  
4 little dicey on the sliding.

5           MR. RECCHIA: Okay. And I got the sense  
6 that people were concerned about that. And  
7 maybe --

8           CHAIRMAN EASTMAN: I'm with Louise. I  
9 think every time you're sliding and you have  
10 all these decisions to make it's an  
11 opportunity for --

12          MR. RECCHIA: Just recognize that with  
13 straight numbers you also have people coming  
14 in with 14.9 megawatts.

15          MS. McCARREN: Going to happen.

16          MR. JOHNSTONE: That's right.

17          MS. SYMINGTON: Well it's 14.9.

18          MR. RECCHIA: That also tells me they  
19 make their decision on such an important  
20 project and carefully thought out business  
21 plan based on how long it takes to get  
22 through the process. It's crazy.

23          MS. McCARREN: That's why the  
24 differences in work load or obligation of  
25 the developer among the tiers is important.

1 Okay, because are we really adding something  
2 of significance in the above 15? And the  
3 answer is we are adding a required public  
4 engagement plan, and that's the big thing.

5 MS. MCGINNIS: Plus 90 days'  
6 notification. So there is, yeah, that's a  
7 significant change from 45-days notification  
8 and no requirements on public engagement at  
9 all.

10 MS. MCCARREN: So a solar project that  
11 is -- how many times the size of the one in  
12 South Burlington? That's 2.2 just roughly.

13 MR. JOHNSTONE: Seven, ball park six  
14 and-a-half.

15 MS. MCCARREN: Seven times does not  
16 require a public engagement just so we are  
17 --

18 MS. MCGINNIS: Yeah. Well the public  
19 engagement is what's been added at least  
20 from what I understood from Ed, both on tier  
21 two and on tier three, is that there is a  
22 requirement that the developer provide all  
23 copies of any comments received and  
24 description of how the petition addressed  
25 those comments, that they made good faith

1 efforts to hold a meeting with the Select  
2 Board and the Regional Planning Commission  
3 in the town where it's going to be hosted  
4 and the affected towns. So it's much more  
5 prescriptive than what currently exists for  
6 tier two and tier three. But it's just with  
7 tier four that it's even more prescriptive  
8 saying you need a public engagement plan  
9 that the Board has to be okay with.

10 MR. JOHNSTONE: And we have incented  
11 frankly for the solar field, Louise, I think  
12 the same thing that's happening now which is  
13 2.1 actually gets easier now. You're really  
14 probably going to drive the solars to be  
15 under 2.2 with this model.

16 MS. McCARREN: I understand. Yeah.

17 CHAIRMAN EASTMAN: What's the feeling?  
18 Do we substitute this for what we currently  
19 propose? Or put it out there for comment?

20 MS. SYMINGTON: What if somebody was  
21 planning to do a 10 megawatt and likes the  
22 two, and so they just propose five twos?

23 MR. RECCHIA: That's the thing. And I  
24 would take -- as a public servant in the  
25 Public Service Department, I would ask the

1 Board to combine those and stick them into a  
2 different tier. And if you just have it on  
3 size, you're going to have people playing  
4 those games and having four different  
5 applicants at 2.1 megawatts.

6 MS. MCGINNIS: Which currently happens,  
7 and they deal with it.

8 CHAIRMAN EASTMAN: Right, but this gives  
9 you an opportunity to push back.

10 MR. JOHNSTONE: It does. You might even  
11 add some language to deal with this issue,  
12 Gaye, that you raise around cumulative. So  
13 that even if you separate those projects by  
14 a year, if it's adjoining and, you know,  
15 it's clearly an add, then it goes through  
16 the different tier where it would have  
17 appropriately landed, right? You don't get  
18 the hall pass for the first 2.1, right?

19 MS. MARKOWITZ: Then we are also clear  
20 that it's not just size in any event because  
21 it's also environmental impact and other  
22 matters, so it's part of that.

23 MS. MCCARREN: And all of these there is  
24 the right to object.

25 CHAIRMAN EASTMAN: Yes.

1 MS. McCARREN: Okay. So it doesn't  
2 matter what size is --

3 MR. JOHNSTONE: That's right.

4 CHAIRMAN EASTMAN: Yeah.

5 MS. MCGINNIS: My question for  
6 clarification is so we are not going to  
7 provide incentives to be able to bump down a  
8 tier? We are not going to do that? So  
9 you're not going to say for certain  
10 community projects you can bump down from  
11 tier three to tier two or tier two to tier  
12 one?

13 MS. McCARREN: I was just going to say I  
14 don't see what -- the big issue is whether  
15 I've got to do a public engagement plan,  
16 right? The rest of these are time lines.

17 MR. JOHNSTONE: Time lines.

18 MS. McCARREN: So that's not a big deal.  
19 What I'm trying to say inarticulately is  
20 what is the big incentive to go down a tier?  
21 You save a few days.

22 MS. MCGINNIS: To go from tier two to  
23 tier one is a huge incentive because  
24 basically tier one is 30 days. If you get  
25 no issue raised, then you're through.

1 That's accepted. That's huge compared to  
2 estimated six months of a process and  
3 notification and all these other things.

4 MS. SYMINGTON: Tier two is a six-month  
5 process.

6 MS. MCGINNIS: Potentially.

7 CHAIRMAN EASTMAN: Potentially.

8 MS. SYMINGTON: Because of the CPG.

9 MS. MCGINNIS: So the question is I  
10 think you're right, Louise, going from tier  
11 three to tier two there is not that big a  
12 difference really. But going from tier two  
13 which goes up to 2.2 megawatts, it's not  
14 that huge.

15 The whole point that was being brought  
16 up in the discussions there was a number of  
17 cookie-cutter type projects out there that  
18 haven't raised any community issues so far  
19 that we would like to facilitate, be they  
20 community driven projects, they might be in  
21 that realm from 500 kilowatts to 2.2  
22 megawatts. If there are those type of  
23 projects that are brought forth, and they  
24 aren't seeming to raise any issues, then why  
25 not incent -- provide incentives for those

1 kinds of projects to move down.

2 MS. McCARREN: I hear what you're  
3 saying.

4 MS. MCGINNIS: That was the issue.

5 MS. McCARREN: Right. But I think if  
6 there is a project with that kind of  
7 support, those -- that time frame is  
8 maximum. The Department and the Board could  
9 move it through. I'm just really concerned,  
10 as you know, to repeat myself, I want to say  
11 it again, about creating a system. You're  
12 going to have people fighting over what tier  
13 it is.

14 CHAIRMAN EASTMAN: I think what's  
15 important here, and those other ones maybe  
16 it won't work, I think we can come back and  
17 think about this some more especially with  
18 the community project issue, but I agree if  
19 it's easy, then you go in, and at the  
20 prehearing conference you do a much faster  
21 schedule.

22 MS. McCARREN: Sure.

23 CHAIRMAN EASTMAN: You know if you --  
24 you know, and you promote that. And we have  
25 some language that encourages, you know,

1 reminds people these are maximum.

2 MR. RECCHIA: Okay. But just since we  
3 are doing a transcript, just to know these  
4 are not maximum.

5 CHAIRMAN EASTMAN: Yes, I understand.

6 MR. RECCHIA: If something occurs midway  
7 that requires something to be reset, we will  
8 do that.

9 CHAIRMAN EASTMAN: I understand.

10 MR. JOHNSTONE: One thing you could  
11 think about on this front for the larger  
12 projects now is if we want to do something  
13 with the community, proactive projects, is  
14 tier four could really be 2.2 and above.  
15 And tier three could be enabled only if you  
16 meet the criteria of community project. So  
17 that you get rid of the 150-day advance  
18 stuff, because you've already done the  
19 engagement, because you're coming from the  
20 community, you know, and the time lines can  
21 be short because it's coming from the  
22 community.

23 CHAIRMAN EASTMAN: So you're telling me  
24 that you're going to make every merchant  
25 plant a community project? Every large

1 merchant?

2 MR. JOHNSTONE: No. They can go through  
3 the full 150-day process and the year-long  
4 post process if they want to. If they don't  
5 want to work with their community. And they  
6 can expect lots of opposition.

7 MR. RECCHIA: That gets you -- if a  
8 community has a project that's over 15  
9 megawatt, that gets them a simpler system, a  
10 tier three system.

11 MR. JOHNSTONE: That's what I was  
12 thinking.

13 MR. RECCHIA: But how many community  
14 projects -- we don't know. That's fine.

15 MS. MCGINNIS: He's saying anything over  
16 2.2, so if a community came up -- right.

17 MR. RECCHIA: But 2.2 doesn't require  
18 that anyway.

19 CHAIRMAN EASTMAN: A big community  
20 process.

21 MR. JOHNSTONE: But it could. What I  
22 said is 2.2 could it be a dual path. Three  
23 is community which has one set of criteria.  
24 And four is if you don't want to do the  
25 community route.

1 MS. SYMINGTON: What I hear him saying  
2 is that there is no tier three. Unless  
3 you're a community project.

4 MR. RECCHIA: Right.

5 MS. SYMINGTON: So if you're not a  
6 community project, everything involved in  
7 tier four kicks in. The public engagement  
8 process.

9 MR. RECCHIA: Oh, oh.

10 CHAIRMAN EASTMAN: 2.2 and above you're  
11 going to have a 150-day public engagement  
12 process?

13 MR. JOHNSTONE: If you choose not to  
14 participate with your community. That's a  
15 really different idea. I'm fine, because we  
16 have got to go somewhere -- if we want to go  
17 somewhere and put this on that shelf and  
18 think about it.

19 MR. RECCHIA: I kind of like that idea.  
20 In ways I think the 2.2 is a little low.

21 MS. MARKOWITZ: That might not be the  
22 right number.

23 MR. JOHNSTONE: I don't know what the  
24 number should be.

25 MS. MARKOWITZ: I really want us to hold

1 on to the idea of the moving up and down,  
2 that is the way we incentivise the kind of  
3 projects we have been talking about, those  
4 kinds of projects, we want to incentivise  
5 the community-based projects. So that's --

6 CHAIRMAN EASTMAN: So maybe for now we  
7 replace five with this, with four tiers.  
8 And we hold the thought of, you know,  
9 community projects, and maybe there is some,  
10 you know, how do we do that. And then we  
11 keep six which is the moving up and down.  
12 Yeah?

13 MS. MCCARREN: I'm as usual going to be  
14 a little heretical here, and that's going to  
15 shock all of you. I'm not sure that this is  
16 going to make much difference. Okay? I  
17 think the only big difference that I'm  
18 seeing is a formalized public engagement  
19 plan. The rest of it could all be managed  
20 by the Department and the Board right now.  
21 So I'm not sure. I mean so I'm torn because  
22 I don't think it makes that much difference,  
23 so why worry about it?

24 MR. JOHNSTONE: Except we are hearing  
25 that it's not being managed that way by the

1 Board right now.

2 CHAIRMAN EASTMAN: We are hearing there  
3 aren't any deadlines for anything. If  
4 people go into right now the 500 KW to 2.2  
5 and a prehearing conference doesn't get set  
6 for two months. So for me it's not just the  
7 tiers, it's the time line.

8 MS. McCARREN: Well these time lines are  
9 not binding. Maybe the prehearing  
10 conference is. But right, Chris?

11 MR. RECCHIA: Right.

12 MS. McCARREN: This could be --

13 MR. RECCHIA: These could be extended --

14 MS. McGINNIS: The total time line isn't  
15 binding.

16 MR. RECCHIA: -- and contracted if they  
17 move through the process faster than those.

18 CHAIRMAN EASTMAN: But we are setting  
19 some goals for we have got to make decisions  
20 here and move people along. That's what I  
21 heard. I heard a lot of people say it goes  
22 in and it sits. And that's even for simple  
23 things.

24 MS. MARKOWITZ: At the end of the day I  
25 think we want to be able to demonstrate that

1 this will make the system better from the  
2 perspective of actually getting stuff built,  
3 right? And it will make it better in terms  
4 of improving the access of the public to the  
5 process. And so that's why articulating  
6 what's in the tiers might be helpful like,  
7 okay, let's do a scenario. It would be  
8 great at the end to be able for us to be  
9 able to take some example out there, look at  
10 how much time it took and say, okay, well if  
11 this process had been in place, look at how  
12 more efficient it would have been.

13 CHAIRMAN EASTMAN: And I do think it  
14 does. It specifies new process or at least  
15 some information encouraging things at tier  
16 three level and requiring that process at  
17 tier four. So we are up from our 20  
18 minutes. So --

19 MR. RECCHIA: Shocking.

20 CHAIRMAN EASTMAN: Are we ready to go to  
21 say -- that we have got, you know, for  
22 purposes of here's a draft, as I say,  
23 substituting what Chris has got on the table  
24 for five, and then leaving six for now?

25 MS. SYMINGTON: I do have one question.

1 CHAIRMAN EASTMAN: Yeah.

2 MS. SYMINGTON: You mentioned -- you  
3 used the word reset, what I wanted to  
4 understand is if in the public process, you  
5 know, someone accommodates by reducing, you  
6 know, taking out one of the towers or, you  
7 know, having six instead of eight solar  
8 collectors, that doesn't set them back to  
9 square one --

10 MR. RECCHIA: No.

11 MS. SYMINGTON: -- in terms of starting  
12 the clock ticking.

13 MR. RECCHIA: No. Most times that would  
14 be accommodated in the normal schedule of  
15 things. But let's say --

16 MS. SYMINGTON: Most.

17 MR. RECCHIA: Let's say something is  
18 shifted, like not just eliminated, but it's  
19 moved from here to there. That it might  
20 involve more resources, different resources  
21 that require more assessment, and the Board  
22 would say, okay, we are going to allow that  
23 much more time for this piece of it to go  
24 through. It might be that it moves it to a  
25 different part of the property, that it has

1 a different abutter. And then they need  
2 time to evaluate it and comment.

3 So often the Board will say, okay, we  
4 are going back to initial discovery on this  
5 piece.

6 CHAIRMAN EASTMAN: But that's the  
7 process once the application is filed.

8 MR. RECCHIA: That's correct.

9 CHAIRMAN EASTMAN: The 150 days doesn't  
10 ever reset, you start --

11 MR. RECCHIA: No, right.

12 CHAIRMAN EASTMAN: You have the notice  
13 and you do a public engagement process. As  
14 things change, as they talk about what the  
15 project might be, that doesn't reset.

16 MS. SYMINGTON: Right.

17 CHAIRMAN EASTMAN: But it would depend  
18 upon how significant, once an application  
19 was filed, if there were then -- hopefully  
20 having the actual public process would mean  
21 you would have less of that happening once  
22 an application is filed.

23 MR. RECCHIA: And that's one of the  
24 incentives here.

25 MS. SYMINGTON: That's why you don't

1 want to have 150 plus 50 plus 60 before you  
2 get to the end.

3 CHAIRMAN EASTMAN: Right. Before you  
4 actually file.

5 MR. RECCHIA: Here's what I don't want  
6 is somebody submitting an application to  
7 start the time line, having it be a half  
8 thought through process, and then try and  
9 fix it as they go and expect that the  
10 process is going to continue. I want the  
11 ability to send them back to the beginning.

12 CHAIRMAN EASTMAN: Right.

13 MR. COSTER: Before you move on from  
14 this, can I ask or raise a couple issues? I  
15 recall your last discussion around tier one  
16 you were suggesting that all the ANR permits  
17 needed to be in hand for a project to  
18 qualify as a tier one. And I think that's  
19 something that we were supportive of. I  
20 didn't hear that as part of this  
21 conversation.

22 MR. RECCHIA: I would not support all  
23 the permits being in hand.

24 MR. COSTER: For a tier one? Under 500  
25 kilowatts.

1 MR. RECCHIA: In hand?

2 MR. COSTER: That's just what was said  
3 last time. You weren't here, but that's  
4 fine.

5 MR. RECCHIA: That's not where I'm at.  
6 I could be convinced otherwise.

7 MS. MARKOWITZ: That makes sense because  
8 it -- this is simple, right? So there  
9 shouldn't be anything besides really  
10 wetlands, possibly construction, you know,  
11 if there is a construction stormwater issue,  
12 but they are not going to open up more than  
13 five acres.

14 CHAIRMAN EASTMAN: Why is it any  
15 different? You've got notice so you can say  
16 they have --

17 MS. MARKOWITZ: Well that will allow us  
18 to identify -- so wetlands is the issue for  
19 solar. We will just use that as an example.  
20 So in order to determine if it's a tier one,  
21 we need to have been out there, or we need  
22 to have had an opportunity to say, hey,  
23 there is a wetlands issue here. And so  
24 either you've resolved it so now it's a tier  
25 one, or you haven't resolved it, and it

1 needs to be pushed up to a tier two.

2 CHAIRMAN EASTMAN: So what you were  
3 going to say when you get there, you're  
4 going to say you haven't had time to go out.  
5 So --

6 MR. RECCHIA: So I'm picturing an  
7 application for a small solar project in  
8 November.

9 MS. MARKOWITZ: Exactly.

10 MR. RECCHIA: And I want to get this --  
11 I want to have them go through our process,  
12 but in the event that no one's assessed the  
13 wetlands, you can condition that, or they  
14 can apply for wetlands, or they did identify  
15 wetlands from it, and they have applied for  
16 it, but you guys are not in a position to be  
17 able to evaluate it until the spring.

18 MS. MARKOWITZ: So what happens if in  
19 the spring we say, hey, there is a problem  
20 here. They have got to redo their project  
21 or reorient it, if they need to come back to  
22 you and reorient it --

23 MR. RECCHIA: You may not have saved any  
24 time at all.

25 MS. MARKOWITZ: You won't have. In

1 which case also -- yeah, there is  
2 environmental issues that maybe there needs  
3 to be more notice to neighbors over.

4 CHAIRMAN EASTMAN: What happens now? I  
5 just want to -- just a minute, Kim, and we  
6 are really way beyond the 20 minutes.

7 MR. RECCHIA: I'm sorry I wasn't here  
8 last -- I didn't know that was going to be  
9 an issue. I'm happy to think about that  
10 some more.

11 CHAIRMAN EASTMAN: Is that what we said?

12 MS. MARKOWITZ: Yeah, tier one.

13 MR. RECCHIA: In the spirit of decision  
14 making, let's keep it that way and keep  
15 going. The fact that I wasn't here --

16 MR. COSTER: A more robust application  
17 for that tier one so these things are more  
18 thoroughly vetted than they are right now.

19 CHAIRMAN EASTMAN: That is not what we  
20 want. I don't want people to have to put --  
21 these are supposed to be the simple ones.

22 MR. COSTER: They are not working now.  
23 People are violating the federal wetlands  
24 rules with these projects because they are  
25 not doing what they need to do right now.

1           CHAIRMAN EASTMAN:  And my point is we  
2           either make the ANR permit, have it in hand,  
3           okay, or we don't allow them to construct  
4           until the ANR permit is in hand.

5           MR. RECCHIA:  That's usually --

6           MR. COSTER:  That's the rule anyhow.

7           MS. MARKOWITZ:  This is -- what we are  
8           -- we are trying to accomplish here is we  
9           have had instances where folks have gone in  
10          for, you know, in the very simple permit  
11          applications that they have got now, they do  
12          this little self assessment and check off  
13          the box saying there is no environmental.  
14          Turns out it's in a wetland.  So there is a  
15          significant environmental issue that we only  
16          discover in the context of enforcement.

17          CHAIRMAN EASTMAN:  Okay.

18          MS. MARKOWITZ:  And so the application  
19          does not do the applicant justice because it  
20          doesn't require them to jump through enough  
21          hoops to determine that there is not an  
22          environmental problem.  So we don't want big  
23          hoops.  We just want enough hoops to make  
24          sure they are not going to end up in an  
25          enforcement --

1           CHAIRMAN EASTMAN:  What we said we were  
2 going to do is we were going to have a  
3 checklist of things that went along with  
4 these tiers and the application.  And maybe  
5 we have -- they have to have the ANR permit  
6 in hand and then we have got to have ANR --

7           MS. MARKOWITZ:  Or here's another idea  
8 that came from staff.  Or they need a page  
9 from the Biofinder map that shows their  
10 property and shows that it's not a  
11 designated wetland.

12          MS. MCGINNIS:  I think that is an  
13 elegant solution.

14          CHAIRMAN EASTMAN:  Which goes to the  
15 checklist issue.

16          MR. RECCHIA:  That's a better solution.

17          MS. MARKOWITZ:  So the map isn't  
18 perfect, but we have mapped all the  
19 wetlands.  We know it's not perfect because,  
20 of course, nature always changes, but I  
21 think our staff are comfortable with that  
22 kind of --

23          MS. MCGINNIS:  It also forces everyone  
24 to use a tool that's going to be enormously  
25 useful for everyone, so it makes everyone

1 familiar with that tool.

2 CHAIRMAN EASTMAN: That's a good idea.

3 MR. COSTER: That's more what I meant  
4 for a more thorough application, more  
5 information.

6 CHAIRMAN EASTMAN: That's fine.

7 MR. RECCHIA: That helps me, because my  
8 question was going to be if you require the  
9 permits up front for the really small ones  
10 what's -- why wouldn't we do that for the  
11 big hunkaroos, and maybe that's where you  
12 were going.

13 MR. COSTER: No. The thought for the  
14 smaller ones it's more easier to avoid or to  
15 get a permit. A general wetlands permit,  
16 it's not a big deal. 30 days.

