

1                                   **STATE OF NEW HAMPSHIRE**2                                   **SITE EVALUATION COMMITTEE**

3                   **September 22, 2017 - 9:03 a.m.**                                   **DAY 38**  
4                   49 Donovan Street   **Morning Session ONLY**  
5                   Concord, New Hampshire

6                   {Electronically filed with SEC on 10-03-17}

7                                   **IN RE:    SEC DOCKET NO. 2015-06**  
8   **Joint Application of Northern**  
9   **Pass Transmission, LLC, and**  
10   **Public Service Company of**  
11   **New Hampshire d/b/a Eversource**  
   **Energy for a Certificate**  
   **of Site and Facility.**  
   **(Hearing on the merits)**

12                   **PRESENT FOR SUBCOMMITTEE/SITE EVALUATION COMMITTEE:**

13                   **Chrmn. Martin P. Honigberg**   Public Utilities Comm.  
                                  *(Presiding as Presiding Officer)*

14                   **Cmsr. Kathryn M. Bailey**       Public Utilities Comm.  
15                   **Dir. Craig Wright, Designee**   Dept. of Environ. Serv.  
16                   **Christopher Way, Designee**    Dept. of Business &  
  Economic Affairs

17                   **William Oldenburg, Designee**   Dept. of Transportation  
18                   **Patricia Weathersby**           Public Member  
19                   **Rachel Dandeneau**             Alternate Public Member

20                   **ALSO PRESENT FOR THE SEC:**

21                   Michael J. Iacopino, Esq., Counsel for SEC  
                                  *(Brennan, Caron, Lenehan & Iacopino)*

22                   Pamela G. Monroe, SEC Administrator

23                                   *(No Appearances Taken)*

24                   **COURT REPORTER:   Steven E. Patnaude, LCR No. 052**

**I N D E X**

**PAGE NO.**

**WITNESS: ROBERT VARNEY (resumed)**

Cross-examination by Ms. Schibanoff 5

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\* \* \*

**E X H I B I T S**

**EXHIBIT NO. DESCRIPTION PAGE NO.**

NAPO-BP 18 Excerpt from Appendix 41, 5  
captioned "Review of Local,  
Regional and State Planning  
(2 pages)

NAPO-BP 20 Document of 2 photographs, 6  
Figure 5 and Figure 6 (1 page)

NAPO-BP 21 Photograph noted as Figure 11 8  
(1 page)

NAPO-BP 25 UG Alignment Plan indicating 10  
Franconia Inn

NAPO-BP 26 Photograph of the entrance to 11  
the Franconia Inn, with 2  
additional inset photographs  
(1 page)

NAPO-BP 27 Document consisting of excerpts 11  
from letters from the Tamarack  
Tennis Camp, the Franconia Inn,  
and the Kinsman Lodge B&B  
(3 pages)

NAPO-BP 23 UG Alignment Plan depicting the 13  
Tamarack Tennis Camp (1 page)

**E X H I B I T S**

<b>EXHIBIT NO.</b>	<b>D E S C R I P T I O N</b>	<b>PAGE NO.</b>
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5 6 7	NAPO-BP 19 UG Alignment Plan depicting the Kinsman Lodge B&B, Franconia, NH (1 page)	18
8 9	NAPO-BP 22 Photograph of Kinsman Lodge B&B, with 2 inset photographs (1 page)	18
10 11 12	NAPO-BP 28 Screen capture of the Project Journal entitled "NH SEC Extends Deadline for Decision on Northern Pass", posted on 08-31-17 (1 page)	19
13	NAPO-BP 29 Photograph depicting 1331 Easton Valley Road (Rt. 116), Easton, NH	21
14	NAPO-BP 30 Photograph depicting 1189 Easton Valley Road (Rt. 116), Easton NH	21
15 16	NAPO-BP 32 Photograph depicting 979 Easton Valley Road (Rt. 116), Easton NH	22
17 18	NAPO-BP 31 Photograph depicting 891 Easton Valley Road (Rt. 116), Easton, NH	22
19	NAPO-BP 33 Photograph of a traffic stop, Easton Valley Road (Rt. 116), Easton, NH	22
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JT Muni 160 [Incorrectly noted as JT Muni 260]	Response from Normandeau Assoc. to TS 8-1, consisting of notes related to NH Regional Planning Commissions and various Cities and Towns in NH, including Franklin, Lancaster, Deerfield, Pembroke, Plymouth, and Concord (08-06-15)	116
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[WITNESS: Varney]

1                                   **P R O C E E D I N G**

2                                   CHAIRMAN HONIGBERG: Good morning,  
3 everyone. I'm going to start Day 38. We still  
4 have Mr. Varney on the stand. And the  
5 questioning this morning is going to begin, I  
6 believe, with Ms. Schibanoff.

7                                   Ms. Schibanoff, wave to Mr. Varney so  
8 he sees where you are.

9                                   MS. SCHIBANOFF: And Attorney Whitley  
10 is going to help at the ELMO.

11                                  Good morning, Mr. Varney. I'm here.

12   *[Ms. Schibanoff indicating.]*

13                                  WITNESS VARNEY: Good morning.

14                                  MS. SCHIBANOFF: I'm Susan  
15 Schibanoff. I'm the spokesperson for the  
16 Non-Abutting Property Owners of Bethlehem to  
17 Plymouth.

18 BY MS. SCHIBANOFF:

19 Q And I'm going to start with Exhibit -- once we  
20 get the ELMO up here, I'm going to start with  
21 Exhibit 18, which is a statement, Mr. Varney,  
22 from your Appendix 41 report.

23                                  MS. SCHIBANOFF: If we could go to  
24 Page 2 please, bottom of Page 2.

[WITNESS: Varney]

1 BY MS. SCHIBANOFF:

2 Q And, Mr. Varney, if you don't mind, I'll read  
3 it. If you disagree with what I'm saying you  
4 said, let me know. "The construction and  
5 operation of the Project will not have an  
6 adverse impact on commercial or industrial  
7 operations because it is located underground  
8 along an existing transportation corridor", and  
9 it goes on. But that's the part I want to  
10 focus on.

11 Do you recall this statement, Mr. Varney?

12 A Yes. Along with the next sentence that says  
13 "The Applicant will work with local businesses  
14 and communities to minimize any temporary,  
15 short-term impacts due to construction."

16 Q Yes. Well, we'll talk about that as well.

17 Thanks.

18 MS. SCHIBANOFF: Exhibit 20 please.

19 BY MS. SCHIBANOFF:

20 Q Mr. Varney, are you familiar with what is  
21 depicted here?

22 A Yes, generally. I'm not a design engineer, but  
23 I'm generally familiar with the process.

24 Q Okay. Could you describe it please?

[WITNESS: Varney]

1 A There will be excavation along the corridor,  
2 there will be, as depicted, a duct bank  
3 installation, flowable concrete backfill will  
4 be installed along the route. It will be  
5 covered. And it will be moving in a linear  
6 fashion, with segment-by-segment along the --  
7 along the route.

8 Q Thank you. Do you know how wide this  
9 installation excavation, for lack of a better  
10 term, will be?

11 A I can't recall. I would assume it's probably  
12 three to four feet.

13 Q What you're looking at there is three to four  
14 feet?

15 A I said that's my reconciliation, that it was  
16 around three to four feet, in terms of the duct  
17 bank installation.

18 Q The duct bank, yes. May I represent to you  
19 that the EIS uses a ballpark figure of ten feet  
20 for what we're looking at here, the excavated  
21 area. And I have been able to find no figures  
22 from Northern Pass itself. So, I'm --

23 A Well, their -- excuse me.

24 Q Yes.

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[WITNESS: Varney]

1 A Their -- I assume that this was covered by the  
2 Construction panel when they spent several days  
3 here before the Committee.

4 MS. SCHIBANOFF: Could we go to,  
5 excuse me, Exhibit 21 now.

6 And these photos, by the way, are in  
7 the record. They're from Counsel for the  
8 Public's expert witness, excuse me, Rusty  
9 Bascom, and you've got the URL on the bottom  
10 there.

11 BY MS. SCHIBANOFF:

12 Q And could you describe what this is please, Mr.  
13 Varney?

14 A Yes. It says "Figure 11 - Example underground  
15 splice vaults, approximately 7 feet wide/8 feet  
16 tall (from top to bottom) and 33 feet long".

17 Q And do you know what this is actually depicting  
18 here or shall I offer that?

19 A It's for the splice -- the splice vaults for  
20 the underground cable.

21 Q Right. And we're actually seeing the bottom  
22 half of two splice vaults. There will be a top  
23 half that's dropped onto the bottom. And, if  
24 I'm correct, Northern Pass is not using a



[WITNESS: Varney]

1 double splice bank installation. They would be  
2 using a single.

3 Do you know how wide the -- or, how --  
4 what width would be necessary to install one of  
5 these splice vaults every 1,600 feet?

6 MR. NEEDLEMAN: I'm going to object,  
7 to the extent that this purports to represent  
8 what Northern Pass is doing. This is a Counsel  
9 for the Public exhibit that I think is just  
10 illustrative.

11 MS. SCHIBANOFF: Yes. This is --

12 CHAIRMAN HONIGBERG: I think  
13 everybody understands that.

14 MS. SCHIBANOFF: Yes. This is a  
15 typical splice vault, not a specific Northern  
16 Pass splice vault. Although, Northern Pass has  
17 suggested it will be using the same dimensions.

18 BY MS. SCHIBANOFF:

19 Q Mr. Varney, do you know what width would be  
20 necessary to excavate and drop this baby in?

21 A No. But I'm -- I don't know precisely, but I'm  
22 sure that it was covered by the Construction  
23 panel that was here for multiple days.

24 Q Okay. Thank you.

[WITNESS: Varney]

1 MS. SCHIBANOFF: Could we now go to  
2 Exhibit 25 please.

3 BY MS. SCHIBANOFF:

4 Q Do you know what this is, Mr. Varney?

5 A It appears to be the Franconia Inn, and that is  
6 located along Route 116.

7 Q Correct. And do you know what's being  
8 represented here?

9 A I assume, based on your prior exhibits, that  
10 it's the location of a splice vault?

11 Q Correct. And the double -- the dashed --  
12 dark -- the dark dashed double line is the  
13 trench. This is from the DOT Permit package.  
14 And I believe the Applicant has these as an  
15 exhibit. What we're specifically looking at is  
16 the plan, the underground plan for going down  
17 116, in front of the Franconia Inn.

18 And if I may just explain one or two  
19 things here. The top of the diagram is east,  
20 the bottom is west, the left is north, and the  
21 right is south.

22 So, you see this trench and splice box  
23 combination running down the west side in front  
24 of the Franconia Inn on the EOP, what is called

[WITNESS: Varney]

1 the "edge of pavement".

2 MS. SCHIBANOFF: Now, I want to pair  
3 that please with Exhibit 26. Well, actually,  
4 I'm sorry, Steven. I didn't mean "pair", I  
5 meant put 26 on, and enlarge it. Thanks.

6 BY MS. SCHIBANOFF:

7 Q Do you know what this is a photo of, Mr.  
8 Varney?

9 A The entrance to the Franconia Inn.

10 Q Correct. And a photo that I took last week.  
11 What I have done on this photo is to represent,  
12 from the plan you just saw, where the 10-foot  
13 trench -- where the 10 feet necessary,  
14 according to the EIS, to install the trench  
15 would be from the edge of pavement. And then  
16 I've just drawn an arrow to where the splice  
17 vault would be. Okay.

18 Now, on this picture, do you think that  
19 the commercial operation of this inn would be  
20 adversely affected by this?

21 A Temporarily, as a construction project within  
22 the state corridor.

23 MS. SCHIBANOFF: Steven, could we  
24 please go to Exhibit 27. Page 2.

[WITNESS: Varney]

1 BY MS. SCHIBANOFF:

2 Q Exhibit 27 are -- contains excerpts from three  
3 letters written by Franconia area business  
4 owners that were submitted to this Committee in  
5 late July. They're on the public comment site.  
6 Again, the URL is there.

7 The one that I would like to look at is  
8 from Richard Morris, who is the owner of the  
9 Franconia inn. And he poses this question,  
10 which I'm going to ask you to think about  
11 please, Mr. Varney. This will be the second  
12 bank of yellow highlighting. "Please ponder  
13 these simple questions. If you knew that your  
14 favorite vacation place in the White Mountains  
15 was going to be temporarily torn up, would you  
16 not skip a visit until the mess was cleaned up?  
17 If you are a new visitor to the White  
18 Mountains, would you want to visit any of the  
19 places that were under construction/destruction  
20 from the Northern Pass corridor? If my  
21 favorite" -- well, that's not a question. I'll  
22 stop there.

23 How would you answer Mr. Morris, Mr.  
24 Varney?

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[WITNESS: Varney]

1 A That the Project will be a -- will have a  
2 temporary impact. That the work will not all  
3 be occurring in one location, as is sometimes  
4 the case with bridge projects or major  
5 intersection type projects. And there's no --  
6 no road closure. And that, because it's a  
7 linear project moving along, it will be limited  
8 duration, in terms of the impact.

9 And, finally, as I indicated in my  
10 response to questions yesterday, the Project  
11 has employed Louis Karno Company to work with  
12 local businesses, to solicit their input and  
13 involvement in providing input on a traffic  
14 control plan and traffic -- and transportation  
15 management plan, and ensure that they minimize  
16 any potential impacts and try to work with  
17 businesses to minimize those impacts.

18 Q Thank you. We'll get to that issue in just a  
19 minute.

20 MS. SCHIBANOFF: Could we look at  
21 Exhibit 23 please.

22 BY MS. SCHIBANOFF:

23 Q And I'll represent to you, if you'll accept  
24 this, that the property diagrammed here is the

[WITNESS: Varney]

1 Tamarack Tennis Camp on 116, in Easton. Also  
2 on both sides of the road, as is the Franconia  
3 Inn. And this is a composite diagram, with the  
4 original plan on the right, which didn't have  
5 much detail, superimposed on the left, and I've  
6 tried to match up the borders, is the exception  
7 request which we'll be talking more about next  
8 week.

9 Again, you can see the trench on the --  
10 running along the bottom of the road, which is  
11 the west side of the highway, the splice box in  
12 blue. And the circled red area you will now  
13 see in Exhibit 24 please, in a photo.

14 The arrow represents my measurement of ten  
15 feet. I used a yardstick. The splice vault, I  
16 can't gauge how much space that would take.

17 Mr. -- I'm sorry?

18 Mr. -- the owner, or the co-owner of the  
19 Tamarack Tennis Camp asked a question based on  
20 this picture that I would like to look at.

21 MS. SCHIBANOFF: And, Steven, we have  
22 to go back please to Exhibit 27, Page 1.

23 BY MS. SCHIBANOFF:

24 Q Again, I'll be happy to read it, if it's

[WITNESS: Varney]

1 difficult to see. This is from the co-owner of  
2 the Tamarack Tennis Camp, who addressed this  
3 body in late August in the public comment  
4 section. His name is Mike Kenney. He also  
5 wrote a letter that is in the packet of 75  
6 letters about Franconia area businesses that's  
7 in the written public comments.

8 He says "where I live, we have a set of  
9 circumstances relating to the physical  
10 topography of our property", that you have just  
11 seen illustrated in that photo. His question  
12 is this, and I am not going to ask you for a  
13 legal conclusion, but this is his question.  
14 I'll ask you the question I'm going to ask, but  
15 it's not going to be legal.

16 "Do our property deeds need to be changed  
17 to indicate an 8 foot by 8 foot by 30 foot long  
18 concrete splice vault that is located in front  
19 of our restored 110 year-old barn?"

20 Mr. Varney, I'm not asking you to give us  
21 a legal opinion about whether it needs to be in  
22 the property deed or needs to be disclosed or  
23 whatever. I'm asking you to try to understand  
24 the broader sense of what Mr. Kenney is asking

[WITNESS: Varney]

1 here. That something fundamental is changing  
2 in the nature of that little road that goes  
3 down 116, that country road that is all of a  
4 sudden going to have this massive  
5 infrastructure buried in it, and he's worried  
6 about it. This is the way he's expressing it.  
7 Do you understand this concern?

8 A Yes, I do.

9 Q And how would you answer him, not the legal  
10 question?

11 A That, first of all, as a general principle, my  
12 understanding is that the Project tries to  
13 locate splice vaults in areas where they do not  
14 hamper access to businesses. And, so, that's  
15 one of the guiding principles, I believe, that  
16 they try to do, try to use in locating them,  
17 one of many factors that they have to consider.

18 And the Project will need to be  
19 constructed in such a way that it will not be  
20 an issue in the future for the DOT, which is  
21 responsible for road maintenance or the  
22 adjacent property owners. Eversource will be  
23 forever responsible for that maintenance. And  
24 should there be any issues, they will be



[WITNESS: Varney]

1 responsible for addressing those issues.

2 Q Do you think this is a convenient location for  
3 Mr. Kenney, who has water lines running under  
4 116, and this comes in the middle of the two  
5 halves of his tennis camp?

6 A I would say, probably not. And this is a good  
7 example of where dialogue between the Project  
8 and the business owner is important and needs  
9 to be done. And I believe that Eversource has  
10 committed to ensuring that that dialogue takes  
11 place. I don't know whether they have yet  
12 talked with Mr. Kenney since he wrote this  
13 letter. I don't know the date of it.

14 Q It was -- excuse me -- about July 30th, or even  
15 later.

16 A In speaking with Louis Karno Company a couple  
17 of weeks ago, they indicated that they had been  
18 reaching out to businesses in Bethlehem and  
19 Franconia, in addition to Plymouth and Easton.

20 Q May I represent to you that Mr. Kenney has said  
21 "I haven't seen that Northern has reached out  
22 to address any of the above issues"?

23 A Yes. And, again, I'm pointing out the  
24 different dates. And, so, I'm not sure that

[WITNESS: Varney]

1 that's accurate today. But, even if they  
2 haven't spoken yet, my understanding is that  
3 Eversource will be reaching out and Louis Karno  
4 Company will be reaching out to these business  
5 owner, if they haven't already.

