

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

**December 3, 2018 - 1:00 p.m.**  
49 Donovan Street  
Concord, New Hampshire

**DELIBERATIONS**

**DAY 3**

*{Electronically filed with SEC 12-18-18}*

**IN RE:       SEC DOCKET NO. 2015-04**  
**Application of Public**  
**Service of New Hampshire**  
**d/b/a Eversource**  
**Energy for Certificate**  
**of Site and Facility**  
***(Deliberations)***

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

**Patricia Weathersby**  
*(Presiding Officer)*

Public Member

**David Shulock, Esq.**  
**Dir. Elizabeth Muzzey**  
**Charles Schmidt, Admin.**  
**Dep. Dir. Christopher Way**  
**Dir. Michael Fitzgerald**  
**Susan Duprey, Esq.**

Public Utilities Comm.  
Div. of Hist. Resources  
Dept. of Transportation  
Div. of Economic Dev.  
Dept. of Env. Services  
Public Member

***ALSO PRESENT FOR THE SEC:***

**Michael J. Iacopino, Esq.**       Counsel for SEC  
**Iryna Dore, Esq.**               Counsel for SEC  
*(Brennan, Lenehan, Iacopino & Hickey)*

**Pamela G. Monroe, SEC Administrator**

*(No Appearances Taken)*

**COURT REPORTER: Cynthia Foster, LCR No. 14**

**I N D E X**

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1           Number 2, documentation which demonstrates  
2 compliance with the application requirements of  
3 all such agencies.

4           And then under rule Site 301.07, effects on  
5 environment, each Application shall include  
6 information including the applications and  
7 permits filed pursuant to 301.03(d) which I just  
8 read. Information including the applications  
9 and permits filed pursuant to Rule 301.03(d)  
10 regarding issues of -- that was air. Issues of  
11 water quality. Again.

12           And C, information regarding the natural  
13 environment including, and then there are six  
14 subsets which I'm not going to read. They're  
15 rather lengthy. But again, that is Site  
16 301.07(c)1 through 7 which are the specific  
17 information required regarding the effects on  
18 environment, and that includes rare plants, rare  
19 natural communities, significant wildlife  
20 species, critical wildlife habitat and  
21 significant resources affected, assessment of  
22 potential impacts of construction on significant  
23 wildlife species, rare plants, rare natural  
24 communities.

1           5, description of measures planned to  
2           avoid, minimize or mitigate potential adverse  
3           effects; and 6, description of the status of the  
4           Applicant's discussions with the New Hampshire  
5           Department of Fish & Game, New Hampshire Natural  
6           Heritage Bureau, Fire & Wildlife and other  
7           federal and state agencies.

8           Again, those are all the environmental  
9           aspects, but these are, I believe those are the  
10          statutes and rules that we're required to follow  
11          up on.

12          And I thought that I would give an  
13          overview, I would go over the state agency  
14          permits that are required and provide a little  
15          bit of information on the status of those, and  
16          then dive into the -- many of those are  
17          incorporated into one permit with New Hampshire  
18          DES. So there's several permits: Alteration of  
19          Terrain, there's Wetlands, Shoreland, et cetera.  
20          Those are all incorporated into one final permit  
21          from DES which was issued last February, and  
22          there have been some revisions to that as well.

23          And then go into the specific water quality  
24          issues, and Chris and I have divided this up. I

1 will outline the Application and the areas that  
2 relative to water quality that we need to  
3 consider. And Chris, there were significant  
4 concerns raised by the Town of Durham's panel  
5 and Chris has reviewed those. I will note that  
6 their concerns, they were able to meet with DES,  
7 their concerns were addressed by DES, and so a  
8 lot of the issues have been at least presented  
9 to DES and considered for possible inclusion in  
10 the requirements.

11 Also I would note that there are  
12 stipulations in Exhibit 193, commencing on page  
13 6, 22 to 31. Proposed requirements. And there  
14 are stipulated facts between the Counsel for the  
15 Public and the Applicant.

16 I'd like to know the Committee's pleasure,  
17 if it would be helpful to review those up front  
18 possibly so that we have a context for things  
19 that have been pretty well resolved between the  
20 Applicant and Counsel for the Public. I think  
21 that was helpful in going through historic sites  
22 and aesthetics was to understand those things  
23 that had already been stipulated. So does that  
24 meet with the Committee's pleasure?

1           Okay. We'll start there. So again, the  
2 stipulations are Exhibit 193, and there's also a  
3 set of stipulated facts -- I'm not sure. I  
4 didn't have a chance to prepare notes. I had a  
5 printed document. But starting with Stipulated  
6 Facts and Proposed Conditions document dated  
7 August 15th, I'm not sure of the exhibit number  
8 off the top of my head. I don't know if anybody  
9 has that.

10           MR. IACOPINO: 184.

11           MR. FITZGERALD: 184. Exhibit 184. And  
12 beginning on page 3, real page 3, not  
13 electronic. There's a section entitled Water  
14 Quality.

15           Starting with number 18, February 28th,  
16 NHDES issued a decision on the parts of the  
17 Application that relate to permitting to its  
18 permitting or regulatory authority relative to a  
19 Wetland permit, Alteration of Terrain, 401 Water  
20 Quality Certificate and a Shoreland permit. New  
21 Hampshire DES recommends approval of the  
22 Application with the conditions that are  
23 enclosed on the February 28th. We'll get into  
24 that later. There's 72 conditions that are part

1 of that February 28th decision.

2 19. The Applicant has entered into a  
3 signed MOU with the Darius Frink Farm for  
4 Conservation Easement Improvements dated  
5 September 27th, 2016. The Applicant agrees to  
6 comply with all conditions of that MOU executed  
7 with the Rockingham County Conservation  
8 District.

9 20. Applicant has entered into a signed  
10 MOU that includes Soil and Groundwater  
11 Management Plan for underground construction on  
12 the Darius Frink Farm in Newington. Applicant  
13 agrees to comply with all conditions of the MOU  
14 again.

15 21. The Applicant has developed a Draft  
16 Revised Soil and Groundwater Management Plan for  
17 the Newington area provided to the SEC on July  
18 27, 2018, to manage groundwater during  
19 construction and in the vicinity of Pease Air  
20 Force base, former Pease Air Force base as it  
21 may be potentially impacted by perfluorinated  
22 compounds, PFCs.

23 22. Permanent direct wetland impacts are  
24 below the NHDES threshold for mitigation, 10,000



1 square feet of permanent wetland impact.  
2 Secondary impacts due to tree removal exceed  
3 that number and result in the need for federal  
4 compensatory wetland mitigation. In accordance  
5 with applicable US Army Corps of Engineers  
6 regulation and guidance, mitigation is  
7 proposed -- am I going too fast?

8 COURT REPORTER: Little bit.

9 MR. FITZGERALD: I'm sorry.

10 COURT REPORTER: That's all right. Thank  
11 you.

12 MR. FITZGERALD: Therefore, in accordance  
13 with the applicable US Army Corps of Engineers  
14 regulations and guidance, mitigation is proposed  
15 for direct and secondary project impacts to  
16 wetlands and impacts to stream buffers.  
17 Mitigation ratios were applied to these  
18 anticipated impacts in accordance with the New  
19 England Army Corps of Engineer mitigation  
20 guidance document and in coordination with the  
21 USACE and NHDES.

22 23. Applicant has submitted a Revised  
23 Environmental Monitoring Plan for Little Bay.  
24 On September 15th, 2017, prior to construction

1 the Applicant will receive final approval from  
2 DES on that plan and the plan will assess water  
3 quality during construction, postconstruction,  
4 topography and benthic invertebrates.

5 24. The Applicant has conducted sediment  
6 testing that indicates all parameters tested are  
7 below regulatory risk thresholds with the  
8 exception of Arsenic which is a common naturally  
9 occurring element in New Hampshire bedrock.

10 And 25. The Applicant has submitted a  
11 Cable Removal Plan to NHDES dated June 30th,  
12 2017. The Applicant will comply with all  
13 proposed environmental avoidance, minimization  
14 and mitigation measures as described in that  
15 plan including potential debris mitigation and  
16 remedial debris recovery and using pollution  
17 prevention measures. All existing cable removed  
18 from the seabed will be disposed of in  
19 accordance with applicable laws.

20 So those are the stipulated facts included  
21 in that Exhibit 184. And then moving on, does  
22 anybody have any questions on those?

23 (No verbal response)

24 MR. FITZGERALD: Moving on, there's a set

1 of stipulated conditions in a document dated, I  
2 believe that's Exhibit 193 dated 9/17. Wait a  
3 minute. I'm not sure if that's the exhibit  
4 number or not.

5 DIR. MUZZEY: It is.

6 MR. FITZGERALD: And condition number 8 is  
7 that the Applicant shall file with the SEC a  
8 copy of all Best Management Practices to be  
9 utilized for the Project for all construction  
10 activity to the extent they have not already  
11 provided, including without limitation BMPs for  
12 entering and exiting the right-of-way, sweeping  
13 paved roads at access points, BMPs relating to  
14 Applicant's Storm Water Pollution Prevention  
15 Plan, BMPs for specific locations such as steep  
16 slopes and near water bodies, and BMPs for  
17 submarine and shoreland cable installation. And  
18 during construction the Applicant shall adhere  
19 to all BMPs consistent with all state and  
20 federal permit requirements.

21 Then beginning on page 4, I'm not sure of  
22 the electronic page, but the Environmental  
23 conditions, proposed conditions are starting  
24 with number 22, the Applicant shall comply with

1 all NHDES permit conditions issued in the Final  
2 Decision, February 28th, 2018, as modified by  
3 correspondence from DES August 31, 2018.