17 CHAIRMAN EASTMAN: It's not a big deal.  
18 Okay.

19 MS. MCGINNIS: I've got it. With the  
20 tier issue and the screening process for  
21 now. I mean this is to get a draft out for  
22 public comment, and then we have got more  
23 days to come in. Is that okay? Okay.

24 MR. JOHNSTONE: I'm fine.

25 CHAIRMAN EASTMAN: Okay. Next is there

1 something you need to say about the tier?

2 MR. FRIED: I was just going to support  
3 what Billy said is my -- this issue of  
4 complete application is critical. I mean it  
5 comes back to planning. You don't just slap  
6 in an incomplete application to get your  
7 shovel in the ground --

8 CHAIRMAN EASTMAN: Right.

9 MR. FRIED: -- and then let everybody  
10 point out inefficiencies during the next  
11 year. There has to be penalties that go  
12 along with an incomplete application.

13 CHAIRMAN EASTMAN: Agreed.

14 MR. JOHNSTONE: Can I ask one question  
15 really on behalf of Tom? I have been trying  
16 to follow his notes as we go through. He  
17 just wanted us to understand what the basis  
18 of the 15 megawatt cut off was.

19 MS. McCARREN: We don't have one.

20 CHAIRMAN EASTMAN: We don't have one.

21 MR. JOHNSTONE: I just wanted to say  
22 that out loud, because if he was here he  
23 would have.

24 CHAIRMAN EASTMAN: I mean -- and that  
25 may change. People may say you've got to

1 push back.

2 MR. JOHNSTONE: Maybe we will get some  
3 good public comment about that, and we can  
4 evaluate it.

5 CHAIRMAN EASTMAN: Right. You know that  
6 REV already said they would rather have it  
7 be 25.

8 MR. JOHNSTONE: And others would like it  
9 to be lower.

10 CHAIRMAN EASTMAN: Yes. So here we are.

11 MR. JOHNSTONE: I think we should go to  
12 hearing. I just wanted to --

13 CHAIRMAN EASTMAN: Okay. The next issue  
14 is increased opportunity for public  
15 participation. We have got three  
16 recommendations here. The seven is the  
17 early notification that we have already  
18 talked about. Right and --

19 MS. MCGINNIS: And I'll change that to  
20 reflect moving to four tiers.

21 CHAIRMAN EASTMAN: And then eight will  
22 change to say there is, you know, there is  
23 new issues in three and four.

24 MS. MCGINNIS: Yeah. But what I might  
25 do is put together a table along these lines

1 that would have what the different  
2 requirements are of each of these just to  
3 sort of -- I'll write it, but I'll also have  
4 a table so you can have it.

5 MR. RECCHIA: I think we would benefit  
6 from this Commission spending more time on  
7 number eight, explaining what they visualize  
8 should happen in those 150 days. I'm not  
9 suggesting we do that today. But I think  
10 that this particular paragraph would benefit  
11 and the public process would benefit about  
12 how this changes if we explain more about  
13 what we think should be happening in that  
14 public process.

15 MS. MCGINNIS: What I could do is send  
16 you, there is -- I've sent them to you  
17 before, but if you're going to be looking at  
18 it very specifically in the next few days, I  
19 wrote up two case studies on the New York  
20 public engagement plan and their scoping  
21 process. They do both of them for 100  
22 megawatt projects and over, so that's why we  
23 are proposing to do one of them since we  
24 don't have any of those.

25 But it gives some ideas of the types of

1 things you might want to incorporate and not  
2 incorporate. So I can send those around to  
3 everybody.

4 CHAIRMAN EASTMAN: And we were, of  
5 course, giving it to you --

6 MR. RECCHIA: Of course.

7 CHAIRMAN EASTMAN: -- your Department to  
8 be responsible for being sure that the  
9 public engagement process was an appropriate  
10 one. Figuring that --

11 MR. RECCHIA: Which is great.

12 CHAIRMAN EASTMAN: You have it correct.

13 MR. RECCHIA: Wouldn't mind a little  
14 more guidance on your expectations of what  
15 happens. I think that will help assuage  
16 people's concerns more too.

17 CHAIRMAN EASTMAN: I think. Yeah. And  
18 nine is provide RPC funding support if  
19 requested on a cost share basis in both the  
20 preapplication and application periods.

21 Now in light of your comment earlier  
22 about bill back I want -- and I looked at  
23 the, you know, at the provisions currently  
24 in the statute. And it's interesting  
25 because I think section 20 which you know

1 allows, you know, provides for bill back,  
2 actually provides for the opportunity for  
3 RPCs currently to receive it. But only for  
4 when they are, you know, it's in the  
5 language that the Board is allowed to  
6 contract with the Regional Planning  
7 Commissions to have them -- help them  
8 provide the information on, you know, on the  
9 regional issue kind of thing.

10 MR. RECCHIA: Right, this would be more,  
11 right, as a party. This would be different.

12 CHAIRMAN EASTMAN: Well the interesting  
13 thing is the bill back, as I read it, and I  
14 know maybe you're not using it, and maybe it  
15 isn't working this way, or the Public  
16 Service Board isn't working this way, bill  
17 back looks to me like you can cover your  
18 general costs, you can cover anything with  
19 bill back.

20 Now in response to that, REV I don't  
21 think likes that because, you know,  
22 applicants want to know what's it going to  
23 cost, and if you do all this stuff with bill  
24 back they don't know up front what the cost  
25 is going to be. But I think we need to have

1 RPC funding, and maybe we don't decide today  
2 how we do it, but it's interesting that  
3 funding the RPCs for their work through bill  
4 back relative to the issue relating to the  
5 orderly development of the region is  
6 provided for. And yet we heard from, was it  
7 Chris, is he Windham? That he didn't get  
8 bill back from, you know, relative to --  
9 sorry.

10 MR. RECCHIA: That's true.

11 MS. MCGINNIS: Which he couldn't search  
12 precedent on the Web site.

13 CHAIRMAN EASTMAN: That's not searching  
14 precedent. This is statutory language. So  
15 this again with the kind of statutory  
16 language we currently have with bill back,  
17 all right, and if it isn't working that way  
18 because of how the Board is interpreting  
19 things, then I'm first surprised. And  
20 secondly, we have got, you know, to clarify,  
21 I think. Because it's unless again --  
22 because it only said their role is orderly  
23 development and they wanted to participate  
24 on other criteria.

25 MR. RECCHIA: So I was going to suggest

1 that this be available to them to the extent  
2 that they are representing that their plan  
3 is -- they are trying to comment on the  
4 energy component of the plan before the  
5 Public Service Board. Sounds like you might  
6 be broader than that, which we can talk  
7 about.

8 The other thing I thought was the last  
9 word instead of intervener costs should be  
10 party costs. If we are making them a party  
11 -- I'll be right back.

12 (Mr. Recchia left the room.)

13 MS. MCGINNIS: That's good.

14 CHAIRMAN EASTMAN: And I guess I'm  
15 looking at this and saying instead of would,  
16 costs could be covered by bill back. I  
17 think that again we have said that we have  
18 got to have Chris look at what's the  
19 appropriate -- you know, what's the  
20 appropriate way to fund, you know, various  
21 pieces, what we need to do now is say do we  
22 think this is worth funding or needs to be  
23 funded.

24 MS. MCGINNIS: I thought that the whole  
25 point of providing either intervener funding

1 or something on a cost share basis note that  
2 it's saying on a cost share basis is to  
3 provide incentives to the RPCs, that's those  
4 RPCs that have gone through the whole  
5 planning process and done all that work  
6 would have the support in being able to be  
7 an effective party. So I thought that was  
8 part of the incentive.

9 CHAIRMAN EASTMAN: Excuse me. I want  
10 them incented. I'm saying there are other  
11 ways to do this. You don't have to do it by  
12 bill back necessarily. What I'm suggesting  
13 is currently the statute says that relative  
14 to the Regional Planning Commission role,  
15 relative to orderly development of the  
16 region, it authorizes bill back, okay, all  
17 right. But it sounds to me like it may not  
18 currently be being used. Or -- so that's  
19 not even on a cost share basis right now.

20 See that's what I'm trying to clarify.  
21 And I guess for me relative to them  
22 providing the testimony on the plan which is  
23 their role on the plan, I don't know if that  
24 ought to be cost sharing. That ought to be  
25 we have got to find a way to support that.

1 If they want to participate as a party on  
2 other criteria, maybe then they have got to  
3 come up with money to do that. But  
4 currently the bill back provision 20 says  
5 RPCs --

6 MS. McCARREN: Do we know why they  
7 didn't get bill back funding?

8 MS. MCGINNIS: Yes. Chris explained it,  
9 and I shared it with everybody, but I can  
10 share it again. What Chris explained is  
11 they had applied for bill back on all the  
12 due diligence they had done. The problem  
13 was they weren't able to show precedent --

14 MS. McCARREN: I'm sorry. You did.

15 MS. MCGINNIS: -- on their particular  
16 case because they couldn't get access on the  
17 Web site to precedence to be able to argue  
18 their specific case. And so they were  
19 refused the bill back which at least to me  
20 seemed kind of ridiculous, but that was --  
21 so anyway, it was trying to have a broader  
22 interpretation of bill back or at least more  
23 concise definition of what we understand  
24 Regional Planning Commissions if they put  
25 the work into the planning, which would be

1 paid for in a slightly different way, then  
2 if they have to become a party which costs  
3 money to do, then the costs would be  
4 associated with experts' own time, attorneys  
5 and other related party costs.

6 CHAIRMAN EASTMAN: What I'm saying is  
7 right now relative to -- because right now  
8 the role of the RPC is not -- it's not the  
9 plan right now. It's the plan giving advice  
10 on orderly development of the region. But  
11 if we change the standard you could change,  
12 you know, the language in 20. It's there  
13 already as bill back. It's already in the  
14 statute.

15 My concern is if it's already in the  
16 statute and they haven't been getting it,  
17 then oops, okay.

18 MR. RECCHIA: You need more guidance.

19 MR. JOHNSTONE: My memory must have  
20 failed me on this one, because I thought  
21 where we were headed, the dialogue we had  
22 last time we weren't going to have  
23 intervener funding for anybody. And by  
24 funding the planning correctly and making it  
25 dispositive, that their plan -- their view

1 was already going to be in the record, and  
2 in a ruling fashion such that having them,  
3 you know, on the energy side --

4 CHAIRMAN EASTMAN: Yeah.

5 MR. JOHNSTONE: Not the other stuff they  
6 might want to talk about. They are like  
7 every other funder on that side, and  
8 therefore there wasn't a need to fund their  
9 participation in the proceeding because of  
10 the status we gave it and the fact we were  
11 funding the planning, but maybe I dreamed  
12 that up.

13 MS. MCCARREN: This was where I was.

14 CHAIRMAN EASTMAN: See, I believe --  
15 okay, now here we have got this, and this is  
16 especially true, I think, on the big  
17 projects because it is a contested case  
18 basis. They have to prepare their  
19 testimony.

20 MR. JOHNSTONE: I get that.

21 CHAIRMAN EASTMAN: And they have to do  
22 all that. So it may not cost a lot of  
23 money. But I think that you see -- here's  
24 the interesting things. The current bill  
25 back statute covers -- virtually every state

1 party is eligible to get all of their costs  
2 recovered, you know, if the Department of  
3 Health -- they are all of them, so to me --

4 MR. RECCHIA: If they are parties;  
5 right?

6 CHAIRMAN EASTMAN: If they are parties.

7 MR. RECCHIA: My sense of the way that  
8 our -- the RPC piece was written in here was  
9 that the Board was able to consult with them  
10 or use them as contract to assist --  
11 contract to explain their plan. Let's just  
12 call it that. They weren't a party to the  
13 proceedings.

14 CHAIRMAN EASTMAN: Well let me -- how is  
15 this written. I don't know how they get  
16 away with not giving them their money.  
17 Okay?

18 MR. RECCHIA: Okay.

19 CHAIRMAN EASTMAN: Let me just find it.  
20 Section 20, this is amazing when I  
21 actually-- it drives me nuts too though. So  
22 this is where it says the Board or  
23 Department may authorize or retain legal  
24 counsel, stenographers, expert witnesses,  
25 advisors, temporary employees and other

1 research services. And then it has various  
2 things one, two, three. In addition to the  
3 above, in proceedings under subsection 248,  
4 (h) is that it? Of this title? Or is that  
5 something different?

6 MR. RECCHIA: (h)?

7 CHAIRMAN EASTMAN: By contract with the  
8 Regional Planning Commission of the region  
9 or regions affected by a proposed facility  
10 to assist in determining conformance with  
11 local and regional plans and to obtain the  
12 Commission's data, analysis and  
13 recommendations on the economic,  
14 environmental, historic or other impact of  
15 the proposed facility in the region. Is 20  
16 (h) -- I bet that's just nuclear.

17 MR. COSTER: It's just gas.

18 CHAIRMAN EASTMAN: Okay.

19 MR. RECCHIA: Sorry. I don't have all  
20 those memorized yet. Give me another couple  
21 of months.

22 MS. McCARREN: Just gas.

23 MR. COSTER: Just gas.

24 CHAIRMAN EASTMAN: So if we want to do  
25 it through bill back --

1 MR. RECCHIA: It's got to be a gas  
2 project.

3 MS. McCARREN: It's actually got to be a  
4 gas pipeline.

5 CHAIRMAN EASTMAN: We have got to add  
6 language.

7 MR. COSTER: In my experience trying to  
8 implement bill back in a variety of cases I  
9 think if you're going to rely on it as a  
10 primarily funding source, the whole statute  
11 needs to be revisited and be really clear  
12 what the intent is, because people interpret  
13 it different ways.

14 CHAIRMAN EASTMAN: This is why I'm  
15 saying I don't disagree with you, Billy,  
16 because as I read this statute you could be  
17 billing back everything. You, you, you guys  
18 could be billing back everything, and to the  
19 extent that another state agency becomes a  
20 statutory party or becomes a party, they  
21 could too. And interestingly enough, it's  
22 not just the Board that has the ability,  
23 it's you.

24 MR. RECCHIA: Yeah. I know. And we do.  
25 We send bills.

1           CHAIRMAN EASTMAN: No. But I mean you  
2 can send bills, not just for you, but for  
3 other people.

4           MR. RECCHIA: Do we send your bills?

5           MR. COSTER: No. I would like you to  
6 because they are not paying our bills as of  
7 right now.

8           CHAIRMAN EASTMAN: And actually note  
9 one, two, this is 30 V.S.A. section 20.

10          MS. McCARREN: Section?

11          CHAIRMAN EASTMAN: Section 20. So not  
12 to belabor this, so the issue we have to  
13 decide today is do we want them to have  
14 their costs covered at least on a cost share  
15 basis for party -- for having to be a party.

16          MR. RECCHIA: Well normally I would go  
17 with what Scott was suggesting before is his  
18 understanding of it. So I kind of like that  
19 better. It's cleaner. But I was unwilling  
20 to support the way this is, particularly on  
21 the cost sharing basis.

22                   I think that provides the right  
23 incentive where people are not just  
24 continuing the process because they have  
25 unlimited funds to torture -- particularly

1 if those funds are bill back funds, so that  
2 if they don't like the applicant, they can  
3 continue to torture the applicant not only  
4 in time but in money. So --

5 CHAIRMAN EASTMAN: Well for me it's, you  
6 know, we are asking people -- yeah. So --

7 MS. MCGINNIS: I do think that there was  
8 a couple, Gaye and somebody else, had  
9 suggested that we put a cap on it. That if  
10 it gets used more, then we need to ensure  
11 that there is a cap on it. And so I don't  
12 know if we have to come up with a number,  
13 but I think the direction that we are going  
14 is that --

15 CHAIRMAN EASTMAN: What's the purpose of  
16 the cap?

17 MS. MCGINNIS: So that it would mean --  
18 New York does it, everybody seems to do it.  
19 That if there is any bill back, that it  
20 doesn't go over three hundred thousand or  
21 whatever for a given project. It's a large  
22 amount, but that you don't get excessive  
23 with it.

24 CHAIRMAN EASTMAN: But we are doing this  
25 relative to the sole issue of conformance

1 with their Regional Plan. Right?

2 MR. RECCHIA: Yeah.

3 MR. JOHNSTONE: From an energy  
4 perspective.

5 MR. RECCHIA: Right.

6 CHAIRMAN EASTMAN: Well no, it's going  
7 to be conformance with the Regional Plan  
8 when we get there, not just the energy  
9 piece. If we stick with where we are.

10 MR. RECCHIA: Yeah.

11 CHAIRMAN EASTMAN: So that's not going  
12 to be huge.

13 MR. COSTER: Unless that's the piece  
14 that the case hinges on.

15 CHAIRMAN EASTMAN: Then they ought to be  
16 covered if they need to play.

17 MR. DOSTIS: Can I just ask a question,  
18 because I'm a little confused. So the RPCs  
19 in doing their plans, the work that they  
20 need to do, to figure out where the best  
21 sites are for generation within their  
22 purview, that work and whatever costs are  
23 incurred, that is what's being billed back.

24 CHAIRMAN EASTMAN: No. Right now we are  
25 just talking about during an application

1 process.

2 MR. DOSTIS: Okay.

3 CHAIRMAN EASTMAN: And if they are going  
4 to have to come and be -- participate on the  
5 issue of conformance with the Regional Plan  
6 how are their costs covered? Do we at least  
7 cost share it with them.

8 MR. DOSTIS: Who pays for --

9 MR. RECCHIA: For the earlier planning  
10 work, that's the check I'm writing.

11 CHAIRMAN EASTMAN: We are considering  
12 that.

13 MR. JOHNSTONE: That was the earlier  
14 check.

15 CHAIRMAN EASTMAN: We are trying to come  
16 up with a way. Is there a way.

17 MS. SYMINGTON: Louise thinks it ought  
18 to be ratepayers.

19 (Laughter).

20 MR. DOSTIS: I don't think so.

21 MS. McCARREN: I don't think so. She is  
22 giving me a hard time.

23 CHAIRMAN EASTMAN: So now we're -- all  
24 we are talking about is the resources they  
25 need to participate in the process.

1 MR. RECCHIA: To participate. So just  
2 in terms of the concept of the cap, I mean I  
3 think that there are a variety of choices we  
4 need to make if you get to intervener,  
5 additional party funding of any sort. And  
6 one is potential cap. It's potentially  
7 whether like New York does it or was it  
8 California that was the we decide after the  
9 fact if you added value, and if you did, we  
10 will pay you, and if not, thanks for coming.

11 MR. JOHNSTONE: We threw that away.

12 MR. RECCHIA: You've already decided.

13 CHAIRMAN EASTMAN: Right now we are  
14 saying this, and you're right, it's not  
15 intervener costs, it's their party costs.

16 MR. RECCHIA: I don't think this one --  
17 for the reasons you mentioned, I don't think  
18 you need a cap.

19 MS. MCGINNIS: That's fine. Move on.

20 MS. SYMINGTON: I don't remember  
21 suggesting a cap. My thought was it was a  
22 cost share of some kind though.

23 MS. MCGINNIS: That's the first line, on  
24 a cost share basis.

25 MR. JOHNSTONE: You had both. At least

1 the notes here say you did, for better or  
2 for worse. But it's fine.

3 MR. RECCHIA: Okay.

4 CHAIRMAN EASTMAN: Now the thing is, can  
5 I just say are we -- it's preapplication we  
6 talked about here too. So that means that  
7 150 day -- does that mean that 150-day  
8 public process? If we are asking -- for me  
9 that's going to depend upon how you decide  
10 -- what we decide to suggest to you for a  
11 public process, doesn't it?

12 MR. RECCHIA: In part.

13 CHAIRMAN EASTMAN: And how it gets  
14 handled.

15 MR. RECCHIA: In part. And --

16 MS. MCGINNIS: That's where the cap  
17 comes in. Is the preapplication period.

18 MR. RECCHIA: But if you want them to do  
19 work, if you really want them to do the  
20 work, then the cap becomes irrelevant  
21 because either you're not paying them for  
22 what you want them to do and you're stopping  
23 them short, or they didn't need that much,  
24 so it doesn't really matter. So I'm having  
25 trouble seeing how the cap is helpful other

1 than as a cost containment thing.

2 MR. JOHNSTONE: I think the problem  
3 where you start getting in trouble with the  
4 pre-app is it's not necessarily now about  
5 the status of the Regional Plan,  
6 dispositive, and now I don't know how you're  
7 going to start distinguishing between which  
8 party, now you're really talking intervenor  
9 funding and the process, so why are we going  
10 to fund the RPCs and not the towns at that  
11 point?

12 MR. RECCHIA: And I think the public  
13 engagement process is about the applicant  
14 going and doing stuff with the community and  
15 the -- and they should be reading the plan,  
16 and they should be presenting the plan.  
17 People can go to meetings and talk about it.  
18 Maybe this will be explored and fleshed out  
19 more when you start to think about what do  
20 you want the public engagement process to  
21 be, and that will be helpful.