6 Q Thank you.

7 MS. SCHIBANOFF: May we move to  
8 Exhibit 19 please.

9 BY MS. SCHIBANOFF:

10 Q Another excerpt from the DOT Permit packages,  
11 and another local business located on both  
12 sides of 116. All the same conditions, north,  
13 south, east, west pertain. The trench here  
14 you'll see is running on the west -- the east  
15 side of the road, the splice location smack in  
16 front of the Kinsman Lodge.

17 MS. SCHIBANOFF: And could we now  
18 look at Exhibit 22.

19 BY MS. SCHIBANOFF:

20 Q Which is a recent photograph of the property in  
21 question here. The splice box in the front  
22 lawn, on the right. The 10-foot hypothetical  
23 trench distance marked with the arrow. And, as  
24 Mr. and Mrs. Thompson mentioned in their

[WITNESS: Varney]

1 letter, it would take out their sign and trees  
2 further down the property. The Thompsons also  
3 have questions to ask, but I'm going to ask a  
4 different question for them, and all of these  
5 owners.

6 MS. SCHIBANOFF: Steven, Exhibit 28  
7 please.

8 BY MS. SCHIBANOFF:

9 Q This is a screen capture of the Northern Pass  
10 blog from the website, posted on August 31,  
11 2017. This was after the SEC had recently or  
12 just announced a push-out of the schedule into  
13 March.

14 Northern Pass says, in the highlighted  
15 section: "We continue to believe that we will  
16 be in a position to start construction in the  
17 second quarter of 2018." That's about six  
18 months from now.

19 Mr. Varney, what are the Thompsons, Mr.  
20 Morris, Mr. Kenney supposed to tell people who  
21 call now to book lodging or camp spots for  
22 their kids for this summer?

23 A I'm not sure they need to tell them anything  
24 yet, until the Project has been approved by the

[WITNESS: Varney]

1 SEC and the detailed design for the underground  
2 portion has been worked out with New Hampshire  
3 DOT to their satisfaction.

4 Q So, we are not to believe what we are reading  
5 in front of us?

6 A I don't know. I don't know how quickly the  
7 process will go. My guess is that, since the  
8 extended time frame, that it may take longer.  
9 But, when you start construction, there are  
10 various phases of construction that take place.  
11 So, I really can't comment beyond that.

12 Q Can you at least appreciate the dilemma that  
13 this Project is putting business owners in who  
14 run lodges -- excuse me, who run lodgings and  
15 have, you know, long-term commitments, if they  
16 don't say anything, and the guests show up and  
17 this is going on, they have lost a permanent  
18 customer?

19 A Absolutely understand the concern. And that's  
20 why the Applicant has hired Louis Karno Company  
21 to ensure that Eversource has -- and Northern  
22 Pass has good communications with the  
23 businesses prior to and during and after  
24 construction.

[WITNESS: Varney]

1 Q May I tell you that I think it was six months  
2 ago I first heard about the outreach to  
3 businesses, that it was going to be occurring  
4 soon, and Louie Karno was going to be working  
5 everything out six months ago. Not one of  
6 these people has yet heard from them.

7 MR. NEEDLEMAN: Objection.

8 MS. SCHIBANOFF: Withdrawn.

9 BY MS. SCHIBANOFF:

10 Q Let's move on to four photos that I'd like to  
11 show in a row, with no questions, and then just  
12 a group question at the end of them.

13 MS. SCHIBANOFF: Steven, if you could  
14 put up individually please 29, 30, 31 and -- 32  
15 and 31, starting with 29.

16 BY MS. SCHIBANOFF:

17 Q I haven't bothered to do all the diagramming  
18 for you. But you'll see the red arrow there  
19 that marks the trenching area. This is a house  
20 on 116.

21 MS. SCHIBANOFF: Could we go to  
22 number 30 next.

23 BY MS. SCHIBANOFF:

24 Q This is the Farrell's *[sic]* barn on 116. Red

[WITNESS: Varney]

1 arrow marks the trench. No exception requests  
2 have been filed for this that I'm aware of.

3 MS. SCHIBANOFF: Number 32 please.

4 BY MS. SCHIBANOFF:

5 Q Another private residence on the Easton Valley  
6 Road. The red arrow marks the 10-foot trench.

7 MS. SCHIBANOFF: And, finally, number  
8 31.

9 BY MS. SCHIBANOFF:

10 Q The same circumstances, red arrow marks the  
11 trench. These are all on the Easton Valley  
12 Road. And I could have shown you many more,  
13 but I will stop there.

14 MS. SCHIBANOFF: One final photo, 33  
15 please.

16 BY MS. SCHIBANOFF:

17 Q Which I took while idling in my car on Tuesday,  
18 on Route 116. Mr. Varney, I believe you said,  
19 correct me if I'm wrong, I believe you said on  
20 Tuesday, on the first morning you were here,  
21 that you expected traffic stops to last about a  
22 minute. Am I recalling that correctly? I  
23 heard "a minute". I'm not sure what exactly  
24 you said about it.

[WITNESS: Varney]

1 A I believe that was Lynn Farrington's testimony.

2 Q Oh, I see.

3 A During the Construction panel.

4 Q Okay. Well, would you be surprised if I told  
5 you that on the -- at this picture, where this  
6 picture was taken, northbound on 116, at 9:50  
7 a.m., I waited six minutes? Went to town, came  
8 back. And, when I was on the opposite side, I  
9 waited 11 minutes. Now, this is a DOT project,  
10 it's not a Northern Pass Project. But would it  
11 lead you to believe, Mr. Varney, that if the  
12 DOT is okay with somebody sitting in traffic  
13 for 11 minutes, it's going to be okay for  
14 Northern Pass to use that standard as well?

15 MR. NEEDLEMAN: Objection.

16 Relevance.

17 CHAIRMAN HONIGBERG: There's also a  
18 problem, Ms. Schibanoff, when you asked him two  
19 very different questions.

20 MS. SCHIBANOFF: All right. I'll  
21 separate --

22 CHAIRMAN HONIGBERG: You want to  
23 separate them out, and we'll see whether  
24 there's a problem with them individually. They

[WITNESS: Varney]

1 still may have a relevance problem, I think,  
2 for Mr. Needleman. But let's do them one at a  
3 time.

4 BY MS. SCHIBANOFF:

5 Q Mr. Varney said --

6 CHAIRMAN HONIGBERG: I think the  
7 first question was "would it surprise you if I  
8 told you that I waited six minutes going in one  
9 direction?"

10 MS. SCHIBANOFF: All right.

11 CHAIRMAN HONIGBERG: That was the  
12 first question.

13 BY MS. SCHIBANOFF:

14 Q Would it surprise you, Mr. Varney, if I told  
15 you that I waited six minutes in one direction?

16 MR. NEEDLEMAN: And I'll object to  
17 the relevance.

18 CHAIRMAN HONIGBERG: Overruled. You  
19 can answer.

20 **BY THE WITNESS:**

21 A Yes, it would surprise me. I've been in  
22 positions where I've traveled all over New  
23 England, in both rural and suburban and  
24 urbanized areas. And I don't believe I've ever



[WITNESS: Varney]

1           been through a project that had a wait of that  
2           length.  If there was, it had to be a  
3           one-time -- if this occurred with you, my guess  
4           is that it was a one-time occurrence.  But I  
5           can't think of any traffic project, and I've  
6           been through many, many throughout New England,  
7           and especially in New Hampshire, and have not  
8           experienced that kind of a wait with a project.

9                           CHAIRMAN HONIGBERG:  Ms. Schibanoff,  
10          I think your second question, although implied,  
11          not asked explicitly, was "would you be  
12          surprised if I told you that I had an 11 minute  
13          delay in the other direction?"  Is that  
14          correct?

15                          MS. SCHIBANOFF:  I think he's already  
16          answered that one.

17                          WITNESS VARNEY:  Yes.

18  BY MS. SCHIBANOFF:

19  Q       So, one more question about this picture, and  
20       then I'll move on.  Do you think the length of  
21       these delays has anything to do with the fact  
22       that the road is so narrow here, 116, that it  
23       couldn't be routed around the construction?

24                          MR. NEEDLEMAN:  Objection.  This is

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1 far beyond this witness's testimony.

2 CHAIRMAN HONIGBERG: It is. We'll  
3 take it for what it's worth and allow him to  
4 answer.

5 **BY THE WITNESS:**

6 A I don't know.

7 BY MS. SCHIBANOFF:

8 Q Okay. One final question, and this is much  
9 broader gauge. For all of this week, I have  
10 heard you talk about your focus on "regional  
11 orderly development". You have not been as  
12 interested to hear about an individual property  
13 or an individual owner, because you're  
14 considering "the region", is that correct?

15 A No. I've been interested in looking at the  
16 entirety of the route, and describe the route  
17 in detail community-by-community. But my  
18 overall judgment on orderly development is  
19 pursuant to the SEC rules, which specifically  
20 state that it's an "evaluation of orderly  
21 development of the region".

22 Q How are you defining "regions"?

23 A Typically, within regions, regional planning  
24 commission regions, which are planning and

[WITNESS: Varney]

1 development regions. But it's typically  
2 applied for projects that are of shorter  
3 distances, and it's oftentimes considered one,  
4 one region.

5 Q Could you tell us which specific --  
6 specifically what regions you're considering?

7 A The North Country Council Region, the Lakes  
8 Region, the Central New Hampshire Region, and,  
9 for Deerfield, the Southern New Hampshire  
10 Region.

11 Q And these are divisions that are recognized by  
12 the State of New Hampshire?

13 A Yes, they are.

14 Q Where would Easton fall?

15 A North Country Council Region.

16 MS. SCHIBANOFF: Okay. I have no  
17 more questions. Thank you.

18 WITNESS VARNEY: Thank you.

19 CHAIRMAN HONIGBERG: According to my  
20 list, Ms. Pacik is up next.

21 MS. PACIK: Thank you. We're just  
22 going to need the ELMO -- not the ELMO, Apple  
23 TV. Thank you.

24 CHAIRMAN HONIGBERG: Off the record.

[WITNESS: Varney]

1                   *[Brief off-the-record discussion*  
2                   *ensued.]*

3                   MS. PACIK: Good morning, Mr. Varney.  
4                   My name is Danielle Pacik. And I am the  
5                   attorney for the City of Concord, and I am also  
6                   the spokesperson for Municipal Group 3 South.

7 BY MS. PACIK:

8 Q               And, I want to start by talking about the  
9               prefiled direct testimony that you submitted in  
10               October 2015. And that was submitted with the  
11               Application, is that correct?

12 A              Yes.

13 Q              And, if we go to the next page, and this is  
14              from your Exhibit 20, which is your -- or, the  
15              Applicants' Exhibit 20, and it's your  
16              testimony, and it's Page 3 of it, you were  
17              asked "what is the purpose of your testimony?"  
18              And you say it's "two-fold". First, you  
19              "provide an assessment and opinion on impacts  
20              to construction and operation...on local land  
21              use". And then you offer an opinion on  
22              "ordinary development of the region". And, for  
23              purposes of this morning, I want to talk about  
24              the first opinion you give, which is "impacts

[WITNESS: Varney]

1 to local land use".

2 And, if we go to the next page, this is --  
3 we've looked at this before with a few other  
4 individuals who have questioned you so far.  
5 But, just to be clear, for the rules, for the  
6 criteria for the Site Evaluation Committee to  
7 find undue interference, one of the items that  
8 they need to look at is land use, right?

9 A Yes.

10 Q Okay. So, in this case, you actually prepared  
11 a report on land use specifically, right?

12 A Yes.

13 Q And, in your prefiled testimony, you discussed  
14 the methodology that you used to prepare that  
15 report on land use.

16 A Yes.

17 Q And, if we go to the next slide, this is your  
18 testimony, your prefiled testimony again, from  
19 October 2015. And, on Page 3, you asked  
20 about -- you're asked, under Line 17, "what's  
21 the methodology you used for developing your  
22 report?" And you explain that you did "an  
23 in-depth review of local, state, and regional  
24 long-range planning documents", and that you

[WITNESS: Varney]

1 also did a "thorough examination" along the  
2 communities. And you actually drove along the  
3 right-of-way, is that right?

4 A Yes.

5 Q Okay. And, if we go to the next page of your  
6 prefiled testimony, you talk in a little bit  
7 more detail about what were those regional and  
8 state and local plans that you looked at. And  
9 you talk about "planning documents", like the  
10 "local river corridor management plan". And  
11 that is a regional plan, right?

12 A Yes.

13 Q And that deals with rivers. And one of the  
14 rivers in that is the Merrimack River, is that  
15 right?

16 A Yes. There's the Upper Merrimack and the Lower  
17 Merrimack, which were both designated by the  
18 State when I was DES Commissioner.

19 Q Okay. And, so, those are both designated  
20 rivers, right?

21 A Yes.

22 Q Okay. And then you talk about other plans that  
23 you look at, in terms of state and federal  
24 plans, right?

[WITNESS: Varney]

1 A Yes.

2 Q Okay.

3 MS. PACIK: And could we go to the  
4 next page please.

5 BY MS. PACIK:

6 Q So, we talked about before that you did a  
7 report that was submitted with the Application  
8 on land use. And this is your report, right?  
9 And this was marked by the Applicants as  
10 "Exhibit 1 Appendix 41"? Is that correct?

11 A Yes.

12 Q And, on the next page, it starts with the Table  
13 of Contents, and it shows in great detail all  
14 of the local, regional, and state planning  
15 documents that you looked at, right?

16 A Yes.

17 Q And it includes, under 5.7, "Municipal Plans  
18 and Ordinances", and you looked at master plans  
19 and zoning ordinances, right?

20 A Yes.

21 Q And you've testified that you read every master  
22 plan and you read every zoning ordinance of  
23 towns or cities along the route, right? The  
24 host communities?

[WITNESS: Varney]

1 A Yes.

2 Q And, if we go to the next page, we can see  
3 there's actually 31 municipalities and  
4 unincorporated places, and those are the ones  
5 that you looked at?

6 A Yes.

7 Q And, so, in this report, the only  
8 municipalities and unincorporated places that  
9 you analyzed are the ones listed on Attachment  
10 A, is that correct?

11 A Yes.

12 Q So, in terms of a discussion of the master  
13 plans and a discussion of the prevailing land  
14 uses, the only ones in your report are the ones  
15 that we have in front of us in the Table of  
16 Contents, Attachment A?

17 A I'm not sure I understand the question.

18 Q So, you looked at -- for each of those towns  
19 and cities and unincorporated places, you  
20 looked at the master plans and you looked at  
21 the prevailing land uses of those places,  
22 right?

23 A Along the route, yes.

24 Q Okay. So, let's go to the next page for a



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1 second. And I had a question about this, and  
2 that's why I've asked all these questions,  
3 because I was a little confused. Because, if  
4 you look at the rules for Site 301.09, it says  
5 that you have to provide "master plans of  
6 affected communities and zoning ordinances of  
7 the proposed facility host municipalities and  
8 unincorporated places".

9 And, then, under (a), where it says the  
10 discussion needs to have a discussion of "land  
11 use in the region", it says that you have to  
12 have "a description of the prevailing land uses  
13 in the affected communities".

14 So, according to 301.09, there's a  
15 difference between an "affected community" and  
16 a "host community" -- a "host municipality".  
17 Is that your understanding?

18 A Yes.

19 Q Okay. And, so, in terms of "affected  
20 communities", what's your understanding of what  
21 that means?

22 A Let me -- let me find the definition.

23 Q Well, okay. So, you understand it is defined  
24 in the rule?

[WITNESS: Varney]

1 A Yes. And I reviewed the master plans for 52  
2 abutting communities along the route. Rather  
3 than simply try to select those that were  
4 affected, I went well beyond that and reviewed  
5 the master plan for every community east and  
6 west of -- on either side of the host  
7 communities.

8 Q But those weren't included in your reports,  
9 right?

10 A No, they weren't.

11 Q Okay.

12 A They were provided separately.

13 Q Well, what do you mean "provided separately"?

14 A They, I believe, were provided as part of  
15 discovery.

16 Q Okay. But you understand that this is a role  
17 in terms of what the Application requires and  
18 what the SEC needs for information, right?

19 A Yes.

20 Q So, the fact that you did it separately, and it  
21 was provided in discovery, that doesn't -- is  
22 it your understanding that that meets the  
23 requirements of this rule?

24 A I don't know.

[WITNESS: Varney]

1 Q Okay.

2 A All I know is that I did review the master  
3 plans for 52 communities on each side of the  
4 host communities.

5 Q All right. Well, let's look at the -- just  
6 let's go to next slide and look at what the  
7 definition of an "affected community" is. And  
8 an "affected community" means not only "the  
9 proposed energy facility host municipalities  
10 and unincorporated places", but, and it's in  
11 red, "other municipalities and unincorporated  
12 places that are expected to be affected by the  
13 proposed facility, as indicated in studies  
14 included with the application submitted with  
15 respect to the proposed facility."

16 And, so, are you aware of any studies that  
17 showed that there are communities other than  
18 the host communities that will be affected?

19 A My understanding was that the Visual Impact  
20 Assessment, which was the greatest concern with  
21 respect to communities that are further away  
22 from the Project, was going to go -- was going  
23 to cover that issue.

24 Q Okay. So, you -- but you did the land use

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1 section, right?

2 A Right.

3 Q And we just talked about the fact that land use  
4 needs to include a description of the  
5 prevailing uses in the communities that are  
6 affected, right?

7 A It was to review prevailing land uses along the  
8 corridor. And, given that there was not any  
9 significant effect on land uses along the  
10 corridor, it would logically extend to areas  
11 that were much further away, unless it was a  
12 visual impact, and that was covered by the  
13 visual impact consultant.

14 Q Well, let's go back to the slide before us for  
15 a second. So, it says "A description of the  
16 prevailing land uses in the affected  
17 communities". And there's just -- there's no  
18 discussion of that, though, in your reports,  
19 right?

20 A Correct.

21 Q Okay. But somewhere there needs to be a  
22 description of the prevailing land uses in the  
23 affected communities under this rule. You  
24 would agree with that?

[WITNESS: Varney]

1 A No, I don't believe so.

2 Q Okay. So, you don't think there needs to be,  
3 even if there's a community that's going to be  
4 affected, you don't think that there needs to  
5 be any description of the prevailing land use?