4 Chairwoman, Attorney Iacopino, do we need  
5 to have any discussion with regard to -- there's  
6 been substantial motions and correspondence with  
7 regards to that DES, and I believe an order was  
8 issued to that, for that August 31st DES  
9 document. Do we need to have any discussion on  
10 that or is that settled?

11 MR. IACOPINO: The Presiding Officer who is  
12 in charge under the statute of making procedural  
13 orders did in fact issue an order so I think the  
14 Committee is bound by that order.

15 MR. FITZGERALD: Okay. All right. Anyone  
16 need further information on that?

17 (No verbal response)

18 MR. FITZGERALD: Okay. Proposed  
19 conditions, number 23. Further ordered that  
20 pursuant to the Alteration of Terrain Permit  
21 condition 8, Applicant shall complete and comply  
22 with the requirements of a Storm Water Pollution  
23 Prevention plan and the United States  
24 Environmental Protection Agency National

1 Pollutant Discharge Elimination System  
2 Construction General Permit before beginning  
3 construction.

4 Number 24, the Applicant shall implement  
5 measures to avoid and minimize to the extent  
6 possible any potential water quality impacts  
7 including sedimentation and erosion controls,  
8 and the Applicant shall implement all applicable  
9 Best Management Practices prior to commencing  
10 construction of the Project.

11 25, and please feel free to stop me if you  
12 have questions about any of this. The Applicant  
13 shall use independent environmental monitors to  
14 oversee the construction of the Project and to  
15 work with contractors to implement appropriate  
16 BMPs to avoid or minimize environmental impact.  
17 Shall also use independent DES-approved  
18 environmental monitors to oversee work in Little  
19 Bay.

20 Number 26. Once construction begins, the  
21 Applicant shall weekly file with the DES and a  
22 copy to SEC a copy of all Weekly Compliance  
23 Monitoring Reports by all construction and  
24 environmental monitors. SEC shall post said

1 reports on its website. The SEC or any state  
2 agency to which the SEC delegates authority  
3 shall have continuing jurisdiction to address  
4 any violations of these conditions.

5 We did have some discussion last week  
6 relative to the fact that the state agencies  
7 still retain all of their enforcement,  
8 compliance and enforcement authorities and can  
9 address any problems or issues that are brought  
10 to their attention through their normal  
11 enforcement measures.

12 So following remediation of any such  
13 violation, the Applicant shall file with the  
14 NHDES and copy to SEC a report of remediation  
15 and the SEC shall post said reports.

16 27. Applicant shall restore any disturbed  
17 soils, wetland and upland, to a stabilized  
18 condition to prevent permanent erosion impacts.

19 28. The Applicant shall obtain DES  
20 approval of a revised Soil and Groundwater  
21 Management plan for the Newington area to manage  
22 groundwater during construction within the  
23 vicinity of the former Pease Air Force base that  
24 is potentially impacted by PFCs and other

1 contaminants, a draft of which was provided to  
2 the SEC on July 27, 2018. The Applicant shall  
3 comply with all conditions of the Final Soil and  
4 Groundwater Management Permit for the Town of  
5 Newington.

6 29. Further ordered the Applicant shall  
7 use the State's Aquatic Resource Mitigation  
8 Calculator to determine the final amount of  
9 mitigation money necessary to comply with the  
10 in-lieu fee program and shall make sure that the  
11 required Application to the ARM found prior to  
12 the commencement of, shall make the required  
13 payment to the ARM fund prior to commencement of  
14 construction.

15 And last, number 30, ordered the Applicant  
16 shall comply with all vegetation management BMPs  
17 and TOY, time of year, restrictions established  
18 by the New Hampshire Natural Heritage Bureau and  
19 as described in Best Management Practices and  
20 Construction Plan for Protected Wildlife and  
21 Plants dated September 15th, 2017.

22 So that is a list of all of the Stipulated  
23 Facts and Proposed Conditions relative to  
24 perhaps a little larger than just water quality

1 but relative to the DES permits.

2 MS. DUPREY: I just wondered about 31. Is  
3 that one that you're going to cite later?

4 MR. FITZGERALD: Did I miss one? Sorry.

5 MS. DUPREY: I can read it if you want.  
6 Further ordered that the Applicant shall comply  
7 with Best Management Practices and Time of Year  
8 restrictions approved to by the New Hampshire  
9 Fish & Game Department to avoid and minimize  
10 potential impacts to rare, threatened and  
11 endangered wildlife species and rare plants as  
12 described in Best Management Practices and  
13 Construction Plan for Protected Wildlife and  
14 Plants dated September 15th, 2017.

15 MR. FITZGERALD: As I mentioned -- thank  
16 you very much. As I mentioned, some of these  
17 are going to natural environment so I'm  
18 primarily dealing with water now but I did want  
19 to address all of the things that have been  
20 stipulated about the environmental conditions.  
21 That's certainly relevant.

22 MR. SCHMIDT: I have a quick question. On  
23 paragraph 8 it says that the BMPs will be  
24 submitted to the SEC. Is that intended as an



1 approval process or will they be submitted to  
2 DES for approval?

3 MR. FITZGERALD: The Applicant shall file  
4 with the New Hampshire SEC a copy of all BMPs to  
5 be utilized for all construction activity. And  
6 then lists several BMPs. I think the intent  
7 here is to overall cover the BMPs being  
8 submitted to the SEC, but I think several of  
9 them are addressed individually in conditions,  
10 in other conditions as well. So I think all 8  
11 is saying is these must be submitted. It just  
12 seems to be an overall list. And then during  
13 construction the Applicant shall adhere to the  
14 BMPs consistent with all state and federal  
15 permit requirements. I think it's just a very  
16 general statement that there are a number of  
17 BMPs. The applicant shall provide them all to  
18 the SEC and they shall comply with them all and  
19 then as needed specifically they're addressed in  
20 other conditions. Certain ones.

21 MR. SCHMIDT: So is it the intent that DES  
22 will approve all the BMPs?

23 MR. FITZGERALD: That's my understanding is  
24 that they will be submitted to DES, those that,

1           you know, are relevant to the DES permit in the  
2           72 conditions that DES imposes would be  
3           submitted for approval to DES. I believe  
4           there's been some concerns raised that all of  
5           that is not final. There was some testimony and  
6           it's my understanding that SEC can delegate that  
7           authority to DES to approve those plans and make  
8           sure that they are received and approve them on  
9           behalf of the SEC so that will need to be  
10          addressed in our conditions if they're not  
11          finalized by the time we finish our  
12          deliberations.

13                 MR. SCHMIDT: Thank you.

14                 MR. FITZGERALD: Any other questions with  
15          regards to facts and conditions.

16                 PRESIDING OFFICER WEATHERSBY: I have one  
17          question concerning number 29. The ARM fund.

18                 MR. FITZGERALD: Yes.

19                 PRESIDING OFFICER WEATHERSBY: I know that  
20          the Applicant has already agreed to provide  
21          close to \$350 million to that fund.

22                 MR. FITZGERALD: Thousand.

23                 PRESIDING OFFICER WEATHERSBY: Thank you.  
24          They almost had a heart attack.

1 MR. FITZGERALD: He's clutching his heart.

2 MR. SHULOCK: Everyone's awake now.

3 PRESIDING OFFICER WEATHERSBY: To the ARM  
4 fund.

5 MR. FITZGERALD: Yes.

6 PRESIDING OFFICER WEATHERSBY: So it sounds  
7 like this says they still need to calculate  
8 based on what -- can you explain that in  
9 relation to the Applicant's commitment if you  
10 can or maybe this is something you were planning  
11 to talk about later.

12 MR. FITZGERALD: Well, I don't have a lot  
13 of expertise in this area, but my understanding  
14 is that that would, that if any conditions  
15 change, if any of the permit conditions change  
16 or the amount of wetland or anything like that,  
17 that that calculation may have to be revisited.  
18 Is that --

19 MR. WAY: That's my understanding. It's a  
20 little bit flexible depending on what's  
21 encountered up and to during construction. That  
22 might change the amount of the ARM fund, so, for  
23 example, if there's more wetlands that were  
24 encountered or something to occur on the DES

1 end, that might affect the amount that would  
2 give them the ability to revise that amount as  
3 well.

4 PRESIDING OFFICER WEATHERSBY: So what's  
5 coming to my mind is concrete mattresses could  
6 be more or less than what they're estimating,  
7 they would then recalculate the impact and that  
8 could cause that number to go up or down.

9 MR. FITZGERALD: I believe any impact to  
10 wetlands that is substantially different than  
11 what has been permitted or applied for would be.

12 PRESIDING OFFICER WEATHERSBY: Thank you  
13 for the clarification.

14 MS. DUPREY: I can't remember which one of  
15 these had a 10,000 square foot number for the  
16 Army Corps.

17 MR. FITZGERALD: I believe the 10,000  
18 square foot was possibly the DES limit for --

19 MS. DUPREY: Impact to?

20 MR. FITZGERALD: Yes. Impacts. I believe  
21 that was in --

22 MS. DUPREY: 184.

23 MR. FITZGERALD: Yes.

24 MS. DUPREY: That seemed directed at the

1 concrete mattresses in large part. Is that  
2 true?

3 MR. FITZGERALD: Well, I think it's, it's  
4 number 22 on page 4 of that document. Real page  
5 4. Permanent direct wetland impacts are below  
6 the NHDES threshold for mitigation, 10,000  
7 square feet. Secondary impacts are above and  
8 therefore other requirements come into,  
9 therefore in accordance with the Army Corps  
10 regulations mitigation is proposed for direct  
11 and secondary impacts, mitigation ratios were  
12 applied to these anticipated impacts. So.