22 MR. JOHNSTONE: That's helpful.

23 MS. MARKOWITZ: I know we were  
24 comfortable with the idea that intervenor  
25 funding would go to the municipality. One

1 of the things that we have seen in the  
2 process is that it's the host town plus the  
3 surrounding towns that have a lot at stake,  
4 and it may be just the small piece of what  
5 the region looks like. You know, so the  
6 Regional Plan is -- the Regional Planning  
7 Commission has an interest, but in this  
8 context it will be related ideally to the  
9 energy component of their plan, whereas the  
10 municipalities have a whole host of concerns  
11 that are neighbor related that --

12 CHAIRMAN EASTMAN: We don't have  
13 intervener funding in here anywhere. Once  
14 we make them a party.

15 MR. JOHNSTONE: I thought we took it out  
16 last time.

17 MS. MCGINNIS: We took it out.

18 MS. MARKOWITZ: I might have missed that  
19 piece of it. My apologies.

20 MR. RECCHIA: I think this is an  
21 interesting point, because I think one of  
22 the things about the public engagement  
23 process that was in some ways we were trying  
24 to find a way to reward these applicants who  
25 are dealing with these bigger projects to

1 get out front and have these communications  
2 and conversations before they file  
3 something.

4 CHAIRMAN EASTMAN: Right. And in fact  
5 that's what one of the proposals, when  
6 Annette made her proposal regarding this  
7 really encouraging a public engagement  
8 process, she suggested to us a public  
9 engagement process be required which is what  
10 we are trying to get on these projects or  
11 intervener funding.

12 MR. RECCHIA: Okay. And so right, would  
13 you want -- if you're trying to reward an  
14 applicant for doing that part, or get them  
15 to do that, one presumes that if the public  
16 engagement process isn't going well for them  
17 that they will change their project before  
18 they submit it. Or abandon their project.  
19 But they get through that process, and then  
20 they go to the formal hearings.

21 Do you really want to be kind of double  
22 dipping for them and making them have an  
23 intervener support through that process as  
24 well? We want to do something to convince  
25 them to do the public engagement process

1 well.

2 MS. MARKOWITZ: I think actually that  
3 was the discussion, and that's exactly why  
4 we dropped the intervener funding. The idea  
5 is we wanted them to spend the money up  
6 front to do the advance process. So I stand  
7 corrected there.

8 MR. JOHNSTONE: All involved said they  
9 want to be engaged in that front end  
10 process. I don't think we have had anybody  
11 say if you want to do public engagement in  
12 our town we want to get paid as a town to do  
13 public engagement. What they have said is  
14 the price of public engagement is onerous,  
15 and it can wipe us out. Maybe there is  
16 things left unsaid. That's what I heard.  
17 Which is why I didn't see the need on the  
18 front end.

19 MS. MARKOWITZ: I remember that now. I  
20 apologize.

21 CHAIRMAN EASTMAN: Now I'm unclear, are  
22 we now back to talking about intervener  
23 funding?

24 MS. MARKOWITZ: I think we are not.

25 MR. RECCHIA: No. But we are also not

1 talking about supporting anybody on the  
2 pre-app part of it either.

3 CHAIRMAN EASTMAN: Not even the Regional  
4 Planning Commissions.

5 MR. RECCHIA: That's what I'm hearing.

6 CHAIRMAN EASTMAN: So it's just the  
7 application process? Okay. The problem  
8 becomes for -- I'm just going to say this on  
9 behalf of the Regional Planning Commissions  
10 because I was at the VAPDA meeting. They do  
11 participate on a lot of other issues, not  
12 just the Regional Plan, and they participate  
13 sometimes, you know, with the Agency when  
14 you're, you know, doing whatever,  
15 Memorandums of Understanding, you know, the  
16 things as they go through. And that takes  
17 time and effort on them, and that is really  
18 a preapplication procedure or whatever.

19 So to the extent that we -- I guess I'm  
20 looking at the language in 20, still the  
21 bill back which says that in proceedings  
22 under Section 248 to assist any state Agency  
23 that needs to be there, you can bill back  
24 their time for it if the Board thinks their  
25 participation is, you know, necessary or

1 helpful. I am still wondering if the RPCs  
2 are already participating on issues not  
3 related to the plan because they know  
4 regional issues, that we shouldn't be, you  
5 know, funding them. We are funding you, and  
6 we are funding, you know, ANR. And  
7 sometimes they are -- they are the ones that  
8 know what's going on locally, especially on  
9 these big projects.

10 MR. JOHNSTONE: We still have that in  
11 here.

12 CHAIRMAN EASTMAN: Well I thought we  
13 were taking it out.

14 MR. JOHNSTONE: He said pre-app.

15 MS. MCGINNIS: He's saying take them out  
16 pre-app, but not during the application  
17 process, not as a party.

18 CHAIRMAN EASTMAN: So here's now my  
19 issue is with terms. What's the  
20 application? Because if ANR's off doing  
21 work with them and they are doing their  
22 permits in advance so they can then have  
23 standing in the process, then that's pre-  
24 app. And --

25 MR. RECCHIA: But it's pre-app

1 associated with the ANR permits which are  
2 not part of the --

3 CHAIRMAN EASTMAN: But if those permits  
4 get standing in 248, then it's pre-app for  
5 the 248 process.

6 MR. RECCHIA: So they should be billed  
7 back for ANR permits that have processed  
8 independent of the application before it  
9 appears before the Public Service Board,  
10 right? That's where this leads to.

11 CHAIRMAN EASTMAN: How does a region  
12 play then? If a region is there and we want  
13 them to participate in these things, and  
14 talking about what the local issues are, who  
15 is funding that? Is that something that I  
16 need to go over and talk to, you know, not  
17 you, but somebody else, and say we need to  
18 be sure that in their general resources that  
19 are provided by the state, that they get  
20 proper funding to pay for that time?

21 MR. JOHNSTONE: Beyond the bill back, I  
22 think so. So we are basically saying the  
23 towns -- there is general planning support  
24 and a, you know, you figure out how you then  
25 get there. And we are saying to RPCs we

1 will help you with funding to make sure the  
2 energy section can be dispositive, and then  
3 you've got to defend your work.

4 The planning entities in the state  
5 typically then have the burden to defend  
6 their plan is the way I think it's worked.  
7 Maybe it shouldn't, and I'm open to those  
8 arguments, but from an equity perspective --

9 CHAIRMAN EASTMAN: Yeah.

10 MR. RECCHIA: It feels like about the  
11 right balance for me too. Because I feel  
12 like I'm going to help the transcriber  
13 because I said the exact same words that he  
14 did. Transferred. I'm sorry.

15 I feel like it's a good -- it's a good  
16 transition because the RPCs are dealing with  
17 the towns during normal work anyway, and  
18 what we are really asking during the  
19 preapplication process is that perhaps they  
20 show up at a meeting, hear what the project  
21 is about, describe their opinion about it.  
22 Not huge. But in the event that they do  
23 have to become parties or desire to become  
24 parties, in the actual PSB proceedings --

25 CHAIRMAN EASTMAN: Okay.

1 MR. RECCHIA: -- they get some bill  
2 back.

3 CHAIRMAN EASTMAN: Right. I'm with you.  
4 I can go there.

5 MS. SYMINGTON: If they have  
6 participated with an approved plan.

7 MR. RECCHIA: With an approved plan;  
8 correct.

9 CHAIRMAN EASTMAN: I can -- okay.

10 MR. JOHNSTONE: We will get a lot of  
11 comment about this. So that's okay.

12 CHAIRMAN EASTMAN: But you know, again I  
13 would look at -- I always found RPCs, as I  
14 say, my time of counsel I always felt bad  
15 for them because, you know, and I don't know  
16 if we fixed this, but it's like RPCs are in  
17 this place, and the staffs are in place,  
18 where they are not a municipal employee,  
19 they don't have state benefits and municipal  
20 benefits. They get a little money and  
21 whatever. So they have never been able -- I  
22 can remember when Charlie Carter retired  
23 after 50 years he had no retirement  
24 virtually.

25 So I just always -- I sort of feel

1 responsible that again if the state's saying  
2 this is a process that we want done, and  
3 this is a group we want to play --

4 MR. JOHNSTONE: I'm VAPDA alumni. I  
5 know what you're talking about.

6 CHAIRMAN EASTMAN: It feels so bad. Is  
7 that enough on this session?

8 MR. DOSTIS: Can I ask another question?

9 CHAIRMAN EASTMAN: Sure.

10 MR. DOSTIS: For a private developer who  
11 is building a project, and RPCs decide they  
12 want to participate, they become a party and  
13 there is a bill back, who is actually being  
14 billed for that?

15 MR. RECCHIA: The applicant.

16 MR. DOSTIS: Who?

17 MR. RECCHIA: The applicant.

18 CHAIRMAN EASTMAN: Because this is  
19 relative to the conformance with the  
20 Regional Plan. If we get it --

21 MR. JOHNSTONE: If that happens.

22 CHAIRMAN EASTMAN: If that happens.

23 MR. RECCHIA: Though it is presented as  
24 a cost share in this current draft.

25 MR. JOHNSTONE: I would say to that

1 point if we somehow dropped that, I would  
2 want to revisit this. If we dropped the  
3 idea of a conformance with the Regional Plan  
4 as a criteria, at some point through this  
5 whole process, which I don't intend to do  
6 personally, then I would want to come back  
7 and revisit whether or not even the bill  
8 back is necessary.

9 MS. McCARREN: Right.

10 CHAIRMAN EASTMAN: I've got to tell you  
11 if we drop conformance with the Regional  
12 Plan, then I would come back and say we need  
13 more there.

14 MR. JOHNSTONE: Well maybe.

15 CHAIRMAN EASTMAN: I mean my point is  
16 that --

17 MR. RECCHIA: Could I offer that this is  
18 hypothetical, and we should keep going.

19 CHAIRMAN EASTMAN: It is, and then it  
20 isn't. I'm sorry. Again it all flows to  
21 me, and I think it's this, because we have  
22 got done -- we have had the planning, and we  
23 have had conformance with the Town Plan, so  
24 they have had some say already.

25 MR. RECCHIA: I agree.

1 CHAIRMAN EASTMAN: Okay. So --

2 MS. MCGINNIS: I'll take out  
3 preapplication as a word. I'm changing  
4 intervener to party. And I'm saying costs  
5 could be covered by bill back.

6 CHAIRMAN EASTMAN: You want it covered  
7 by bill back. So he thinks -- I think we  
8 put it out as would.

9 MS. MCGINNIS: Would. All right. So  
10 two words.

11 MS. SYMINGTON: On a cost sharing.

12 CHAIRMAN EASTMAN: Yeah, a cost sharing  
13 basis. Do we want to take a break here?

14 THE COURT REPORTER: A short one.

15 CHAIRMAN EASTMAN: Five minutes. And  
16 then we will --

17 (Recess was taken.)

18 CHAIRMAN EASTMAN: Can we come back  
19 together. The next one we are at improving  
20 the siting process for increased  
21 transparency and efficiency.

22 Oh, by the way, I did ask Linda relative  
23 to the increased opportunity for public  
24 participation, remember Chris said we  
25 probably needed to talk about eight some

1 more. I've asked her to make a comment  
2 about that, so that it's in here, that we  
3 are not done yet really figuring out what we  
4 want for that process and who we want to  
5 participate in that, that and the other  
6 thing.

7 The other thing is to make a note here  
8 that we have already talked about a new  
9 plan, you know, the RPCs, you know, the  
10 state plan, becoming more -- I've got to  
11 find the right word, more robust, and the  
12 Regional Planning Commissions' planning, and  
13 those are again increased opportunities for  
14 public participation especially at the  
15 regional planning level.

16 Okay. So improved siting process for  
17 increased transparency and efficiency. And  
18 we are proposing that the PSB hire a case  
19 manager, on line docketing manager, to  
20 provide guidance on all aspects of the  
21 siting application process. And then  
22 dealing with the, you know, potentially  
23 dealing with the Web site. And --

24 MR. JOHNSTONE: You didn't like the Web  
25 site part.

1 MS. McCARREN: No, no, I do.

2 CHAIRMAN EASTMAN: Number 10.

3 MR. JOHNSTONE: You liked the Web site  
4 part, you didn't think the case manager  
5 should do it unless I misread your note.

6 MS. McCARREN: All I said was needs to  
7 distinguish process from substance.

8 MS. MCGINNIS: Right.

9 MS. McCARREN: That's all. I think the  
10 case manager is a great idea.

11 MR. JOHNSTONE: I've got that.

12 MS. McCARREN: And the Board I am sure  
13 is painfully aware of how bad their Web site  
14 is.

15 CHAIRMAN EASTMAN: And they are working  
16 on that as Anne says, but remember I just  
17 want us to note this is something that the  
18 Board didn't want to have at the Board.

19 MR. JOHNSTONE: Right.

20 MS. McCARREN: My only thought here was  
21 I'm not sure that the case manager should  
22 also have to take on the Web site.

23 MR. JOHNSTONE: That's all I said.

24 MS. McCARREN: Sorry, sorry. Yeah,  
25 yeah.

1 MS. MCGINNIS: So should I be taking  
2 that out?

3 MR. JOHNSTONE: I would just say that  
4 the Board needs to keep their Web site up to  
5 date however they choose to do it.

6 MS. MARGOLIS: I just wanted to -- we  
7 had a discussion internally and also  
8 discussion with the Board yesterday, and I  
9 think we are all of the mindset that a case  
10 manager might sound nice in theory, but it's  
11 not actually going to accomplish what we are  
12 looking to accomplish. And the way that  
13 that can be done is, to be explicit, that  
14 Hearing Officer at the Board is allowed to  
15 have conversations about process and  
16 procedure with any party, and that would not  
17 be considered ex-parte communications but  
18 that we explicitly give them, you know,  
19 state that in our recommendations that we  
20 expect the Hearing Officer to be able to  
21 engage in those conversations with any party  
22 about anything except substance, no  
23 substance, substantive conversations.

24 MS. McCARREN: Where does someone who is  
25 contemplating a project go? Because there

1 is no Hearing Examiner. Can they go to the  
2 Department? Is there someone at the  
3 Department who can help them? Is that you?

4 MS. MARGOLIS: It depends at what point.  
5 If there is no petition that's been filed,  
6 they are free to contact the Department to  
7 find out, you know, what they need to do,  
8 what the procedures are, you know, where to  
9 access the forms, where to access prior  
10 Board orders, anything like that.

11 Once a petition is docketed then, you  
12 know, any communication -- like the  
13 Department becomes a party in the 248  
14 process, so we can not have one-on-one  
15 conversations, you know, that don't involve  
16 all of the other parties.

17 MS. McCARREN: Yeah you can.

18 MS. MARGOLIS: At that point or about.

19 CHAIRMAN EASTMAN: This is what I'm  
20 concerned about. Does the Board staff agree  
21 to that?

22 MS. MARGOLIS: The Board -- well we had  
23 a conversation with the Chairman who was  
24 also of the feeling that it would be pretty  
25 straightforward to enable the Hearing

1 Officers -- this is point that Sheila Grace  
2 has been making.

3 CHAIRMAN EASTMAN: I understand.

4 MS. MARGOLIS: In Massachusetts that  
5 they were able to -- a developer could call  
6 up the Hearing Officer, a party could call  
7 up the Hearing Officer, and the Hearing  
8 Officer could tell them here's what's going  
9 on in terms of here's where we are in the  
10 schedule. Here's the next thing that's  
11 scheduled to happen. Anything that's  
12 process and procedural. Anything that would  
13 otherwise require all of the parties to be  
14 on the phone right now that has to go  
15 through the Clerk of the Board, so that's  
16 another sort of a bottleneck.

17 MS. McCARREN: Oh really?

18 MS. MARGOLIS: So they were suggesting  
19 that perhaps there could be the opportunity  
20 for a Hearing Officer, not in every  
21 instance, but as needed, to be able to  
22 arrange a conference call with all the  
23 parties without scheduling that through one  
24 individual.

25 MR. JOHNSTONE: Can I just clarify?

1           What I think I'm hearing you say from the  
2           Department and the Board and correct me if I  
3           get this wrong, is that the responsibilities  
4           that we have been contemplating are those of  
5           a case manager, could appropriately be  
6           handled within the current system, and there  
7           would be support for having the Hearing  
8           Officers fulfill that role.

9           MS. MARGOLIS: In terms of during the  
10          inactive docket. In terms of before a  
11          petition has been filed, we see that that  
12          would be a responsibility that falls within  
13          the Department to engage with the developer  
14          and a preapplication process with potential  
15          parties, with towns, with municipalities, to  
16          be able to enable those conversations to  
17          happen, that that shouldn't be placed at the  
18          Board, and also on the back end in terms of  
19          compliance with Board orders, that that  
20          would fall into the Department as well.

21          MR. JOHNSTONE: So that would require us  
22          -- just to follow that through, if you're  
23          all right with that, would require us to  
24          rewrite this to essentially tag the  
25          functions appropriately to the Hearing

1 Officers, and the Department and during and  
2 before as you've described and after.

3 CHAIRMAN EASTMAN: And after.

4 MR. JOHNSTONE: In lieu of a case  
5 manager.

6 MS. MARGOLIS: Correct.

7 MR. JOHNSTONE: But the functions were  
8 after. Rather than just hope it happens, I  
9 think we would still want to define what we  
10 see as missing in the process and what we  
11 have heard the solutions are. Is that that  
12 would be what I think we would have to  
13 change because I know Linda wants to know  
14 what do we need to do.

15 CHAIRMAN EASTMAN: And I'm concerned --  
16 I thought that -- I just want to say this.  
17 That I thought that, and maybe because of  
18 our time lines or what we put in over here  
19 with the tiers suggesting that prehearing  
20 conferences be within a certain time or  
21 something, that that's addressing the issue  
22 of actually, for me, you know, managing the  
23 process. Keeping everybody moving forward,  
24 you know, keeping -- I mean who is doing  
25 that? Is the Hearing --

1 MS. MARGOLIS: Well I think the thought  
2 is between having Hearing Officers  
3 accessible to, you know, having their phone  
4 number out there, you know for the parties  
5 to call to figure out where things are in  
6 the process, having the on line case  
7 management system that's currently being  
8 worked upon, there will be web access to,  
9 you know, different parts of different  
10 filings. And then, you know, having -- what  
11 was the other part?

12 Let's see. So having the Web site,  
13 having -- Chris can help me.

14 MS. MCGINNIS: And the time lines.

15 MS. MARGOLIS: The time lines would  
16 drive -- everyone would know what the  
17 expectations are if they couldn't get ahold  
18 of, you know, the Hearing Officer, for  
19 instance. I think Chris we were just  
20 talking about --

21 MR. RECCHIA: Case manager.

22 MS. MARGOLIS: -- case manager and the  
23 conversation internally, and then we had  
24 with --

25 MR. RECCHIA: The Board.

1 MS. MARGOLIS: -- the Board, just about  
2 how those could be managed in a way on the  
3 front end and the back end at the  
4 Department, but with Hearing Officer access  
5 during the active docket.

6 MS. McCARREN: The only thing I was  
7 going to pick on you about was when a case  
8 is in front of the Board, the Department's a  
9 party, there are no ex-parte restrictions,  
10 and I can call you up. I can call him up  
11 and say, you know, you have a terrible  
12 position in that case.

13 MR. RECCHIA: That's correct. Yeah.

14 MS. MARGOLIS: I think I was referring  
15 to the Board's --

16 MS. McCARREN: Absolutely.

17 MS. MARGOLIS: -- having to have all the  
18 parties together to have a conversation.

19 MS. McCARREN: Absolutely.

20 MR. JOHNSTONE: Can I ask a resource  
21 question? So we were contemplating, happy  
22 if it's not necessary, but just so we get  
23 this, we were contemplating that the adding  
24 the case manager function would cost  
25 something. So when you talked about this

1 did you talk about needing to add a Hearing  
2 Officer or a resource at the Department or  
3 did you feel like -- did you and the Board  
4 reps feel like there is adequate resource in  
5 the current team?

6 MR. RECCHIA: Rock, paper, scissors. So  
7 it started with the Board saying they  
8 thought the case manager was a terrible  
9 idea.

10 MR. JOHNSTONE: We know that part.  
11 Let's go by that.

12 MR. RECCHIA: Then we started talking  
13 about what the Hearing Officers could do in  
14 terms of actually being able to answer  
15 people's questions directly administratively  
16 and procedural and not have -- not  
17 substance. And not have it be ex-parte  
18 communications. The more they thought about  
19 how frequently people might be calling them  
20 to ask them -- ask the Hearing Officers what  
21 they could be doing, and what the timing  
22 would be, and when the next hearing is, and  
23 what's the next step in this process, Jim  
24 Volz offered that maybe the case manager is  
25 not such a bad idea. So we ended up there.

1 And it would be an extra person, extra  
2 funding to do that piece.

3 MR. JOHNSTONE: So now we are back to a  
4 case manager. Now I'm really confused.

5 MS. MARGOLIS: It seemed like there was  
6 --

7 MR. RECCHIA: At the end of the day it  
8 could be either way.

9 MR. JOHNSTONE: It could be either way.  
10 He's okay either way. I'm confused.

11 MS. MCGINNIS: I am too.

12 CHAIRMAN EASTMAN: I am too because I'm  
13 also trying to look at what we really wanted  
14 to accomplish. Tell me now --

15 MR. RECCHIA: Okay. So the suggestion  
16 would be that at the front end before  
17 anything has been filed with the Board I  
18 think it's really hard to have a case  
19 manager reach into the front end process;  
20 right?