6 A I think the interpretation that most people  
7 have had is to look at prevailing land uses  
8 along the corridor. And, if there do not  
9 appear to be any impacts, then one would then  
10 assume, unless there were visual impacts, that  
11 there would not be any impacts to affected  
12 communities. And, in the testimony that I  
13 provided, indicate -- the indication was that  
14 there was no significant impact on prevailing  
15 land uses along the corridor. That it would  
16 not interfere with the continued uses that  
17 exist.

18 Q Okay. And, so, you -- and, again, you analyzed  
19 the host communities. So I don't go too down  
20 this road with you, let's keep going, and we'll  
21 go to the next slide.

22 And this shows Boscawen. And this is a  
23 viewshed analysis of Boscawen, and it's  
24 circled in red. And this comes from, if you

[WITNESS: Varney]

1 just go up a little bit, this is from  
2 Appendix [Applicants?] Exhibit 2, Attachment 6,  
3 which was a supplemental viewshed analysis  
4 provided by Terrence DeWan. And you can see in  
5 this how close Boscawen is to the corridor,  
6 correct? And, if we blow it up a little bit, I  
7 think you might be able to see it more.

8 But you're aware that the town line of  
9 Boscawen follows the Merrimack River?

10 A Yes.

11 Q And those three bumps we see in red, that's the  
12 Merrimack River. Is that correct?

13 A In red?

14 Q There it's purple. I see purple.

15 A Okay. Okay. You said "red", I'm sorry.

16 Q The circle is red. My apologies.

17 A Okay.

18 Q So, the Merrimack River, that's a -- we already  
19 established, that was a designated river,  
20 right?

21 A The Merrimack, yes.

22 Q Okay. And, so, in terms of Boscawen, that  
23 wasn't on your list in the report of towns that  
24 you analyzed the master plan of or discussed

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1 the prevailing uses of, is that right?

2 A Could you ask that again? I'm sorry.

3 Q In your report that you provided to the Site  
4 Evaluation Committee, you did not discuss  
5 either the Master Plan or the prevailing land  
6 uses of Boscawen, correct?

7 A In the report, I didn't. But, in the review of  
8 master plans for abutting communities, I did.

9 Q Okay. And we've already established that the  
10 review of master plans for abutting communities  
11 that you provided was something that you  
12 produced in discovery, it wasn't in any of your  
13 reports, right?

14 A Correct.

15 Q And let's actually look at that document that  
16 you're talking about, which was produced in  
17 discovery, and I believe it was even marked as  
18 an exhibit by the Applicants. And it's  
19 Applicants' Exhibit --

20 MR. NEEDLEMAN: 123.

21 BY MS. PACIK:

22 Q -- 123. Thank you. So, let's go to the first  
23 page first. It says "Draft" on it, right?

24 A Yes. Because the -- it's a working draft.

[WITNESS: Varney]

1           Because we have tried to update it over time,  
2           given the long length of time since the report  
3           was written, and because master plans are  
4           periodically updated or sections of plans are  
5           periodically updated, we've tried to update the  
6           document as new information is available.

7   Q       Okay.  But you're testifying today, right?  
8           You're here to testify?  We're at the testimony  
9           stage, correct?

10  A       Yes.  Yes.  Yes.  I'm here today.

11  Q       And this is the only document to date that's  
12           been provided is the one that says "Working  
13           Draft", right?

14  A       I believe so.  I'm not aware -- I was not  
15           involved in the transmittal of information  
16           between the Applicant and the other parties  
17           during the proceeding.  We provided all of our  
18           information to the Applicants.

19  Q       But you're not aware of any additional one that  
20           you've done?

21  A       No.  This was probably the most recent update.  
22           Although, I'm not sure.  There may have been  
23           some slight additions.  Perhaps in the  
24           supplemental testimony, there may have been



[WITNESS: Varney]

1 reference to some master plan updates, which I  
2 believe were indicated in that, in that  
3 testimony.

4 Q Okay. But, in terms of an analysis of either  
5 the master plans or the prevailing land uses of  
6 affected communities, this is the only document  
7 that you have working, right?

8 A For affected communities, for -- for abutting  
9 communities, which is beyond affected  
10 communities, yes.

11 Q Okay. So, now, let's go to the section of  
12 Boscawen. So, this is the only document we  
13 have, and this is your discussion of the  
14 Boscawen Master Plan?

15 A It's just a summary of its existence, when the  
16 plan was developed, which is quite old. It was  
17 prepared in 2001-2002. Describes the chapters  
18 that are in the plan, describes the fact the  
19 Transportation chapter was updated. And, then,  
20 we specifically looked for any reference to  
21 "electricity" or "transmission lines", and this  
22 is all that it said about the issue of electric  
23 lines in the town.

24 Q Okay. And just -- I don't know, maybe my

[WITNESS: Varney]

1 question wasn't clear, but it really -- the  
2 only question I just asked was, "is this the  
3 only section that discusses the Town of  
4 Boscawen Master Plan?"

5 A Yes. But the Plan speaks for itself.

6 Q Okay. So, the answer to that question was  
7 "yes"?

8 A Yes.

9 Q Okay.

10 A Yes, but.

11 Q All right. And, in this section of the Town of  
12 Boscawen, there's no discussion of "prevailing  
13 land uses", is that correct?

14 A Correct.

15 MS. PACIK: Can we go back to --  
16 there we go. Sorry, just bear with me for a  
17 second while I get the right page here.

18 BY MS. PACIK:

19 Q Okay. So, now going back to your review of  
20 these municipal master plans and zoning  
21 documents, you had said that you reviewed all  
22 them. And I understand you don't know how much  
23 you charged for your time to review those.

24 But, if you were to estimate how many hours you

[WITNESS: Varney]

1 and your office spent reviewing master plans  
2 and zoning ordinances, what would you estimate?

3 A I'm not sure that I could answer your question.  
4 I didn't keep track. But, I would say, for  
5 some of them, it was as many as four hours  
6 perhaps. Some plans are very simple and  
7 limited in their level of information. And  
8 those reviews were probably done faster than  
9 that.

10 Q Okay.

11 A But it was a review of the entire plan in each  
12 instance.

13 Q And you also said you reviewed all of the  
14 zoning ordinances, right?

15 A Yes.

16 Q Okay. So, it's something that wasn't done in a  
17 couple hours, correct?

18 A Correct.

19 Q Probably took more than a week?

20 A Took a fair amount of time, yes.

21 Q Probably a few weeks? Is it fair to say  
22 probably hundreds of hours, is that right?

23 A Probably.

24 Q Okay. And you spent that time because you

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1 thought it was important, right?

2 A Yes. To develop an understanding of the master  
3 plan, and to look for any references to  
4 electric utility corridors.

5 Q Okay. So, now, if we go to the following page  
6 of your report, or a section of it, which is  
7 Section 5.7. And this is from Applicants'  
8 Exhibit 1 Appendix 41. You talk about the  
9 importance of master plans in New Hampshire.  
10 And you explain that they "serve as a basis for  
11 local ordinances and regulations", and that  
12 they are a "soundboard in the performance" --  
13 whoa. Hold on a second, we'll get that back  
14 up.

15 And you also said that they're a  
16 soundboard for, and I have it highlighted,  
17 "smart growth, sound planning and wise resource  
18 protection", is that right?

19 A Yes.

20 Q Okay. And, so, the point of a master plan  
21 isn't to just look at the existing land uses,  
22 but also to help guide future development for a  
23 community?

24 A Yes.

[WITNESS: Varney]

1 Q And, in your report, you explain that the  
2 content of master plans is actually something  
3 that's required by statute, and it's RSA 674:2?

4 A It states the contents of the plan, that they  
5 need to have a vision section and a land use  
6 section at a minimum.

7 Q Okay. So, let's look at 674:2 for just one  
8 moment. And you just mentioned that a vision  
9 section is required, right?

10 A Yes.

11 Q And the vision section is something that  
12 "articulates the desires of citizens affected  
13 by the master plan", correct?

14 A Yes.

15 Q And there's a fair amount of community  
16 involvement in the development of a master  
17 plan?

18 A Some do and some don't.

19 Q So, in terms of the City of Concord's Master  
20 Plan, I understand that you reviewed this?

21 A Yes. As well as several other plans that are  
22 intended to be incorporated into the Master  
23 Plan 2030.

24 Q Okay. So, starting off on the next page, and

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[WITNESS: Varney]

1 this is Joint Muni 182, Section II talks about  
2 "The Vision for Concord". And that's what we  
3 just talked about, is the importance of having  
4 a vision portion of a master plan.

5 And, in this, the first line for "Vision  
6 of Concord", is to "maintain the essential  
7 character that is valued by residents while  
8 accommodating growth and development in a way  
9 that maintains and is consistent with that  
10 essential character." Do you see that?

11 A Yes.

12 Q Okay. And you would agree that it doesn't say  
13 anything about transmission lines, but what it  
14 does require is all new development to be  
15 "consistent with the essential character" of  
16 Concord, right?

17 A That's the -- that's the hope or vision --

18 Q Okay.

19 A -- that it states. It doesn't require it. It  
20 simply states that that is a vision.

21 Q Yes.

22 A A broad vision, yes.

23 Q Okay. So, let's go to the next page. And this  
24 is the second page of the Master Plan and the

[WITNESS: Varney]

1 Vision section. And it talks about, in the  
2 first -- the top of it, I've highlighted it, it  
3 talks about the fact that the essential  
4 character includes "an extensive rural  
5 landscape". Do you see that?

6 A Yes, I do.

7 Q Okay. And, then, the next bullet that I  
8 highlighted, it says "New development maintains  
9 and reinforces the historical pattern of land  
10 use and development in Concord." And in that  
11 section, again, it says that they want to  
12 "minimize the sprawl of development in the  
13 rural parts of the community and they want to  
14 maintain the rural landscape." You see that  
15 word again "rural landscape"?

16 A Yes.

17 Q And a little bit further, a couple sentences  
18 later, they want to make sure the vision is  
19 that "the development doesn't occur in rural"  
20 -- that "does occur in rural areas is "rural"  
21 not "suburban" in character, and it does not  
22 adversely affect a working rural landscape."  
23 Do you see that word again?

24 A Yes, I do.

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1 Q Okay. If we go down a little bit more, it  
2 talks about maintaining and preserving historic  
3 buildings. And, in that section, what they say  
4 is that they want to maintain the character of  
5 historic districts, and the vision is for  
6 "landscapes and vistas with historic relevance  
7 to be protected from encroachment by  
8 development", and that "the view of the Capitol  
9 dome is preserved". Do you see that?

10 A Yes. It's a reference to visual effects.

11 Q Okay. So, on this page alone, four times  
12 "rural landscape" is discussed, right?

13 A Yes.

14 Q Transmission corridors are not discussed, are  
15 they?

16 A No.

17 Q Transmission lines are not discussed?

18 A No.

19 Q But, in general, they want to maintain the  
20 rural landscape, correct?

21 A Yes. Which is an example of why maintaining  
22 the existing land use pattern is important, so  
23 that you don't need to introduce a new corridor  
24 within a rural landscape.



[WITNESS: Varney]

1 Q Okay. And I can assure you, we're going to get  
2 into that in a little bit.

3 A Okay.

4 Q But, for now, I just want to talk about the  
5 Vision section. So, going to the next page,  
6 they also talk about, and we're still in the  
7 Vision section, that "new non-residential  
8 development is well designed, minimizes its  
9 impacts on the community, its neighbors, and  
10 the environment, enhances the quality of life  
11 in Concord". Do you see that?

12 A Yes.

13 Q If you go down a little bit more, they talk  
14 about the transportation system. Even the  
15 transportation system in Concord's -- the  
16 vision is to have it "more attractive" to  
17 users, and "aesthetics are integrated into  
18 transportation improvements". And, so, you  
19 understand the vision deals with community  
20 aesthetics, right?

21 A Yes.

22 Q And those community aesthetics, it's not just  
23 about preserving scenic resources, it's about  
24 the entire community, correct?

[WITNESS: Varney]

1 A Yes.

2 Q And, again, in the next bullet, it again talks  
3 about "rural landscapes", right?

4 A Yes.

5 Q So, we just talked about the vision of Concord.  
6 And we talked earlier about what the statute  
7 requires, and what, under 674:2, II(b), it says  
8 that the master plan needs to have a "land use  
9 section", and that the "section shall translate  
10 the vision statements into physical terms",  
11 correct?

12 A Yes.

13 Q And you looked at the land use section of the  
14 City of Concord's Master Plan, right?

15 A Yes, I did.

16 Q And, if we go to the next slide, this is Joint  
17 Muni 182, and it's "Section III, Land Use".  
18 And, if you go to the next page, under "Land  
19 Use Goals", you can see I highlighted 6, 12,  
20 13, and 14. And number 6, under Land Use, what  
21 they want to do is to "promote orderly  
22 transition among land use and separate or  
23 buffer incompatible uses to the greatest extent  
24 possible in order to limit or minimize

[WITNESS: Varney]

1           undesirable impacts to adjacent land uses". Do  
2           you see that?

3    A       Yes, I do.

4    Q       Okay. And I understand, you looked at this  
5           Master Plan to see if anywhere it said  
6           "transmission line", right? You were looking  
7           for those words?

8    A       I looked for those words. But I also  
9           considered all of these -- all of these goals  
10          that you're listing, and they were included in  
11          my summary of the City's Master Plan.

12   Q       Okay. We're going to talk about that, too, in  
13          a bit, in terms of your summary. But, in terms  
14          of this particular goal, which is to "minimize  
15          undesirable impacts to adjacent land uses",  
16          even though it doesn't have the words  
17          "transmission line" in it, you would agree  
18          that, if there's some sort of transmission  
19          project that might impact or might be  
20          undesirable to an adjacent land use, that could  
21          fall under number 6, couldn't it?

22   A       Yes. Buffering requirements or requests are  
23          very common with development in communities  
24          across the State of New Hampshire.

[WITNESS: Varney]

1 Q Okay. And, then, I don't want to spent a lot  
2 of time going through all of these, but 12, 13,  
3 and 14, 12 talks about "the overall appearance  
4 and aesthetics of the community". And, again,  
5 this isn't just scenic resources, it's the  
6 entire community, isn't it?

7 A Yes.

8 Q Okay. And number 13 is the "Statehouse Dome",  
9 which, obviously, is important to Concord,  
10 correct?

11 A Yes.

12 Q And, then, 14 talks again about "historical  
13 resources", including landscapes around them,  
14 correct?

15 A Yes.

16 Q So, we had just talked about your report, and  
17 how that report describes Concord's Master  
18 Plan. So, first of all, I want to just --  
19 we're going to take a moment and skip to Page  
20 60 of this slide, just to look at your original  
21 report and how you described Concord. And this  
22 is Attachment A to your Land Use Report, and  
23 this is Appendix -- Applicants' Exhibit 1,  
24 Appendix 41. And we're now looking at the City

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[WITNESS: Varney]

1 of Concord section, and that's Page A-87. And,  
2 so, if we look at this, under the "City of  
3 Concord" section, if we scrolled up, what you  
4 first start talking about is just a general  
5 overview of Concord, correct? There's no  
6 reference to the Master Plan in there?

7 A No.

8 Q And, under "Project Corridor Description", you  
9 go through a description of the entire line and  
10 some of the land uses surrounding it. In there  
11 there's no description of the Master Plan, is  
12 there?

13 A No. It is a description of prevailing land  
14 uses along the corridor.

15 Q And the next page, "Land Use Description",  
16 again, is land uses along the corridor. No  
17 discussion of the Master Plan, right?

18 A Correct.

19 Q Okay. So, you just said that, when we talked  
20 about the Master Plan, it was in your report,  
21 but it's not, is it?

22 A The Master Plan is in my report. I produced a  
23 document summarizing the master plans of all  
24 the Project communities.

[WITNESS: Varney]

1 Q But it's not in this report, is it?

2 A No, it's not. It's a -- this section is a  
3 review of prevailing land uses along the  
4 right-of-way.

5 Q So, what document are you talking about?

6 A "Review of Master Plans: Northern Pass  
7 Transmission Project". And it's a detailed  
8 summary of each master plan, and it goes well  
9 beyond the summary of master plans that was in  
10 this, in this document.

11 Q And this is a document that was produced in  
12 discovery?

13 A I don't recall how it was provided by the  
14 Applicant.

15 Q But it wasn't part of your report?

16 A No. It was a separate compilation that is  
17 about 150 pages long.

18 Q And it's not part of the Application, was it?

19 A Well, the Application states that I reviewed  
20 the master plans of all of the communities  
21 along the route.

22 Q I understand that. But the rules actually  
23 require you to provide information about the  
24 master plans, correct?

[WITNESS: Varney]

1 A Again, I reviewed all of the master plans along  
2 the route, and stated that in my testimony and  
3 report.

4 Q Okay. And I understand that you reviewed it.  
5 I understand that you stated that you reviewed  
6 it. But, in your report, which was part of the  
7 Application, you did not provide any  
8 information about the City of Concord's Master  
9 Plan, did you?

10 A It was just a brief summary of master plans,  
11 and a reference to the fact that they were --  
12 all of them were reviewed. And there was this  
13 companion document, which had links to every  
14 master plan and a summary of every master plan.  
15 And that was developed prior to the submission  
16 of the Application.

17 Q So, was the answer to my question "no"?

18 A Again, the information in this document, the  
19 depth of 150 pages review of the master plans,  
20 I believe was not included with the Application  
21 by the Applicant.

22 Q Okay. So, let's go through my question again.  
23 In your report, which was submitted in the  
24 Application, there is no information about the

[WITNESS: Varney]

1 City of Concord's Master Plan, is there?

2 A I don't believe so. Only a reference that it  
3 was reviewed.

4 MS. PACIK: Sorry. Just bear with  
5 us. We're time to get the overhead projector  
6 working over here. Is it working on your  
7 screen, Mr. Varney?