13 MS. DUPREY: Okay. So since the secondary  
14 exceeded their minimum number, does that mean  
15 that if the concrete mattresses get bigger than  
16 the 8,000 square feet that are or whatever,  
17 8,000-plus square feet that are projected today  
18 that this mitigation will take care of that?

19 MR. FITZGERALD: Well, I think concrete  
20 mattresses are a particular issue, and it's my  
21 understanding that the DES permit permitted a  
22 maximum amount of, I think it was on the order  
23 of 8,600 and something square feet of concrete  
24 mattresses. And that was at DES's

1 recommendation in order to ensure that they did  
2 not have to come back and revise the permit in  
3 order, in other words, they asked the Applicant  
4 to tell them what their maximum estimate of, so  
5 I think this number 22 applies to all wetlands,  
6 not just the concrete mattresses. But my  
7 understanding is that if the 8600 changes that  
8 they would have to go back and revise their  
9 permit. The original estimate I think was on  
10 the order of 5,000 square feet and DES asked  
11 them to give them sort of their high end worst  
12 case estimate in order to avoid having to come  
13 back and revise the permit for that situation.  
14 So I think that's covered by two pieces.

15 MS. DUPREY: Thank you.

16 MR. FITZGERALD: Okay. So that, I will  
17 start with discussion of the various state  
18 permits, some of which are water quality  
19 related, some of which are not, but for  
20 instance, the Alteration of Terrain is intended  
21 to protect groundwater so to some degree they're  
22 all incorporated.

23 I did want to bring up three or four quick  
24 issues that we ought to keep in our mind during

1           these deliberations that we don't necessarily  
2           have to talk about right now, but I just wanted  
3           you to bear them in mind as we go through the  
4           deliberations.

5           I think last week we had some discussion  
6           relative to the undergrounding the lines near  
7           the Pickering Farm and whether or not that would  
8           constitute a significant change to the Project  
9           and whether if we were to order undergrounding  
10          that that would actually constitute a different  
11          Project and we would have to deny the  
12          certificate for this Project first. In other  
13          words, we were not going to consider that as an  
14          alternative for this Project.

15          I think the same sort of logic applies for  
16          the HDD versus jet plowing, but I wanted to get  
17          a sense of the Committee, either now or when we  
18          get to that section, but it seems to me that DES  
19          did not put any particular conditions and they  
20          had a supplemental recommendation that there be  
21          an evaluation of HDD versus jet plow. That was  
22          conducted, we received significant information,  
23          reports and testimony on that, and it was  
24          concluded that that was not a viable option.

1           However, it certainly seemed to me during  
2           the testimony that I, when I heard that there  
3           would be significant information that is not  
4           before us now relative to impacts on either end,  
5           you know, and we don't have any engineering  
6           plans or any things other than a comparison  
7           report to support HDD.

8           So I think the same situation would apply  
9           as I mentioned with the Pickering Farm, but I'd  
10          like you to think about, and we can discuss now  
11          or later, but it seems to me that if that were  
12          the case that we felt that more attention needed  
13          to be paid to an HDD option that we'd be  
14          basically considering a different Project and we  
15          would need to deny this Application and tell  
16          them to come back and do that.

17          MR. WAY: I guess I was just wondering what  
18          the pleasure was going to be? Do we talk about  
19          that now or do we talk about that later. And  
20          the reason I bring that up is when you look at a  
21          lot of the testimony, that comes up later in the  
22          discussion. Part of it is based on the idea  
23          that there's an alternative that might offset  
24          some of the problems proposed or assumed to be



1 inherent in the jet plow process. So we can  
2 talk about it now or we can talk about it later,  
3 but at some point we have to address whether HDD  
4 is still an alternative on the table or is it  
5 something that we remove.

6 MR. FITZGERALD: I just want to reiterate  
7 that the HDD versus jet plow study and the trial  
8 run were only recommendations of DES. They were  
9 not specific requirements. So to the extent, it  
10 seems to me that that's information that is  
11 supportive of the Application for this Project  
12 but not necessarily information that would allow  
13 us to look at different project.

14 PRESIDING OFFICER WEATHERSBY: So my  
15 personal opinion is that right now it's  
16 premature to rule HDD out in that I think we  
17 should have a discussion about it and determine  
18 whether or not we have enough facts in evidence  
19 that would allow us to require HDD as an  
20 alternative. Or if we don't, then we can rule  
21 that out at that time. I think that probably we  
22 want to explore that a little bit more than just  
23 decide right now.

24 MR. FITZGERALD: Well, I just want to note

1 that at least in my mind, the discussion first  
2 needs to be is HDD an alternative or a different  
3 project, and then if we somehow decide that it's  
4 a potential alternative, we can have a lot more  
5 discussion.

6 PRESIDING OFFICER WEATHERSBY: So I think  
7 we should have a discussion of whether it's an  
8 alternative or different project and what the  
9 facts are that would support that determination.  
10 We can have that now if you want or we can talk  
11 about it in connection with --

12 MR. FITZGERALD: At the pleasure of the  
13 Chair.

14 PRESIDING OFFICER WEATHERSBY: Ms. Duprey?

15 MS. DUPREY: I think that the discussion of  
16 HDD is important in the sense that it informs  
17 our opinion about jet plowing possibly, and so  
18 even if it is a different project, it still  
19 seems to me it should be a valuable discussion  
20 to have, and another reason I think it's a  
21 variable discussion to have is so much of the  
22 public seemed to be invested in HDD, and I think  
23 that it's important to address it. Even if it  
24 would be a separate project I still think it's

1 important for us to address it.

2 MR. FITZGERALD: I certainly do plan to  
3 discuss the report and so on and so on, and I  
4 believe that to be very appropriate, but --

5 PRESIDING OFFICER WEATHERSBY: So maybe as  
6 we get into it we'll have a discussion about HDD  
7 as an alternative, a different project as a  
8 backup in case jet plow, if we do require a test  
9 run and things aren't looking good, is it what  
10 we fall back to, but I think you should have  
11 that discussion. Maybe let's kind of get into  
12 the -- I sense you have a process or a  
13 chronology you're following.

14 MR. FITZGERALD: Yes.

15 PRESIDING OFFICER WEATHERSBY: Let's keep  
16 to that and when we get to HDD we'll have that  
17 discussion.

18 MR. FITZGERALD: Okay. Sounds good. As I  
19 say, I was just bringing up key issues that I  
20 want you to keep in mind as we go through the  
21 process.

22 The second one I think we've pretty much  
23 taken care of which was enforcement authority,  
24 and we have general agreement that the agencies

1 had authority under statute and our rules to do  
2 the appropriate compliance and enforcement of  
3 their specific authorized permits. So unless  
4 anybody has any questions on that, I think  
5 that's pretty well resolved.

6 Also there was, has been throughout all of  
7 this, all of the testimony there's been a lot of  
8 discussion relative to required monitoring plans  
9 and the approval of those monitoring plans, and  
10 then I guess just to be clear whether these  
11 monitoring plans contain the appropriate  
12 requirements in order that if something goes  
13 wrong and there's a problem to either halt the  
14 project or to correct the issues. So that's  
15 sort of an overriding issue that weaves through  
16 a large number of the permits, and a lot of them  
17 have monitoring plans and monitoring  
18 requirements. So I'd just like you to keep that  
19 in mind as to whether we believe that the  
20 monitoring as proposed is appropriate and will  
21 be protective in order to ensure the major  
22 environmental impacts are avoided.

23 Okay. So the DES Wetlands Permit was filed  
24 and, again, DES filed a final permit on February

1 28th, 2017, and then issued some relatively  
2 minor revisions to that following further  
3 discussions with the Applicant on August 30th.

4 So the February 28th Final Decision  
5 contained a number of conditions relative to the  
6 construction and the monitoring through wetlands  
7 in Little Bay. Among those was included the  
8 Applicant shall retain an independent  
9 environmental monitor to ensure compliance with  
10 permit conditions during and after construction  
11 activities.

12 I'm going to go through these. There's a  
13 ton of material here. I'm going to go through  
14 these at a fairly high level. Feel free to stop  
15 me and question anything so -- but I'm going to  
16 try to keep moving. So Chris?

17 MR. WAY: Right now you're on Exhibit 183?

18 MR. FITZGERALD: I'm not on any particular  
19 exhibit. I'm just going through the issues, you  
20 know, that DES Final Decision was Applicant's  
21 Exhibit 166. But, you know, I'm going through  
22 sort of a consolidation of a wide variety of the  
23 permits and those conditions. I'm basically  
24 highlighting the things that I think need to be

1 addressed.

2 Next the Applicant shall notify DES  
3 Wetlands in writing of the Independent  
4 Environmental Monitor and also notify DES if  
5 that changes during the Project.

6 DES established conditions relative to the  
7 Project's impact on wildlife fisheries,  
8 botanical resources and Essential Fish Habitat.  
9 That included at least 60 days prior to the  
10 start of construction the Applicant shall notify  
11 and coordinate with the New Hampshire Natural  
12 Heritage Bureau, Fish & Game, to the  
13 satisfaction of both those agencies to establish  
14 protocols for encounters with any rare,  
15 threatened or endangered species during the  
16 Project.

17 A New Hampshire certified wetlands  
18 scientist or similar qualified professional  
19 shall walk the area of the proposed activity and  
20 the wetlands impact areas and survey for any  
21 rare, threatened or endangered species prior to  
22 ground disturbance each day to check timber mats  
23 for basking turtles and snakes and relocate  
24 those animals.

1           Sixty days prior to the start of  
2           construction the Project-specific BMPs shall be  
3           developed in coordination with NHB and NHFGD,  
4           Heritage and Fish & Game, submitted to DES for  
5           review and approval and implementation for the  
6           following activities. A, construction mat use  
7           in areas identified as sensitive. B,  
8           ground-based construction techniques and use of  
9           smaller, lighter or low ground pressure  
10          equipment. C, fenced exclusion zones and  
11          wildlife survey areas and D, on-site monitoring  
12          for protection of resources.