21 CHAIRMAN EASTMAN: I agree that's got to  
22 be the Department.

23 MR. RECCHIA: We are thinking that's the  
24 Department. That's a facilitator job type  
25 thing up front. Similarly at the back end

1 post-CPG monitoring, we feel like that's  
2 similar type thing that needs to be us as  
3 well. And if we see a problem, we bring it  
4 back to the Board and say we have got to fix  
5 this.

6 In the time when somebody applies for a  
7 CPG for the -- from the notice on, then you  
8 could have this internal Public Service  
9 Board case manager, or you could have the  
10 Hearing Officers change in culture a little  
11 bit. Have the Hearing Officers be able to  
12 deal with the procedural things without  
13 having to work through the Clerk which is  
14 what the current practice is.

15 CHAIRMAN EASTMAN: So here's my concern,  
16 and I welcome -- I'm glad you had the  
17 conversation with the Board, you know, about  
18 this, because this isn't -- I'm going to  
19 tell one more story, and I wish Deb were  
20 here.

21 Prior to my tenure as Secretary of the  
22 Agency of Natural Resources we had wardens  
23 in the Department of Fish and Wildlife.  
24 Okay. And wardens --

25 MR. RECCHIA: They still have those.

1                   CHAIRMAN EASTMAN: I understand, but  
2 listen to this. But wardens, I will tell  
3 you why we still have wardens. Wardens went  
4 through the Police Academy which they still  
5 do. Wardens carry guns, wardens are  
6 actually authorized to enforce any law in  
7 the State of Vermont, not just Fish and  
8 Wildlife violations, and they usually work  
9 alone. Notice I'm Secretary. That's scary.

10                   But a prior Secretary decided that we  
11 wanted to switch this, and we didn't want  
12 wardens, we wanted conservation officers.  
13 So through language they thought they could  
14 change culture. And I know we have talked  
15 about, you know, addressing culture. I  
16 think it's very difficult to change culture  
17 through language. And I look at Anne  
18 Ingersol's, the Wilderness Society, I think  
19 we are here with the Public Service Board,  
20 you know, right now we are sticking with the  
21 three-person Public Service Board. I think  
22 we need somebody at the Board who comes from  
23 a different background.

24                   I mean I think the Hearing Officers do a  
25 great job, and I would like them to talk to

1 people about things. But I still think I  
2 understand it, and we have got somebody else  
3 here that, you know, there's staff at the  
4 Public Service Board that has various  
5 expertise; there is economists, there is  
6 whatever, and so if it isn't a case manager  
7 it's like somebody who has some, you know,  
8 just generic background expertise on, you  
9 know, siting issues or, you know, public  
10 process. That's all I'm -- I'm not thinking  
11 about a lot here, but that's what I was also  
12 hoping to get out of a case manager is  
13 somebody who was looking broadly at what the  
14 issues are and trying to get a handle on  
15 everything, not just what was happening at  
16 the Public Service Board, but all the  
17 related, you know, ANR documents. And it is  
18 -- it's like herding sheep. So I'm still --

19 MS. SYMINGTON: It's also someone who  
20 can speak plain English.

21 CHAIRMAN EASTMAN: And so I respect --

22 MS. FRIED: Someone to talk to.

23 CHAIRMAN EASTMAN: I respect what the  
24 Board does and the Board's staff and  
25 whatever, but I seriously think that we

1 might -- I'm still at a suggestion of  
2 putting somebody -- I agree -- for in those  
3 times, and yes, I think you need to be out  
4 there in the front and in the rear and  
5 that's not the role of the Board.

6 But I think that here's the other thing,  
7 here's the other thing. Yes, while it  
8 matters before the Board two parties can  
9 talk to each other, but if those two parties  
10 aren't talking to all the other parties, and  
11 --

12 MR. RECCHIA: Communication cannot be --  
13 right. And also I want to respect the fact  
14 that once we are in the Board proceedings  
15 and the Department is taking a position pro,  
16 con, whatever, that we are not the right  
17 vehicle to help other people who want to  
18 know, well how is the best way to intervene  
19 in this or affect it. So I want to respect  
20 that as well. And that's why I think it  
21 belongs at the Board.

22 CHAIRMAN EASTMAN: Yeah. So I think for  
23 that, and I respect because I do agree that,  
24 you know, that Hearing Officers can talk  
25 about process, and I remember my old young

1 days when I was doing my first cable cases,  
2 it was me and the Hearing Officer, and they  
3 were very helpful and I learned a lot. So I  
4 know they can do that, and I still encourage  
5 that that change, but I still think somebody  
6 on these siting issues would be really  
7 useful.

8 MS. MCGINNIS: It sounds like the Board  
9 would be okay with that. What if it was a  
10 combination of the two? Because that would  
11 deal with the culture issue that Gaye has  
12 brought up.

13 MR. RECCHIA: I think we need to do  
14 both.

15 MS. MCGINNIS: You have a case manager  
16 and require your Hearing Officers to  
17 actually open up a little bit.

18 MS. MCCARREN: And you have a Web site  
19 where the lay public can go and understand  
20 what's going on with the case.

21 MS. MCGINNIS: Exactly.

22 MR. JOHNSTONE: I think we all agree.

23 CHAIRMAN EASTMAN: So thanks for the  
24 conversation. I really -- great.

25 MS. SYMINGTON: You have some people

1 behind you.

2 MR. FRIED: I just want to say from my  
3 meager 13 months of experience with the  
4 Public Service Board, this case manager job  
5 description here, it's only two sentences  
6 long, is very exciting to me. Having  
7 somebody that can talk to not just the  
8 attorneys but the public and pull all of the  
9 aspects together and knows at least in  
10 general all the aspects would be a huge  
11 improvement for the Public Service Board.

12 And I also strongly feel it's a cultural  
13 issue and you don't just massage it, but you  
14 have to make that change. It's a position  
15 that's sorely needed.

16 CHAIRMAN EASTMAN: Great. And thanks  
17 for everybody's work on that. Okay. So we  
18 are all -- we all agree.

19 MR. RECCHIA: I should warn you that  
20 maybe I should leave now that we have all  
21 agreed on something, but I will have to  
22 leave in like 15 minutes; 10, 15 minutes.

23 CHAIRMAN EASTMAN: So on approving the  
24 siting process, here's where we talk about  
25 checklist for the tiers.

1 MS. MCGINNIS: Everybody agreed.

2 MR. COSTER: So again I just want to  
3 reiterate we want -- we are fine in concept,  
4 but we want to make sure the information  
5 that's provided is sufficient for us to do  
6 the work we need to do at the time of  
7 filing.

8 CHAIRMAN EASTMAN: Your Biofinder idea  
9 was great.

10 MR. RECCHIA: When you get to the point  
11 where you have the third and fourth tier,  
12 the more complicated projects, we think that  
13 these -- we need to be able to distinguish  
14 between administrative and technically --  
15 technical completion. And I think that I  
16 would support the idea that the applications  
17 have to be technically complete prior to the  
18 commencement of the proceedings.

19 CHAIRMAN EASTMAN: Is that for all  
20 tiers?

21 MR. RECCHIA: No. I'm thinking  
22 particularly tier three and four. Four most  
23 especially.

24 CHAIRMAN EASTMAN: Yeah. Okay. So we  
25 want another --

1 MR. RECCHIA: Billy, do you agree with  
2 that? I know you're working on six things  
3 at once.

4 MR. COSTER: I'm sorry. What were you  
5 asking?

6 MR. RECCHIA: So technical -- I want to  
7 make sure your applications that you get  
8 before we start the clock at the Public  
9 Service Board for at least tier four are  
10 technically complete.

11 MR. COSTER: The ANR permit  
12 applications?

13 MR. RECCHIA: Yeah. In addition to  
14 administratively complete.

15 MR. COSTER: Yeah.

16 MR. RECCHIA: And technically complete,  
17 as you know, can change depending on --

18 CHAIRMAN EASTMAN: Are we talking about  
19 11 or 12?

20 MR. RECCHIA: I was talking about 11.  
21 Should I be talking about 12? I should be  
22 talking about 12. Sorry. I'll reserve my  
23 comment until we get to 12. I apologize.

24 MR. JOHNSTONE: With that, we will  
25 probably be at 12.

1 CHAIRMAN EASTMAN: So we are all --

2 MR. RECCHIA: In the checklist one.

3 Sorry.

4 CHAIRMAN EASTMAN: That's to establish  
5 an application is deemed complete, but  
6 you're saying there is administrative  
7 completeness and there is technical  
8 completeness. You're thinking that's more  
9 administrative completeness.

10 MR. COSTER: There is two things going  
11 on here. 11 talks about what information an  
12 applicant needs to provide to the Public  
13 Service Board at the different tiers for  
14 their application to start moving forward.  
15 And there is -- we can determine what those  
16 tests are.

17 12 looks at the concurrent review of the  
18 Certificate of Public Good and ANR permits  
19 and whether the ANR permits are  
20 administratively or technically complete,  
21 and at what point of the CPG process that's  
22 necessary.

23 MR. RECCHIA: Okay.

24 MR. COSTER: So I think we are good on  
25 11. That needs to be fleshed out a bit, but

1 conceptually it makes sense. 12 is a more  
2 substantive discussion that you were just  
3 getting into, Chris.

4 MR. RECCHIA: Okay.

5 CHAIRMAN EASTMAN: Okay. So give me 12  
6 then.

7 MR. RECCHIA: Okay. 12 we are going to  
8 file the necessary ANR permits with ANR  
9 prior to or concurrent with the Public  
10 Service Board process. It's important to me  
11 that both of these be technically complete  
12 applications, the one going to the Public  
13 Service Board, and the various applications  
14 that go to ANR.

15 I'm trying to get us away from where a  
16 project changes so dramatically not because  
17 of changes that are normal through the  
18 process, but because the applicant hasn't  
19 actually done the work necessary to support  
20 the project fully. So I think these in  
21 number 12, I feel like those ANR permits  
22 need to be technically complete applications  
23 before the Agency.

24 MR. COSTER: The comment that we had put  
25 in was like an additional sentence that said

1 for tier two and three docket discovery  
2 shall not begin until the associated ANR  
3 permit applications were deemed technically  
4 complete.

5 MR. RECCHIA: So now are you talking  
6 tier three and four?

7 MR. COSTER: Yeah. And Judith, feel  
8 free to jump in.

9 MS. DILLON: I guess I've just seen the  
10 new revision to tier two to tier three.  
11 Some of the 2.2 megawatt projects may  
12 necessitate our permits as well, or is that  
13 a default, if it requires one of our permits  
14 it doesn't fit within the tier two?

15 MS. SYMINGTON: We are not doing that.

16 MR. JOHNSTONE: Some of the tier ones --

17 MS. DILLON: I would recommend even for  
18 tier two, for the larger projects, that  
19 discovery would not commence until our  
20 permits were deemed technically complete.

21 CHAIRMAN EASTMAN: Well in tier two, the  
22 way tier two is working, it's not much  
23 discovery.

24 MR. JOHNSTONE: There is virtually none  
25 unless somebody raises objection.

1 MS. SYMINGTON: That was one as long as  
2 you submitted the map showing --

3 MR. RECCHIA: Tier one was Biofinder.

4 MS. DILLON: If it stays in tier two,  
5 there won't be. If it's kicked out tier  
6 two, then it's tier three.

7 CHAIRMAN EASTMAN: Yeah. You know we  
8 can put this for now, and as we actually see  
9 what the mapping looks like -- so what we  
10 are now deciding to say here right, as I  
11 understand this, is that we are going to be  
12 -- have sort of a concurrent process.

13 MR. COSTER: At the beginning.

14 CHAIRMAN EASTMAN: At the beginning.  
15 Okay. Is that what we like?

16 MS. MARKOWITZ: Yes.

17 MS. SYMINGTON: And will the applicants  
18 have access to information about where  
19 things stand? Anybody for that matter have  
20 access to information about where things  
21 stand with the ANR permit process, and will  
22 that be a something that either the case  
23 manager helps them get or the Web site helps  
24 them understand? Because the information  
25 getting fed in --

1           CHAIRMAN EASTMAN: I would think that --  
2 seriously I would think that this docket  
3 system, you know, once you're there, that if  
4 these permits are required for this process  
5 that what's -- you know, the status of those  
6 should be on this Web site. I mean people  
7 should be able to go to one place.

8           MS. MARKOWITZ: And see it all.

9           CHAIRMAN EASTMAN: And see it all, and  
10 what's going on with every permit.

11          MS. MARKOWITZ: I think that makes some  
12 good sense. We are working on our ANR Web  
13 site, and ultimately we will have, you know,  
14 all the permits accessible on line easily,  
15 and it may be that what will happen is we  
16 will link from one site to the other. So  
17 they are in the middle of building the  
18 various sites.

19          MS. MCGINNIS: But will you have where a  
20 docket is in that process? Is it an on line  
21 docket? That's her question, an on line  
22 docket manager saying --

23          MS. MARKOWITZ: It is not.

24          MS. DILLON: A permit number management  
25 system and in various divisions of DEC are

1 at various levels of advancement with  
2 respect to that. But right now it doesn't  
3 correspond to the docket numbering system.  
4 It's project based and there is a separate  
5 permit number assigned.

6 MS. MARKOWITZ: But it could be that  
7 that permit number is on the PSB site.

8 MS. SYMINGTON: Somehow there should be  
9 cross referencing so somebody can go to one  
10 place and get to it.

11 CHAIRMAN EASTMAN: And then find out  
12 everything and then -- yeah.

13 MS. MARKOWITZ: They can push the button  
14 and come to ours. We will work on that.

15 MR. RECCHIA: We can do that if we have  
16 an electronic docket management system. My  
17 most recent conversation, the reason I was  
18 late this morning, was meeting with Senate  
19 Appropriations people who are revisiting all  
20 the electronic thing and may very well stop  
21 that project in its tracks. And we are  
22 going to have to visit that if that happens,  
23 because that's a really critical piece to  
24 becoming transparent for people.

25 MS. MCGINNIS: Absolutely.

1                   CHAIRMAN EASTMAN:  And I think that  
2                   because we are now again, as I say, for me  
3                   part of this issue is we are not going to a  
4                   siting board, right?

5                   MR. RECCHIA:  Right.

6                   CHAIRMAN EASTMAN:  But we are trying to  
7                   have a siting process.  So in lieu of, you  
8                   know, so in lieu of changing all that, in  
9                   this one place I think people need to be  
10                  able to find out everything that's going on  
11                  or is required to go on relative to this  
12                  proposal.  Okay.

13                  MS. MCGINNIS:  I also want to make sure  
14                  that we heard Gaye's question because she is  
15                  talking about what happens in the  
16                  preapplication period.  If a person has a  
17                  question on where are my various things, do  
18                  they still have to go to ANR for the ANR  
19                  stuff, to the Department for the Department  
20                  stuff, or is that facilitator in the  
21                  Department going to be able to tell them  
22                  actually this is where you are?  I mean that  
23                  was the notion of the case manager being  
24                  cradle to grave, being able to tell  
25                  everybody from the beginning where they are,

1 so I'm wondering where that happens.

2 MR. RECCHIA: I don't know. I mean if  
3 it's in the preapplication process and  
4 permit applications haven't been filed yet,  
5 how would we know what permits are required  
6 and who and when they are going to be filed?

7 CHAIRMAN EASTMAN: I think this will go  
8 to some of the things we have been talking  
9 about relative to ANR. And Billy, talking  
10 about even them going out and being sure  
11 they are out to communities earlier and all  
12 of that. So I don't disagree. I mean it  
13 may -- there is going to have to be some, as  
14 you've accepted the responsibility, some  
15 closer working relationship in the earlier  
16 stages between ANR and DPS, and I believe  
17 which -- I know -- I don't know, I've got to  
18 be sure I get to this, because it's the  
19 thought I had, those other state agencies  
20 get notice, but they are not specifically  
21 statutory parties according to the statute  
22 currently. Although I know in the old days  
23 they were treated like that. Well I just  
24 want to be sure that the Department of  
25 Health, you know, the Agency of Agriculture,

1 but to the -- you know, that those parties,  
2 you know, those agencies become parties and  
3 play or you've got to be --

4 MR. RECCHIA: No. We have to start --  
5 we have got to do a better job of reaching  
6 out to those other agencies and getting  
7 comments that they might have on this. We  
8 have an Act 250 process that -- I mean the  
9 Department used to participate in those.  
10 And we haven't been, but we are going to  
11 restart that. And participate in reviewing  
12 Act 250 cases that have energy implications.

13 CHAIRMAN EASTMAN: Thank you.

14 MR. RECCHIA: And we want the reciprocal  
15 help, so I think the Act 250 club and the  
16 Public Service Board Act 248 club might be  
17 reestablished.

18 MR. JOHNSTONE: So I'm really supportive  
19 of the idea of getting technically complete  
20 in the ways we have talked about. One  
21 potential unintended consequence, I think  
22 for the new tier four I don't think there is  
23 any unintended consequences. For tier three  
24 there potentially is.

25 One of the things we have heard from the

1 public pretty routinely is there is lots of  
2 activity going on about a project that looks  
3 like it's all behind the cloak of secrecy,  
4 and all of a sudden a fully engaged project  
5 emerges. And we are not demanding a formal  
6 public involvement process for tier three.  
7 And we are only requiring 60-days' notice,  
8 and to get the technically complete there is  
9 going to be field work and a lot of activity  
10 going on for some ANR activity long before  
11 anybody has any idea something is going on  
12 with their town with a developer that  
13 chooses to remain anonymous.

14 And so we could end up with an  
15 unintended consequence of tier three looking  
16 more covert, which is not what anybody at  
17 this table is suggesting. But I just want  
18 to notice that.

19 CHAIRMAN EASTMAN: We are talking here  
20 for tier three about people are making a  
21 good faith effort to hold meetings with the  
22 Select Board and all of that.

23 MR. COSTER: They are going to need to  
24 do their work for their Certificate of  
25 Public Good regardless.

1 MR. JOHNSTONE: I know. I'm just saying  
2 they are supposed to do that within that 60-  
3 day window, I think.

4 CHAIRMAN EASTMAN: No. That's -- that  
5 is prior to filing.

6 MR. JOHNSTONE: The 60 days is when you  
7 need to let them know you may be filing.

8 CHAIRMAN EASTMAN: No, the 60 days is  
9 when you file, 60 days in advance.

10 MR. JOHNSTONE: Maybe I misunderstand.  
11 I'm sorry.

12 MR. RECCHIA: I think you're right,  
13 Scott.

14 MR. JOHNSTONE: Prior to the petition is  
15 when you have to let everybody know, and  
16 you're got to be working with the town and  
17 let them know and try to have the process  
18 with them in that 60-day window. But they  
19 will have already -- if we are going to be  
20 technically complete by the time the  
21 proceedings begin --

22 CHAIRMAN EASTMAN: Wait a minute. But  
23 the developers as part of their application  
24 --

25 MR. JOHNSTONE: Maybe I'm not getting

1 this. I'm sorry.

2 CHAIRMAN EASTMAN: Within 60 days.

3 MR. COSTER: Can I try? The tier three

4 --

5 CHAIRMAN EASTMAN: I think this is  
6 written wrong.

7 MR. COSTER: -- it's just giving a  
8 longer, formal notice period.

9 MR. JOHNSTONE: No, I get that.

10 MR. COSTER: For projects of that scale  
11 the anticipation is they are still going to  
12 be doing like up to a year's worth of  
13 studies before that 60 days which isn't  
14 going to change.

15 MR. JOHNSTONE: My point is if you have  
16 150-day period where you're working with  
17 that community, they are going to know  
18 earlier on that something is going on in  
19 their town. And we are thinking tier three  
20 is less onerous and more inclusive in some  
21 ways because of the size, and it may end up  
22 feeling more covert and onerous. And that  
23 isn't what any of us have been talking  
24 about.

25 CHAIRMAN EASTMAN: Wait a minute. I've

1 got to get this. I thought that the filing  
2 at 60 days prior --

3 MR. RECCHIA: It's 60 days prior to  
4 filing.

5 CHAIRMAN EASTMAN: Prior to filing.

6 MR. RECCHIA: You give notice to all the  
7 communities, and you give notice to all the  
8 abutters, the towns, all those people that  
9 you mentioned.

10 CHAIRMAN EASTMAN: But their notice --

11 MS. DILLON: It's not a complete  
12 application and it's not as comprehensive as  
13 the petition itself.

14 MR. RECCHIA: It's not the application  
15 that gets noticed. You're noticing that  
16 you're going to file for the application.  
17 But to get to Scott's point and kind of  
18 Billy is into this, I think what we are  
19 saying is for three or four, the reality is  
20 that --

21 MR. JOHNSTONE: They have been started.

22 MR. RECCHIA: They have been started  
23 long before that if they are going to have a  
24 complete application to submit on the  
25 schedule that they are talking about.

1 CHAIRMAN EASTMAN: My reality is how do  
2 people know that?

3 MR. RECCHIA: If a project has -- if an  
4 ANR permit is out to public notice, they  
5 will see that.

6 MR. JOHNSTONE: They will be working  
7 quietly with them.

8 MR. RECCHIA: Okay. Well that's what  
9 the 60 days and the 150 days are for. And  
10 if you want more time --

11 MR. JOHNSTONE: No. I hear you.

12 MR. RECCHIA: For those size projects --

13 CHAIRMAN EASTMAN: I guess I wish --  
14 this is the thing too about -- sorry, I'm  
15 going to go back to what I think. Your  
16 responsibility is from a Department's  
17 perspective, you know, to represent the  
18 public.