8 WITNESS VARNEY: No.

9 MS. PACIK: Okay. It's flickering a  
10 little bit today.

11 BY MS. PACIK:

12 Q So, you had mentioned before, as we were going  
13 through the City of Concord's Master Plan, that  
14 you had talked about all of the important  
15 issues relating to aesthetics, and incompatible  
16 uses and buffering. And, at the top, where  
17 it's highlighted, this is your summary of all  
18 master plans, and, again, it's not specific to  
19 Concord. And what you say is that, just  
20 generally, "master plans contain broad goals  
21 about development topics, such as land use,  
22 economic, and the environment", and you say  
23 that "the Project is consistent with those  
24 broad goals, because it helps reduce energy



[WITNESS: Varney]

1 costs". And do you have any information about  
2 Concord and what the amount of energy costs  
3 will be reduced for Concord taxpayers?

4 A It was done on a regional basis. So, the  
5 assumption is that there would be energy cost  
6 savings in each individual community that's in  
7 the ISO-New England grid.

8 Q Okay. But nothing specific for Concord that  
9 you analyzed?

10 A No.

11 Q Okay. And, then, in terms of the last  
12 sentence, it says "The Project also supports  
13 goals to preserve open space by locating within  
14 or along already developed utility and roadway  
15 corridors, and going underground in key  
16 locations." And you talked about this sentence  
17 with Attorney Fillmore yesterday, didn't you?

18 A Yes.

19 Q Okay. And I'm also a little confused about  
20 this sentence. So, there's nothing, first of  
21 all, in that paragraph that talks about  
22 "community attractiveness", is there?

23 A No. There was a visual consultant hired by the  
24 Applicant to address visual impact.

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[WITNESS: Varney]

1 Q Okay. And you understand, though, that that  
2 visual consultant only analyzed scenic  
3 resources. Are you aware of that?

4 A He reviewed resources consistent with the  
5 requirements of the SEC.

6 Q Okay. But right now what we're talking about  
7 is master plans.

8 A Yes.

9 Q And you agree that the Master Plan, which is  
10 under orderly development and land use,  
11 requires or at least has visions and references  
12 to "community aesthetics", correct?

13 A Yes. I reviewed the City's Master Plan in  
14 detail.

15 Q Okay. And you're the person testifying as to  
16 whether or not this Project is consistent with  
17 the Master Plan, right?

18 A Yes.

19 Q And you understand that there is a difference  
20 between "community aesthetics" and "scenic  
21 resources", don't you?

22 A Yes.

23 Q Okay. Now, in your opinion, about the fact  
24 that the Project supports goals to preserve

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1 open space by going within or along an already  
2 developed utility and roadway corridor, you did  
3 not analyze information about the proposed pole  
4 heights, did you? You considered that to be an  
5 aesthetic issue for the scenic resource expert?

6 A I was aware that there would be an increase in  
7 height within the corridor, and that there  
8 would be -- that there were structures already  
9 within the right-of-way, and that the -- with  
10 the relocation and the construction of the  
11 new -- the new structures that there would be  
12 an increase in height.

13 Q Okay. But you looked at it very generally.  
14 You did not look at details, correct?

15 A Correct. I'm not a visual impact assessment  
16 person. And there was also some review of  
17 visuals with respect to the work of Dr.  
18 Chalmers.

19 Q Dr. Chalmers didn't do any visuals, did he?

20 A He did by trying to look at aerials, and going  
21 to the locations of sites where there  
22 appeared -- they were close to the right-of-way  
23 and where there may have been a change in view.

24 Q And that was for purposes of his property value

[WITNESS: Varney]

1 analysis, right?

2 A Correct.

3 Q Okay. And you're doing something different,  
4 right? You're looking at impacts to land use,  
5 correct?

6 A Correct.

7 Q Okay. And, so, in terms of getting into the  
8 details of the increased heights or what  
9 buffers were going to be removed along the  
10 corridor, you didn't look at those details,  
11 right?

12 A I reviewed it from the context that, if there's  
13 a residential property, for example, near the  
14 right-of-way, that that use would continue in  
15 the future. And that there was a review of  
16 potential impacts on property values as well.  
17 And I didn't try to look at every individual  
18 site or every individual buffer along the  
19 right-of-way.

20 Q Okay.

21 A And was also aware that the City of Concord, on  
22 its website, was encouraging local property  
23 owners to contact the Applicant to talk with  
24 them about either the maintenance of buffers or

[WITNESS: Varney]

1 the potential planting of new buffers along the  
2 route.

3 Q What website are you talking about?

4 A City of Concord's website.

5 Q And when did you see this information?

6 A It's on there right now, if you look at it.

7 Q But was it on there at the time you did your  
8 report in 2015?

9 A Probably not.

10 Q Okay. And what we're talking about today, just  
11 to be clear, is what information you had when  
12 you prepared your report in October of 2015,  
13 okay?

14 MR. NEEDLEMAN: Objection. She can  
15 try to limit the questions to that, but  
16 certainly everything else is part of the  
17 record.

18 CHAIRMAN HONIGBERG: Correct. But,  
19 if a response is not responsive to the  
20 question, she can object to that or move to  
21 strike. You may need to ask a subsequent  
22 question on redirect.

23 MR. NEEDLEMAN: Understood. It just  
24 sounded like she was trying to limit Mr. Varney

[WITNESS: Varney]

1 in that respect, and I don't think that's  
2 proper.

3 CHAIRMAN HONIGBERG: She was making a  
4 lot of different points, but I hear what you're  
5 saying.

6 Ms. Pacik, you may continue.

7 BY MS. PACIK:

8 Q So, going back to the sentence, Mr. Varney, and  
9 I think we need to just be clear about this.  
10 When you wrote this sentence, in terms of "the  
11 Project also supports goals to preserve open  
12 space by locating it within or along an already  
13 developed utility and roadway corridor", you  
14 looked generally at the plans, but you didn't  
15 get involved in terms of looking at increased  
16 pole heights and removal of buffers, is that  
17 right?

18 A I was aware of and considered those factors, as  
19 well as my knowledge of other projects that  
20 have been carried out, and recognized that  
21 those were likely to be issues with individual  
22 property owners. And that it was likely, based  
23 on my knowledge of past practice with  
24 Eversource, that they would try to work with

[WITNESS: Varney]

1 the City and with property owners to address  
2 buffering issues that may be necessary. And I  
3 was aware of that prior to the submission of  
4 this Application.

5 Q In terms of this statement, that it's okay to  
6 put a transmission corridor that may be twice  
7 as high as the existing lines, that where  
8 there's going to be buffers removed, where  
9 poles are going to be relocated closer to homes  
10 and businesses, is it your opinion that any  
11 proposed transmission line should be approved,  
12 as long as it's sited in an already developed  
13 utility corridor?

14 A I'm only speaking from the standpoint of sound  
15 land use planning, and that the location of  
16 utility corridors and roadway corridors is a  
17 preferred site location of those kinds of  
18 facilities, because they're consistent with  
19 existing land use. They don't change land use.  
20 And they don't introduce the corridor to other  
21 areas of the City that do not currently have  
22 corridors.

23 Q So, the answer to that question was "yes"?

24 A Can you repeat the question?

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[WITNESS: Varney]

1 Q Sure. Maybe I'll rephrase it, so it's a little  
2 clearer.

3 A Okay.

4 Q Is it your opinion that any transmission  
5 project, as long as it's sited within an  
6 already developed utility corridor, even if it  
7 means increasing the heights of the poles, even  
8 if it means relocating them closer to  
9 businesses and homes, and even if it means  
10 removing tree buffers within the corridor, is  
11 that within --

12 MS. PACIK: Sorry, that was a  
13 terrible question. Let me restart over.

14 *[Laughter.]*

15 MS. PACIK: I didn't make it simpler.  
16 I made it much more complicated.

17 BY MS. PACIK:

18 Q Is it -- let's start with this one. Is it your  
19 opinion that any new existing transmission  
20 line, as long as it's sited within an existing  
21 corridor, should be approved because or to the  
22 extent it complies with local land use?

23 A No.

24 Q What's the limit?



[WITNESS: Varney]

1 A There are many factors associated with the  
2 siting of a project, including many factors  
3 that have been considered here by the SEC. And  
4 they include visual impacts, and property  
5 values, and lots of other issues that could be  
6 associated with a project.

7 My review was limited to this Project, as  
8 proposed.

9 Q Okay. And your review, so you just talked  
10 about property values and other issues, but, in  
11 terms of land use, right, and that's what we're  
12 focusing on today is just land use, which is  
13 different than property values, right?

14 A Yes.

15 Q Okay. So, in terms of impacts to land use, is  
16 it your opinion that, as long as a new  
17 transmission line is sited within an existing  
18 corridor, that it will not have an adverse  
19 impact on land use?

20 A I would say, in most cases, that's true. But I  
21 would not want to generalize and say that it's  
22 in all cases.

23 Q Okay. What if you're taking a pole that, for  
24 example, is 80 feet, and you're going to double

[WITNESS: Varney]

1 it to 160 feet? Do you have any concerns about  
2 land use in that situation?

3 A There's no change in land use for the project.  
4 So, from a pure land use perspective, no.  
5 There may be a concern about visual impact, but  
6 that was not the scope of my review.

7 Q Okay. And, so, I guess that goes back to my  
8 other question, which is, as long as a  
9 transmission line is sited in an existing  
10 transmission corridor, it's your opinion that  
11 there's going to be no change in land use, is  
12 that correct?

13 MR. NEEDLEMAN: Objection. Asked and  
14 answered.

15 CHAIRMAN HONIGBERG: Is it just a  
16 clarification, Ms. Pacik, of the previous, a  
17 summary?

18 MS. PACIK: Yes.

19 CHAIRMAN HONIGBERG: It sounded like  
20 roughly the same question.

21 MS. PACIK: It wasn't. It really was  
22 a follow-up. Because I got an original answer,  
23 I got a second answer, which was inconsistent.  
24 And, so, now I'm going back to find out what is

[WITNESS: Varney]

1 the first answer.

2 Does that make sense?

3 CHAIRMAN HONIGBERG: No. But I guess  
4 what you're looking for is --

5 MS. PACIK: A clarification.

6 CHAIRMAN HONIGBERG: -- "I may not  
7 understand what you're saying, Mr. Varney. Let  
8 me try it again." Is that really where you  
9 are?

10 MS. PACIK: Yes.

11 CHAIRMAN HONIGBERG: Okay. Why don't  
12 you try that.

13 MS. PACIK: Okay.

14 CHAIRMAN HONIGBERG: Go ahead.

15 MS. PACIK: I'm not sure if I'll be  
16 able to remember my question.

17 BY MS. PACIK:

18 Q But going back to my question, Mr. Varney, is  
19 you had just said that, if a pole was increased  
20 from 80 to 160 feet, there would be no impact  
21 on land use, because it's an existing corridor,  
22 correct?

23 A Yes.

24 Q Okay. So, going back to my original question,

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1 Mr. Varney, is it your opinion that, as long as  
2 a new transmission line is sited within an  
3 existing corridor, that there will be no impact  
4 to land use?

5 A No. I believe I said there would not be any  
6 significant impact to land use.

7 Q I'll let it go. Okay. Let's turn to zoning  
8 ordinances for a moment. You said you reviewed  
9 every single zoning ordinance, is that correct?

10 A Yes, I did.

11 Q Okay. And, in terms of zoning ordinances, you  
12 understand that zoning ordinances are preempted  
13 by the Site Evaluation rules, right?

14 A Yes. It's stated in your highlighted section.

15 Q Yes. It actually says "The Project is not  
16 subject to local zoning regulations." Correct.

17 A Correct.

18 Q But the Site Evaluation rules, they still  
19 require zoning ordinances or information about  
20 zoning ordinances to be included, is that  
21 right?

22 A They require that they be reviewed.

23 Q Well, information is required to be provided  
24 under the Site rules, correct?

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1 A I can't recall the precise wording on that,  
2 that you had up on the screen earlier.

3 Q Let's go back to --

4 A But all I know is that I did review every  
5 zoning ordinance along the Project route. And  
6 that was limited to the host communities. I  
7 did not review zoning ordinances for abutting  
8 communities, because the rules didn't require  
9 that.

10 Q Okay. And I understand that. But let's go  
11 back to zoning ordinances. Under the  
12 Application, it says "Each application shall  
13 include information", and then it goes on,  
14 "including information about zoning ordinances  
15 of the proposed facility host municipalities  
16 and unincorporated places", correct?

17 A Yes.

18 Q So, "information" doesn't mean that "the  
19 Applicant just reviewed it", does it?

20 A There is reference to it in the testimony and  
21 report. But the detailed summary of zoning  
22 ordinances was a separate document that I  
23 provided to the Applicant.

24 Q Okay. So, it was a separate document provided

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1 to the Applicant. But what we're talking about  
2 right now is the Application. And, to be  
3 clear, you reviewed every zoning ordinance, is  
4 that right?

5 A Yes. I believe I've said that three or four  
6 times.

7 Q Okay. But, as far as I've seen, you didn't  
8 include information about the different host  
9 municipality zoning ordinances in your report,  
10 did you?

11 MR. NEEDLEMAN: Objection. Ms. Pacik  
12 is arguing about the meaning of the rule. Mr.  
13 Varney has explained how he understood it and  
14 what he provided in response.

15 CHAIRMAN HONIGBERG: I didn't hear  
16 that question as an argument. I heard that  
17 question as "this you didn't do". And she can  
18 ask what he did, what he didn't do, and why.

19 Off the record.

20 *[Brief off-the-record discussion*  
21 *ensued.]*

22 CHAIRMAN HONIGBERG: But, otherwise,  
23 you may continue.

24 MS. PACIK: Can we take one now?

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1 Then, I can kind of get my thoughts --

2 CHAIRMAN HONIGBERG: Sure, because --

3 MS. PACIK: Because we're going into  
4 a new subject anyways.

5 CHAIRMAN HONIGBERG: And that's  
6 within the next ten minutes, that fits the  
7 need.

8 MS. PACIK: Oh. Did I not get an  
9 answer to my question? Before we break, could  
10 I get an answer to my question please?

11 CHAIRMAN HONIGBERG: I wondered if  
12 you might want that.

13 WITNESS VARNEY: Did you have a  
14 question?

15 MS. PACIK: I did. I might need it  
16 read back, if that's possible.

17 CHAIRMAN HONIGBERG: Off the record.

18 *[Brief off-the-record discussion*  
19 *ensued.]*

20 *(Whereupon the court reporter*  
21 *read back the last question*  
22 *asked.)*

23 **BY THE WITNESS:**

24 A And the answer was, I referred to the zoning

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1 ordinances in my report, but a detailed summary  
2 of each zoning ordinance was a separate  
3 document and was provided to the Applicant.

4 MS. PACIK: Okay. Thank you.

5 CHAIRMAN HONIGBERG: All right.

6 We'll take a break, ten minutes or so.

7 (Recess taken at 10:32 a.m. and  
8 the hearing resumed at 10:47  
9 a.m.)

10 CHAIRMAN HONIGBERG: Ms. Pacik, you  
11 ready to go?

12 MS. PACIK: Yes. Thank you.

13 BY MS. PACIK:

14 Q So, Mr. Varney, before we took a break, we were  
15 just starting to have our discussion about  
16 zoning ordinances. And we talked about the  
17 fact that information about zoning ordinances  
18 is required, but the local zoning ordinances  
19 are preempted by the Site Evaluation Committee,  
20 correct?

21 A Correct.

22 Q And, in terms of the reason why the Site  
23 Evaluation Committee needs information about  
24 zoning ordinances, is it your understanding



[WITNESS: Varney]

1           that the Committee basically sits as the  
2           planning review for the entire Project, right?

3    A       That's a broad generalization.  I wouldn't try  
4           to make that comparison.

5    Q       The Site Evaluation Committee is responsible  
6           for ultimately determining the siting of the  
7           Project, right?

8    A       Yes.

9    Q       And that review, if there wasn't a preemption,  
10          would be done by a planning board, correct?

11   A       Yes.

12   Q       Now, we also talked about the fact that there  
13          is no detailed information in your report about  
14          City of Concord's zoning regulations, right?

15   A       Correct.

16   Q       And, so, if we go to the next page, this is  
17          674:16.  And this is actually referenced in  
18          your report about the purpose of zoning  
19          ordinances.  And you understand that they're  
20          "for the purpose of promoting the health,  
21          safety, or general welfare of the community"?

22   A       Yes.

23   Q       And is it your -- also your understanding as  
24          being a planner in the State of New Hampshire

[WITNESS: Varney]

1 that that phrase "general welfare" can include  
2 community aesthetics?

3 A I can't recall.

4 Q Okay. So, you just don't know the answer to  
5 that?

6 A I can't recall.

7 Q Okay. So, let's go to the next page. And this  
8 is -- this is Ordinance 28-2-2 from the City of  
9 Concord. And just wait a moment for the screen  
10 to come back up.

11 And this is part of -- this was marked as  
12 Joint Muni Exhibit 181 for the record. But you  
13 read this, correct, in your review of the  
14 ordinances?

15 A Yes. I reviewed the various zoning ordinances.  
16 There's some tables on permitted uses within  
17 each district. And I reviewed, for each  
18 district, why it was established, --

19 Q Okay.

20 A -- the intent of that district.

21 Q And my question was just "did you review this?"  
22 And the answer was "yes" you said?

23 A Yes.

24 Q Okay. So, you understand that there's

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1 different zoning districts, and some of these  
2 zones districts apply along the proposed route,  
3 correct?

4 A Yes. And that's commonly the case in most  
5 communities with a transmission line.

6 Q And, if we go down a little bit, a couple  
7 pages, this provision, which is 28-4-2 of the  
8 City of Concord's Zoning Ordinance, talks about  
9 the different buffer requirements for each  
10 district. Do you see that?

11 A Yes.

12 Q And you understand, under the "Purpose" of  
13 buffer requirements, one of the reasons we have  
14 it is to address "visual blight from  
15 nonresidential development in nonresidential  
16 districts on adjacent residential districts".  
17 Do you see that?