13           Next, at least 60 days prior to the start  
14          of construction the Applicant shall coordinate  
15          with Heritage Fish & Game, NOAA, U.S. Fish &  
16          Wildlife to produce a report which examines time  
17          of year restrictions for all rare, threatened  
18          and endangered or Essential Fish Habitat species  
19          found to be associated with the Project and  
20          which provides the best resource protection  
21          timing requirements practicable as agreed to by  
22          the agencies and to the agencies' satisfaction.

23           Again, this goes to the issue that I raised  
24          at the beginning, if we feel that these

1 requirements are appropriate.

2 The report shall be submitted to NHDES for  
3 review and approval and the Applicant shall  
4 implement the approved timing restrictions.

5 Then 60 days prior to the start of the  
6 construction of the submarine cable crossing,  
7 the Applicant shall coordinate with NHDES Waste  
8 Management Spill Response and Complaint  
9 Investigation Section to identify a specific  
10 staff contact representative for both DES and  
11 the Applicant. The Applicant's representative  
12 shall notify the DES contact upon each  
13 commencement of work and upon completion of work  
14 involving cable installation so the cable  
15 installation does not impede DES oil spill  
16 command emergency response capability and to  
17 avoid interaction of an incident or its response  
18 with active cable installation.

19 Ninety days prior to constructing the  
20 dewatering activities in the vicinity of Pease  
21 and the Darius Frink Farm property the Applicant  
22 shall consult with Pease Development Authority,  
23 NHDES Waste Management, USEPA to determine if  
24 groundwater has been contaminated by PFCs to



1 levels which would require special treatment.  
2 Should special treatment be necessary Applicant  
3 shall submit a plan to DES.

4 With regards to the Little Bay crossings,  
5 specific conditions include appointment of an  
6 Independent Environmental Monitor for work in  
7 Little Bay. Selection of the Independent  
8 Environmental Monitor shall be approved by DES,  
9 and the Monitor shall be empowered to order  
10 corrective actions related to surface water  
11 quality and to order temporary cessation of  
12 construction activities until corrective action  
13 had been implemented.

14 Eelgrass. There was significant testimony  
15 and information relative to potential impacts to  
16 eelgrass. The Applicant is ordered to assess  
17 the impact of work associated with laying cable  
18 on eelgrass. They shall conduct an eelgrass  
19 survey in Little Bay the summer before  
20 construction commences and one year after  
21 construction is completed. At least 90 days  
22 prior to the scheduled date for conducting  
23 preconstruction survey the Applicant shall  
24 submit a plan describing how the survey will be

1 conducted, the results, how the results will be  
2 assessed, how and when the results will be  
3 reported to DES, mitigation measures based on  
4 eelgrass impacts, and when the data will be  
5 input electronically into the DES monitoring  
6 database. The Applicant shall then implement  
7 the approved monitoring plan. To the maximum  
8 extent the methodology shall be consistent with  
9 recent surveys conducted for the Piscataqua  
10 River Estuaries Program known as PREP.

11 I believe we had a significant amount of  
12 testimony with regard and information with  
13 regards to eel. I don't believe that the  
14 current proposed route and proposed project has  
15 significant impacts on eelgrass. There was some  
16 testimony that there may be emerging areas of  
17 eelgrass that are not well known as this time  
18 but seems that these conditions certainly  
19 address that.

20 Benthic habitat monitoring. At least 60  
21 days prior to the start of construction  
22 Applicant shall obtain DES and Fish & Game  
23 approval of a Benthic Habitat Monitoring Plan to  
24 determine if substrate conditions, topography

1 and grain size, in Little Bay estuary in the  
2 vicinity of the proposed underground cables were  
3 significantly altered during construction. Plan  
4 shall include details regarding the method,  
5 accuracy and extent of the bathymetric survey,  
6 when the study will be conducted, locations for  
7 sampling. Applicant shall then implement the  
8 revised plan, the approved plan.

9 Benthic infaunal community plan. The  
10 Applicant shall conduct a pre- and  
11 post-construction monitoring of benthic infaunal  
12 community in Little Bay estuary. Ninety days  
13 prior to the scheduled date of construction  
14 Applicant shall submit plan to DES describing  
15 how and when and where the monitoring will be  
16 conducted, how the results will determine  
17 impacts, how and when they will be reported to  
18 DES and when they will be implemented into the  
19 DES Monitoring Database. Applicant is required  
20 to implement the plan approved by DES. Results  
21 of preconstruction monitoring will be submitted  
22 to DES for approval no less than 30 days prior  
23 to scheduled cable installation date and a  
24 report comparing pre- and post-construction

1 shall be submitted to DES no more than 90 days  
2 following construction.

3 Mixing Zone Plan. At least 60 days prior  
4 to the start of construction the Applicant shall  
5 submit a mixing zone request to DES Watershed  
6 Management Bureau for approval that includes a  
7 description and map showing the proposed mixing  
8 zone, justification for proposed limits, and  
9 demonstrating that the proposed mixing zone  
10 complies with minimum criteria in DES  
11 administrative rules Env-Wq 1707.02. The mixing  
12 zone shall be established for jet plow and hand  
13 jetting activities and the Applicant shall  
14 determine if there are any new aquaculture  
15 operations in Little Bay prior to submitting  
16 that mixing zone request. The mixing zone shall  
17 not include any existing aquaculture operations.

18 PRESIDING OFFICER WEATHERSBY: Mr.  
19 Fitzgerald, I'm going to pause you a little bit  
20 here.

21 MR. FITZGERALD: Sure.

22 PRESIDING OFFICER WEATHERSBY: We all have  
23 the permit, and there's certainly very important  
24 information in there, but I don't think in the

1 interest of time maybe we can just sort of  
2 identify, you know, number 44, there's a Mixing  
3 Zone Plan. If there's something critical about  
4 that, we'll talk about it.

5 MR. FITZGERALD: Okay.

6 PRESIDING OFFICER WEATHERSBY: Just kind of  
7 move -- if you're comfortable doing so.

8 MR. FITZGERALD: I am. I wanted to raise  
9 the issues.

10 PRESIDING OFFICER WEATHERSBY: You're doing  
11 a great job, and I don't want to throw off your  
12 rhythm, but kind of move more quickly through  
13 them and we all can read as well. There's a lot  
14 of conditions.

15 MR. FITZGERALD: Okay. I wanted to explain  
16 the requirements. There are additional  
17 Shellfish Program monitoring and reporting  
18 requirements including a plan to assess  
19 shellfish tissue before and after the crossing  
20 and designating the species to be tested and a  
21 significant number of chemical parameters to be  
22 tested for, to have tissue analysis for. And  
23 that the permit requires compliance with all  
24 state and federal laws relative to the Fish &

1 Game Department to collect and test shellfish.

2 The Applicant, if violations of surface  
3 water quality standards occur, the Applicant,  
4 let's see. DES sets forth additional conditions  
5 relative to that which are the requirement of  
6 the Spill Protection and Cleanup Plan, an  
7 existing cable remedial response plan, including  
8 specific means of controlling turbidity and  
9 means of removal and transport of debris.

10 A requirement to notify Marine Patrol  
11 regarding concrete mattresses.

12 Weather requirements. Specific weather  
13 monitoring and governing when and how jet plow  
14 work shall be conducted and what weather  
15 conditions.

16 Wind. There's a limitation if sustained  
17 wind speeds in excess of 15 miles per hour are  
18 forecast so that requires the coordination with  
19 DES to decide whether to go forward.

20 Cable depth and as-builts. There's a  
21 requirement to provide documentation on the  
22 specific, the final installation.

23 There are requirements for silt curtains to  
24 specifically contain turbidity and silt during

1 the operation of the hand jetting and that  
2 Water-Lift devices are required to assist hand  
3 jetting. There's timing requirements.

4 Then there are conditions related to the  
5 impacts on salt marshes, salt marsh vegetation,  
6 and that salt marsh vegetation shall be removed  
7 with at least 18 inches of soil intact and how  
8 that's to be handled.

9 Preliminary plans of shoreline restoration  
10 shall be submitted and approved by DES. Living  
11 shoreland and salt marsh shall be monitored for  
12 a minimum of five years.

13 As mentioned previously, Applicant has  
14 agreed to pay \$349,834.26 into the ARM Fund  
15 based on their calculation of impacts. And  
16 there's also requirements for conservation  
17 easements, draft deed for a conservation parcel  
18 proposed in Newington. Must be approved and,  
19 reviewed and approved by DES. Several  
20 conditions relative to that Newington parcel.  
21 Requirements for the filing of those  
22 conservation easements and very specific  
23 details.

24 It should be noted that DES was asked by

1 the Public Counsel to modify its wind condition  
2 of 15 miles per hour up to 20 miles per hour  
3 noting that there was some testimony that 15 was  
4 basically what constitutes a light breeze and  
5 DES refused to modify that condition.

6 So I also have, I think I mentioned all of  
7 the Counsel for the Public's Requests and  
8 Stipulated Facts and Conditions relative to this  
9 permit so I don't think I'm going to go into  
10 great detail on those, and there were also  
11 comments from the Town of Durham relative to the  
12 permit. And I'll go into more detail on those  
13 during the detailed discussion of water impacts.

14 The Shoreline Protection permit does --  
15 that's not particularly water although it is  
16 intended to protect water. Do you want to just  
17 recognize that there is a permit and DES has  
18 imposed the appropriate conditions to that and  
19 not go through the specific details of that?