19 MR. RECCHIA: Yup.

20 CHAIRMAN EASTMAN: Which is as soon as  
21 you know there is something active going on,  
22 you know, in a community, I mean I think you  
23 know, maybe ANR should be --

24 MR. LEWENDOWSKI: Thank you.

25 MR. COSTER: We said we are willing to

1 do that. I think one of the things we  
2 offered early on is there had to be a 30-day  
3 notice to towns before the project had site  
4 control over a property. I think we have  
5 been on board for this very early notice.

6 CHAIRMAN EASTMAN: Right.

7 MR. COSTER: And that time has been  
8 contracted through this process by you all.  
9 So however you want to do it, we are willing  
10 to do it.

11 MR. JOHNSTONE: So the notion of site  
12 control, some sort of public notice which  
13 could be even more informal, less onerous,  
14 kind of a site control notice could be  
15 something we might explore in this.

16 CHAIRMAN EASTMAN: And my concern is I'm  
17 trying to figure out, and I'm just trying to  
18 figure out because I think that you're  
19 willing to do it, Billy, but I also think  
20 the easiest way for a community is to go  
21 through the Department of Public Service,  
22 because the Department of Public Service is  
23 who people know are going to be dealing with  
24 these siting issues. So it's more like it's  
25 like there has got to be something else here

1 on some Web site so that people can see,  
2 yes, somebody has actually started -- has  
3 made an official, you know, request of,  
4 whenever it's public. And it should be  
5 public early.

6 MR. RECCHIA: But at what stage when  
7 somebody comes in and talks to me about  
8 thinking about doing a transmission corridor  
9 upgrade.

10 CHAIRMAN EASTMAN: No. I'm thinking  
11 when somebody is already talking officially  
12 to ANR about one of their permits, the  
13 wetland thing two years in advance, okay,  
14 then I think -- and it's related to a  
15 possible siting issue, I think that's public  
16 information.

17 MS. MARKOWITZ: Well certainly if it's  
18 in writing it is. You know, anything we  
19 have that's in writing is public record.  
20 And part of it -- what I'm trying to picture  
21 is, you know, when something actually  
22 begins. You know, we encourage applicants  
23 for any kind of development to come and  
24 learn about what the rules are, to get more  
25 information, if it's a big development, no

1 matter what kind of development it is. That  
2 they come and talk to our scientists, our  
3 biologists to see if it's a bad idea there,  
4 or if it could be a go. We do a lot of  
5 trying not to commit either way but give  
6 information, because until we actually get  
7 on the land, we don't know what all of the  
8 factors are there. And so the question is  
9 when is that -- when is the -- what activity  
10 should be the activity that says okay now  
11 you're doing something.

12 MS. MCGINNIS: Exactly. That's hard.

13 (Mr. Recchia left the hearing.)

14 MS. MARKOWITZ: And the reason why the  
15 team thought site control was the way to do  
16 it is that's when there has actually been an  
17 investment of some kind or some sort of  
18 affirmative action, that's a commitment. We  
19 want to encourage people. What we don't  
20 want to do is set up a system that says, you  
21 know, whenever you come to talk to us all of  
22 a sudden we are putting it on a big bulletin  
23 board so all of a sudden you're going to get  
24 lots of public comments before you even know  
25 what you want to do. Right? Before you're

1 even -- you even thought it through.

2 Because we want people to come and get  
3 information so when they do get site control  
4 they are doing it to the right site.

5 CHAIRMAN EASTMAN: So though, I mean I'm  
6 not disagreeing that you didn't, you know,  
7 agree, it's just how do people find this  
8 out. You know, when it is, and you know,  
9 when you are at the official, you know,  
10 you've started these real conversations with  
11 people about these other permits.

12 And for me, if I'm a normal human being,  
13 I'm not thinking about the environmental --  
14 I'm not normal, I'm the raging, whatever,  
15 maniac, the diva, I mean I think it's a  
16 Public Service Department -- I mean I think  
17 they are the sort of way out for --

18 MR. COSTER: They should be talking to  
19 DPS when they are talking to us. When they  
20 are serious enough to start pursuing real  
21 natural resource inventory, I presume they  
22 are talking to you guys.

23 CHAIRMAN EASTMAN: Not necessarily.  
24 That's why I think --

25 MS. MARGOLIS: They don't need anything

1 from us.

2 CHAIRMAN EASTMAN: I think ANR is doing  
3 -- as soon as you think, you know, they have  
4 started, I think ANR should be telling DPS,  
5 oh, we have got a potential here. And then  
6 there is some responsibility of the  
7 Department to say how much involvement, you  
8 know, we represent the public. So how much  
9 engagement, how much conversation locally  
10 should we be having.

11 MR. COSTER: We would be happy to give  
12 them the heads up and let them determine at  
13 what point it's really enough that they have  
14 to do the notice.

15 CHAIRMAN EASTMAN: And it might be, you  
16 know, and again it might be that your things  
17 become, you know, you decide you want to go  
18 out, and have you talked about going out  
19 earlier for conversations in communities  
20 about certain issues as well.

21 MR. COSTER: Yeah.

22 CHAIRMAN EASTMAN: I mean here's --

23 MS. MCGINNIS: I'm still trying to  
24 understand at what stage and what objective  
25 trigger does ANR have to know when to tell

1 the Department? Is it at -- is that what we  
2 are saying? At site control?

3 CHAIRMAN EASTMAN: Here's my concern.  
4 For me I think it's -- it can be an either  
5 or. The earliest thing does somebody have  
6 to have site control when they file for a  
7 wetlands permit?

8 MR. COSTER: And again people aren't  
9 filing their permit applications.

10 MS. MARKOWITZ: They are filing for  
11 permits.

12 MR. COSTER: The earliest contact we get  
13 from developers are for large projects where  
14 they need to do -- to do multi-year seasonal  
15 surveys of wildlife. So they need to be in  
16 the field for two springs to get bird or bat  
17 data. So they need to do that two years  
18 before they then file their application.  
19 That's to inform the CPG process, not our  
20 ANR permits.

21 CHAIRMAN EASTMAN: And I say when you're  
22 authorizing a study that's public, and that  
23 I think that the public ought to know that  
24 in case they want to say, oh, you know, what  
25 are the parameters of this study? You know,

1 who is doing it? I think that that's  
2 something the public should know about. No?

3 MS. DILLON: But there is not always a  
4 memorialization of that conversation. It  
5 could be a developer comes in, meets with  
6 some wetland folks or some Fish & Wildlife  
7 folks and say we are looking to explore a  
8 project in this area, what types of studies  
9 would you like us to do? And our staff  
10 would inform them as to the studies that  
11 they would like to do. Thank you very much,  
12 and they go out and they do that.

13 There is no -- there is not a  
14 memorialization, there is no decision on the  
15 part of the Agency that we are reducing to  
16 writing that we could then put on a Web site  
17 to alert the public that that's going on.

18 MR. JOHNSTONE: They don't even  
19 necessarily know the site.

20 MS. DILLON: We don't have all the  
21 parameters of the site, exactly.

22 CHAIRMAN EASTMAN: So that's  
23 interesting. So you don't participate with  
24 determining the parameters of the study.

25 MR. COSTER: It all depends on the

1 needs. Often developers using consultants  
2 who have done this work time and time again  
3 they know what is typically required. So  
4 sometimes we do, sometimes we don't.

5 CHAIRMAN EASTMAN: That's interesting  
6 because now I say, jeez, you know, the whole  
7 issue is the study; right? And please just  
8 really brief because I really need -- we  
9 need to get through this today, and we are  
10 not committing, but Kim, you had your --

11 MR. FRIED: We just lived through that  
12 experience as Billy knows, and it's if you  
13 want to dial in the public, okay, these are  
14 public dollars that are paying for, I don't  
15 know what you want to call it, consultation  
16 or whatever, but boy when the public finds  
17 out there is significant dollars or time  
18 being invested in projects that do become  
19 active, and you find out about it three,  
20 four, six months afterwards, I think that  
21 you need to figure out what that point is is  
22 when it's -- when -- whether it's how many  
23 dollars or how many people are involved.  
24 But the public needs to hear about it early,  
25 and we shouldn't have to hire an attorney

1 and look for documents and search around.

2 CHAIRMAN EASTMAN: Well my issue is once  
3 an application is filed and people start the  
4 process, that's one thing. Here I'm saying  
5 this is a conversation, and there could be  
6 studies being done, but who knows. You had  
7 a comment.

8 MR. PUGHE: Just in terms of the study  
9 you're doing on the site, you're doing the  
10 studies on the site to find out whether it's  
11 something you're going to pursue. You might  
12 go up there, you find out there is a whole  
13 bunch of lady slippers or something. You  
14 can't do it. You've established that the  
15 site you've looked at is no good. You're  
16 doing those studies before you do -- it's a  
17 really preliminary thing.

18 CHAIRMAN EASTMAN: Really really  
19 quickly.

20 MR. LEWENDOWSKI: Very quick. By the  
21 same token, us residents, we might also be  
22 making plans for the future that could be  
23 well impacted by anything that they might  
24 come through with also. So you know, we  
25 could be spending our money on a lot of, you

1 know, whatever we are looking for.

2 CHAIRMAN EASTMAN: Okay. And --

3 MS. ISELIN: Well we know that the large  
4 developers often come into an area, you  
5 know, two years or so before they make any  
6 public noise about applying for a permit,  
7 and in the case of Newark, I'm not sure  
8 exactly what date that the 2,000 or 2,600  
9 acres of land was leased for the Hawk Rock  
10 project, but I think the public deserves to  
11 know at that point, because if the public  
12 doesn't like the project, the developer has  
13 made a significant investment for 50 years.  
14 Kathleen Iselin, I-S-E-L-I-N.

15 CHAIRMAN EASTMAN: Okay. So let's -- we  
16 are not going to resolve the timing. I  
17 think we need to come up with something on  
18 this, so that I've got to look back at what  
19 you suggested before, Billy.

20 MR. COSTER: I think we are happy -- we  
21 are as transparent as we can on this. If  
22 people call and ask me have you been talking  
23 to a developer, I would tell them what we  
24 have been doing.

25 MR. JOHNSTONE: Can I just suggest so

1 Linda knows what to do, let me just suggest  
2 with 12 we add the notion around technical.

3 MS. MCGINNIS: Got it.

4 MR. JOHNSTONE: And we leave the other  
5 issues alone for now since we haven't  
6 resolved them, the issues of timing and some  
7 of the potential unintended consequences.  
8 We will get input from people, and we can  
9 come back, and we all know that we haven't  
10 finished this dialogue.

11 CHAIRMAN EASTMAN: I would just add a  
12 note on 10 that just says, you know, the on  
13 line docketing, you know, system what's on  
14 it, you know, it's easy to put it from the  
15 time that something is filed before the  
16 Public Service Department, but we are still  
17 discussing how do we deal with notice of  
18 things that are officially happening at  
19 ANR --

20 MR. JOHNSTONE: So people know.

21 CHAIRMAN EASTMAN: -- prior to that.

22 MS. MCGINNIS: I'll do that on 16.  
23 That's where the Web site issue was.

24 MR. JOHNSTONE: Does that work for 12,  
25 this issue of adding the technical --

1 whatever we call it. Technically  
2 incomplete. And leave the rest of it for  
3 now.

4 CHAIRMAN EASTMAN: Are you okay with  
5 that? Louise, are you okay with that?

6 MS. McCARREN: Yes.

7 CHAIRMAN EASTMAN: Okay. So establish  
8 statutory time lines for -- thank you.  
9 Establish statutory time lines for all  
10 involved parties. So we talked about time  
11 lines as part of the tier issue.

12 MR. COSTER: That's 14.

13 MR. JOHNSTONE: I think we have done it.

14 CHAIRMAN EASTMAN: 13?

15 MR. COSTER: No. 13 is the time lines  
16 at the beginning of the process. To set how  
17 the milestones --

18 MS. MCGINNIS: The examples were there.  
19 The Board shall hold prehearing conferences  
20 within 14 days, for example, of an  
21 application being deemed complete.

22 CHAIRMAN EASTMAN: And we talked about  
23 some of that in this tiering thing. It's in  
24 there.

25 MS. MCGINNIS: It is discussed.

1 CHAIRMAN EASTMAN: Then that's okay.  
2 Establish an overall -- we did this --  
3 overall decision time line.

4 MR. COSTER: I think we have.

5 MR. JOHNSTONE: Has to change with the  
6 four tiers.

7 MR. COSTER: We have some real  
8 reservations about that. I don't know,  
9 Judith, if you want to speak to that. In  
10 our experience we have seen like Georgia  
11 took 13 months, and that would be under your  
12 new tier as a tier three.

13 CHAIRMAN EASTMAN: We are trying to push  
14 12 months.

15 MR. COSTER: Right. But part of the  
16 reason there's been so much consternation  
17 with the Public Service Board process is  
18 because people don't feel the process has  
19 worked well and doesn't serve the interest  
20 of the parties. If you're just saying we  
21 will speed it up, that's not going to  
22 necessarily address those issues.

23 MS. McCARREN: I absolutely agree with  
24 that. I think it's going to be a counter --  
25 counter productive.

1 MR. COSTER: Maybe for the smaller  
2 projects, but when you get a big,  
3 complicated project trying to make it go  
4 faster is not going to serve anyone.

5 CHAIRMAN EASTMAN: Well wait a minute.  
6 No. Tier three is now tier four. And we  
7 have got -- and so for those projects --

8 MR. JOHNSTONE: You're right. I'm  
9 sorry.

10 MS. DILLON: Georgia would have fit  
11 under tier three which would be nine months.  
12 And Kingdom Community Wind would be a tier  
13 four. And that was in my opinion, humble  
14 opinion, I'm sure Charlie and I have a  
15 disagreement on this, was kind of crammed  
16 down. The schedule was incredibly fast.

17 MS. MCGINNIS: How fast was it?

18 MR. PUGHE: May 10th to May 31st.

19 CHAIRMAN EASTMAN: What we are trying to  
20 do here is that if we do some of these  
21 things earlier, you know, if we actually  
22 plan that by the time you get to the  
23 application process it shouldn't --

24 MS. DILLON: But if you have a contested  
25 case for a large project it takes -- should

1 take more than a year to allow for  
2 discovery, opportunity to develop testimony,  
3 and a full and fair hearing and opportunity  
4 for briefing. It should take more than a  
5 year. Even if --

6 MR. JOHNSTONE: If you promise that  
7 presumption and the Regional Plans do, and  
8 the permits are all technically complete  
9 before we start, you know --

10 MS. DILLON: There will -- may be  
11 aesthetic issues, noise issues, certain  
12 issues that are covered by --

13 MS. MARKOWITZ: What we are thinking  
14 about now as taking place during that year  
15 could be front loaded in a way that speeds  
16 it up.

17 MS. MCGINNIS: That was the idea.

18 MS. MARKOWITZ: That's our goal.

19 MS. MCGINNIS: And every other state in  
20 New England has these overall time lines for  
21 projects far larger than what we are looking  
22 at.

23 MS. MARKOWITZ: Right.

24 MS. MCGINNIS: And none of them are over  
25 12 months.

1 MR. COSTER: In all of those other  
2 states, all the environmental considerations  
3 are done through the environmental agency's  
4 jurisdiction. With our process there is a  
5 whole host of environmental considerations  
6 that the Board decides that we are a party  
7 to. So we have to develop a whole case  
8 outside of our permit processes that need  
9 the CPG. So that just takes time.

10 MS. SYMINGTON: I thought we were  
11 talking about we are trying to avoid that  
12 duplication by having -- if they have a  
13 permit that that has some kind --

14 CHAIRMAN EASTMAN: He's talking about  
15 the other things they don't have permits  
16 for.

17 MS. DILLON: There are a number of  
18 issues for which we don't issue permits.

19 CHAIRMAN EASTMAN: The other interesting  
20 thing when people say they want to move  
21 things to Act 250, the Public Service Board  
22 248 actually provides a lot more opportunity  
23 to review a lot of environmental issues that  
24 are never reviewed under Act 250.

25 MS. SYMINGTON: Weren't we talking about

1 creating guidelines for those things like  
2 wildlife corridors and aesthetics?

3 MS. MARKOWITZ: Yes, and there will be  
4 some that, when we go back to staff, some  
5 that will be easier than others to do  
6 guidelines. Some it's going to be very  
7 site-specific. So having general guidelines  
8 it really won't be useful.

9 CHAIRMAN EASTMAN: Can I say this?  
10 Here's the thing about tier four. So  
11 Kingdom County is now really -- the notice  
12 is -- it's 12 months, but then it's 90 days  
13 and it's 150 days for a public engagement  
14 process. So we have got 150 days and then  
15 --

16 MS. MCGINNIS: Plus 90.

17 CHAIRMAN EASTMAN: Plus 90 plus 12  
18 months. I mean --

19 MS. MCCARREN: I just think it's -- we  
20 will have incredible unintended consequences  
21 by putting a hard time line on PSB  
22 decisions. I can support a requirement that  
23 there be a prehearing conference within 14  
24 days and a scheduling order within 21 days.  
25 The scheduling order will force -- it could

1 be changed, but it would force the parties  
2 and the Board to plan out the case. If we  
3 are going to go with these hard time lines  
4 there has got to be an escape hatch. You  
5 can imagine a situation where the developer  
6 has all the cards.

7 CHAIRMAN EASTMAN: Then why don't we  
8 because --

9 MS. MARKOWITZ: I am for actually having  
10 hard time lines with escape valves. We  
11 talked about that with staff. And that way,  
12 you know, that way because we do want to  
13 make the system more dependable and so that  
14 applicants know what to expect, have those  
15 escape values be truly protective of, you  
16 know, the things that we need to have done  
17 on our end, and our other partner agencies,  
18 but at least have something.

19 MS. DILLON: When -- I mean when you  
20 have an end date everything is pushing for  
21 that end date, and all of the scheduling  
22 anticipates that end date. So the goal is  
23 the end. The goal is the issuance of a  
24 permit which seems to me too outcome  
25 determinative. And if the -- one of the

1 reasons why this Commission was established  
2 was to address the public's concern  
3 regarding more transparency and public  
4 involvement, I don't think that that issue  
5 is allayed or addressed by having hard and  
6 fast decision dates.

7 CHAIRMAN EASTMAN: The other reason it  
8 was, you know, addressed was also to deal  
9 with the issue that people think some things  
10 going to holes, so it's not just, yes, we  
11 want to protect the public, but we also  
12 wanted to enhance a process. For me I think  
13 it's fine. I get it. If we have got a  
14 totally contested case process and we are  
15 going to have a prehearing conference and a  
16 scheduling order and a case manager in  
17 there, that makes me comfortable.

18 My issue is what are the ones that we  
19 don't want anything to languish so when  
20 there is nobody pushing that's when I need  
21 some deadlines to remind people we have got  
22 to move this along.

23 MR. JOHNSTONE: So if what we need --

24 CHAIRMAN EASTMAN: I'm with you.

25 MR. JOHNSTONE: If what we need is

1 escape valves, could we write this in a way  
2 -- keep the same time lines, and make clear  
3 I don't know if the word target or  
4 milestone, but the goal of the docketing  
5 process by tier is this, the numbers we've  
6 come up with. And then the docketing  
7 procedure if parties agree can, you know,  
8 the Board could change that, but it would be  
9 clear within these that there is a goal of  
10 this cycle.

11 MS. MCGINNIS: Or like ANR already does  
12 with your performance standards, it could be  
13 along those lines.

14 MS. MARKOWITZ: That's right.

15 MS. MCGINNIS: What you've done is  
16 really interesting. You have those  
17 performance standards, and you've done a  
18 report that shows if you've met them or not.

19 MS. MCCARREN: In the Public Service  
20 Board in rate cases, right, they have nine  
21 months. But the remedy is if you go over  
22 the nine months, it just whatever --  
23 whatever the company gets it goes back to  
24 that nine-month date. So there is a remedy.  
25 There is an automatic remedy in there is

1 what I'm saying for a rate case.

2 I'm not coming up with any automatic  
3 remedy here. I like the standards, I mean  
4 the concept of, you know, this is what you  
5 should be trying to do. I just think hard  
6 time lines are --

7 CHAIRMAN EASTMAN: Right, and I get you  
8 about with a totally contested case, you  
9 know, you have a prehearing conference and  
10 you do a scheduling order. And you just  
11 sort of time it out. I think that should  
12 always chump, you know, a deadline because  
13 you're right.

14 MR. COSTER: Just the reality is right  
15 now it's so hard without these deadlines to  
16 get a schedule that's workable to then put  
17 the expectation of that deadline on top of  
18 that, I don't see how we would go beyond the  
19 deadlines.