18 A Yes. That's what it says.

19 Q And the word "visual blight" is actually in the  
20 Zoning Ordinance, isn't it?

21 A It's referred to in that sentence.

22 Q Okay. And, in terms of buffer requirements,  
23 there's one that I just want to point out that  
24 we're going to talk about a little later. And

[WITNESS: Varney]

1 I believe it's on the next page, for the  
2 Gateway Performance District. Actually, no,  
3 it's in a different area.

4 Actually, before we get to that, I do want  
5 to talk about this particular provision, which  
6 is conditional use permits for certain buffers.  
7 And this provision actually talks about how to  
8 deal with situations where a buffer is  
9 required, but land is encumbered by an  
10 easement, and that the easement limits the  
11 amount of tree growth that can occur. And are  
12 you familiar with this section?

13 A I read it a while ago. Generally, yes.

14 Q Okay. And, so, the City of Concord's Zoning  
15 Ordinances go into detail, even to the extent  
16 of dealing with buffers along transmission  
17 corridors, right?

18 A Yes. They have used buffers for most of the  
19 projects that I've seen in the City, that a --

20 Q Yes, buffers.

21 A -- where a buffer would be appropriate.

22 Q Okay. And, in this particular provision, it  
23 deals with easements, transmission easements,  
24 and what buffers might be required, and the

[WITNESS: Varney]

1 fact that you need to get a Conditional Use  
2 Permit, if there's a transmission corridor, and  
3 the height of the trees can't actually work as  
4 a buffer because of the transmission corridor,  
5 right?

6 A I don't see "transmission corridor" mentioned  
7 here.

8 Q Right. And it says if it's "encumbered by an  
9 easement". And that could include a  
10 transmission corridor, is that right?

11 A I don't want to make a legal interpretation.

12 Q Okay. So, it would be fair to say you haven't  
13 analyzed this particular provision in such  
14 detail that you can answer this question right  
15 now, is that right?

16 A No. I'm generally aware of the desire of the  
17 City of Concord to provide buffers as new  
18 developments occur.

19 Q Okay. Let's go to the next page. And I don't  
20 want to get into a lot of details about this,  
21 but you understand that the City of Concord's  
22 Ordinances also deal with lot sizes, frontage,  
23 setbacks, yard requirements, is that right?

24 A Yes.

[WITNESS: Varney]

1 Q And these provisions deal with community  
2 aesthetics to a certain degree, don't they?

3 A Oftentimes to -- partially, yes.

4 Q And, now, at this point, we're looking at the  
5 part of the Ordinance that deals with setbacks  
6 and lot frontage. And, for the Gateway  
7 Performance District, and I'll ask you about  
8 this later, the lot frontage is "300 feet".  
9 And, if we scroll down, we'll see that. And  
10 were you aware of this, Mr. Varney?

11 A I did review, I don't know if I was familiar  
12 with the 300-foot requirement. I probably read  
13 it, but I don't recall.

14 Q Okay. And there's also Site Plan Regulations  
15 in the City of Concord. And did you -- did you  
16 review the Site Plan Regulations for the City  
17 of Concord?

18 A No. That's not required by the SEC, as you  
19 know.

20 Q Okay.

21 MS. PACIK: And, so, just for the  
22 record, this is marked as "Joint Muni 272".

23 BY MS. PACIK:

24 Q But, in terms of the Site Plan Regulations,

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1           you're familiar generally with site plan  
2           regulations from different communities?

3   A       Yes.

4   Q       Okay. And you'd agree that they have specific  
5           information to comply with the ordinances, in  
6           terms of buffers and landscaping, is that  
7           right?

8   A       Yes, for projects within their jurisdiction.

9   Q       Okay. Are you aware that the City of Concord  
10          has height restrictions for different buildings  
11          and structures depending on which district  
12          they're in?

13   A       Yes, I do.

14   Q       Okay. And you understand that those are for  
15          community aesthetic reasons in part, correct?

16   A       Probably, yes.

17   Q       Okay. For example, if you're in a residential  
18          area, a three-story home might be okay, but a  
19          six-story home would be prohibited, right?

20   A       There are many factors that go into dimensional  
21          controls, including fire safety, and aesthetics  
22          would potentially be one of many factors that  
23          are considered.

24   Q       And aesthetics is a factor, though, that is

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[WITNESS: Varney]

1 considered in that rule, right?

2 A I would say that it probably is, but I wasn't  
3 involved in the development of the Site Plan  
4 Regs for Concord.

5 Q Well, and those would be in the ordinances,  
6 right, in terms of height restrictions?

7 A Height restrictions. But, again, they are  
8 established for various reasons.

9 Q Okay. And are you aware that the City of  
10 Concord also has architectural design review  
11 guidelines?

12 A Yes.

13 Q And that's purely for aesthetic reasons, right,  
14 in terms of what type of facade or landscaping  
15 should occur around a property, right?

16 A Yes.

17 Q In terms of information that you provided to  
18 the Site Evaluation Committee about zoning  
19 ordinances, we talked about the fact that there  
20 was no specific information about the City of  
21 Concord's Zoning Ordinance, right?

22 A I reviewed every zoning ordinance along the  
23 proposed route, and wrote a summary of each  
24 ordinance, and provided it to the Applicant.

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[WITNESS: Varney]

1 Q Okay. You provided it to the Applicant. And  
2 my question was, in terms of your report  
3 provided to the Site Evaluation Committee,  
4 there was no information about the City of  
5 Concord's Zoning Ordinance, right?

6 A Not in the report. I believe it was provided  
7 to the Committee separately.

8 Q Okay. What exhibit, do you know, or what was  
9 the name of the document you claim was  
10 provided?

11 A I don't know. It wasn't my responsibility to  
12 provide the submittals to the SEC.

13 Q Now, I want to talk about the City of Concord  
14 portion of your report. And we already  
15 reviewed this a little bit earlier before, but  
16 I want to go into a little bit more detail now.  
17 And what we're looking at is Appendix Exhibit 1  
18 -- or, Applicants' Exhibit 1, Appendix 41. And  
19 it starts on Page A-87 of your report.

20 MS. PACIK: If we just hold on one  
21 second.

22 BY MS. PACIK:

23 Q In terms of the "Project Corridor Description",  
24 as you go through it, you talk about some

[WITNESS: Varney]

1 different areas. And, on the next page, you  
2 start talking about the area of Concord. And  
3 this is -- you spent time driving down the  
4 route in Concord, is that right?

5 A Yes. And, as someone who has lived and worked  
6 in the City of Concord, I'm very familiar with  
7 it, in addition to the review, with a  
8 windshield survey, where I could access the  
9 line via public roadways.

10 Q Okay. And, in terms of the use of the line  
11 itself, you talk about "Hoit Road". And that's  
12 in the second paragraph, sort of halfway  
13 through it. And you say "Residences are  
14 located adjacent or near the west side of the  
15 corridor along Hoit Road Brookwood Drive and  
16 Fox Run." Do you see that?

17 A Yes. I've driven through that neighborhood.

18 Q Okay. And are you familiar with the house  
19 located at 41 Hoit Road, which is on the  
20 intersection of Mountain Road and Hoit Road?

21 A Yes.

22 Q And, when you were doing your review, what I  
23 noticed was missing from this was any reference  
24 to "joint use agreements" along the corridor.

[WITNESS: Varney]

1           Were you aware that there's joint use  
2           agreements along the corridor?

3    A       No. I focused on existing land use.

4    Q       Okay. But, if you're focusing on existing land  
5           use, wouldn't you want to know if there's a  
6           joint use agreement that allows property owners  
7           to use the land directly underneath the  
8           corridor?

9    A       No. And I would say that there may be several  
10           joint use agreements along the right-of-way.  
11           And my experience is that I have seen many  
12           instances of use by property owners within  
13           existing transmission corridors.

14   Q       Right. And, so, if you want to describe to the  
15           Site Committee what the prevailing land uses  
16           are, don't you need to know if there's certain  
17           structures or wells or rights that property  
18           owners have underneath the line?

19   A       No. For the purposes of my review, that's a  
20           level of detail on a site-specific basis that  
21           would be worked out between the Applicant and  
22           the property owner.

23   Q       Okay. So, for purposes of your review, you  
24           didn't think it was important to get into that

[WITNESS: Varney]

1 level of detail, correct?

2 A I reviewed prevailing land uses along the  
3 corridor, as required by the Site Evaluation  
4 Committee rules.

5 Q Okay. But my question was different. My  
6 question was, in terms of your review, you did  
7 not think it was important to get into that  
8 level of detail?

9 A Not for the -- no, not for the purposes of my  
10 assessment.

11 Q Okay. And I think that would have been a  
12 "correct", right? Not a "no"?

13 A Correct.

14 Q Okay. I'd like to turn to Joint Muni 286 for a  
15 moment.

16 A Before we do, I just want to mention --

17 Q Actually, there's not a question pending. But  
18 thank you.

19 Joint Muni 286 is a compilation that was  
20 provided in discovery in another docket of  
21 joint use agreements along the corridor. And  
22 I'll represent to you that this particular  
23 grouping has 34 joint use agreements. And fair  
24 to say, this is 185 pages of joint use

[WITNESS: Varney]

1 agreements, you haven't reviewed any of these?

2 MR. NEEDLEMAN: Objection.

3 Relevance.

4 CHAIRMAN HONIGBERG: Ms. Pacik.

5 MS. PACIK: It's relevant to the  
6 extent that he's doing an analysis of what the  
7 prevailing land uses are underneath the  
8 corridor. He is analyzing whether there's  
9 going to be any impact to the prevailing land  
10 uses because of this proposed Project. And  
11 these joint use agreements go directly as to  
12 what is the prevailing land use underneath the  
13 easements.

14 MR. NEEDLEMAN: This is a completely  
15 different docket, and he's already explained  
16 exactly how joint use agreements relate to the  
17 work he did here.

18 CHAIRMAN HONIGBERG: What is it you  
19 want to know about this joint use agreement?

20 MS. PACIK: I'm not going to talk  
21 about the one that's particularly up right now,  
22 but I want to establish that there's at  
23 least --

24 CHAIRMAN HONIGBERG: Then why is it

[WITNESS: Varney]

1 in front of us?

2 MS. PACIK: Because I want to  
3 establish that there are at least 34 joint use  
4 agreements that discuss what the land use is  
5 underneath the line that he did not look at.

6 CHAIRMAN HONIGBERG: And haven't you  
7 already done that?

8 MS. PACIK: Well, I don't think he  
9 was aware of the number of joint use  
10 agreements. And that's why this is up.

11 CHAIRMAN HONIGBERG: Didn't he --  
12 maybe I missed something. Didn't he already  
13 say that he didn't look at joint use  
14 agreements?

15 MS. PACIK: He did.

16 CHAIRMAN HONIGBERG: Then, does it  
17 matter whether there's one or a thousand?

18 MS. PACIK: Yes, I do think it  
19 matters, because --

20 CHAIRMAN HONIGBERG: But that's not  
21 for him. He didn't look at any. You've got  
22 that, right?

23 MS. PACIK: Right. But, in the  
24 record right now, there's not any information

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1 about how many he missed, and I'm establishing  
2 right now that there's at least 34.

3 CHAIRMAN HONIGBERG: He missed 100  
4 percent of them.

5 MS. PACIK: Right.

6 CHAIRMAN HONIGBERG: Whatever that  
7 is, whatever that number is. Does it matter  
8 whether it's 1 or 34 or 3,400?

9 MS. PACIK: I do. Because, if he's  
10 looking at regional impacts, I do think it  
11 matters how many there are.

12 CHAIRMAN HONIGBERG: It's going to be  
13 in the record. I would be shocked if this --  
14 this is a Joint Muni exhibit already. That's  
15 in the record. He missed them all. You can  
16 make whatever arguments you want based on that.  
17 Right?

18 MS. PACIK: I don't want to argue,  
19 but my understanding is that the Applicants can  
20 object to exhibits that we've marked at the  
21 end, and I need to at least provide some  
22 information as to why they should be included  
23 at the end, and that's why I'm trying to --

24 CHAIRMAN HONIGBERG: I would have

[WITNESS: Varney]

1 assumed, if this was significant to you, it  
2 would have been part of one of your witnesses'  
3 testimony.

4 MS. PACIK: I think it's a fair  
5 cross-examination question. The City  
6 doesn't --

7 CHAIRMAN HONIGBERG: Let's go back to  
8 the specific question you asked him. What is  
9 the specific question you asked him? It's  
10 probably written down in front of you.

11 MS. PACIK: It's actually not,  
12 believe it or not. I will --

13 CHAIRMAN HONIGBERG: Then, what  
14 question do you want to ask him right now about  
15 it? Let's try it that way.

16 BY MS. PACIK:

17 Q My question was, you haven't reviewed this  
18 document, which I've represented has 34 joint  
19 use agreements in it?

20 CHAIRMAN HONIGBERG: Have you  
21 reviewed this document?

22 WITNESS VARNEY: No.

23 MS. PACIK: That was my question. I  
24 wasn't going to --



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1 CHAIRMAN HONIGBERG: No, it had a lot  
2 of other stuff in it. It had a lot of other  
3 stuff in it about how many others there were.  
4 "Have you reviewed this document?" "No."

5 What's your next question?

6 MS. PACIK: I'm just looking for my  
7 other exhibit that I need to turn to.

8 BY MS. PACIK:

9 Q Exhibit 293. Mr. Varney, in terms of your  
10 review, and when you looked at Hoit Road, and  
11 looked at prevailing land uses along the  
12 corridor, you also did not look at what's  
13 marked as "Joint Muni 293", which is the 41  
14 Hoit Road Joint Use Agreement, is that correct?

15 A Correct.

16 Q Okay. And, if we go to the last page, there's  
17 a map of the property. And are you aware that  
18 part of the home on 41 Hoit Road is within the  
19 corridor?

20 A I think I am, from a statement that you made at  
21 one of the technical sessions. But I was not  
22 aware of it at the time that I wrote the  
23 report.

24 Q Okay. And fair to say that this would be a

[WITNESS: Varney]

1 example of a prevailing land use within the  
2 corridor that you did not analyze?

3 A I reviewed the use that exists, if there's a  
4 residential use or an equestrian use or  
5 whatever it may be, and determined that, if it  
6 is within the corridor, that there would -- the  
7 Applicant would be working with the property  
8 owner on the Project.

9 Q Okay.

10 A As I stated previously, my experience has been  
11 that Eversource tries to work with property  
12 owners and has many joint use agreements with  
13 them, and they seem to have worked well in the  
14 past.

15 Q Okay. But your role in this case is to address  
16 whether or not the Project should be approved,  
17 correct?

18 A That's for the SEC to decide.

19 Q Understood. But you're giving an opinion on  
20 land use, right?

21 A Correct. And I described land uses along the  
22 corridor.

23 Q Okay.

24 A Including residential and agricultural and so

[WITNESS: Varney]

1 on.

2 Q So, I want to get back to your previous  
3 statement, which is, as long as a transmission  
4 line is sited, or as long as this transmission  
5 line is sited within an existing corridor,  
6 there's no impact on land use. And, in terms  
7 of this particular parcel, you can see that  
8 there is 62.1 feet between the edge of the  
9 house and the edge of the corridor. Do you see  
10 that?

11 A Yes.

12 Q Actually, and let me rephrase that. What the  
13 -- the dotted line that you see is actually the  
14 existing transmission line. It's the 115 line.  
15 Do you see that?

16 A Yes. They have coexisted, yes.

17 Q It's the F139 line. And you understand that  
18 that F139 line is getting moved 45 feet closer  
19 to that house. Are you aware of that?

20 A I can't recall.

21 Q Okay. Now, I just explained that the line is  
22 going 45 feet closer. And I understand you  
23 didn't look at that level of detail. But there  
24 is a transcript from Day 7. And, on Page 11,

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1 there's a discussion of the fact that the line  
2 is going 45 feet closer. You have no reason to  
3 disagree with that, right?

4 A I don't -- I might disagree with something  
5 that's in a question, but I don't -- if there's  
6 an assumption. But I don't have any reason to  
7 dispute any of the comments that are made here.

8 Q Okay. And I've highlighted the discussion  
9 about the structure. And this is one that's  
10 under the same segment. And Mr. Bradstreet, I  
11 had asked "I'm not good at math, but what I can  
12 tell, it's 45 feet closer?" And he said  
13 "Sounds correct." Do you see that?

14 A Yes.

15 Q And, if you go down to Page 28, we were talking  
16 about Hoit Road on this particular area. And  
17 he says, when we're talking about Hoit Road,  
18 "It would be the same [math]", he thought it  
19 was "40", "45 feet", but he said "it's the same  
20 cross-section." So, that's 45 feet, right?

21 A Apparently, yes.

22 Q Okay. So, going back to that map we had, which  
23 is Exhibit 293, if the F-139 line is going 45  
24 feet closer to that home, and it's currently

[WITNESS: Varney]

1           62.1 feet away, that means that the pole is  
2           going to be 17 feet from the house, correct?

3    A       Apparently.

4    Q       And I'll represent to you that the pole is  
5           going from about 50 feet to 100 feet, is that  
6           right? Are you aware of that?

7    A       I can't recall the dimensions. But I'll take  
8           your word for it.

9    Q       Okay. So, it's your opinion that, even if a  
10           pole is getting moved 17 feet from a home, and  
11           it's going to be 100 feet tall, that it has no  
12           impact on land use because the pole is still  
13           being sited within an existing corridor, is  
14           that correct?

15   A       Again, I said that there was not likely to be  
16           any significant impact on land uses along the  
17           corridor. And, with that, there's a  
18           recognition that there are specific properties  
19           where the Applicant will need to work with the  
20           property owner to minimize impacts.

21   Q       Well, before you actually said that it's sound  
22           siting to locate a transmission line within an  
23           existing corridor, but you didn't look at any  
24           of the details of the properties along the

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1 corridor, right?

2 A I didn't review the joint use agreements that  
3 may exist.

4 Q Okay. And have you heard the phrase like "the  
5 devil's in the details"?

6 A Yes, I have.

7 Q Okay. And this would be one example, right?

8 A I can't comment on that. I don't have enough  
9 information about this particular circumstance.  
10 But I do know that there is use within the  
11 right-of-way today, and there's likely to be  
12 continued use in the future.

13 Q In your review of Concord, you provided this  
14 map, right? And this is from Applicants'  
15 Exhibit 1, Appendix 41.

16 A Yes. I believe this is the City's existing  
17 land use map from 2007.

18 Q Okay. And the reason you provided this was to  
19 show what the prevailing land uses are in  
20 Concord, is that right?