20 MS. DUPREY: Could you say what permit that  
21 was again?

22 MR. FITZGERALD: That was the Shoreland  
23 Protection Permit, and that's incorporated into  
24 the DES February 28th.



1           There is also an Alteration of Terrain  
2 permit and a number of conditions associated  
3 with AOT.

4           And then the next topic that I come to is  
5 the DES additional recommendations which  
6 included the requirement to provide a more  
7 thorough evaluation of HDD method for installing  
8 cable, and two, a trial jet plow run.

9           So unless anyone has any specific questions  
10 or wants to raise any issues with those other  
11 permits that DES has authority to issue and the  
12 agreements relative to some of the other  
13 conditions with Fish & Game and Natural Heritage  
14 Bureau, Army Corps of Engineers, US Fish &  
15 Wildlife, et cetera, I think that pretty much  
16 covers the state environmental permits with the  
17 exception of the DES recommendations on HDD  
18 versus jet plow.

19           DIR. MUZZEY: I had a question. Could you  
20 give me the date of your order in regards to the  
21 DES permits? We referred to it just a little  
22 while ago. Just trying to pull it up. Or if  
23 anyone else has that.

24           MR. IACOPINO: I think it's the order on

1 the Motion to Strike dated November 20th.

2 DIR. MUZZEY: Thank you.

3 PRESIDING OFFICER WEATHERSBY: This would  
4 probably be a good time to just point out that  
5 the October filing with the Committee, from the  
6 DES to the SEC, contained a number of clerical  
7 corrections and then compiled the information  
8 from the August, what they were calling their  
9 Final Decision, and then the unchanged  
10 information from the earlier decision made back  
11 in April. There was nothing new in the October  
12 filing, but it put it all kind of in one place.

13 MR. WAY: I have a hard copy of that. Do  
14 you have the exhibit number of that October  
15 filing?

16 MR. IACOPINO: Committee Exhibit 12c. 12d  
17 is the annotated if you want to see the  
18 redlined, but 12c is the document that has  
19 February and August combined.

20 DIR. MUZZEY: So then as we refer to DES's  
21 Final Decisions, we are looking at what was  
22 published 10/29/18 then? Is that your  
23 understanding?

24 PRESIDING OFFICER WEATHERSBY: If you want

1 to look at what DES is recommending as a whole,  
2 we should look at the October 29th filing from  
3 DES. It's up to the Committee to decide whether  
4 the Final Decision was the February decision and  
5 the August filing was suggestions or whether we  
6 should include, treat the August filing as also  
7 a decision by DES.

8 MS. DUPREY: And what are the implications  
9 of that?

10 PRESIDING OFFICER WEATHERSBY: We should  
11 meet with counsel to discuss that in the other  
12 room. Is that something we should do right now?

13 MS. DUPREY: If we're going to make a  
14 decision, yes. If we're not, then okay.

15 PRESIDING OFFICER WEATHERSBY: Let's take a  
16 break and we'll have an attorney/client meeting  
17 with our counsel.

18 (Recess taken 2:03 - 3:00 p.m.)

19 PRESIDING OFFICER WEATHERSBY: Okay. We  
20 will resume our deliberations. Thank you,  
21 Mr. Fitzgerald, for the summary of permit  
22 conditions. We've been discussing DES  
23 conditions and determining which of those  
24 conditions we should adopt. DES has proposed

1 conditions in its February 28, 2017, August 31,  
2 2018, and they were consolidated in its October  
3 30th or 31st correspondence.

4 At this point the SEC is intending to adopt  
5 conditions that are consistent with what DES has  
6 proposed so we don't feel as there's a need to  
7 go back to DES for approval. If during our  
8 discussions it turns out we intend to adopt  
9 other conditions, then that would change.

10 So we're going to move on then and  
11 Mr. Fitzgerald, could you pick up our next water  
12 quality topic, please?

13 MR. FITZGERALD: Okay. So the Applicant  
14 provided an evaluation of HDD versus jet plow as  
15 DES recommended. Do you want me to review that  
16 at this point? How do you want to proceed?

17 PRESIDING OFFICER WEATHERSBY: Sure. Let's  
18 have a discussion about HDD, what the Applicant  
19 has provided, what other issues there are. I  
20 think this is an important subject for many.

21 MR. FITZGERALD: All right. So DES in its  
22 August 31st letter back to the SEC agreed to  
23 allow the Applicant to conduct a jet plow trial  
24 run and they also, DES had recommended that

1           there be an HDD versus jet plow evaluation  
2           conducted. The Applicant filed a document  
3           entitled A Comparison of Jet Plow and Horizontal  
4           Direct Drilling Techniques and Impacts for 115  
5           kV Cable Burial Under Little Bay, and they had  
6           testimony from Kenneth Bowes, David Plante,  
7           Nicholas Strater and Marc Dodeman, and testimony  
8           from their Environmental Panel as well relative  
9           to that report. They testified that --

10           MR. IACOPINO: Just of those of you looking  
11           for it, it's Applicant's Exhibit 133.

12           MR. FITZGERALD: They evaluated two HDD  
13           design configurations. One, full HDD, and two,  
14           shore landing HDD. They note that HDD at the  
15           shore would require an additional 30,000 square  
16           feet of space on each shore of the Bay to  
17           provide for all of the equipment necessary to  
18           implement HDD under the bay and so there would  
19           be significant impacts that we don't have  
20           information on there. They also do not have the  
21           property rights -- go ahead. I'm sorry. Yes.

22           They also indicate that they do not have  
23           the property rights in both Durham and Newington  
24           and that even for shore landing HDD the

1 Applicant would have to acquire property rights  
2 for five properties in Durham and ten properties  
3 in Newington.

4 The time, estimated time for a full HDD  
5 installation is significantly longer than the  
6 proposed Project. Time estimate is  
7 approximately 28 months. And the estimated cost  
8 is approximately \$132,000,000 in addition to the  
9 current Project.

10 Also the Applicant asserts the subsurface  
11 conditions across Little Bay increase the  
12 likelihood of an unsuccessful drill attempt.  
13 They analyzed the potential for frac-out or  
14 what's known as inadvertent return and conclude  
15 that the risk of inadvertent return is greater  
16 in the middle of the bay for the full HDD option  
17 and the risk of IR is greater near the HDD exits  
18 for the shore landing and the risk of IR  
19 associated with the shore landing appears to be  
20 greater than with the full HDD.

21 They conclude there is risk of an IR and  
22 the IR would release a bentonite clay-based  
23 drilling fluid and depending on the time of year  
24 and volume of the inadvertent return and we had

1 testimony that that IR could be very significant  
2 depending on how long it took to be detected,  
3 that it would be possible that bentonite plume  
4 would reach and settle on live eelgrass.

5 HDD impacts to Little Bay, they are  
6 expected to be relatively minor and temporary,  
7 and they provided a chart in the report with a  
8 significant detailed summary of the impacts of  
9 jet plow, HDD and shore landing for a wide  
10 variety of areas: Design, subsurface  
11 conditions, duration, suspended solids,  
12 shellfish, aquaculture, benthic community, et  
13 cetera, and that is in 133. Exhibit 133. I  
14 believe that's the HDD report that Mike  
15 referenced.

16 And they conclude that the potential risks  
17 and technical challenges for HDD are  
18 significantly outweighed from its benefits. As  
19 to the trial run, the Applicant has agreed to  
20 condition conduct a trial run of a thousand  
21 feet. Run near the eastern end of the western  
22 tidal flat.

23 PRESIDING OFFICER WEATHERSBY: Let's hold  
24 up on the trial run right now --

1 MR. FITZGERALD: I'm sorry?

2 PRESIDING OFFICER WEATHERSBY: -- and kick  
3 around HDD a little more?

4 MR. FITZGERALD: All I have is they've  
5 agreed to conduct the trial run.

6 PRESIDING OFFICER WEATHERSBY: Okay.

7 MR. FITZGERALD: So those are the two DES  
8 permit recommendations. So I'm done. We can go  
9 to HDD.

10 PRESIDING OFFICER WEATHERSBY: Mr. Way?

11 MR. WAY: Several months ago, I think it's  
12 several months ago now when we decided that we  
13 would consider HDD as compared to jet plowing, I  
14 remember when we ruled on the expert that was  
15 requested we said as the adjudicative hearings  
16 went on, we'd get more information and good  
17 testimony and we'd hear from both sides. And I  
18 think both sides have really had an opportunity  
19 to weight in on this, and I think we have a lot  
20 of good information.

21 But I think there's two pieces to this now.  
22 One, whether let's assume that we favored HDD.  
23 Do we have sufficient information in which to  
24 require something like that or make it a



1 condition. And I think obviously the other  
2 piece is that do we favor HDD more than we would  
3 favor jet plowing.

4 For my part, I think the jet plowing route  
5 makes more sense for this case for a lot of the  
6 reasons that was brought up by Mr. Fitzgerald.  
7 I think the impacts, the time, obviously the  
8 cost, whether those costs would be recoverable,  
9 the extent of land impacts and whether the land  
10 is secured, I think there's a lot of things, and  
11 I even think back to maybe previous cases or  
12 previous case where HDD was discussed, and it  
13 was set of on the flip side. Where it was not,  
14 you know, necessarily embraced. So that's one  
15 piece where, I guess, that's where I'm coming  
16 from in terms of which one I prefer.

17 But I think more to the point it doesn't  
18 matter because I don't think we have sufficient  
19 information in front of us in which we could  
20 say, yes, go out and do HDD. I see a very good  
21 report, and we have good testimony, but at the  
22 end of the day we don't have permitting, we  
23 don't have construction, we don't have the  
24 impacts fully assessed and quantified. We have

1 sort of that general, here's what would be  
2 involved.