20 MS. DILLON: We would never go beyond.  
21 The developer would never agree to a  
22 schedule beyond that hard date.

23 MS. MCGINNIS: Unless you wrote the  
24 wording that was favorable to what you think  
25 is necessary as an escape valve, which is

1 what a lot of other siting commissions have  
2 done. They all have an escape valve. Every  
3 one of them has a different version of it.  
4 Sometimes it's at the applicant's request  
5 which doesn't address your issues, but I  
6 think if you could come up with wording that  
7 made you comfortable that there was an  
8 escape valve, where necessary, but the idea  
9 is what Deb was saying earlier front loading  
10 a lot of the work in the hope that you're  
11 going to make the whole process more  
12 efficient, and by putting an -- if we want  
13 to call it a performance standard rather  
14 than a hard and fast goal, it's just showing  
15 that you're trying to work towards a better  
16 process.

17 MS. MARKOWITZ: You know, I think in  
18 terms of as we picture what this whole  
19 package is going to look like to the public  
20 we need to demonstrate what we are doing is  
21 something that's going to increase, you  
22 know, the success of the program. Not  
23 necessarily saying yes, but in coming to a  
24 decision in a predictable, you know, way  
25 that's faster than it was before unless it

1 needs to be slower for real reasons, and  
2 that it's transparent and public process.

3 So I wonder if there is a way to see  
4 what some of those escape valves look like.

5 MS. MCGINNIS: I can pull some of those  
6 up.

7 MS. MARKOWITZ: We can find one that  
8 would be helpful.

9 CHAIRMAN EASTMAN: And I'm willing to  
10 look at that escape valves. And I totally  
11 get --

12 MR. JOHNSTONE: Me too.

13 MS. MCCARREN: Just remember, the time  
14 line creating a hard and fast time line is  
15 going to work in someone's interest, and we  
16 don't want to inadvertently over empower one  
17 party or another. Okay? That's my concern.

18 CHAIRMAN EASTMAN: Right.

19 MS. MARKOWITZ: And we absolutely agree  
20 with that.

21 MS. MCCARREN: It could be the opponents  
22 too. I mean you could jam a case --

23 MS. MARKOWITZ: We could slow it down.

24 CHAIRMAN EASTMAN: So upon reflection,  
25 and I've got to think about this some more,

1 I can really see when it's actually a truly  
2 contested case and you've got all those  
3 parties, that's when I don't need that.  
4 It's when it's something in between and  
5 things languish which some people think  
6 happens, that that's my concern. And maybe  
7 having, as I say, the requirement of a  
8 prehearing conference within so many days,  
9 you know, something else within so many  
10 days, and then a case manager to say we have  
11 got to move this along.

12 MS. DILLON: And I don't mean to throw  
13 in a wrinkle at this late date, but perhaps  
14 suggesting the escape valve in the inverse  
15 so that things don't languish after X number  
16 of days there is a check-in, and if nobody  
17 has raised an issue, you know, expedite it,  
18 set it for a hearing as opposed to setting a  
19 hard and fast end date.

20 CHAIRMAN EASTMAN: That's interesting.

21 MS. MARKOWITZ: That's interesting.

22 CHAIRMAN EASTMAN: It is.

23 MS. MCGINNIS: It is. I'm trying to --  
24 write it for me.

25 CHAIRMAN EASTMAN: But that is. Okay.

1 So I --

2 MS. DILLON: I mean there is incentive  
3 if a party is engaged and involved and has  
4 identified an issue, they are aware of it,  
5 and they can articulate that, and then the  
6 Board can factor that into the scheduling.  
7 But if certain issues are resolved, you  
8 know, you can --

9 CHAIRMAN EASTMAN: Okay. So I don't  
10 know where this leaves us with this, but --

11 MR. COSTER: We can do some work trying  
12 to come up with what an escape hatch might  
13 look like in the scheduling phase.

14 MS. MCGINNIS: It's also, however, in  
15 the tiering trying to distinguish what's the  
16 difference between a tier. Right? So that  
17 was part of the idea of saying, you know,  
18 and again it doesn't have to be a hard and  
19 fast date, it could be a performance  
20 standard to show people that if you're in a  
21 lower tier it goes faster because, you know,  
22 that kind of thing.

23 MR. COSTER: Right. Now we are only  
24 setting tiers on capacity. And that's  
25 totally indifferent to any of the other

1                   contested issues of a case; location,  
2                   impacts, you know, it doesn't matter the  
3                   capacity. It's all the other things.

4                   MS. MARKOWITZ: We were talking about  
5                   having the tiering also taking into account  
6                   these other impacts as part of the  
7                   application that they have to, you know, go  
8                   through. That if they don't, you know, so  
9                   that was -- wasn't it the conversation  
10                  earlier? Although we are talking about it  
11                  by size, it also implicit in it is that it's  
12                  also, you know, that it doesn't have other  
13                  contested issues.

14                  CHAIRMAN EASTMAN: Right. And in here  
15                  in what DPS put together it talks about, you  
16                  know, 30 days of receipt, you decide whether  
17                  there is a significant issue. So you know,  
18                  if there is no significant issue, it's  
19                  moving on. If there is a significant issue,  
20                  something is going to happen.

21                  MS. MARKOWITZ: It just means the  
22                  application needs to be designed to really  
23                  vet, you know, whether or not -- tease out  
24                  the potential issues.

25                  MR. JOHNSTONE: So maybe instead of --

1 MS. SYMINGTON: That mushiness still  
2 makes me feel like we could be making this  
3 worse not better.

4 CHAIRMAN EASTMAN: Okay.

5 MS. MCGINNIS: Scott?

6 MR. JOHNSTONE: What I was going to  
7 suggest to try to have something for the  
8 public hearing is maybe we add that idea of  
9 a performance guideline to number 14.

10 MS. MCGINNIS: Performance standard.

11 MR. JOHNSTONE: Performance standard so  
12 it isn't read as an absolute. At this point  
13 it's read for the dialogue we have just had  
14 which let's us get public input on the idea  
15 without being so boxed in. And we can talk  
16 later.

17 MS. MCCARREN: The remedy -- you can do  
18 a motion to show cause in superior court.  
19 Makes you very popular.

20 CHAIRMAN EASTMAN: Exactly. But we are  
21 also trying to not have people have to do  
22 that. We are trying to make it less  
23 legalistic.

24 That moves us on to 15, rebuttable  
25 presumptions for ANR permits.

1 MR. JOHNSTONE: So I'm okay with -- I'm  
2 definitely okay with permits. I would even  
3 add rules -- approved rules to the  
4 presumption personally.

5 MS. MARKOWITZ: And there already is  
6 with rules.

7 MS. DILLON: Well there is deference to  
8 the Agency's interpretation of its own  
9 rules. That's -- the Public Service Board  
10 has memorialized that.

11 MR. JOHNSTONE: Last time we talked  
12 about permits, rules, approved LCAR rules  
13 and guidance, as all three could carry the  
14 weight of presumption when ANR did it. And  
15 I said last time --

16 CHAIRMAN EASTMAN: Wait a minute.  
17 Presumption and deference are different.

18 MR. JOHNSTONE: Okay. So we need to  
19 figure out what we mean.

20 CHAIRMAN EASTMAN: If there is already  
21 deference, see that's where I really -- this  
22 is one of those places where language is  
23 important.

24 MR. JOHNSTONE: It is because I thought  
25 last time we were talking presumption about

1 that.

2 CHAIRMAN EASTMAN: But she is saying  
3 they currently do deference to your rules,  
4 but they don't do that for your permits.

5 MS. DILLON: Correct. Well with respect  
6 to our -- I don't know. Let me back up.  
7 With respect to agencies interpretation of  
8 its own rules or statutes it implements, the  
9 Board affords deference to our  
10 interpretation. And the Board has made that  
11 finding most recently in the Kingdom  
12 Community Wind water appeals that were just  
13 issued.

14 But with respect to permits, the Board  
15 hasn't had our permits, and folks have not  
16 been offering our permits in evidence  
17 because they usually get them later and  
18 haven't been asking the Board to make a  
19 presumption, have basically been here's our  
20 evidence regarding this issue, and the Board  
21 relies upon issuance, but there is no  
22 presumption.

23 MR. JOHNSTONE: And I thought the  
24 request last time was to extend all the way  
25 to presumption, all the way down through

1 rules and guidance, which is what I was  
2 trying to frame. And where I am on that  
3 right now, because we haven't had  
4 information around what guidance goes  
5 through for process, you know, to the extent  
6 that presumption is even an accurate way to  
7 characterize it, I'm okay with rules because  
8 I know what that goes through, but not  
9 guidance.

10 CHAIRMAN EASTMAN: A rebuttable  
11 presumption relates to a permit that's  
12 issued. Deference is just on the appeal  
13 somebody is saying that you didn't--

14 MS. DILLON: It's more than appeal.  
15 It's Agency's opinion or testimony even  
16 before the Public Service Board in  
17 connection with a CPG proceeding. If the  
18 Agency is saying this project complies with  
19 the wetlands rules, the Board would defer to  
20 the Agency's interpretation of its own  
21 rules.

22 CHAIRMAN EASTMAN: So you're -- well  
23 that's amazing to have deference on rules  
24 and a rebuttable presumption on permits.

25 MS. DILLON: Or if the Agency is

1 interpreting what our rules mean and a party  
2 is -- another party has offered testimony  
3 saying no the rule means X, Y and Z, the  
4 Board defers to our interpretation of that  
5 rule.

6 CHAIRMAN EASTMAN: Okay. That doesn't  
7 bother me, but a permit only gets a  
8 rebuttable presumption. I mean if somebody  
9 wants to do it, right now you don't use them  
10 because people don't have the permits.

11 MS. DILLON: And I guess Scott was  
12 suggesting that the rebuttable presumption  
13 also include the rule.

14 MR. JOHNSTONE: I'm open I guess. The  
15 dialogue is slightly different this time in  
16 terms of what you have already and what you  
17 think you need. I guess the question is  
18 what do you think is appropriate in this  
19 context from permits, rules and guidance  
20 because I just want to make sure I know what  
21 the question on the table is.

22 MS. DILLON: Well the permit is usually  
23 a decision regarding how the Agency viewed  
24 the particular project when compared to our  
25 statute, et cetera. And it makes sense, I

1 think, to have the rebuttable presumption.  
2 It saves time, it makes it a more efficient  
3 process before the Board.

4 MR. JOHNSTONE: When it's available.

5 CHAIRMAN EASTMAN: And that's the  
6 standard that is in Act 250.

7 MS. DILLON: And the District  
8 Commissions, correct. So I'm trying to see  
9 how it would work with a rule.

10 CHAIRMAN EASTMAN: I don't think it  
11 works with a rule.

12 MR. JOHNSTONE: So deference is okay?

13 CHAIRMAN EASTMAN: No, no. I think what  
14 -- by statute you get rebuttable presumption  
15 for permits or something, you know, if we  
16 have to do it that way or by rule. To the  
17 extent that the Board has established, you  
18 know, another process for something else so  
19 be it. The Board decides who they think the  
20 experts are. So I don't think we go any  
21 further.

22 MR. JOHNSTONE: Good. We don't have to  
23 go there. It's even easier. I thought you  
24 wanted us to go there.

25 MS. MARKOWITZ: We talked about having

1 our guidance having some deference and our  
2 permits having deference.

3 CHAIRMAN EASTMAN: I'm really worried  
4 about guidance having deference.

5 MS. MARKOWITZ: We had some conversation  
6 about lack of public process and, you know,  
7 in terms of developing the guidance. And I  
8 went back to the team and we had some  
9 conversation about it. And I think we ended  
10 up being comfortable with what you've just  
11 heard from Judith.

12 MR. JOHNSTONE: Okay. So we can leave  
13 that alone then.

14 CHAIRMAN EASTMAN: Just go here.

15 MS. MARKOWITZ: Was there anything else?

16 MS. DILLON: No.

17 CHAIRMAN EASTMAN: Just go here and  
18 you've got with the rules listing to you.

19 MR. JOHNSTONE: Okay.

20 MS. MCGINNIS: ANR, you did have a  
21 request to add an additional paragraph. I  
22 don't know if you want us to still do that  
23 or not.

24 CHAIRMAN EASTMAN: Where are we? On 15?

25 MS. MCGINNIS: On recommendation 15.

1 ANR suggested, and I don't know if you still  
2 want to do it or not, which was a  
3 significant addition to this --

4 CHAIRMAN EASTMAN: No. This actually  
5 just explains this.

6 MS. MCGINNIS: Right. So I don't need  
7 to add it, or I do?

8 MS. MARKOWITZ: If applicant obtains  
9 permit from ANR, that piece?

10 MS. MCGINNIS: The piece that says on  
11 recommendation number 15, yeah, add the  
12 following; that a project that conforms to  
13 the permit and permit conditions, and the  
14 project will not result in an adverse impact  
15 to the natural environment. Specific to the  
16 impacts identified and reviewed under the  
17 permit program, broader resource impacts not  
18 addressed by a permit will not be subject to  
19 the presumption, and the PSB may continue to  
20 consider broader resource impacts.

21 CHAIRMAN EASTMAN: I think that's got  
22 the explanation.

23 MR. JOHNSTONE: That's what they are  
24 saying.

25 MS. MCGINNIS: So I add that.

1           CHAIRMAN EASTMAN: Yeah. This goes to  
2 the issue of should we have it -- actually  
3 goes to ensure adequate environmental issues  
4 as well which is to remind people that 248  
5 actually looks at a lot more environmental  
6 things than Act 250 does.

7           MR. COSTER: We were just trying to  
8 clarify that.

9           CHAIRMAN EASTMAN: I think that's good  
10 language.

11          MS. McCARREN: How -- right now an ANR  
12 permit that is appealed to the Public  
13 Service Board is a de novo -- is it a de  
14 novo?

15          MS. DILLON: It is a de novo.

16          MS. McCARREN: So in that world there is  
17 no presumption, there is no deference. It's  
18 a brand --

19          MS. MCGINNIS: On appeal.

20          MS. DILLON: It's brand new. But the  
21 Board will defer to the Agency's  
22 interpretation of its rules, but you're  
23 absolutely right, the Board conducts a new  
24 hearing.

25          MS. McCARREN: All right.

1 MR. JOHNSTONE: I'm fine.

2 CHAIRMAN EASTMAN: So 16, the Web site.

3 Do we need to --

4 MS. McCARREN: We don't need to beat  
5 that one any more.

6 MS. MCGINNIS: Except you had said --

7 MS. McCARREN: Count them. How many did  
8 we have?

9 MR. JOHNSTONE: What do you need, Linda?

10 MS. MCGINNIS: You did say earlier that  
11 I need to add something along the lines we  
12 are still discussing at what point the  
13 public needs to be notified of the beginning  
14 of a project.

15 CHAIRMAN EASTMAN: Of -- we are still  
16 working on notification of if somebody's --  
17 you know, ANR, you know, ANR permits.

18 MR. COSTER: Just to be fair, sometimes  
19 they talk to the Department first, depending  
20 on the type of project.

21 CHAIRMAN EASTMAN: Yeah. Look, I agree,  
22 Linda.

23 MS. MCGINNIS: I just want to know how I  
24 put that. So we are still discussing at  
25 what point --

1           CHAIRMAN EASTMAN: Look. Here's the  
2 issue. It's easy once an application is  
3 filed, we want all of these things. Okay.  
4 The issue is prior to an official  
5 application for a Certificate of Public Good  
6 we are still working on how to determine at  
7 what point, you know, -- at what point it's  
8 almost like a docket or an issue is opened  
9 on this on a Web site so that people can  
10 know what's going on.

11           MS. DILLON: Did you actually want to  
12 have it at the point where the notice is  
13 sent out as opposed to the petition?

14           CHAIRMAN EASTMAN: Yeah, yeah. We want  
15 it as early as we can get it. But the whole  
16 point is there may be some even prior time  
17 depending upon when you're working on  
18 something.

19           MS. MCGINNIS: Right. I'm just figuring  
20 out how to word that so people understand  
21 it. We are still discussing how to  
22 determine at what point.

23           MR. COSTER: I think at what point in  
24 the predevelopment phase of a project is it  
25 noticed publicly on this Web site.

1 CHAIRMAN EASTMAN: Yeah. So we have got  
2 to work on that.

3 MS. MCGINNIS: Yeah.

4 CHAIRMAN EASTMAN: Okay. So let's --  
5 hey, we have got 22 minutes.

6 MS. SYMINGTON: I don't really  
7 understand 15. I understand the rebuttable  
8 presumption for permits. I'm lost about  
9 where we ended up with the other stuff.

10 CHAIRMAN EASTMAN: That's all we are  
11 saying is rebuttable presumption for  
12 permits.

13 MS. MCCARREN: Actually that's not  
14 consistent with the de novo appeal. That's  
15 not my concern.

16 CHAIRMAN EASTMAN: It is -- excuse me.

17 MS. MCCARREN: How does that work?

18 MS. DILLON: This is for where the  
19 public -- I'm sorry.

20 CHAIRMAN EASTMAN: As part of the  
21 application part of the first hearing  
22 process, it works in Act 250. District  
23 Commissions you get a rebuttable presumption  
24 on appeal.

25 MS. DILLON: And I think perhaps it

1 needs to be clarified that you're talking  
2 about the Board in its, you know, fact  
3 finder capacity. Not in its -- in the  
4 context of its appellate jurisdiction  
5 because I think if you maintain that  
6 distinction, it is clear and consistent with  
7 --

8 CHAIRMAN EASTMAN: She is right. This  
9 is in the original process, not on the  
10 appeal.

11 MR. COSTER: So basically if someone  
12 goes to the Public Service Board and they  
13 already have a wetlands permit in hand for  
14 their project.

15 MS. McCARREN: And no one has appealed  
16 it.

17 MR. COSTER: Correct. The Board gives  
18 that a rebuttable presumption.

19 MS. McCARREN: Right. Okay. But if  
20 someone has appealed it.

21 CHAIRMAN EASTMAN: It's going to be a  
22 whole separate hearing. That's the way it  
23 is and hasn't changed.

24 MS. DILLON: Louise, you're right, it  
25 does create a problem.

1 MS. McCARREN: Creates a huge problem.

2 MS. DILLON: There is a trial going on  
3 in connection with the original jurisdiction  
4 of the Board whether or not to issue a CPG  
5 and at the same time they are dealing with  
6 the appeal. That's never happened before  
7 because our permits usually don't come until  
8 sometime after. It may still be even under  
9 the scenario that we are anticipating that  
10 folks are going to be filing their permit  
11 applications at the same time they file  
12 their CPG petitions.

13 Our review process is likely to  
14 correspond to the same timing as the Public  
15 Service Board's. So there will-- it's  
16 unlikely that there would be that overlap.  
17 We would likely issue our decision at or  
18 near the same time the Board issues its CPG.

19 CHAIRMAN EASTMAN: So this may never be  
20 used.

21 MS. McCARREN: Well --

22 MR. PUGHE: I mean if you're getting  
23 down and you had a month left in your CPG,  
24 and ANR issues their wetlands and their  
25 stormwater permit and it gets appealed the

1 next day, where does the Public Service  
2 Board go at that point because they can't  
3 rely on the facts, right? At that point for  
4 issuing their order?

5 CHAIRMAN EASTMAN: Here's the thing.  
6 They can rely on their own facts. It's just  
7 that there is no longer --

8 MS. DILLON: Well there is no automatic  
9 stay. So the permit is still valid and in  
10 effect. So they can rely upon it until -- I  
11 agree there is a conflict.

12 CHAIRMAN EASTMAN: No. I expect what's  
13 going to happen is if you actually get to  
14 getting permits in advance, that an opposing  
15 party, the person who is against you and is  
16 filing that appeal, has already made an  
17 attempt to rebut the presumption by  
18 providing their own testimony on the issue,  
19 which is what happens in this.

20 So if this is a contentious issue, it's  
21 likely your presumption is going to be  
22 rebutted. How this really works and saves  
23 time is again when it's not a contentious  
24 issue and you've got the permit, we don't  
25 have to talk about things, and people don't

1 have to provide more testimony on it. When  
2 it's a contentious issue rebutting a  
3 presumption is not that difficult.

4 MS. McCARREN: I would also be concerned  
5 about the other -- the flip scenario where a  
6 developer -- is this possible, a developer  
7 comes in, goes to you, to ANR, gets a  
8 permit, appeal time lapses, is gone, then  
9 files for a CPG, and they say too bad. I  
10 got my wetlands permit.

11 CHAIRMAN EASTMAN: You can rebut a  
12 presumption.

13 MS. McCARREN: You can, that's true.

14 CHAIRMAN EASTMAN: And it's not, as I  
15 say, the standard is not that high. So  
16 that's what somebody would do. And in fact,  
17 that's -- you know, that can potentially be  
18 a problem because it's a way for somebody  
19 to, oh, I didn't have to appeal that. I'm  
20 dealing with it over here.

21 MS. DILLON: Collateral appeal.

22 CHAIRMAN EASTMAN: Yup. That's not a  
23 problem created by us. It's a problem  
24 created by saying that the appeals are going  
25 to go to the Public Service Board of

1 environmental permits.

2 MS. DILLON: Louise, the problem  
3 currently exists because the Board routinely  
4 in issuing its decision defers a finding on  
5 whether or not there will be undue adverse  
6 impact to water quality saying that if the  
7 applicant petitioner gets its wetlands  
8 permit or stormwater permit, that that  
9 establishes the project will not result in  
10 undue adverse impact to water quality.

11 MS. McCARREN: Okay. So let's say that  
12 -- it's circular -- so let's say the Board  
13 says that. You grant the permit, but an  
14 opponent appeals the permit. Then it's  
15 right back at square one; right? It's right  
16 back.