21 A To provide a general -- a general sense of  
22 where the Project was located within the City,  
23 and to be added to the section in which there's  
24 a detailed description of uses along the

[WITNESS: Varney]

1 corridor.

2 Q Okay. And you provided this in 2015, and you  
3 decided to use a map from 2007. So, it was  
4 about eight years old at that point, correct?

5 A Yes. This was, we were told, the most recent  
6 available land use map for the City.

7 Q Okay. Did you get any zoning maps when you  
8 were doing your review?

9 A We did look at the zoning in each community,  
10 and did a similar thing as you see here, where  
11 we located the line on each municipal zoning  
12 map.

13 Q Well, you didn't include that in the report,  
14 did you?

15 A It was included in the document that I  
16 described earlier.

17 Q Okay. The document that we don't know whether  
18 it was submitted as an exhibit?

19 A The document that we produced and provided to  
20 the Applicant.

21 Q Okay. So, in terms of this particular map,  
22 where you see the arrow, it doesn't really  
23 explain a lot of information, other than  
24 "single family", there's one that says, and

[WITNESS: Varney]

1 it's hard to read the way it is, "vacant", we  
2 don't really know what "vacant" is, do we?

3 A These are categories that the City of Concord  
4 has used.

5 Q And that was in its existing land use plan,  
6 right?

7 A Yes.

8 Q Okay. And, so, you had mentioned that there  
9 were zoning maps. And, if we go to the next  
10 page, I'm showing you what's been marked as  
11 "Exhibit 271". And this is an example of a  
12 recent one. But this actually has a little bit  
13 more information. You'd agree with that? In  
14 terms of how land is used and regulated in the  
15 City of Concord?

16 A Yes. We looked at the maps that were included  
17 in the City's Master Plan and in their Zoning  
18 Ordinance.

19 Q Okay. Well, maps aren't included in the Zoning  
20 Ordinance. But, if you contacted the Planning  
21 Board, you could have gotten a zoning map,  
22 right?

23 A We did look at the zoning map for the City of  
24 Concord.



[WITNESS: Varney]

1 Q And you chose not to include this more detailed  
2 map in your report?

3 A This is titled "Future Land Use Plan", not  
4 "Existing Land Use".

5 Q Oh. And my apologies. This is actually the  
6 one that shows, in the Master Plan, how the  
7 City wants the city to look in the future,  
8 right?

9 A Yes.

10 Q Okay. If we go to the next page, this is the  
11 City of Concord's zoning map. You see that?

12 A Yes.

13 Q And, again, this one has a lot more detail, and  
14 it shows what the different zones are along the  
15 route, correct?

16 A Yes. Yes, we reviewed that.

17 Q Okay. And I know this one's hard to read. So,  
18 I have a better quality one available. And  
19 this is Joint Muni 271. And we're just going  
20 to pull it up a little bit.

21 And you can see in that box all of the  
22 land use categories and the zoning are  
23 provided, do you see that?

24 A Those are zoning districts, not existing land

[WITNESS: Varney]

1 use, as you've stated.

2 Q Well, industrial is a type of use, right?

3 A Yes. It's a zoning district. It doesn't  
4 necessarily correspond to existing land use.

5 Q Okay. And you think that that Master Plan did?

6 A Excuse me?

7 Q You thought the Master Plan was more detailed  
8 than this one and more useful?

9 A We looked at all of the maps that were in --  
10 that were available on the City's website.

11 Q Okay. And you chose to provide the one with  
12 the Master Plan, right?

13 A We provided the one in the Master Plan that had  
14 existing land use, which most directly relates  
15 to prevailing land uses along the corridor,  
16 which is the requirement of the SEC.

17 Q So, in terms of what you decided was  
18 appropriate to provide to the Site Evaluation  
19 Committee, and your choice of providing this  
20 particular map, you decided the Master Plan  
21 just shows a section of the top of the map as  
22 vacant land, and those are all the white boxes.  
23 Do you see that?

24 A Yes. But, again, I want to caution you that

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1 our review included a description of land uses  
2 along the corridor, and we also added a map,  
3 which was the most recent existing land use map  
4 that the City had available for our use.

5 Q You added it? Where?

6 A We added it to the section that described  
7 prevailing land uses along the corridor.

8 Q And that's the one I just showed you? The one  
9 that we just looked at was the one from your  
10 report, right?

11 A The existing land use from the City, yes.

12 Q Okay.

13 A The City's map.

14 Q Okay. And this actually shows how the area is  
15 zoned, which is "RO", right?

16 A Yes.

17 Q And, if you go to the next page, this shows  
18 that a lot of those properties are actually  
19 conservation land, right?

20 A Yes.

21 Q Okay. And you can't tell that from the zoning  
22 map, right? Or, the Master Plan map that you  
23 provided?

24 A No. But we did look at conservation lands that

[WITNESS: Varney]

1 were along the right-of-way.

2 Q Okay. In terms of your --

3 MR. IACOPINO: Ms. Pacik?

4 MS. PACIK: Yes.

5 MR. IACOPINO: Could refer to these  
6 by exhibit numbers as you're going through  
7 them, because --

8 MS. PACIK: Certainly. I apologize.

9 MR. IACOPINO: -- the transcript  
10 isn't going to reflect anything.

11 MS. PACIK: I will do that.

12 BY MS. PACIK:

13 Q What we're showing now is, again, Exhibit 1,  
14 Appendix 41, the Existing Land Use map from  
15 Concord. And I have an area that's circled in  
16 green. And it says "Parks and Recreation". Do  
17 you see know what that land is?

18 A I can't tell by -- based on the City's map, I  
19 can't tell off the top of my head.

20 Q And, if we turn to the next page, I'm looking  
21 at Joint Muni 282. That actually is a  
22 photograph, and it shows us the Concord Country  
23 Club.

24 A Yes. I'm very familiar with that.

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1 Q Okay. So, the map that you provided doesn't  
2 really provide a lot of detail in terms of what  
3 the uses are, right?

4 A It was referenced in the written description of  
5 prevailing land uses along the corridor, and it  
6 mentioned the fact that it ran near the Concord  
7 Country Club in the text.

8 Q And, then, in terms of the Existing Land Use  
9 map, which is Appendix Exhibit -- Applicants'  
10 Exhibit 1, Appendix 41, there's a spot in the  
11 industrial zone that is shown as vacant land.  
12 And I have it circled with a red arrow. Do you  
13 see that?

14 A Yes.

15 Q Okay. Do you know what particular parcel that  
16 is?

17 A I can't tell from that map. But I'm very  
18 familiar with the Industrial zone in Concord.

19 Q Okay. And that particular parcel that was  
20 shown as vacant is 60 Regional Drive. Now, are  
21 you familiar with 60 Regional Drive?

22 A Can you point to it?

23 Q Sure. It's the one that's vacant, with a  
24 sandpit. And it's Joint Muni 245, Page 41

[WITNESS: Varney]

1 we're looking at. And the cursor is on it  
2 right now.

3 A Okay. Yes. It was on the wrong site. It  
4 confused me. I believe that's a site that's  
5 been offered for mitigation for the Karner blue  
6 butterfly. And this, of course, is an area in  
7 the Heights that's been heavily developed by  
8 the City.

9 Q Okay. And, in terms of your land use analysis  
10 and prevailing land uses, you didn't do any  
11 analysis in terms of the change of use of that  
12 particular parcel, from being a parcel that's  
13 available for sale in the industrial zone, to a  
14 parcel that is potentially going to be  
15 conserved in perpetuity, did you?

16 A No, I did not.

17 Q And I had a question, because, as a planner,  
18 when Dr. Shapiro was testifying, and I was  
19 asking her about the impacts for taxes, she  
20 explained that she didn't do any analysis, but  
21 that particular site could potentially be used  
22 for gambling. Are you aware of whether  
23 gambling is allowed in that zone, based on your  
24 review of the zoning ordinances?

[WITNESS: Varney]

1 A No. I'm familiar with -- I've walked the site  
2 and I am familiar with its current use. And  
3 I'm familiar with the fact that it's been  
4 offered as a mitigation site.

5 Q Okay. So, now, I just want to talk for a  
6 moment about your conclusions in this  
7 particular report. And we're looking at your  
8 prefiled direct testimony, Page 4. And it's  
9 been marked as "Exhibit 20", "Applicants'  
10 Exhibit 20". And you say that, in terms of  
11 your conclusions on land use implications, you  
12 say, "in summary...because the electric  
13 transmission system in New Hampshire was  
14 constructed beginning in the early 1900s", in  
15 the last sentence you say "the use of the  
16 transmission corridor will not change", and  
17 then you go on in the last sentence to say  
18 "siting a new transmission [line] in an already  
19 developed corridor is sound planning and  
20 environmental principle because it reinforces  
21 local patterns of development and minimizes  
22 environmental impacts". Right?

23 A I didn't say "because", you started the  
24 sentence with "because". But the paragraphs

[WITNESS: Varney]

1 stands by itself.

2 Q Okay. And, then, in the next one you say "the  
3 prevailing land use...includes forest,  
4 agricultural, residential, commercial,  
5 industrial, transportation, utilities,  
6 historic, and natural resources, as well as  
7 conservation and recreation areas." That  
8 pretty much covers everything, isn't it?

9 A Yes. There are 1,600 miles of electric  
10 transmission lines throughout New Hampshire,  
11 and virtually every type of land use is along  
12 these lines.

13 Q Right. Every land use is along those lines.  
14 And it's your opinion that, because all of  
15 those land uses have coexisted with utility  
16 lines since the 1900s, that the Project is not  
17 going to prevent the uses from continuing in  
18 the future, right?

19 *[Cellphone ringing.]*

20 WITNESS VARNEY: I thought this was  
21 off. I'm sorry. Excuse me. Could you repeat  
22 the question?

23 BY MS. PACIK:

24 Q Your opinion is, because there's a lot of



[WITNESS: Varney]

1 different land uses, and those uses have  
2 coexisted with electrical utility lines, that  
3 the Project will not prevent the uses from  
4 continuing in the future, right?

5 A I'm stating that they have coexisted as part of  
6 the fabric of local and regional development.  
7 And that I do not feel, from the perspective of  
8 this Project, that it will prevent these uses  
9 from continuing in the future. I haven't seen  
10 any documentation from anyone in this  
11 proceeding to suggest that that would not be  
12 true.

13 Q Okay. But you understand that, in terms of  
14 zoning and the Master Plan, the goal and the  
15 vision is that they want to both maintain and  
16 enhance community aesthetics, right?

17 A That's one of many factors that are addressed  
18 in the Master Plan.

19 Q Okay. And, in your analysis, you didn't look  
20 at community aesthetics, because you determined  
21 that that was an issue for the other experts,  
22 right?

23 A The requirements for aesthetics and visual --  
24 potential visual impacts is prescribed by the

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1 SEC in their rules.

2 Q Okay. And I understand that. I understand  
3 that there's a rule for scenic resources. But  
4 what I'm talking about, in terms of land use,  
5 and all the master plans and the land use  
6 regulations that we've talked about today, we  
7 have addressed the fact that they pertain to  
8 something different than scenic resources.  
9 They look at community aesthetics and community  
10 attractiveness, right?

11 A Yes.

12 Q Okay. And, when you made this opinion, you did  
13 not take into consideration community  
14 aesthetics and community attractiveness, did  
15 you?

16 MR. NEEDLEMAN: Objection. He  
17 already testified that he did.

18 CHAIRMAN HONIGBERG: Ms. Pacik.

19 MS. PACIK: I don't recall that he  
20 testified that he did. And, in fact, I think  
21 he specifically said he did not.

22 CHAIRMAN HONIGBERG: Mr. Varney, you  
23 remember the question?

24 WITNESS VARNEY: Yes.

[WITNESS: Varney]

1 CHAIRMAN HONIGBERG: You can answer  
2 then.

3 **BY THE WITNESS:**

4 A I certainly considered the issue. I didn't  
5 conduct an individual site-by-site visual  
6 assessment, however.

7 BY MS. PACIK:

8 Q You considered the issue of community  
9 aesthetics and community attractiveness?

10 A Yes, I did, because they were embedded in the  
11 Master Plan and in the Zoning Ordinance.

12 Q Okay. But, in terms of your review of the  
13 impacts of this Project on community aesthetics  
14 and community attractiveness, you didn't do any  
15 sort of study to determine what the impacts on  
16 those issues would be, did you?

17 A No. That was not the scope of my review.

18 Q Now, I just want to talk briefly about the  
19 regional master plans that you talked about.  
20 And, if we go a few slides, you talk about and  
21 I want to focus on Central New Hampshire  
22 Regional Planning Commission, because that is  
23 where Concord is located. And you agree  
24 Concord is in the Central New Hampshire

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[WITNESS: Varney]

1 Planning -- Regional Planning Commission area,  
2 right?

3 A Yes. Kerrie Diers and I met with their staff  
4 about the Project.

5 Q Okay. And the last sentence -- or, the last  
6 paragraph of that is, as you say, you reviewed  
7 the plan and that "the Project is consistent  
8 with the CNHRPC Regional Plan as the Project  
9 supports a balance between constructing  
10 increased capacity of clean, renewable energy  
11 with the need to protect existing land use  
12 patterns and open space."

13 Mr. Varney, is hydropower considered  
14 "renewable energy"? Large-scale hydropower?  
15 A By many, yes, it is. It may not be under the  
16 definition of some of the state requirements.  
17 But, in many cases, it's referred to as  
18 "renewable energy". And it depends where you  
19 are and whether or not the Renewable Portfolio  
20 Standards is what you're talking about, or  
21 whether you're talking about it on a broader  
22 basis.

23 Q Well, let's just talk about in New Hampshire.  
24 In New Hampshire, for the PUC, in terms of

[WITNESS: Varney]

1 renewable energy, is large hydropower  
2 considered "renewable energy"?

3 A It's not -- it doesn't meet the definition for  
4 the Renewable Portfolio Standard. But I would  
5 consider hydropower to be renewable energy.

6 Q Okay. So, the answer to the question was "no,  
7 it does not meet the standard in New  
8 Hampshire", right?

9 A You didn't specify what standard you were  
10 talking about. You didn't mention the  
11 portfolio -- Renewable Portfolio Standards  
12 specifically. So, I was trying to clarify.

13 Q Okay. And my apologies. It does not meet the  
14 requirements for the Renewable Portfolio --  
15 Renewable Energy Portfolio in New Hampshire,  
16 right?

17 A That's correct.

18 Q Okay. So, and you also say, in the last  
19 sentence, "the Project will use existing  
20 right-of-way in the region, which will not  
21 impact the prevailing land use patterns." And,  
22 if we go to the Central New Hampshire Regional  
23 Plan, I have it marked as "Joint Muni 281".  
24 And I don't want to go into a lot of detail.

[WITNESS: Varney]

1 But, just like the municipal master plans we  
2 looked at, there's a Vision Statement in this  
3 one, too, right?

4 A Yes.

5 Q And, under "Natural Resources", which is the  
6 Vision Statement, if we go to the following  
7 page, which is Page 2.9, at the top they talk  
8 about the fact, in their vision, and this is in  
9 the second sentence, is "Our working landscape,  
10 open space and recreational lands, and water  
11 resources are among the most valued aspects of  
12 the quality of life in the region." And that  
13 sentence includes "working landscapes", right?

14 A Yes.

15 Q And, if we go to the "Natural Resource"  
16 section, which is Chapter 7 of the Plan, and  
17 this also is marked as "Joint Muni 281". If we  
18 go to Page 7.6 of that section of the Plan, in  
19 red, I've highlighted the discussion. And the  
20 first sentence says "the rural quality and  
21 scenic views of Central New Hampshire are  
22 viewed as important amenities in the region."  
23 That important quality was not referenced in  
24 your overview of this Plan in your report, was

[WITNESS: Varney]

1 it?

2 A I don't -- I don't recall. There are many  
3 words in the summary of these documents. And,  
4 so, I can't recall whether that sentence was  
5 included or not.

6 Q Okay. Well, even a general discussion about  
7 the importance of rural qualities and scenic  
8 views, that wasn't referenced?

9 A That's -- that's in virtually every local and  
10 regional plan, that rural character and scenic  
11 quality is a goal.

12 Q Okay. And it is a goal in almost every plan,  
13 and it wasn't included anywhere in your report  
14 in terms of the overview of the plans, was it?

15 A Actually, it was. It was described. And I  
16 believe in both the testimony and the report.

17 Q In this particular report?

18 A I would assume so. That it was -- it's a  
19 general statement, and there's a discussion of  
20 this, certainly, with respect to the local  
21 master plans. And I would be surprised if  
22 there wasn't some mention of it in the summary  
23 for this region. And we also referenced the  
24 plan as well as a whole.

[WITNESS: Varney]

1 Q You referenced it as a whole, but nowhere in  
2 this section is there anything about scenery,  
3 is there?

4 A Maintaining the region's unique  
5 characteristics, quality of life --

6 *[Court reporter interruption.]*

7 WITNESS VARNEY: I'm sorry.

8 **BY THE WITNESS:**

9 A There are -- those specific words I do not see  
10 in the summary. But there is reference to a  
11 balancing, as you mentioned, in reference to  
12 the region's unique characteristics and quality  
13 of life, preserving open space, seeking to have  
14 more renewable energy, such as hydropower.

15 BY MS. PACIK:

16 Q Okay. And let's talk about that, actually, for  
17 a moment, because you do have an entire  
18 paragraph on energy in this, don't you?

19 A Yes. Especially considering this is an energy  
20 project.

21 Q Okay. And, so, if we go to the Energy chapter,  
22 and you talk about the fact that and in here  
23 you say "the chapter identifies hydropower, or  
24 electric hydropower as one of the most common



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1 and least expensive sources of renewable  
2 energy" -- "renewable electricity in this  
3 United States today", and how this supports  
4 your determination that this Project is  
5 consistent with the regional plan, right?

6 A Well, given that this Project is delivering  
7 relatively clean hydropower from Canada, and  
8 given that this chapter discusses hydropower,  
9 it appeared to be relevant to the discussion.