3 So I don't think we would have the ability  
4 to say, you know, we've considered this and we  
5 think that HDD should be done in the Bay. We  
6 can talk about what that would mean if we  
7 thought that that was the option and we didn't  
8 like jet plowing, but I don't think we can  
9 require that as an option. I'm open to  
10 thoughts.

11 PRESIDING OFFICER WEATHERSBY: Ms. Duprey?

12 MS. DUPREY: I'm not ready to talk about  
13 jet plowing itself right now, but I do want to  
14 comment on HDD, and I have to say one of the  
15 things that's concerned me a bit in this case is  
16 the vehemence that the public has struck with  
17 respect to HDD over jet plowing, and that makes  
18 me think that perhaps there was some kind of  
19 campaign, educational campaign perhaps, and I  
20 wonder if the public was really fully educated  
21 about what the effects of HDD were because I was  
22 struck by a number of these things.

23 One was the persistent noise that people  
24 who live near the Project would be subjected to

1 over long periods of time. And it wasn't just  
2 little noise. It was a lot of noise going on  
3 and on.

4 Also the disruption of the equipment and  
5 the larger size of the marshalling yards that  
6 were necessary to make that Project a reality,  
7 not to mention the fact related to the actual  
8 process itself which was we had testimony that  
9 this was one of the longest HDD runs, if not the  
10 longest HDD run, anybody knew about. So if you  
11 want to feel uncomfortable about a process, that  
12 says it all to me. We're going to be the  
13 experimenter?

14 Whereas in comparison with jet plowing  
15 which is a regularly used methodology, and this  
16 length is in keeping with where it's been used  
17 other places, here we're in a experimental  
18 range. That left me with a lot of disquiet  
19 about this Bay.

20 I would add that I felt like the experts  
21 for Counsel for the Public were satisfied with  
22 jet plowing and did not make some big case for  
23 HDD over jet plowing, and that was also  
24 important to me because that was opposing expert

1 testimony and the only opposing -- I'm sorry,  
2 no, Durham had expert testimony as well.

3 I guess in addition to that I think the  
4 \$132,000,000 is not something to be taken  
5 lightly as well. That's a significant sum of  
6 money. It's more than the cost of the Project.  
7 And so that was important to me as well.

8 But the sound, the longer than it's ever  
9 been used before, and the size of marshalling  
10 yards were, the property rights weren't lined up  
11 were really important to me and I don't know if  
12 the public was really aware of those things  
13 because they were not discussed at our public  
14 hearings so I don't know. Thank you.

15 PRESIDING OFFICER WEATHERSBY: Just picking  
16 up on what you said, I think that Counsel for  
17 the Public, I found it helpful they laid out a  
18 table, I think it was CFP Exhibit 2 maybe,  
19 comparing jet plow and HDD, full HDD in shore  
20 lands, and that was instructive and laid out  
21 some of those concerns that you have as well.  
22 And the fact that Counsel for the Public's  
23 expert really didn't advocate for HDD over jet  
24 plow is interesting.

1 MR. FITZGERALD: So I think we have  
2 scheduled or I've organized this in a way that  
3 we can discuss the concerns that were raised by  
4 the experts for Durham when we get into it.  
5 Most of their concerns were related to water  
6 quality issues in the Bay, and this is, I've  
7 kind of set the outline with permits and  
8 requirements and then I plan to get into that.

9 But I think that certainly the Counsel for  
10 the Public's expert was pretty strong on this  
11 issue, as Ms. Duprey pointed out, that jet  
12 plowing is a well-proven, low impact, used  
13 around the world for installing electric and  
14 fiberoptic telecommunication cables. And he  
15 then goes on to talk about jet plow trials as  
16 close to the possible time of construction  
17 assures that the trials will use the same  
18 equipment and the trials conducted during the  
19 same seasonal condition and vessel crews will  
20 familiarize themselves with similar tidal  
21 current and navigational conditions.

22 So he opines that the trials provide  
23 significant backup and support to the fact that  
24 jet plowing is more likely to be the best

1 option.

2 Then, so I think we can have a more lengthy  
3 discussion of the water quality issues, the  
4 modeling and so on at a slightly later point.  
5 Hopefully we're getting to that quickly.

6 But it seems certain to me that the Durham  
7 experts raised a number of issues, but I don't  
8 know that any of them had a lot of experience in  
9 this jet plowing area, and a lot of the issues  
10 that they raised were of the sort of well, this  
11 may happen or this could happen, et cetera, and  
12 I don't want to bias that in any way. I just, I  
13 think that as Ms. Duprey indicated that the CFP  
14 consultant certainly seemed to concur that there  
15 was a lot that made considering jet plow to be  
16 the appropriate option.

17 PRESIDING OFFICER WEATHERSBY: Before we  
18 get into water quality and Intervenors' input,  
19 further discussion about HDD, pros, cons,  
20 whether we feel we should go that route, can go  
21 that route? Director Muzzy?

22 DIR. MUZZEY: Well, I agree with comments  
23 that have been made to date that we certainly  
24 found out much more about how HDD would work

1           potentially in this Project with the reporting  
2           and the testimony that has been made in the  
3           docket, but we also found out what we didn't  
4           know, and Ms. Duprey addressed that, and we  
5           don't have permit information for the HDD  
6           option, and we don't have landowner permissions  
7           all in place for the HDD option.

8           And so I feel that we, we're not in a  
9           position where we could assert it's the better  
10          alternative. I think we'll need to have that  
11          discussion about the jet plow alternative and  
12          see if that is an appropriate alternative for  
13          this Project, and only in light of that not  
14          being an appropriate alternative would we then  
15          need to turn back to HDD and -- well, actually I  
16          think there's probably not any turning back to  
17          HDD. There would be a need to reject the  
18          certificate at that point and then potentially  
19          see if an additional Application was made.

20          PRESIDING OFFICER WEATHERSBY: Mr. Way?

21          MR. WAY: I think if you were to go that  
22          route, much the way we were looking at  
23          alternatives last week, I think your choices are  
24          to deny the certificate or you suspend the

1           hearings because this has already been raised as  
2           an issue, and the Applicant would have to go  
3           back and develop an HDD plan.

4           I guess my point, once again, is we don't  
5           have the ability to say we prefer you to go this  
6           route as opposed to the jet plow route. There's  
7           something else that happens if we were to say  
8           that.

9           I guess also, too, I just wanted to not  
10          qualify but add to my comments. In terms of  
11          HDD, the technology of it, I really don't have  
12          an issue. I think it would work out. It would  
13          be different. It would have different impacts,  
14          and part of the problem was when we heard the  
15          testimony of both sides, particularly when I  
16          heard the Counsel for the Public's experts,  
17          there was a couple ways you could do this. You  
18          could do HDD and you could do jet plowing and  
19          they're both viable alternatives. As a matter  
20          of fact, in a lot of ways I didn't get a sense  
21          that they were strongly endorsing or really in  
22          favor of one over the other. As a matter of  
23          fact as I recall, I think I asked one of the  
24          experts at the end that all things being equal,



1 would you do jet plowing or would you do HDD,  
2 and as I recall I think they even agreed that  
3 jet plowing would probably be the way to go.

4 So what I'm saying is when you've got  
5 fairly weighted alternatives, both with  
6 different impacts, our ability to implement one  
7 over the other, our ability to try to recover  
8 costs when there's another viable solution on  
9 the table that's already been proposed I think  
10 would be very challenging.

11 PRESIDING OFFICER WEATHERSBY: Mr. Shulock?

12 MR. SHULOCK: I'd just like to point out  
13 the obvious. The DES has already permitted this  
14 for jet plow. Right? So there is another  
15 viable alternative. I think it's up to us to go  
16 through our process and determine whether there  
17 is any unreasonable adverse impact as required  
18 by the statute. If there's not, then balance  
19 that with the public interest. And if we can  
20 get to an approval with jet plow, we should  
21 seriously consider doing that.

22 PRESIDING OFFICER WEATHERSBY: Mr. Schmidt?

23 MR. SCHMIDT: I agree with the opinions to  
24 date. I think that the design and the research

1 just hasn't been completed enough on the HDD to  
2 enable us to make a decision. We've heard as an  
3 example it could take 3 to 6 months or more.

4 It's just not enough information there that, the  
5 design's not complete enough, the real estate  
6 hasn't been secured and so on and so forth.

7 PRESIDING OFFICER WEATHERSBY: I don't  
8 think we have enough information on this record  
9 to require an HDD. We don't have the  
10 environmental, we don't really understand the  
11 environmental impacts to shore lands, to  
12 wetlands, frac-out issues. We don't know the  
13 geotechnical composition of what they'll be  
14 boring through, how long it would take. Of  
15 course, the amount of space that they need.  
16 So I don't think we can require, I don't think  
17 the record will support us requiring an HDD  
18 method of crossing the Bay. So I think that we  
19 do need to look at jet plow trial and whether  
20 that's appropriate.

21 MR. FITZGERALD: I would concur with that.  
22 I think it's important to remember that DES did  
23 not request a condition of evaluating HDD. They  
24 requested -- and as I say it was a request. It

1 was a recommendation, not a condition. But I  
2 think basically what, as I understood it and I  
3 wasn't present for the deliberations back in  
4 last spring, but it seems to me that DES was  
5 looking for more backup information to  
6 understand the assertion that jet plowing was  
7 the appropriate technology for this Project. I  
8 don't think that they were asking us to consider  
9 HDD as an alternative to this Project. That's  
10 just my opinion from reading the information and  
11 so on.