17 CHAIRMAN EASTMAN: Except the problem is  
18 there is no stay, so somebody is building.

19 MS. McCARREN: Fair enough.

20 MS. DILLON: That's what happened with  
21 Kingdom Community Wind. There was an appeal  
22 that was filed and the project developer  
23 went forward and we went through -- the  
24 hearings went through.

25 CHAIRMAN EASTMAN: Took the risk. I've

1 got to tell you, it's interesting. Again  
2 it's interesting. I wouldn't -- I think the  
3 Board has a legal responsibility to  
4 determine this. Interesting. Okay.  
5 Anyway.

6 MS. MCGINNIS: So we are sticking with  
7 number 15.

8 CHAIRMAN EASTMAN: Yes. 15 stays the  
9 way it is.

10 MS. MCGINNIS: Okay.

11 MS. MCCARREN: Linda just wants to know

12 --

13 CHAIRMAN EASTMAN: It's complicated  
14 because of the appellate process that the  
15 legislature established, I think that  
16 complicates it. But anyway. We are staying  
17 with that for now. Okay.

18 MS. SYMINGTON: Silent on guidelines,  
19 silent on the issues that there isn't a  
20 permit for.

21 MR. COSTER: Correct.

22 MR. JOHNSTONE: It is what it is. They  
23 have already determined for their -- for  
24 rule interpretation we have heard the  
25 Board's already doing that, and for guidance

1 what we heard from the Secretary was if they  
2 raise to a certain level they will go get  
3 rules. And while it's guidance they  
4 shouldn't have any special effect.

5 MS. DILLON: I don't know that we went  
6 that far. I think what we are saying is we  
7 are not asking for anything more.

8 MR. JOHNSTONE: Right. Okay. Yes.

9 MS. SYMINGTON: And are we -- do we feel  
10 as if that by having the Web site, by having  
11 the case manager, we are responding to the  
12 issue of the black box on the permit  
13 process?

14 CHAIRMAN EASTMAN: I think the black box  
15 I hope gets responded to by part of that and  
16 the case manager. I agree. And that's the  
17 intent.

18 I also have to say that relative to this  
19 issue of rebuttable presumption, and I would  
20 be happy to have, you know, legal issues, I  
21 mean a rebuttable presumption in Act 250,  
22 and that's the language that's used here, is  
23 not that difficult to rebut. So I don't  
24 think it's a deference issue.

25 I think the issue -- part of the issue

1 that I think Annette is raising is this  
2 issue of when does the public get notice of  
3 what's going on at ANR so they can  
4 participate in that process early enough to  
5 say like, for instance, well I get to look  
6 at the proposed study, you know, guidelines  
7 for something.

8 And we had a scientist look at that and  
9 you should have done this, that or the  
10 other. I think that's more important than  
11 -- I mean that's what the public needs is  
12 time to get in to influence what you're  
13 doing and to say did you think of this.

14 MR. COSTER: Yeah.

15 CHAIRMAN EASTMAN: I think deference is  
16 a higher standard than rebuttable  
17 presumption legally. Ask Sheila, because if  
18 I'm wrong about that, I take it back.  
19 Rebuttable presumptions in Act 250 it's  
20 useful, but it's not -- you know, burst the  
21 bubble.

22 MS. DILLON: We can, you know, revisit  
23 that. We were kind of borrowing from the  
24 practice and Act 250 trying to provide some  
25 consistency there.

1                   CHAIRMAN EASTMAN: No. So I'm  
2 comfortable with a rebuttable presumption  
3 Act 250 standard to protect -- to try to  
4 attempt to make things faster, and if  
5 applicants want to use it, I do agree that  
6 this process is incredibly confusing because  
7 the appeals are before the body making an  
8 initial decision.

9                   And I raised the appellate issue early  
10 on and nobody jumped on thinking we needed  
11 to address it.

12                  MS. MCGINNIS: I'm sorry, but we never  
13 get to the environmental stuff, and it's  
14 getting close to 4. And I really hope that  
15 we can.

16                  CHAIRMAN EASTMAN: We will get back to  
17 that next time. Ensure adequate  
18 environmental and other protection.

19                  MR. COSTER: Are we on --

20                  MS. MCGINNIS: 17.

21                  MR. COSTER: So I think we had this  
22 conversation very early in the day where we  
23 and the Department thought that developing  
24 this guidance is a good idea, but we are  
25 going to come up with the range, which is

1 existing, easy to do, and which others are  
2 for whatever reason going to be more  
3 complicated. And we can share that with  
4 you.

5 CHAIRMAN EASTMAN: Okay. So I think --  
6 so we keep this in for now.

7 MR. JOHNSTONE: They offered some -- a  
8 couple modifications to it as well on some  
9 of the questions that Louise asked. And I  
10 thought it looked good.

11 MR. COSTER: Okay.

12 MS. MCGINNIS: I'm sorry. Which  
13 modifications? The one that they did to 17?

14 MR. JOHNSTONE: Yeah, the comment on  
15 forest health and -- yeah.

16 MS. MCGINNIS: What I was also going to  
17 propose to do here, it's based on  
18 discussions with these guys. Which I think  
19 is helpful, is not to lump together things  
20 like setback and noise, together with ANR  
21 things, because setbacks and noise are under  
22 the jurisdiction of the Department. And the  
23 Department needs to come up with its own set  
24 of what is guidelines and what is -- still  
25 has to work with precedent.

1           So I'm just going to break that out a  
2 little bit more to make it clear as to  
3 what's in ANR's jurisdiction, what's in  
4 Department's jurisdiction, and what may be  
5 in the Department of Health's jurisdiction.

6           MR. JOHNSTONE: Good.

7           MS. SYMINGTON: So we have covered some  
8 of the issues that come up in comments  
9 around setback, blasting. Is blasting  
10 covered by setbacks?

11          MS. MCGINNIS: That would be separate.  
12 And that would be under the Department's  
13 jurisdiction, not under ANR's jurisdiction  
14 as it currently stands.

15          MS. SYMINGTON: So what about some of  
16 the issues around blasting that create  
17 issues with groundwater?

18          MR. COSTER: That would be under -- that  
19 would be -- there is kind of the procedural  
20 safety issues related to blasting, and then  
21 there is the impacts on groundwater. We are  
22 actually in the process of developing  
23 guidelines for high elevation blasting as  
24 they relate to groundwater.

25          MS. MCGINNIS: So that will be in your

1 list of which ones you feel you can do  
2 guidelines on and which ones need precedent  
3 still, so that will be in your list.

4 MR. COSTER: What's in this paragraph  
5 right now is not exclusive at all of the  
6 range of guidelines that are out there.

7 MS. SYMINGTON: My suggestion -- I was  
8 just raising it because if this is what's  
9 going out for comment, I think it would be  
10 helpful to add that reference to impact on  
11 groundwater from blasting.

12 MR. COSTER: Yeah.

13 MS. DILLON: I'm just questioning the  
14 use of the term shall. And I see that there  
15 is a bit of a qualifier to the extent  
16 feasible, but if this is a recommendation, I  
17 guess I would request that that be solved  
18 and ANR will or something short of shall.

19 MS. SYMINGTON: What's the difference  
20 between will and shall?

21 MS. DILLON: Shall is mandated which  
22 will doesn't require -- it's a legal  
23 distinction.

24 MS. MARKOWITZ: You mean should rather  
25 than shall. ANR should to the extent

1 feasible update the environmental protection  
2 standards. Shall to the extent feasible I  
3 don't have a problem with, Judith. It  
4 softens it to the extent feasible.

5 MS. MCGINNIS: I think what we are going  
6 to be providing us with really soon is the  
7 list of what you know is feasible and what  
8 you know is not.

9 CHAIRMAN EASTMAN: So we will have  
10 different tiers.

11 MS. MARKOWITZ: So we can moderate  
12 expectations. I think what rightly she is  
13 trying to protect us from is from shalls  
14 that we cannot meet.

15 CHAIRMAN EASTMAN: She's a totally good  
16 person.

17 MS. MCGINNIS: Billy was a great  
18 advocate on that, and we understand.

19 MS. SYMINGTON: So head water issues  
20 would also come up?

21 CHAIRMAN EASTMAN: Yeah. Head waters  
22 are part of the Act 250 criteria.

23 MR. COSTER: Sure. But I don't know if  
24 we can develop guidance that's applied on a  
25 statewide universal level about every

1 potential environmental impact.

2 MS. DILLON: And we have Water Quality  
3 Standards that kind of incorporate issues  
4 related to that. So I'm not sure if --

5 MS. MARKOWITZ: Our scientists  
6 specifically had a conversation about head  
7 waters where it's very, very site specific,  
8 and so in order for them to figure out  
9 what's required in a particular location to  
10 protect the head waters, they need to be  
11 there and walk the site.

12 MS. MCGINNIS: So to me that would fall  
13 under the category -- you would need to list  
14 it as a concern, but it would fall under the  
15 category of precedent until which time they  
16 have enough information to provide  
17 guidelines; right?

18 MS. MARKOWITZ: That's right.

19 CHAIRMAN EASTMAN: Interesting. I don't  
20 know if I would use the word precedence.  
21 Precedence doesn't work there because  
22 precedent means that in fact that's  
23 antithesis.

24 MS. MARKOWITZ: It's really their best  
25 scientific judgment on a site-by-site basis

1 as opposed to being able to generalize from  
2 it, and to say, hey, we know always -- so we  
3 have got clear guidance on bear habitat  
4 because we have got a lot of science that  
5 tells us what bears need. You know, we have  
6 got some general science on head waters, how  
7 you protect head waters, but there is not,  
8 you know, standards of just how much here or  
9 there. You've got to look at the hydrology  
10 of the particular location.

11 MR. COSTER: And I think when we made  
12 the precedent reference it was to passport  
13 actions on these issues, so how the Board  
14 has treated habitat fragmentation in prior  
15 cases is what we meant. That's typically  
16 what their decisions rely on.

17 CHAIRMAN EASTMAN: Again when you tell  
18 me something is site-specific, okay. When  
19 you tell me that, that's, you know, I get it  
20 around, you know, bears need to move,  
21 remember?

22 MS. MARKOWITZ: So that's --

23 CHAIRMAN EASTMAN: I'm a bear expert.

24 MS. MARKOWITZ: That's less  
25 site-specific. You can have standards. We

1 have enough science that tells you they need  
2 X amount of space and what their yearly  
3 cycle is like.

4 CHAIRMAN EASTMAN: So for me that's what  
5 I mean. I don't know if you're telling me  
6 that it's site-specific, how can the Board  
7 create a precedence? Maybe over the  
8 process, but clearly not over the standards.

9 MR. COSTER: That's fair.

10 CHAIRMAN EASTMAN: Because the only way  
11 they can create a precedence is if you have  
12 provided them with information, and this is  
13 it. So --

14 MR. COSTER: I guess what we meant is  
15 something like fragmentation is something  
16 through precedent they consider when  
17 determining whether there is an undue  
18 adverse impact on the natural environment.  
19 It's not one of the criteria of Act 250 that  
20 are expressly articulated, but there is a  
21 precedence of something that they consider  
22 at a certain scale of development.

23 CHAIRMAN EASTMAN: Here's the other  
24 thing then. So the other thing I want to  
25 ask them to go -- from you guys -- to go

1 back to transparency and efficiency, that we  
2 have this issue with people saying they  
3 can't find the precedence. So if you guys  
4 believe there is a process in place,  
5 precedent, you know, that the Public Service  
6 Board has put in place, then we have got to  
7 have that someplace on a Web site so people  
8 can find that. Okay?

9 Because if that's what you're relying on  
10 as precedence over something that you're  
11 providing testimony on, then everybody  
12 deserves to know what that is. And okay.

13 MR. COSTER: Yeah.

14 MS. MARKOWITZ: So like using habitat  
15 fragmentation, for example, that was sort of  
16 the first, you know, we have only been  
17 thinking about it and talking about it in  
18 the last couple cases, and the Board  
19 accepted our testimony and wrote something  
20 in a decision. And you know, our staff  
21 aren't ready to actually write down specific  
22 guidelines, but don't want to give up the  
23 fact that the Board accepted their testimony  
24 that this was important.

25 MS. MCGINNIS: That's exactly what she

1 is talking about.

2 CHAIRMAN EASTMAN: So then you provide,  
3 here's the decision. Here's where we are.

4 MS. MCGINNIS: And where you can find it  
5 on the web so that if anybody else needs to  
6 use it, they know where it's found too.

7 MS. DILLON: So for those issues on  
8 which we haven't developed guidelines, you  
9 want links to cases that have discussed or  
10 treated --

11 CHAIRMAN EASTMAN: If you were going to  
12 rely on precedent, if you were going to rely  
13 on precedent, then yes, I think the public  
14 needs to know that. And they can know that  
15 soon.

16 Here's another issue, if that's an issue  
17 of real concern to the public, let them know  
18 now. And that they can --

19 MS. MARKOWITZ: Developers can know, and  
20 they know that as they are planning a site  
21 they have to plan for a certain amount of --

22 CHAIRMAN EASTMAN: If people don't agree  
23 with that precedent, they can all group  
24 together and say, oh well, if this is  
25 precedent then this means the next time it

1 comes up we have got to play, and we can  
2 change that.

3 If you believe -- I'm trusting you to be  
4 the, you know, protect --

5 MR. COSTER: We can try and identify  
6 those -- the ranges of issues.

7 MS. SYMINGTON: This is an area of a lot  
8 of concern. These places that don't have  
9 permits that cover them. And you know, it  
10 contributes to they are not hearing, they  
11 are not listening, they don't care. And  
12 it's because it's not -- people don't  
13 understand well where do these issues come  
14 up? How are they taken into account?

15 And I think that if we can name some of  
16 these and then help people understand what  
17 guides -- what are we using, is it criteria,  
18 is it site-specific, what is it? I think we  
19 need to name them.

20 CHAIRMAN EASTMAN: And again, and for  
21 people who are concerned, some of these, as  
22 I say, some of these things that you're  
23 addressing in 248 don't get addressed.

24 MR. COSTER: They don't.

25 CHAIRMAN EASTMAN: In 250 at all. And

1 so it's extra time for you. Some of them  
2 do. Head waters are one of the criteria  
3 from Act 250, but this other stuff isn't.  
4 In fact, at some point if I were people I  
5 would be saying maybe we need to go back and  
6 try and address the environmental --

7 MR. COSTER: We are trying to get some  
8 of the fragmentation issues into Act 250 at  
9 some point.

10 CHAIRMAN EASTMAN: That's just the way  
11 things are written. There is more general  
12 language, and in fact I think it's because  
13 originally the general language was in 248  
14 and there was no specificity from Act 250.  
15 And the Act 250 criteria got added later.

16 So in fact, it in some ways provides  
17 more opportunity. Yeah. Really quickly  
18 because we are running out of time and I  
19 want to get --

20 MS. ISELIN: I think -- being very  
21 brief, I think it should be very clearly  
22 defined what the policy is about head  
23 waters, stream head waters, because I had  
24 heard, and I don't know if this is true, but  
25 I heard, and I need to put this in here,

1 that nine head water streams were dammed up  
2 on Lowell, on the Lowell project.

3 CHAIRMAN EASTMAN: Well okay.

4 MR. JOHNSTONE: Thank you.

5 CHAIRMAN EASTMAN: Thanks. So okay. So  
6 that's enough for 17.

7 So 18. So I don't think I relooked at  
8 this. I looked at the environmental  
9 criteria currently reviewed under Act, you  
10 know, I looked at the comparison today. And  
11 we talked about changing the plan. The plan  
12 isn't in there. You know, one of the  
13 criteria's conformance with the plans, and  
14 we have already talked about that. And then  
15 there are some other things -- do you think  
16 they need to be brought over? I'm not sure  
17 they do.

18 MS. DILLON: Ag soils.

19 MR. COSTER: I don't think we do. Maybe  
20 the soil ones wouldn't hurt. I think that's  
21 adding new criteria to the statute is a big  
22 move that may not be necessary. If you're  
23 going to do it, I think the soils criteria  
24 would be helpful. We are able to address  
25 those already under the existing criteria,

1 so you're addressing them.

2 MS. DILLON: And Ag has begun to  
3 participate in a number of these cases more  
4 and more --

5 CHAIRMAN EASTMAN: I heard that.

6 MS. DILLON: And they are allowed to  
7 intervene as a matter of course, so I think  
8 where they have issues they can bring them  
9 up.

10 CHAIRMAN EASTMAN: And in fact, that's  
11 one thing that -- well it maybe does come in  
12 here for me. Ensure adequate environmental  
13 and other protection. When I look at the  
14 way 248 is currently written, and I do see  
15 the notice goes to all of these various  
16 state agencies that I read earlier, but the  
17 confusion is then it's only DPS and ANR that  
18 are sort of, you know, statutory parties.

19 So does that mean that although other  
20 state agencies get notice, I guess I'm  
21 mostly concerned because of potential Ag  
22 issues, for Ag, and I'm really concerned for  
23 the Department of Health. I mean maybe we  
24 don't need to do anything else. But I think  
25 they should be participating in these things

1 when there are ag soils involved, and I  
2 think totally on the issues of noise and  
3 some of these other things the Department of  
4 Health ought to be playing a role if there  
5 are potential health impacts.

6 Maybe we don't need to change it. Maybe  
7 it's enough, but I don't want there to be,  
8 you know what I mean?

9 MS. DILLON: Some hook to get them  
10 involved you were thinking of.

11 CHAIRMAN EASTMAN: Well they get notice  
12 now. And the bill back provisions allow  
13 that if their time is necessary, for the  
14 Board or the Department to bill back their  
15 time. I'm not saying for all this, but when  
16 there is an issue.

17 MS. MARGOLIS: They asked in their  
18 earlier comments to have automatic formal  
19 party status.

20 MS. MCGINNIS: That's in the Ag thing, I  
21 think.

22 MS. MARGOLIS: Even then they didn't ask  
23 to expand the criteria to include ag soils,  
24 but they asked for that opportunity to  
25 participate.

1                   CHAIRMAN EASTMAN:  So maybe that's  
2                   running ahead to other issues, but that's to  
3                   me, ensure adequate environmental and other  
4                   protection, providing protection to me is  
5                   those two especially, and I don't know.  I  
6                   mean it's to have the appropriate state  
7                   entity, you know, responsible for the issue  
8                   if there is an issue.

9                   MR. COSTER:  I think it's working now,  
10                  for instance, on this biomass case.  We have  
11                  been working with the Ag Agency around  
12                  invasive pests.  They have witnesses and  
13                  testimonies in on that issue.  But they  
14                  chose to do that.  They weren't compelled to  
15                  be part of that case.  You know --

16                 CHAIRMAN EASTMAN:  But they are the ones  
17                  who asked for automatic party status, Anne?

18                 MS. MARGOLIS:  Yeah, in their comments.

19                 MR. COSTER:  They generally are willing  
20                  to participate when they have issues.  I  
21                  don't know about the Department of Health.  
22                  I don't know if they are going to want to be  
23                  required to provide testimony for every  
24                  case, but you could recommend that.

25                 MS. McCARREN:  The fact that you have

1 party status --

2 CHAIRMAN EASTMAN: Doesn't mean you have  
3 to participate.

4 MR. COSTER: They are going to get in.  
5 If they move to intervene, I can't imagine  
6 the Board not allowing them to become a  
7 party.

8 CHAIRMAN EASTMAN: Me too, but I also  
9 can't imagine why do we make them ask for  
10 intervener status if they are the ones who  
11 are supposed to be protecting the public.

12 MS. MARGOLIS: Let me just qualify.  
13 They asked for formal party status for any  
14 farm project, a project that's on prime ag  
15 soils, or on soils of statewide significance  
16 they want to limit it seems.

17 CHAIRMAN EASTMAN: I think that's  
18 appropriate. That's where I would want  
19 them.

20 MR. COSTER: I think from our  
21 perspective whatever they want is fine.

22 CHAIRMAN EASTMAN: And we were asking  
23 the Department of Health, they are coming up  
24 next, so maybe -- I mean right? 19 is the  
25 Department of Health.

1 MS. MCGINNIS: Are we cutting out 18?

2 CHAIRMAN EASTMAN: Yeah. I think we can  
3 cut out 18. Well no. To the extent that I  
4 want something in here about the party  
5 status issue for soils, ensuring adequate  
6 environmental and other protection. I think  
7 we want a recommendation that Ag does -- is  
8 a statutory party to just what they asked  
9 for on those matters.

10 MS. MCGINNIS: Ag separate from DOH.

11 CHAIRMAN EASTMAN: Yeah. And I don't  
12 know about -- again maybe we let them ask,  
13 but I think the Department of Health on to  
14 the -- I mean who else is looking at the  
15 health effects? Or yeah.

16 MS. ISELIN: Just very briefly from what  
17 I know about the Department of Health I  
18 don't think they actually are looking at the  
19 health effects of industrial wind in that  
20 there has never been any testing, from what  
21 I understand from Annette, any testing for  
22 infrasound by anybody, anywhere in any of  
23 these projects. And the Department of  
24 Health cites a junk science study, the  
25 Massachusetts study, and that's the limit of

1 their --

2 CHAIRMAN EASTMAN: But our next  
3 recommendation, they finally filed  
4 information with us in which they want to  
5 start to do some work to come up with some  
6 guidelines and standards. That's -- our  
7 next recommendation relates to that.