10 Q Okay. And, if we go to the Energy section, and  
11 sorry, this is hard to read, but it does have  
12 that sentence in red, and this is also Joint  
13 Muni 281. And this is "Chapter 9: Energy".  
14 And it talks about "reliable, affordable  
15 sources of energy". But then it goes on to  
16 discuss, when it comes to energy, the goal is  
17 really "energy efficiency improvements" and  
18 adopting "building energy code standards", and  
19 "incorporating renewable [energy] and energy  
20 efficiency into land use planning", right?

21 A Yes.

22 Q Okay. And, if you go to the next, Page 9.22,  
23 it talks about "hydropower"?

24 A Yes.

[WITNESS: Varney]

1 Q And the discussion is really hydropower  
2 "generated in the United States", not  
3 hydropower imported from Canada, isn't it?

4 A Yes. And it also states that, "in New  
5 Hampshire, close to 30 percent of renewable  
6 energy is provided by hydropower."

7 Q Okay. And, when they talk about that "30  
8 percent of the renewable energy", they're  
9 actually talking about renewable energy that's  
10 entitled to credits under the portfolio, is  
11 that right?

12 A I don't know. I think it's a statement simply  
13 that 30 percent of the renewable energy in New  
14 Hampshire is provided by hydropower.

15 Q Do you know whether 30 percent of the energy in  
16 New Hampshire is provided by hydropower?

17 A I'm reading the statement that's in their Plan.

18 Q But, other than the Plan, do you know if that's  
19 an accurate statement to support your  
20 assumption?

21 A It's probably close to what I would expect.

22 Q Okay. Well, if you go on under the  
23 "Hydropower" section, it talks about all of the  
24 current facilities operating in Central New

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1 Hampshire. Do you see that?

2 A Yes.

3 Q Okay. And these are all small hydro  
4 facilities, right?

5 A Yes. And, obviously, very supportive of  
6 hydropower generation.

7 Q Small hydropower generation is really what this  
8 section is focused on, isn't it?

9 A Within the region, yes. Within the Central New  
10 Hampshire Region, which is the scope of the  
11 Plan that they developed.

12 Q Okay. Now, I want to talk about your statement  
13 in your prefiled testimony about comments you  
14 received from discussions with local and  
15 regional planners. And do you see that  
16 highlighted on Line 16 of Page 3?

17 A Yes. As one of several factors that I  
18 considered.

19 Q Okay. And, in terms of the comments that you  
20 received from the Central New Hampshire --  
21 Central New Hampshire Regional Planning  
22 Commission, if we go to what's been marked as  
23 "Joint Muni 160". This is -- these are the  
24 comments that you received, correct?

[WITNESS: Varney]

1 A This is a meeting summary that was prepared by  
2 Kerrie Diers when we met with the staff, who  
3 are listed as participants.

4 MR. IACOPINO: The exhibit on the  
5 screen is "Joint Muni 260".

6 MS. PACIK: I'm sorry. My apologies.  
7 "Joint Muni 260". I may have misspoke.

8 *[CORRECTION: The document being*  
9 *referenced is "Joint Muni 160".]*

10 BY MS. PACIK:

11 Q In terms of your discussions before you got to  
12 this meeting on August 6, 2015, you didn't tell  
13 any of the participants from Central New  
14 Hampshire Regional Planning Commission that you  
15 were going to be asking for comments about the  
16 Project, did you?

17 A We indicated that we wanted to talk with them  
18 about the Project, and were especially  
19 interested in making sure that the information  
20 that we had was up-to-date and as accurate as  
21 possible.

22 Q But my question was different. My question  
23 was, before you went to this meeting with the  
24 Central New Hampshire Regional Planning

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1 Commission, you did not tell them in advance  
2 that you were going to be asking them for  
3 general comments about the Northern Pass  
4 Project?

5 A I can't recall.

6 Q It's not in your Project Overview, is it? That  
7 you had warned them before you got to the  
8 meeting that you were going to be looking for  
9 comments from them?

10 A I indicated that I can't recall.

11 Q Okay. And there's nothing in your notes to  
12 support anything to suggest that you had told  
13 them you would be asking for comments?

14 A We had a discussion about the Project and about  
15 relevant information that we should be aware of  
16 and consider in the preparation of our report  
17 and testimony.

18 Q Okay. And, on Line 4, they did explain to you  
19 that Concord had "filed as an intervenor with  
20 the Department of Energy". So, at least you  
21 were aware of that, right?

22 A Yes.

23 Q And, if you go to the next page, this is a  
24 discussion from August 4th, 2015. And, again,

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1 before this meeting with the City of Concord,  
2 you didn't notify them that you would be asking  
3 for general comments about the Northern Pass,  
4 did you?

5 A I don't recall the telephone conversation. I  
6 believe that was between Kerrie Diers and Nancy  
7 Larson.

8 Q Okay. And, in this, you were notified that  
9 "the Concord Heritage Commission was concerned  
10 about potential impacts", and that "a couple  
11 people on the Heritage Commission are  
12 passionate in opposing the Project". And they  
13 also indicated "structure heights and EMFs were  
14 concerns", right?

15 A Yes. This is an example of our asking them  
16 about issues that we needed to be aware of,  
17 based on their -- what they were hearing in the  
18 local community and based on what they knew  
19 about the Project.

20 Q Okay. And had you provided them information  
21 ahead of time that that was what you were going  
22 to be looking for, you may have gotten more  
23 information, in terms of concerns that they had  
24 been hearing in the community, right?

[WITNESS: Varney]

1 A No. They knew that the meeting was related to  
2 the Northern Pass Project. It was understood  
3 by all of the participants. And you're  
4 presuming that they didn't know that we were  
5 going to talk about Northern Pass, which is not  
6 the case.

7 Q They may have known you were going to talk  
8 about Northern Pass, but talking about what  
9 plans and ordinances are out there so you could  
10 do your review is different than asking about  
11 information for comments and concerns that they  
12 had been hearing.

13 A Again, I've stated that I was not on the phone  
14 when Kerrie Diers called Nancy Larson to  
15 arrange the meeting.

16 Q Okay. And, under 5, which we can't see, they  
17 also talked about McKenna's Purchase was an  
18 area of concern, right?

19 A Yes.

20 Q Okay. Now, in terms of the requirement under  
21 the SEC for there to be written comments from  
22 municipalities provided, if you turn to the  
23 next page, and this is Attachment 11, and it  
24 was provided as Applicants' Exhibit 2,

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1 Attachment 11. Do you see this?

2 A Yes.

3 Q So, this is a summary of written and regional  
4 comments submitted to the Applicants. And in  
5 this, there's nothing about the City of  
6 Concord, is there? And we can go through the  
7 pages so you can see. We've got Bristol -- if  
8 we go back to the first page, there's actually  
9 a reference to the "Whitefield letter to the  
10 Department of Energy" from 2013. Do you see  
11 that?

12 A Yes.

13 Q Okay. And then there's another reference to  
14 "Whitefield". If we go to the second page,  
15 there's a reference to "Bristol". And, then,  
16 at the following page, there is a reference to  
17 "New Hampton" and "Deerfield". Do you see  
18 that?

19 A Yes.

20 Q And the Deerfield one was from 2013 also. Did  
21 you put this together?

22 A No.

23 Q Do you know who put it together?

24 A I can't recall.



[WITNESS: Varney]

1 Q Were you asked for information when this was  
2 being put together?

3 A I don't recall.

4 Q So, fair to say, you don't know why Concord  
5 wasn't included?

6 A No. And I don't recall the date that it was  
7 prepared, or whether there were even other  
8 pages that are not shown here.

9 Q Well, I'll represent to you that there are no  
10 other pages. And I will represent to you that  
11 this was submitted in February of 2016, in  
12 response to the new rules. It was a  
13 supplemental filing.

14 So, if we go to the next page, you can see  
15 that there's actually a letter to the  
16 Department of Energy, dated June 21st, 2013,  
17 from Tom Aspell, who is the City Manager,  
18 discussing concerns that the City of Concord,  
19 and if you look at the first paragraph, "On  
20 behalf of the City of Concord, New Hampshire, I  
21 am writing to express concerns the City  
22 Administration, the Conservation Commission,  
23 and the Planning Board have with the potential  
24 impacts of the Northern Pass Transmission

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1 Project." Do you see that?

2 A Yes, I do.

3 Q And this is marked as Joint Muni 287. And you  
4 don't know why this letter wasn't included, do  
5 you?

6 A Again, I don't know the background on that --  
7 on that table that you showed. But I clearly  
8 stated in my testimony that I reviewed all of  
9 the municipal comments that were submitted to  
10 the DOE as part of their Draft EIS process.  
11 And I did review this letter.

12 Q Okay. And you reviewing it, again, I  
13 understand you reviewed a lot of information,  
14 but I'm asking about what was submitted. And  
15 you don't know why it wasn't submitted to the  
16 Site Evaluation Committee?

17 A Again, my testimony states that I reviewed this  
18 letter.

19 Q Okay. Now, I want to go to your supplemental  
20 testimony, which was from April 2017. And this  
21 is Applicants' Exhibit 96. And, on Page 2, you  
22 are asked the question, and I know -- I think  
23 Attorney Whitley had asked you about this  
24 yesterday with respect to the communities he

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1 represents, but you were asked if "you reviewed  
2 the prefiled testimony submitted by the  
3 municipal groups and others related to land use  
4 and orderly development?" And, in terms of  
5 the -- Line 20, you start by saying "As the  
6 intervenors who expressed concerns did not  
7 provide information to support their claims, we  
8 explored these issues further." And, in terms  
9 of the statement that "the intervenors did not  
10 provide information to support their claims",  
11 are you aware of all of the information that  
12 the City of Concord has submitted in their  
13 prefiled testimony?

14 A Yes, I am.

15 Q Okay. And it's your position that none of that  
16 information was helpful at all to support the  
17 claim of land use impacts, is that correct?

18 A That's not what I said. That's not direct.

19 Q Well, you actually say they "don't provide  
20 information to support their claims". There's  
21 just no information. Is that what you're  
22 saying?

23 A To support the fact that the Project would be  
24 detrimental to future economic growth and

[WITNESS: Varney]

1 development, to provide a factual basis for why  
2 that statement is true, I did not see a  
3 substantive submission that demonstrated that,  
4 in that -- in that body of information that you  
5 just referred to.

6 Q Okay. So, now we're clarifying that, when you  
7 say "information", you're actually talking  
8 about not information about impacts to land use  
9 and their concerns about that issue, but you're  
10 talking about impacts to land use in terms of  
11 potential future economic development, right?

12 A Well, that, and, again, the question is both  
13 that and substantive information that locating  
14 a transmission project within an existing  
15 corridor is incompatible with existing land  
16 use, and is inconsistent with master plans and  
17 zoning. And I -- it states the question that  
18 is posed here in the Q&A.

19 Q Yes. So, the question is, there's been  
20 concerns, "please respond to concerns expressed  
21 by some intervenors that the Project is  
22 incompatible with" (1) "existing land use," (2)  
23 "inconsistent with master plans and zoning,"  
24 and (3) it "would be detrimental to future

[WITNESS: Varney]

1 economic growth and development". And, in  
2 terms of those three items, you said that "the  
3 intervenors who expressed concerns did not  
4 provide information to support their claims."

5 A I didn't feel that the information -- it was my  
6 opinion that the information that they provided  
7 did not substantiate the claims, and answered  
8 that "nothing provided by the intervenors  
9 changes my opinion that the Project is  
10 consistent with local land use patterns and  
11 will not interfere with the orderly development  
12 of the region."

13 Q All right. So, I'm not going to go into a lot  
14 of detail, but Heather Shank, she was the  
15 Acting City Planner, she is the current City  
16 Planner, she submitted prefiled testimony,  
17 right?

18 A Yes.

19 Q And this is marked as "Joint Muni 133". And  
20 her testimony goes into detail, if we go  
21 through it. On Page 3, she says -- the  
22 question, "Does the proposed Northern Pass  
23 Project comply with the City of Concord's  
24 Master Plan 2030?" And she says "No." And,

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1 then, for the next several pages, in detail,  
2 she goes through why she does not think it  
3 complies with the Master Plan. And we can  
4 scroll through those pages. She talks about  
5 "orderly transition among land uses", on Page  
6 4. Page 5, she continues in that discussion,  
7 Page 6, under "Fourth", it talks about "the  
8 Project will not improve and enhance the  
9 overall appearance and aesthetics of the  
10 community", and discusses in detail her  
11 concerns about that particular issue. And,  
12 then, she goes into detail about all of the  
13 different zoning districts that will be  
14 impacted.

15 This is information that goes into detail  
16 about what the claims are of Concord and why  
17 they are concerned about the impacts of this  
18 project, right?

19 A Yes. But I, in reviewing this information,  
20 there was no new information. This was all  
21 information that we had previously considered.  
22 And there was no new information to  
23 substantiate some of the claims that would  
24 change my opinion.

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[WITNESS: Varney]

1 Q Okay. And, so, you understand the Conservation  
2 Commission also submitted information about  
3 concerns with respect to the Open Space Plan in  
4 Concord, correct?

5 A Yes.

6 Q Okay. And are you familiar with Jan McClure  
7 and Kristine Tardiff?

8 A Yes.

9 Q Okay. And you understand that they submitted  
10 their testimony on behalf of the entire  
11 Conservation Commission?

12 A Yes.

13 Q Okay. And you would -- and this is marked as  
14 "Joint Muni 135". And it's your opinion again  
15 that these members of the Conservation  
16 Commission haven't supported any of their  
17 claims about impacts to land use in Concord?

18 A I reviewed their information, and I disagree  
19 with their conclusion.

20 Q Okay. Now, in terms of Beth Fenstermacher, who  
21 is the Assistant City Planner, she actually  
22 provided a link to a video. And this is "Joint  
23 Muni 138", which talks in detail about the  
24 importance of maintaining vistas and the

[WITNESS: Varney]

1           ridgeline in Concord. And did you watch that  
2           video?

3    A       No, I didn't.

4    Q       Okay. So, you don't know whether there was any  
5           information in that video to support their  
6           claims?

7    A       No. Kerrie Diers, in my office, reviewed the  
8           video.

9    Q       Okay. You did not personally look at it?

10   A       No.

11   Q       Now, if we go to Page 147 -- sorry, actually of  
12           Applicants' Exhibit 96, going back to your  
13           testimony from April 2017, starting on Line 26  
14           of that, Page 2, you say, after your statement  
15           about the fact that the intervenors "did not  
16           provide information to support their claims",  
17           you say that "perhaps the best example of a new  
18           high voltage transmission line" is to look at  
19           "Hydro-Quebec Phase II, which was completed in  
20           1990", right?

21   A       Yes. On a regional basis, yes.

22   Q       And, if you go to the next page, you actually  
23           talk about the Project in Concord, and the  
24           Phase II line in the Concord vicinity, right?



[WITNESS: Varney]

1 And, if we go to the bottom, that's where it  
2 start?

3 A Yes.

4 Q And you talk about a bunch of open space  
5 properties that the line goes by, including  
6 Keating Conservation Easement, the Laura Jobin  
7 Family Trust Easement. Are you aware of  
8 whether those easements were acquired by the  
9 City of Concord or whether those easements were  
10 simply easements provided in the planning  
11 review process when these landowners were  
12 looking to subdivide their property?

13 A Each one has a different history.

14 Q Okay. Did you go into the history of each one?

15 A No. I simply looked at the fact that they were  
16 protected open spaces in the vicinity of this  
17 corridor.

18 Q Okay. And, in terms of the amount of  
19 properties in Concord along that line, did you  
20 look at how many are along the Phase II line in  
21 Concord?

22 A I didn't count them. But I've walked a good  
23 portion of the line and am very familiar with  
24 it.

[WITNESS: Varney]

1 Q What I'm showing you, which has been marked as  
2 Joint Muni 283, is the entirety of the Phase II  
3 line in Concord. And you can see it's 2.1  
4 miles. Do you see that?

5 A Yes, I see it.

6 Q And it's in the corner of Concord, right?

7 A Yes.

8 Q And you can see that there are a lot of  
9 undeveloped properties along that line. Do you  
10 see that?

11 A Yes.

12 Q Okay. Fair to say there's not a lot of homes  
13 over by that line?

14 A It's an area that I would refer to as a "rural"  
15 area.

16 Q Okay. And this is different than the  
17 Eversource proposed Project along the corridor  
18 on the other side of Concord, where there is  
19 much more residential and commercial  
20 development. Agreed?

21 A That's correct. And the review of the corridor  
22 within Bedford and Londonderry would correspond  
23 more directly with the strip commercial  
24 development in Concord.

[WITNESS: Varney]

1 Q Okay. And we'll get to that in a moment. But  
2 this is one portion of it where the line enters  
3 into Concord, and you can see that there are no  
4 homes along the line, except one on Warner  
5 Road. Do you see that?

6 A Yes.

7 Q And that's Joint Muni 283, Page 2. And, if we  
8 go to the following page, Joint Muni 283, Page  
9 3, you can see that, from Warner Road, to where  
10 the line goes into Hopkinton, there's not any  
11 houses along that area. Do you see that?

12 A I do see it, yes.

13 Q Okay.

14 A Warner Road is a heavily traveled road between  
15 Hopkinton and Concord.

16 Q You believe Warner Road is a heavily traveled  
17 road?

18 A Especially due to the landfill facility.

19 Q Okay.

20 A My observation, having been on the trails in  
21 that area, that are publicized by the Town of  
22 Hopkinton and the City of Concord, is that  
23 there's a fair amount of road traffic noise  
24 associated with Warner Road.

[WITNESS: Varney]

1 Q Okay. So, I don't know how you're defining  
2 "heavily traveled" for purposes of this  
3 proceeding, but, at least in terms of whether  
4 there's a lot of residential or commercial  
5 development along this line, you would agree  
6 that you see one home abutting the property --  
7 the corridor, correct?