12 And I think that what the Applicant did was  
13 to go back and produce a report that outlined  
14 the costs/benefits of HDD versus jet plow in  
15 this situation and came up with a conclusion  
16 that jet plowing was appropriate for a number of  
17 reasons and that it would be significantly less  
18 costly and less time and less impact on both  
19 sides of the Bay. And so I don't, we don't  
20 have, as you said, the information, the HDD  
21 versus jet plow was not a technical evaluation  
22 of HDD. It was comparison of the two  
23 technologies for the purposes of making sure  
24 that the proper, that the Applicant had made an

1 appropriate decision to present to us as the  
2 Project.

3 PRESIDING OFFICER WEATHERSBY: Ms. Duprey.

4 MS. DUPREY: Madam Chair, I just quickly  
5 flipped through the briefs again in the  
6 section -- I'm going to admit it was quick --  
7 but I'm not really seeing a big argument for  
8 HDD. Durham addresses it at the tail end of  
9 their argument on Little Bay. Really the  
10 arguments are about "don't do jet plow." It's  
11 not about "use HDD" even though I certainly got  
12 a different feeling as the hearings were going  
13 on, but as I look at the briefs which are their  
14 arguments to us about how we should look at  
15 this, I'm just not seeing a lot there. So I  
16 think that in combination with everything that  
17 we've said here now for me lays the HDD issue  
18 with respect to this particular case to rest.  
19 Thank you.

20 PRESIDING OFFICER WEATHERSBY: I think we  
21 did have, especially some with the Durham  
22 residents, many of them, especially the Millers  
23 who would be affected, they were advocating HDD  
24 despite the noise and interruption. They think

1           it would be better for Little Bay. And then in  
2           the public comments we heard were certainly very  
3           protective of Little Bay and some of them wanted  
4           HDD. So I think there were some advocates  
5           certainly for HDD. We could go back and say  
6           well, we don't have enough information, go get  
7           more information, but in my mind, let's look at  
8           jet plowing and whether that's a viable method  
9           because you can go, you know, there's two ways  
10          to -- probably more than two. There's three  
11          ways that I can think of at least to cross that  
12          Bay, under, through and over, and we're not  
13          considering overhead lines either.

14                 But all things considered, the fact that  
15          the majority of the experts in this case feel as  
16          though jet plowing can work without adverse  
17          environmental impacts, certainly not  
18          longstanding impacts, to me says we should  
19          explore that because it certainly is quicker,  
20          less expensive. We don't, we don't have all the  
21          information, they don't have the land rights.  
22          There's so many reasons sort of not to pursue  
23          HDD at pond. So let's take a look at the jet  
24          plow and its impacts and see if that is

1 something that can work for this Project without  
2 having an unreasonable adverse impacts on the  
3 environment.

4 Does anyone else want to talk any more  
5 about HDD?

6 (No verbal response)

7 PRESIDING OFFICER WEATHERSBY: If  
8 everyone's kind of in agreement, we'll put that  
9 aside for now and move on.

10 So let's move on to jet plow and its  
11 impacts and how the Applicant hopes to minimize  
12 and monitor those.

13 MR. FITZGERALD: Okay. And a reminder that  
14 this is impact on water quality so it's the  
15 entire Project, not just the jet plow. But we  
16 are required to consider the determinations of  
17 DES in its permit, the Army Corps of Engineers  
18 and other federal or state agencies which have  
19 been previously discussed so I don't think we  
20 need to go into those any further.

21 The Project is proposed to impact  
22 approximately 600,000 square feet of, have a  
23 temporary impact of 600,000 square feet which  
24 they have a pretty significant discussion of

1 mitigation. The Project will also require the,  
2 as proposed, will require the installation of  
3 concrete mattresses, 8 feet by 20 feet by nine  
4 inches tall, and these mattresses will be placed  
5 as required when the project is not able to  
6 reach the required depth, and those are required  
7 per the National Electric Safety Code to ensure  
8 that the cable does not float up or come out of  
9 its installation. And the project will also  
10 have a temporary vernal impact, temporary impact  
11 of about 7,000 square feet on vernal pools near  
12 the Flynn Pit.

13 Secondary impact wetlands will be caused by  
14 vegetation conversion of forested or  
15 forest-covered wetlands and upland clearing, and  
16 the Applicant asserts that these permanent and  
17 temporary impacts were avoided through the  
18 design process and that it will minimize the  
19 Project's impact by, one, avoiding placing 26  
20 structures within or partially within wetland  
21 areas; two, removing approximately 51 existing  
22 structures from wetland areas; three,  
23 co-locating the exhibiting distribution line on  
24 new transmission lines.

1           The Project also will have some potential  
2           for erosion and sedimentation to water bodies at  
3           the landings on either end within the wetlands,  
4           and those are all to be proposed to be dealt  
5           with using Best Management Practices Manual for  
6           utility maintenance in and adjacent to wetlands  
7           and water bodies in New Hampshire and applicable  
8           BMPs will be enforced.

9           The Applicant has also submitted a Soil and  
10          Groundwater Management Plan, and it calls for  
11          on-site surface water discharge that would  
12          require the use of a water treatment system, and  
13          also that depending on contaminants that are  
14          found, certain other requirements may be implied  
15          and especially, particularly, the potential for  
16          offsite disposal if PFCs or other chemicals are  
17          found in up limits that would require the  
18          material to be disposed of, the water to be  
19          disposed off offsite.

20          At the Darius Frink Farm, there's an  
21          indication that PFCs were not present in soils  
22          tested, that PFCs concentrations in groundwater  
23          were encountered were lower than state standards  
24          and PFCs concentration in surface water did



1 exceed the ambient New Hampshire groundwater  
2 water quality standard. DES does not have a  
3 surface water quality standard for PFCs at this  
4 point in time. They're working on that right  
5 now.

6 But the plan is based on the assumption  
7 that groundwater that will be encountered in  
8 nutrients and Portsmouth is potentially impacted  
9 by PFCs, and it will tested and managed  
10 appropriately.

11 Sediment in Little Bay. The Applicant has  
12 identified that there will be direct disturbance  
13 of the sediment from the cable installation,  
14 deposition of sediments suspended during jet  
15 plowing and disposed beyond the footprint of the  
16 trenches, that there will be an increase in  
17 suspended sediments above ambient conditions  
18 during jet plowing, and they filed a report  
19 entitled Modeling Sediment Dispersion for Cable  
20 Burial.

21 That report indicated that they simulated  
22 jet plowing and diver burial process along the  
23 cable route, and they came up with a number of  
24 conclusions relative to the amount, length and

1 duration of the impact. I won't go into those  
2 in great detail, but they do state that the  
3 excess concentration will decrease to zero  
4 within approximately one hour following the  
5 stopping of jet plowing, and hand jetting is  
6 estimated to be potentially four hours per day  
7 between nine and 18 days for covering both the  
8 west and east ends of the Project.

9 The settling dispersion model that was run  
10 did not address the effect of wind in Little Bay  
11 because it assumed that that effect will be  
12 insignificant due to the large tidal currents  
13 that already occur in the Bay.

14 Relative to other contaminants, sampling  
15 and testing showed metals were present. Their  
16 concentrations, and this is in sediment,  
17 concentrations were below NOAA screening  
18 criteria for sediment concentrations indicative  
19 of biological effects with the previously  
20 mentioned exception of arsenic.

21 Arsenic did exceed the NOAA screening  
22 criteria but were below the effect range  
23 criterion. Arsenic levels fell within the range  
24 of concentrations found in Little Bay by USEPA

1 previously between 2000 and 2010, and bioassay  
2 testing indicated no adverse effects for such  
3 levels. Concentrations of polycyclic aromatic  
4 hydrocarbons were low or below limits. PCBs  
5 were low or below detection limits. Pesticides  
6 were below detection limits. Dioxins and furans  
7 were present in low concentrations in many  
8 samples. Neither New Hampshire nor US have  
9 developed guidelines for dioxins and furans, but  
10 they were below the guidelines prepared by the  
11 Canadian Council for Ministers of the  
12 Environment.

13 Again, PFCs were below detection limits in  
14 all samples and below the proposed European  
15 Predicted No Effect Concentration. The  
16 conclusion is that all analyses except arsenic  
17 uniformly occurred at levels below  
18 concentrations that were identified to be  
19 problematic.

20 Applicant addressed the concerns raised  
21 that a significant amount of nitrogen will be  
22 released, and the Applicant's experts testified  
23 that such amount will be very, very small as  
24 compared to the current present amount. I

1 believe there were some large numbers that were  
2 offered at one period of time, but I think that  
3 they were potentially -- when I reviewed those  
4 calculations, it seems to me that the amount of  
5 nitrogen that was potentially being released was  
6 extraordinarily small compared to the amount  
7 that's currently there.

8 As with a number of things that I'm going  
9 through in the next few minutes, I think it has  
10 been proposed by Intervenors that there are  
11 significant levels of contaminants that could be  
12 present, and that the impacts will be, could be  
13 extremely large, and I don't think that we had a  
14 lot of information to support those assertions.  
15 And both the CFP and the Applicant's experts did  
16 not concur with those issues that had been  
17 raised relative to nitrogen and the amount of  
18 turbidity and sediment that would be released in  
19 the Project.

20 Again, Mr. Way has information on the  
21 Applicant's objections, and so I'll wait to deal  
22 with that until we get to that.

23 The latest plans that have been submitted  
24 indicate the Applicant will conduct a field

1 survey for measuring turbidity during cable  
2 installation in order to verify that DES  
3 turbidity criterion, and the Applicant as  
4 mentioned under the permitting discussion has  
5 agreed to establish a mixing zone during  
6 construction and to test that for a period of  
7 one week following completion of the  
8 construction.