8 MS. ISELIN: Good.

9 CHAIRMAN EASTMAN: So they have put  
10 something in now at least in this. So the  
11 issue then becomes, I don't know which --  
12 it's not going to be every case that there  
13 is a health case.

14 MR. JOHNSTONE: If we decide to go with  
15 number 19, then I think you ought to afford  
16 them the same status as the other agencies  
17 that are entering the discussion. If we  
18 don't think the health stuff should be a  
19 criteria, then I think we should not afford  
20 it to them. So I'm good with -- and I think  
21 we are all okay with adding 19.

22 CHAIRMAN EASTMAN: I'm okay with 19.  
23 This is something they proposed. Now we are  
24 going to say yes, you really need to do it.  
25 And --

1 MS. MCGINNIS: So Department of Health  
2 shall be --

3 CHAIRMAN EASTMAN: What do you think,  
4 Gaye?

5 MS. SYMINGTON: My concern is that we  
6 reference where we can, that we reference  
7 these are -- this work is based on science  
8 that's been peer reviewed.

9 MR. JOHNSTONE: That's what we did with  
10 ANR. ANR added the same thing. That would  
11 be a good add.

12 CHAIRMAN EASTMAN: Yeah.

13 MS. MCGINNIS: So the Department of  
14 Health shall be a statutory party in cases  
15 where health issues, should I say  
16 specifically?

17 CHAIRMAN EASTMAN: Here's what we are  
18 asking. We are saying applicants will  
19 provide public health impacts assessments  
20 under certain tiers, right? So to me then  
21 the Department of Health will have party  
22 status on these issues. If they don't think  
23 there is an issue, they won't participate.

24 MR. JOHNSTONE: So you give them the  
25 status, and they can opt in or out.

1 MS. MCGINNIS: Yup. Got it.

2 CHAIRMAN EASTMAN: For a recommendation.

3 MR. JOHNSTONE: I'm okay with that.

4 CHAIRMAN EASTMAN: 20. I know we are a  
5 little late. Can we get to the end?

6 MS. SYMINGTON: I would rather keep  
7 going. Keep going.

8 CHAIRMAN EASTMAN: Here we are. ANR and  
9 DPS shall develop guidelines and tools for  
10 understanding and measuring cumulative  
11 impact to be used in both the planning  
12 application and monitoring phase of each  
13 project.

14 MS. MCCARREN: We have had everybody  
15 agree. Including me. Miraculous.

16 CHAIRMAN EASTMAN: Does everybody agree?

17 MS. MCGINNIS: Gaye did not.

18 MS. SYMINGTON: I feel like cumulative  
19 impact belongs in the planning phase. I  
20 don't understand how you can apply it  
21 project by project. I thought we had --

22 MS. MCCARREN: This says -- I may have  
23 read it wrong, Gaye, but I read this to mean  
24 shall develop guidelines and tools for  
25 understanding and measuring cumulative

1 impact.

2 MS. MCGINNIS: I think where Gaye is --  
3 doesn't like it, is having of each project,  
4 and I think what -- I can take that out.

5 MS. MCCARREN: I see. At the very end,  
6 I would just take that out.

7 MS. MARKOWITZ: We were actually  
8 suggesting the additional language that  
9 applicants will provide cumulative impact  
10 assessments under tier two and tier three  
11 projects, which the PSB shall consider in  
12 determining whether a project has an undue  
13 adverse impact or constitutes a public good.

14 So when you're showing, you know, when  
15 demonstrating the impact of a project, that  
16 you can't do it in isolation.

17 MR. JOHNSTONE: There is really two  
18 phases to this. Really the work that we are  
19 talking about that's around the planning  
20 phase, the guidance for broader planning,  
21 but I do think there is a project level just  
22 as you suggested, I think it has to be  
23 considered whether the project tips the  
24 scale of the guidance.

25 MS. MCGINNIS: Exactly.

1 MR. JOHNSTONE: Just as you were just  
2 describing. That's actually pretty good  
3 language. Personally.

4 CHAIRMAN EASTMAN: Yeah.

5 MS. MCGINNIS: So I think you're right,  
6 Scott. It's sort of two levels. ANR and  
7 DPS need to develop guidelines and tools for  
8 understanding and measuring cumulative  
9 impact. Period. At the planning, period,  
10 that's one thing. But then how it's applied  
11 is at two levels. One is at the planning  
12 phase where you're looking at how the broad  
13 impact is already happening and could happen  
14 based on different scenarios.

15 CHAIRMAN EASTMAN: But then there has  
16 got to be a standard for review.

17 MS. MCGINNIS: The second is with a  
18 project, does the project tip it, or does it  
19 not?

20 CHAIRMAN EASTMAN: And that's just like  
21 other things, other criteria. You review  
22 things, and it may or may not have any  
23 impact at all.

24 MS. MCGINNIS: Right. So I'm trying to  
25 see how --

1 MS. SYMINGTON: That is what Tom  
2 commented on as well.

3 CHAIRMAN EASTMAN: ANR. ANR had some  
4 language that isn't too bad.

5 MR. JOHNSTONE: He said not so much the  
6 permitting phase.

7 MS. MCGINNIS: Is specifically for  
8 projects. Well I guess I could just use  
9 that for the projects.

10 MR. JOHNSTONE: Tom is saying  
11 essentially it has to be at the planning  
12 phase because otherwise the -- every project  
13 fights with each other. It's the first in  
14 or the last in.

15 CHAIRMAN EASTMAN: I totally agree.

16 MR. JOHNSTONE: I agree with his point.  
17 At the end of the day if you're going to  
18 take cumulative impacts, unless you're going  
19 to have a process once every 10 years and be  
20 able to pick the best ones every 10 years  
21 there is just some -- there is some  
22 messiness to any development which sometimes  
23 the first in does win, and if you're going  
24 to take up cumulative impacts, there is a  
25 time when you tip the scales and you can't

1 do any more.

2 MS. McCARREN: That's the way it works  
3 on interconnection.

4 MS. MCGINNIS: I do worry that saying  
5 something as broad as applicants will  
6 provide cumulative impact assessments,  
7 that's a big deal.

8 MR. COSTER: That's taken from the one  
9 you put in; applicants will provide health  
10 impact assessments.

11 MS. MCGINNIS: I know.

12 MR. JOHNSTONE: Touche.

13 MR. COSTER: Who is going to do it? The  
14 burden is going to be on the applicant if we  
15 are going to consider it.

16 MS. DILLON: It's really not a big deal.  
17 It's something that is factored in NEPA.  
18 It's factored in other permitting schema.  
19 It's the next step in direct and indirect  
20 impacts. You look at the cumulative impact.  
21 It's similar to the type of work they are  
22 already doing for these larger projects.

23 MS. MCGINNIS: I guess maybe it would be  
24 within the guidelines established by DPS and  
25 ANR that you tell people how to do it.

1 Because there is like when you look at  
2 cumulative impact, I have been reading about  
3 it a lot recently, and there are 1,500  
4 different definitions of what cumulative  
5 impact is, if you're telling a developer to  
6 do a cumulative impact.

7 MR. COSTER: That follows the one that  
8 says we are going to establish the  
9 guidelines, it's within that structure.

10 CHAIRMAN EASTMAN: If you want to revise  
11 a little more to tie it more closely, so be  
12 it.

13 MR. COSTER: The point we are trying to  
14 make is that the burden -- once the  
15 guidelines are set -- the burden is on the  
16 applicant to do the analysis.

17 MS. MCGINNIS: To say whether you tip  
18 the scale or not.

19 CHAIRMAN EASTMAN: Or to say why you  
20 didn't.

21 MS. DILLON: To provide the analysis.

22 CHAIRMAN EASTMAN: All parties shall  
23 agree on third-party monitoring experts to  
24 be hired, paid for by the petitioner, and  
25 overseen by the appropriate agency; ANR,

1 PSB, DPS, Health. It won't be the PSB;  
2 right? When will -- I thought they didn't  
3 want to be around for afterwards. Right?

4 MR. COSTER: I think the Department has  
5 said --

6 CHAIRMAN EASTMAN: I thought it was ANR,  
7 DPS, whatever. Wasn't that it? We were  
8 talking about this earlier today.

9 MS. SYMINGTON: I think he said if there  
10 is a problem, he's going to go back to PSB.

11 CHAIRMAN EASTMAN: Also. And this is  
12 agreeing -- so this might be actually part  
13 of the decision, and so then you've got the  
14 PSB agreeing.

15 MR. JOHNSTONE: But for getting public  
16 comment I think it's fine. We are not sure  
17 exactly which agency will be the lead  
18 enforcement agency. I'm not too nervous  
19 about that today.

20 CHAIRMAN EASTMAN: It says public  
21 complaint responsibility shall be assigned  
22 to the relevant agency.

23 MR. JOHNSTONE: Yeah. So I think it's  
24 fine.

25 MS. MCGINNIS: To keep PSB in there.

1 CHAIRMAN EASTMAN: Yeah.

2 MR. COSTER: Yeah.

3 MS. MCGINNIS: There were several  
4 comments, Gaye and Louise who agreed, said  
5 that this was a little too open ended and  
6 that will all parties really be able to  
7 agree on monitoring experts.

8 CHAIRMAN EASTMAN: Well for me it is --  
9 if the parties don't agree -- it's an order  
10 of the Board.

11 MR. JOHNSTONE: Maybe it should say  
12 that.

13 MS. MCGINNIS: So --

14 MR. JOHNSTONE: It's nice when you can  
15 agree, but at the end of the day the Board  
16 can order.

17 MS. MCGINNIS: If no agreement is  
18 reached, it becomes a Board order.

19 CHAIRMAN EASTMAN: It will be a Board  
20 order even if they agree. But the Board  
21 will order something. What we are trying to  
22 get at is, you know, not having it be a  
23 closed loop here. And that as much as  
24 possible, you know, somebody was, you know,  
25 ensuring the people were qualified. People

1 can comment on it. Maybe they think it's  
2 not necessary.

3 MR. PUGHE: We have a significant number  
4 of third-party people doing post-  
5 construction certification for us on  
6 Kingdom. The issue that's come up, we  
7 already also have an independent party  
8 that's beyond that on, you know, for sound.  
9 We had -- we have another party beyond our  
10 third party doing the analysis. Is that  
11 what you're getting at here, or are you just  
12 talking about following the current --

13 CHAIRMAN EASTMAN: No, because you  
14 decided you wanted to?

15 MR. PUGHE: No.

16 MR. COSTER: I think the intent here is  
17 basically to jump to the independent. So  
18 all the parties agree who the monitor is, so  
19 you only have to do it once.

20 CHAIRMAN EASTMAN: We were trying to get  
21 agreement on who was doing the monitoring up  
22 front.

23 MR. PUGHE: That's great.

24 CHAIRMAN EASTMAN: So there isn't  
25 duplication. So we were trying to have --

1 MR. PUGHE: That makes sense. Great.

2 CHAIRMAN EASTMAN: Sometimes we are  
3 trying to help.

4 MR. PUGHE: No. I just wanted to ask  
5 that.

6 CHAIRMAN EASTMAN: That is what we were  
7 trying to get at.

8 MS. SYMINGTON: Then the other question  
9 that comes up is as that data is collected,  
10 is it then made available on the Web site as  
11 it is collected as opposed to say their  
12 taking quarterly readings and then it only  
13 gets reported once a year? And they are --  
14 not as it's collected? So --

15 MS. MARKOWITZ: How does it work right  
16 now? Do we know?

17 MR. JOHNSTONE: Reports I think.

18 CHAIRMAN EASTMAN: Reports on an annual  
19 basis.

20 MR. PUGHE: We are doing quarterly sound  
21 monitoring reports. We filed one in  
22 February and we just finished our second  
23 quarterly sound. We will be filing that  
24 again in 5 and-a-half weeks from the date --

25 MS. MARKOWITZ: That's in the Board's

1 order.

2 MR. PUGHE: We do it quarterly. You  
3 have to collect all data and run through it.  
4 Once you get through it, you write the  
5 report and here's what the data shows you.  
6 This summer we will be doing bird and bat  
7 counts on the site. Starting April 15. We  
8 will be doing that all through the year.  
9 Filing a report I think it's January 15 next  
10 year. We won't be uploading or would never  
11 intend to upload daily search information.

12 MS. SYMINGTON: I don't know -- I don't  
13 mean that. If you're doing the report  
14 quarterly, then the information would be  
15 uploaded as the report --

16 MR. PUGHE: Yeah, so when we filed the  
17 report it was made to the Public Service  
18 Board and provided to every party in the  
19 docket.

20 CHAIRMAN EASTMAN: And put it on the Web  
21 site.

22 MS. SYMINGTON: That's not what's  
23 happening everywhere, at least from some of  
24 the comments that were received. So if  
25 there are quarterly reports it seems like

1 that information should be available on the  
2 web. Quarterly not annually.

3 CHAIRMAN EASTMAN: Right.

4 MS. MARKOWITZ: So --

5 MR. JOHNSTONE: I think we all agree on  
6 that.

7 CHAIRMAN EASTMAN: I agree, whatever the  
8 reporting time period is.

9 MS. MCGINNIS: I'm going to add that to  
10 the Web site stuff too.

11 MS. RADEMACHER: I don't mean to be  
12 rude, but I guess that's part of the  
13 public's complaint is that they decide who  
14 does those follow-up studies?

15 CHAIRMAN EASTMAN: No. That's what we  
16 have just said.

17 MS. RADEMACHER: That's the follow up  
18 stuff, not just the preconstruction.

19 CHAIRMAN EASTMAN: What we are talking  
20 about is that the monitoring, who does it  
21 would be despoted and agreed on and ordered  
22 by the Board so everybody has got a shot  
23 there. Okay. That's how we were trying to  
24 respond to that.

25 MS. SYMINGTON: It might be the

1 developer.

2 CHAIRMAN EASTMAN: Right.

3 MS. SYMINGTON: It's the Board that's  
4 going to determine that.

5 MS. ISELIN: I think I speak for many  
6 people when I say that I think it's crucial  
7 that infrasound be made -- the testing for  
8 it be made mandatory. And it's my  
9 understanding that it's not being tested for  
10 because the PSB for whatever reason doesn't  
11 think it's important.

12 And I think there are many people that  
13 would -- all over the world -- that would  
14 differ with that, so I hope that you would  
15 include that.

16 CHAIRMAN EASTMAN: What we are doing is  
17 we are asking the Department of Health, you  
18 know, to come up with the study on that.  
19 Because that ought to be done by the  
20 Department of Health on behalf of all of us.  
21 And so to the extent that there are peer  
22 reviewed articles and issues on that, it  
23 should get in. We will watch it for you.  
24 Okay?

25 MS. ISELIN: Absolutely. I'll be

1 watching it as well.

2 CHAIRMAN EASTMAN: Exactly. Okay. So  
3 we are after 4. It's 4:15. Can we --

4 MS. SYMINGTON: We should go through  
5 this stuff. I'll stay.

6 MS. MCGINNIS: The other questions are  
7 kind of important, the three other things.  
8 Because I just need to know whether there  
9 are issues that I need to address directly  
10 in the longer report which will be  
11 significantly longer than three pages, or if  
12 there are things that I don't address.

13 CHAIRMAN EASTMAN: So some of these  
14 things, I know they are important, but it  
15 may be that it's Wednesday's discussion if  
16 it's a long, involved discussion.

17 MR. JOHNSTONE: It's not about the  
18 public hearing. Are any of these about the  
19 public hearing?

20 MS. MCGINNIS: Well this is in what will  
21 go to the public.

22 MR. JOHNSTONE: We haven't actually  
23 determined anything on any of these -- the  
24 question is for what we ask the public to  
25 react to, is there any need for these? At

1 this point.

2 MS. SYMINGTON: Well is there going to  
3 be another public hearing? Yes.

4 CHAIRMAN EASTMAN: Yeah.

5 MS. SYMINGTON: April 9.

6 MS. McCARREN: I'm happy to talk about  
7 it, but I think there is not going to be  
8 agreement on how to handle these three. I  
9 would suggest that we not rush it. But --

10 MS. MCGINNIS: Okay. I just want to  
11 make sure that at some point I know whether  
12 I'm supposed to address these issues,  
13 because they have been brought up again and  
14 again and again, or whether I don't address  
15 them. And the third one has not been  
16 brought up again and again except by Gaye,  
17 who keeps asking us to talk about storage,  
18 and we haven't talked about it, which is why  
19 I put it in here.

20 Gaye has asked on numerous occasions  
21 that we talk about what the siting  
22 implications of -- future implications of  
23 what's happening in the energy sector right  
24 now, one of which will be storage, if we  
25 continue to go on the path that we currently

1 are on. So that's an issue that she asked  
2 that we discuss. We haven't discussed it  
3 yet. So that's why I put it in there to  
4 make sure that we decide whether we want to  
5 discuss it or not.

6 MS. SYMINGTON: We can talk about these  
7 the afternoon of the public hearing, but if  
8 that's what you're suggesting, I think we  
9 should take them out, what we are putting  
10 out there for public comment, because it  
11 doesn't really represent what we have talked  
12 about yet.

13 MS. McCARREN: Agreed.

14 CHAIRMAN EASTMAN: I agree with that.

15 MR. JOHNSTONE: They are long  
16 conversations.

17 CHAIRMAN EASTMAN: I think they are  
18 longer conversations, I think especially on  
19 RECs we need Chris. Is Chris going to be  
20 there on Wednesday afternoon in Rutland?

21 MS. MARKOWITZ: Maybe he can call in.

22 CHAIRMAN EASTMAN: So that's my only  
23 issue. I think these are worthwhile but I  
24 think they are longer. And this is it.  
25 People are just going to learn this is what

1 the process is and here's where we are. But  
2 we are not done yet.

3 MS. MCGINNIS: Yup.

4 MR. COSTER: You have addressed a number  
5 of the ag related ones already. So --

6 MR. JOHNSTONE: Some of the ag ones we  
7 have, but I don't want to miss stuff in  
8 there either. It's important.

9 MS. MCCARREN: I have an issue with gen  
10 -- what they mean by allowing generation on  
11 conserved land. It may need some more  
12 explanation.

13 MS. MCGINNIS: Yeah.

14 MS. SYMINGTON: And I believe there is a  
15 bill, conserved land issues, in the  
16 legislature this year that would affect  
17 this.

18 MR. COSTER: Kind of. Yeah.

19 CHAIRMAN EASTMAN: Well maybe we ought  
20 to get a copy of that for next week.

21 MR. COSTER: I sent Linda the bill to  
22 deal with digester substrate management  
23 that's being proposed by the Ag Agency to  
24 take it away from the Board.

25 CHAIRMAN EASTMAN: Well this gives us

1 something to discuss next, you know.

2 MS. MARKOWITZ: Because we don't want to  
3 be bored and quiet.

4 MS. McCARREN: She is not going to be  
5 here.

6 MR. JOHNSTONE: Because maybe Anne could  
7 take this back, if we are going to talk  
8 about the whole REC issue, we really need  
9 someone from the Department that can talk  
10 about the theory of why they work, and what  
11 critics say about why they don't work.

12 MS. MARGOLIS: RPSs.

13 MS. MCGINNIS: And RECs.

14 MR. JOHNSTONE: We have had a lot of --  
15 there's been a lot of discussion about that  
16 they don't ever reduce any pollution at all,  
17 they don't really affect anything. And you  
18 know, there is two sides to that story. And  
19 we need an expert to help us.

20 MS. MARGOLIS: It would probably be best  
21 to have Asa, but are you talking about on  
22 the -- down in Rutland?

23 CHAIRMAN EASTMAN: We may not be able to  
24 have Asa.

25 MS. MARGOLIS: We can have him on the

1 phone. He could call in probably.

2 MR. JOHNSTONE: I just think that it's a  
3 really deep conversation.

4 MS. MARGOLIS: And just so you know, we  
5 have had conversations, and he has thought,  
6 you know, his opinion is that it's  
7 tangential to the charges in the executive  
8 order, and it would -- at most maybe we  
9 could reference it and say this complicates  
10 the siting conversation. But it's not --

11 CHAIRMAN EASTMAN: I know it's not  
12 necessary to our purview, but even if we  
13 just said, you know, after conversation,  
14 even said that, that this may not be in our  
15 charge, but it does complicate things.

16 MS. MARGOLIS: I'll check with him on  
17 the third by phone.

18 MS. SYMINGTON: I don't think we need --

19 MR. JOHNSTONE: Are we done? We're  
20 adjourned. Thank you.

21 (Whereupon, the proceeding was  
22 adjourned at 4:20 p.m.)  
23  
24  
25

C E R T I F I C A T E

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I, Kim U. Sears, do hereby certify that I recorded by stenographic means the Hearing re: Energy Generation Siting Policy Commission Information Session #6, at the Catamount Conference Room, National Life, Montpelier, Vermont, on March 28, 2013, beginning at 9 a.m.

I further certify that the foregoing testimony was taken by me stenographically and thereafter reduced to typewriting and the foregoing 362 pages are a transcript of the stenograph notes taken by me of the evidence and the proceedings to the best of my ability.

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

Dated at Williston, Vermont, this 1st day of April, 2013.

\_\_\_\_\_  
Kim U. Sears, RPR

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25