8 A Yes. And my point in including this --

9 Q Actually, there wasn't any question. But thank  
10 you.

11 A Yes, there was a question. I said "yes",  
12 and --

13 MS. PACIK: Mr. Chair?

14 CHAIRMAN HONIGBERG: Sorry.

15 MS. PACIK: I think we're having --

16 WITNESS VARNEY: I'm fine to  
17 continue.

18 MS. PACIK: Okay.

19 WITNESS VARNEY: I thought I would  
20 provide some relevant information to the SEC,  
21 but that's okay.

22 MS. PACIK: Thank you. Sorry, I  
23 don't need your assistance. Sorry to interrupt  
24 you.

[WITNESS: Varney]

1 CHAIRMAN HONIGBERG: All right then.

2 MR. NEEDLEMAN: Well, can we find  
3 out -- can we find out if Mr. Varney's answer  
4 was complete?

5 CHAIRMAN HONIGBERG: Mr. Varney, were  
6 you done with your answer to the last question?

7 WITNESS VARNEY: I'm ready to move  
8 on.

9 BY MS. PACIK:

10 Q So, this is -- you were talking about the, you  
11 know, robust development in Bedford along the  
12 line. But, at least from Concord, all the way  
13 to the Market Basket in Bedford, which is  
14 circled in yellow -- in red, sorry, I don't  
15 know why I see yellow. The Market Basket is  
16 circled in red. But, at least from Concord to  
17 that Market Basket, you can see along this line  
18 that there is not a lot of development along  
19 the Phase II line. Do you see that?

20 A Generally speaking, yes. It's a fairly -- what  
21 we would classify as a fairly rural area. And  
22 much of the Phase II line, I've stated  
23 previously, goes through areas that are --  
24 continue to be classified as rural areas.

[WITNESS: Varney]

1 Q Okay. And, if we go to Joint Muni 283, Page 5,  
2 this is a closer up of at least the section of  
3 the Phase II line through I believe it's from  
4 Concord, all the way to Dunbarton. And, so, it  
5 would include portions of Bow, too. And you  
6 can see that there is very little development  
7 along the Phase II line in this area, right?

8 A I suppose so. I didn't try to do a review of  
9 the line from Monroe to Hudson.

10 Q And I'm not doing Monroe to Hudson. I'm just  
11 doing Concord to Dunbarton. And you're  
12 familiar with this region, having worked and  
13 lived in the area, correct?

14 A Yes.

15 Q Okay. Now, let's talk about the Market Basket  
16 in Bedford for a moment. And I want to turn to  
17 what was marked as Applicants' Exhibit 96, and  
18 this is your supplemental testimony from April.  
19 And you have a discussion about that Market  
20 Basket, right?

21 A Yes.

22 Q This Market Basket is located on the corner of  
23 Route 114 and 101?

24 A No.

[WITNESS: Varney]

1 Q It's in the vicinity of those routes?  
2 A It's north of there.  
3 Q Okay. But it's on Route 114, correct?  
4 A Yes.  
5 Q And, if you travel just a little ways, probably  
6 less than a mile, you would hit 101, correct?  
7 A Yes.  
8 Q Okay. So, fair to say this is a pretty good  
9 location, in terms of an area that would --  
10 somebody would want to have a commercial  
11 property located at, right?  
12 A Presumably so, since they built there.  
13 Q Right. It's close to Bedford, Goffstown,  
14 Village of Pinardville, is that right?  
15 A Yes. It was a substantial investment in this  
16 property, --  
17 Q Okay.  
18 A -- adjacent to line and underneath it.  
19 Q Did you take this photograph?  
20 A No. One of our staff did during the winter  
21 months.  
22 Q Okay. And it shows at least one of the lattice  
23 structures in the parking lot of Market Basket.  
24 Do you see that?

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[WITNESS: Varney]

1 A Yes. Much of the parking lot is within the  
2 right-of-way, and some of it is directly  
3 underneath the conductors.

4 Q Okay. And you'd agree this is a fairly large  
5 lattice structure that we're looking at?

6 A Yes.

7 Q Okay. And Market Basket was able to make it  
8 work by building the parking lot underneath  
9 that structure, correct?

10 A Yes. It's a very attractive building and well  
11 landscaped.

12 Q Okay. And fair to say the building is  
13 attractive, but the lattice structures are not  
14 so attractive, are they?

15 A I didn't make a judgment on the structures.  
16 They are -- they are what they are.

17 Q Okay. So, at least from a planning  
18 perspective, Market Basket was able to make  
19 this work. But, as a planner, you would agree  
20 this isn't great planning, is it?

21 A I think the substantial investment that's been  
22 made in this location is a good example of the  
23 fact that there is substantial investment,  
24 where zoning allows for it, along existing



[WITNESS: Varney]

1 transmission lines, even very large ones with  
2 steel lattice structures.

3 Q But my question was, as a planner, this  
4 isn't -- this isn't what you're looking for in  
5 terms of good planning, is it?

6 A Considering that the line was already there, I  
7 think it's very well planned, and includes a  
8 roundabout within the right-of-way itself.

9 Q Okay. Now, the history of this project, you  
10 reference it was "a former restaurant and  
11 miniature golf course", and the restaurant was  
12 Slammers, right?

13 A Yes, I believe so.

14 Q Okay. Did you look at the history of the  
15 property in terms of difficulties developing  
16 it?

17 A No. I'm only aware of the fact that there was  
18 a dispute at one point with another supermarket  
19 chain, about the fact that this Market Basket  
20 was allowed to be as large as it was. But,  
21 other than that, I'm not aware of anything.

22 Q Okay. So, let's talk about that for a moment.  
23 Are you aware that Market Basket actually got a  
24 variance to exceed the square footage of the

[WITNESS: Varney]

1 building that would normally be allowed on that  
2 site?

3 A Yes.

4 Q Okay. And you understand that that variance  
5 was granted?

6 A Yes.

7 Q And did you look at the Zoning Board minutes  
8 from the discussion of why the variance was  
9 granted?

10 A Yes.

11 Q Okay. Well, let's look at that right now. And  
12 it's Exhibit 292. And, if we go to Page 23 of  
13 Exhibit 292, there's a discussion from the  
14 Applicant for the variance as to why they are  
15 asking for it. And they explain that "the  
16 easement distinguishes this from any other  
17 parcels." And they say "I don't believe there  
18 is another commercial parcel in Town that has  
19 this easement running through it, and if you  
20 can visualize following this easement down  
21 through the Town of Bedford, you won't see any  
22 other development under it. There is a little  
23 bit of parking off of one of the lots on  
24 Constitution Drive", and you actually talk

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[WITNESS: Varney]

1 about "Constitution Drive" in your report,  
2 don't you?

3 A Yes.

4 Q Okay. But then -- and then the applicant says  
5 "but other than that, it goes right through  
6 Town and no one else has tried to do any kind  
7 of development under it because you can't. So  
8 this development allows us to make good use of  
9 land that nobody else has found a use for  
10 except hitting golf balls." Do you see that?

11 A Yes.

12 Q And, then, are you aware why the variance was  
13 ultimately granted and the discussion  
14 surrounding it?

15 A I assume you know.

16 Q Okay. Well, let's look at it. This is a  
17 comment from one of the members of the Zoning  
18 Board of Adjustment. And this is the  
19 discussion of why the variance should be  
20 approved and why the square footage of this  
21 building should exceed the zoning requirement.  
22 And the statement was: "The power lines I  
23 think make it a unique visual setting. If you  
24 go just beyond" -- "if you just go beyond that

[WITNESS: Varney]

1 building across Donald Street, it looks like a  
2 moonscape where the power lines are. It  
3 doesn't look quite as bad for this particular  
4 parcel, but with those huge power line towers,  
5 it would be hard to say you're making the  
6 neighborhood look worse by building a 78,000  
7 square foot building surrounded by some  
8 prefabricated, industrial steel buildings." Do  
9 you see that?

10 A Yes. That was an opinion made at the meeting,  
11 and it's for an area that was largely  
12 industrial.

13 Q Right. And, so, in terms of all of the  
14 development opportunities of this site that you  
15 talk about, and the fact that the power line  
16 doesn't impede development, the statement made  
17 by this member of the Zoning Board of  
18 Adjustment contradicts that, doesn't it?

19 A No, I disagree.

20 Q Okay. Well, I'll let the record stand for  
21 itself.

22 In terms of going back to the photograph  
23 that we had looked at a little bit earlier, and  
24 we had talked about the fact that this looks

[WITNESS: Varney]

1           like a pretty tall tower, do you know how tall  
2           that tower is?

3    A       I can't recall off the top my head.

4    Q       Okay.  And just for the record, when I'm  
5           talking about the tower, I'm talking about Page  
6           17 of your report that was included in your  
7           supplemental testimony.  So, you just -- you  
8           don't recall or do you not know?

9    A       I assume that it's probably 90 to 100 feet.

10   Q       Okay.  And, if we go to Joint Muni Exhibit  
11           292 -- sorry, Joint Muni 291, this is an e-mail  
12           from National Grid describing the height of the  
13           tower that we had just been looking at, and the  
14           picture that she's referencing in the first  
15           sentence is on the second page of the e-mail.  
16           And it was that same picture that we had just  
17           looked at.  And, in her e-mail, she states that  
18           the height of that particular structure is  
19           "approximately 95 feet above grade", and she  
20           says that just "doesn't take into account final  
21           foundation elevation data or if the grade was  
22           adjusted since the plaza was constructed."  So,  
23           that pole is about 95 feet that we saw, right?

24   A       Yes.  And my answer to your prior question was

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[WITNESS: Varney]

1 that I assumed it was in the range of "90 to  
2 100 feet".

3 Q Okay. And you were right. So, in terms of  
4 your later opinion about structures near Loudon  
5 Road, and how you don't think that the Project  
6 will have an impact on the Shaw's in that  
7 vicinity, just to be clear, that's 95. Are you  
8 familiar with how tall the proposed structures  
9 are around Shaw's?

10 A I can't recall the exact number.

11 Q Okay. Well, I'll represent to you that there's  
12 two structures that are proposed, one located  
13 close to the Shaw's parking lot, and the other  
14 one on the opposite side of Loudon Road, that  
15 are proposed to be 125 feet tall. So, those  
16 would be 30 feet taller than this particular  
17 structure that we're looking at in your report,  
18 correct?

19 A Apparently.

20 Q And it's about 30 percent taller than that  
21 particular structure, correct?

22 A Yes. But a different structure type.

23 Q Yes. It's a monopole. But we're talking about  
24 height right now.

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[WITNESS: Varney]

1 A Yes.

2 Q I'm just turning back to your report now for a  
3 moment, which was Applicants' Exhibit 96. And  
4 you do talk about the existing PSNH/proposed  
5 Northern Pass line corridor in Concord, near  
6 the Shaw's out by Loudon Road. And, in your  
7 discussion, you talk about the fact that there  
8 has been development in this area despite the  
9 current transmission line that exists, right?

10 A Yes.

11 Q And you haven't done any analysis, in terms of  
12 that particular area, as to what might happen  
13 if some of the poles are increased by 30  
14 percent, and it might -- how developers might  
15 respond to that height, have you?

16 A No.

17 Q Okay. And, in terms of the discussion of Alton  
18 Woods, which I believe is on the next page, you  
19 talk about the fact that Alton Woods is  
20 currently a large apartment complex in the  
21 area, and that there are already a transmission  
22 corridor in the vicinity, correct?

23 A Yes.

24 Q Okay. And you also talk about "Cobblestone

[WITNESS: Varney]

1 Pointe", which is a new senior area located  
2 right along the corridor?

3 A Recently approved and constructed, yes.

4 Q And did you do any analysis of the buffer that  
5 currently exists at Cobblestone, between the  
6 buildings and the corridor?

7 A Yes, I did.

8 Q And have you done any analysis of how that  
9 might be impacted if the Project is approved  
10 and how much more visibility of the line there  
11 will be?

12 A No. But I do know that the City required a  
13 buffer. There's -- on the other side of the  
14 garages that are closest to the right-of-way.

15 Q But you don't know whether that buffer will be  
16 effective if this Project is approved, do you?

17 A I don't. But I know that a buffer was required  
18 by the City, as indicated here.

19 Q Okay. Now, let's talk about Alton Woods for a  
20 moment. You're aware that Alton Woods is  
21 opposed to the Project having 125-foot poles on  
22 Loudon Road, are you?

23 A No. I don't recall that.

24 Q Okay. Now, had you read all of the prefilled



[WITNESS: Varney]

1 testimony that was submitted by the City of  
2 Concord, you may have seen a letter that was  
3 submitted by Alton Woods and attached to the  
4 prefiled testimony of Beth Fenstermacher. And  
5 we have it, and we'll just find it for a  
6 second. We'll go back to those.

7 And it was part of Beth Fenstermacher, who  
8 is the Assistant City Planner's prefiled  
9 testimony. And it was Joint Muni 138. And  
10 there's a letter from her from Hodges Company.  
11 And are you familiar that Hodges Company owns  
12 Alton Woods?

13 A Yes, I am.

14 Q Okay. And, on this letter, the second page,  
15 there's a discussion about the poles. And  
16 Mr. Johnson, who is the owner of Hodges,  
17 explains in the first bullet that the "proposed  
18 pole heights in direct proximity of Alton Woods  
19 would likely be acceptable if mitigation from  
20 line burial is not possible." But then he goes  
21 on to the say in the second bullet, which isn't  
22 highlighted, that they have concerns about  
23 "obstruction to access". And then, in the next  
24 bullet, which is the first highlighted one, it

[WITNESS: Varney]

1 talks about concerns about "structural pads and  
2 bases within the easement area". He discusses  
3 concerns about "tree removal". He expresses  
4 concerns about the fact that, if buffers are  
5 removed, there's going to be more noise from  
6 393, which is right next to Alton Woods, as  
7 well as the "loss of visual screening". And  
8 then he talks about the concern about the fact  
9 that pole heights near Alton Woods are now  
10 being proposed to be increased up to as high as  
11 155 feet. And it's actually, I believe, 165  
12 feet.

13 Have you done any analysis of the fact  
14 that there's now a new design concept to cross  
15 393 with 165-foot structures?

16 A I'm aware of that, that issue, that the  
17 Applicant is working on with DOT. I'm not  
18 aware of where that discussion is and in its  
19 development.

20 Q Okay.

21 A But I am, with respect to Alton Woods, very  
22 aware of the existing land use. And  
23 Mr. Johnson here, as noted in your exhibit,  
24 says that "the proposed above ground pole

[WITNESS: Varney]

1 structures are also likely to be acceptable".

2 Q Right. That's the first line. But then he  
3 goes on, in the next six bullets, as to all of  
4 his concerns about the Project, including the  
5 pole height that may be 165 feet. And the last  
6 bullet talks about his concerns about the  
7 expansion of the pole heights at Old Loudon  
8 Road and Loudon Road, and we can go on to the  
9 next page to keep reading, which he says will  
10 have a problem with curb appeal. And those are  
11 the poles that are proposed to be 125 feet. Do  
12 you see that?

13 A Yes.

14 Q Okay. So, in terms of your statement in your  
15 supplemental testimony about how the PSNH line  
16 exists, and that this proves that all of the  
17 concerns from the intervenors are not  
18 supported, and your reliance on Alton Woods as  
19 being an example, this actually shows that  
20 Alton Woods has some serious concerns about  
21 this Project, right?

22 A This exhibit indicates that the owner has  
23 stated that the poles -- the larger poles are  
24 "likely to be acceptable", and that he has some

[WITNESS: Varney]

1 specific issues that he would like to work  
2 through with Eversource.

3 In addition, I asked the manager of the  
4 complex if they had any issues associated with  
5 units that looked out on the right-of-way with  
6 the existing transmission line, and the  
7 indication from that manager was "no", in fact,  
8 some prefer to be closer to the transmission  
9 line, because it provides open space and  
10 recreational opportunities or occasional  
11 wildlife sightings for renters who are there.

12 The area, of course, is very heavily  
13 wooded, as you know, from the development, very  
14 tall pine trees that are throughout the  
15 development. And my assessment was that, as is  
16 the case with every project, the Applicant  
17 needs to work with adjacent landowners.

18 But I saw no reason why this Project would  
19 have a significant adverse effect on the  
20 continued use of Alton Woods as a desirable  
21 facility for renters.

22 Q Okay. But you understand that the concerns  
23 that Mr. Johnson raises aren't just about, you  
24 know, potentially "hey, maybe we can work with

[WITNESS: Varney]

1 Eversource." These are specific concerns,  
2 including a concern about the increased heights  
3 near Loudon Road, and how it will impact curb  
4 appeal for people coming into Loudon Road.  
5 And, so, your summary of this letter isn't  
6 really consistent with what's stated on the  
7 written document, is it?

8 A I disagree with you. I think he has raised  
9 issues of concern, but his ultimate opinion was  
10 that he was likely to find the new structures  
11 to be acceptable.

12 Q Okay. And I like the fact that you focus on  
13 that one bullet, and you're ignoring, though,  
14 the other bullets, aren't you?

15 A No. Those were in his mind when he made that  
16 statement in the letter.

17 Q Okay.

18 CHAIRMAN HONIGBERG: Ms. Pacik, we're  
19 going to need to break in the next few minutes.

20 MS. PACIK: I don't have a lot more,  
21 but probably not enough to get through before  
22 lunch.

23 CHAIRMAN HONIGBERG: Well, "probably  
24 too much to get through before lunch", that's

[WITNESS: Varney]

1 what you meant, right?

2 MS. PACIK: Yes. See, I can't even  
3 think straight anymore. Maybe we can take a  
4 break now then?

5 CHAIRMAN HONIGBERG: That's probably  
6 a good idea. We'll be back probably shortly  
7 after 1:30.

8 (Lunch recess taken at 12:31  
9 p.m. and concludes the **Day 38**  
10 **Morning Session.** The hearing  
11 continues under separate cover  
12 in the transcript noted as  
13 **Day 38 Afternoon Session ONLY.**)  
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**C E R T I F I C A T E**

I, **Steven. E. Patnaude**, a Licensed Shorthand Court Reporter, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes of these proceedings taken at the place and on the date hereinbefore set forth, to the best of my skill and ability under the conditions present at the time.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action; and further, that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

---

Steven E. Patnaude, LCR  
Licensed Court Reporter  
N.H. LCR No. 52  
(RSA 310-A:173)

**BY MS. PACIK:**  
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**BY MS.**  
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**CHAIRMAN**  
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