9 Monitoring will be required and will take  
10 place at the edge of the mixing zone. There's a  
11 significant discussion of that. Mobile  
12 monitoring will be initiated one hour prior to  
13 the startup of jet plow and will continue for  
14 two hours after jet plow. There's a significant  
15 discussion of the mobile monitoring data that  
16 will be required. Applicant has agreed to  
17 provide that monitoring data to regulatory  
18 agencies within 48 hours of the completion of  
19 the jet plow crossing.

20 Again, I would remind the Committee that  
21 there is a jet plow trial run that is proposed  
22 to verify all of the DES permit requirements,  
23 address all of the potential impacts and is  
24 intended to verify the assumptions regarding

1 currents, turbidity, movement, the modeling, et  
2 cetera.

3 So again, there have been a number of  
4 stipulations proposed which we discussed  
5 previously that are intended to, stipulated  
6 conditions that are intended to put appropriate  
7 protections in place to ensure that the  
8 turbidity and sediment issues in the nitrogen  
9 concerns are monitored and addressed.

10 And so I think that takes care of the major  
11 issues that have been raised relative to water  
12 quality. It's a very high level overview, and I  
13 would be happy to take the Committee's  
14 recommendations as to how to further go into  
15 this if necessary or second, if the Committee  
16 wishes to hear from Mr. Way about the concerns  
17 raised by the Intervenors and particularly the  
18 Durham expert panel.

19 PRESIDING OFFICER WEATHERSBY: Let's hear  
20 from Mr. Way unless somebody has some questions  
21 or wants to discuss anything that Mr. Fitzgerald  
22 has summarized for us. Ms. Duprey?

23 MS. DUPREY: I just want to say that I  
24 would like to reserve our ability to discuss

1 things that Mr. Fitzgerald just went over after  
2 hearing from Mr. Way.

3 PRESIDING OFFICER WEATHERSBY: Absolutely.

4 MR. WAY: Thank you. With regards to  
5 Intervenors, we heard a considerable amount of  
6 testimony and it got pretty in depth in a lot of  
7 cases, no pun intended, I guess, on water  
8 quality.

9 I think also, too, as Mr. Fitzgerald  
10 mentioned with regards to the Counsel for the  
11 Public, it struck me how much was actually  
12 addressed and such things, for example, the need  
13 for absorbent booms on the barges that might  
14 happen during jet plowing and coming to an  
15 agreement there.

16 MR. FITZGERALD: Chris, if I can just -- I  
17 think it's important also to consider the fact  
18 that as I think I mentioned this previously, but  
19 that the Durham Intervenors and the CFP experts  
20 had the opportunity -- I'm not sure, I know the  
21 Durham Intervenors, but I think they had the  
22 opportunity to meet with DES and discuss their  
23 concerns and have them considered by DES in  
24 their permits.

1           MR. WAY: Yes, actually, and I'm going to  
2 get into that in a moment.

3           So I think from the Counsel for the Public,  
4 I was fairly comfortable that much of their  
5 concerns were addressed either through agreement  
6 with the Applicant or through the DES conditions  
7 looking at the spreadsheet.

8           With regards to the Town of Durham, and I  
9 thought that they had some compelling testimony,  
10 and, once again, I think that they put in a lot  
11 of thought and detail. I think you also have to  
12 keep in mind what DES has put forth, the idea  
13 that the Town/UNH experts had the opportunity to  
14 sit with DES to me is a big issue or a big  
15 benefit. That and as a matter of fact I think  
16 it's Exhibit 208, and Dawn, I don't even know if  
17 you have that available, if you can put that up  
18 because that might come up.

19           This is a spreadsheet that Applicant's 208,  
20 that shows some of the conditions that were  
21 proposed by Durham and which ones were accepted  
22 by DES or which ones were rejected by DES or  
23 which ones were in part accepted or modified  
24 from DES. And I know they had at least one



1 meeting where it was just UNH and I believe the  
2 Conservation Law Foundation was in on that  
3 meeting as well, and they met with DES. So  
4 their concerns were very much heard. I agree  
5 the idea that the testimony, Prefiled Testimony  
6 was out there, DES was copied on it, so a lot of  
7 the concerns, the good concerns I think that UNH  
8 had DES was very well aware of and I think DES  
9 incorporated into their decision.

10 So I think as we go through this and we  
11 address some of these issues, keep in mind that  
12 DES had already considered most of these, well,  
13 has considered all of these and put into plates  
14 what they thought was appropriate and we can  
15 decide whether we agree with that but I want you  
16 to keep that in mind.

17 So the witnesses or the experts for Durham,  
18 Famely, Jones, Schultz, and Dacey, certainly  
19 spoke about the Project and I think not as much  
20 from saying this is what's going to occur should  
21 jet plowing happen, but these are the things  
22 that have, the burden of proof has not been  
23 shown what might occur. And so there was, in  
24 their mind there was a big gap that the

1 Applicant didn't do enough work to say worst  
2 case might not happen. They weren't able to  
3 maybe demonstrate that there would be more  
4 impacts than what they initially proposed. So  
5 there wasn't a lot of proof to say that  
6 something bad would happen, but they were saying  
7 that it was unclear whether it would or whether  
8 it wouldn't. I think part of their point, too,  
9 was that when you look at things like  
10 environmental monitoring plans that that's  
11 something that is delegated to DES. Delegate or  
12 not, that's maybe a different topic, but I think  
13 you can delegate to DES and that something that  
14 happens before construction, but it's not  
15 something we have before us now. So even if you  
16 accept some of the things that maybe addressed  
17 UNH concerns they might still believe that it's  
18 something that has to be verified throughout a  
19 monitoring plan which they would say is not  
20 before this Committee right now. But once  
21 again, I think you then have to decide well, if  
22 delegation to DES does that suffice to address  
23 that piece.

24 Some of the things that they talked about,

1 and you're going to forgive me as I read or I  
2 look at some of the things as I go because it  
3 does get into it. They focused on the adequacy  
4 of the sediment characterization reports  
5 stemming from 12 cores scheduled across the bay.  
6 They maintain that the sediment report  
7 characterizes composite samples of the top two  
8 feet of each sampling, but they believe that  
9 there needs to be further evidence to  
10 demonstrate how sediment will move from this  
11 step. In short, the sampling is not  
12 representative of the Project. Difficult to  
13 ascertain the accuracy of the Applicant's  
14 assertions, assumptions and predictions.

15 I'm going to try to move on. Even a little  
16 more of a clip.

17 I think some of the things that  
18 Mr. Fitzgerald has talked about they mentioned.  
19 In terms of the nitrogen loading, certainly a  
20 concern in the Bay. I think eutrophication  
21 whereas excess nitrogen could cause algae  
22 growth, plant growth, which in more  
23 decomposition that could impact eelgrass  
24 populations was a concern. I think part of the

1 issue, too, was that in the Bay you have a  
2 number of tributaries that come in from other  
3 sources and other rivers and you have nonpoint  
4 sources that are coming in. Wastewater  
5 treatment that is delivering material into the  
6 Bay. So I think the nitrogen factor becomes  
7 more of an issue. That was true of Conservation  
8 Law Foundation as well and I think Counsel for  
9 the Public raised that.

10 I think the concern about some of the metal  
11 contamination, arsenic and mercury, that might  
12 be present, and I think also too they maintain  
13 that some of the background testing is not  
14 necessarily adequate so that you might not be  
15 getting a full picture of what you're looking at  
16 or what you can predict. As I recall dioxins  
17 and PCBs fall into that mix as well. And so in  
18 their mind it's hard to sort of model what the  
19 impact might be if you don't have an absolute  
20 good background.

21 How the sediment particles are going to  
22 settle out was an issue with them as well and  
23 that maybe some of the modeling doesn't account  
24 for what will happen in terms of the plumes. I

1 think also, too, parts of that is the fact that  
2 they maintain that the Bay is more silt than  
3 clay whereas some previous discussions have  
4 suggested that it's more of a clay background.  
5 The point being that you're going to have  
6 settling out that's going to occur and maybe at  
7 a rate more than predicted. And I think also,  
8 too, with regards to the sediment I think at one  
9 point they even say, you know, what is expected  
10 to happen with regards to dispersion of soil is  
11 like two years of activity in the Bay. I'm not  
12 sure that was very persuasive to me, but I  
13 understand.

14 And I think also, too, their point when you  
15 look at the impact of wind that the Durham  
16 experts would suggest that wind impacts are not  
17 necessarily comparable to what a jet plow could  
18 be putting forth, even with some of the  
19 restrictions that are being put on by DES.

20 They would like to see things like  
21 elutriate testing be incorporated. Elutriate  
22 testing, and I won't pretend to be an expert on  
23 this, but how contaminants are going to move in  
24 the water column and how you're going to model

1 for that. I think they would like something  
2 with a little bit more comprehensive.

3 With regards to shellfish, I think they  
4 believe that there should be more direct testing  
5 right in the aquaculture beds so that it's not,  
6 it's a direct impact. I think they'd also like  
7 to see more pathogen testing and the pathogen  
8 issue obviously being a concern because of the  
9 wastewater treatment facilities that are somehow  
10 finding their way into the Bay that their  
11 concern would be that there needs to be more  
12 investigation of bacteria and viruses that might  
13 find their way to shellfish which then might  
14 find their way into the public's hands.

15 I think also, too, with regards to cable  
16 removal they opine that the Applicant's  
17 assessment of soil dispersion and what might  
18 happen as a result of those cables being removed  
19 is probably lacking with regards to information.  
20 Bear with me.

21 I think also, too, there's questions about  
22 the impact to water quality with regards to the  
23 extent of jet plowing, how much time it's going  
24 to take to do the jet plowing, and how the soil

1 is going to be dispersed from that point, even  
2 past the mixing zone.

3 I think as I mentioned earlier they had a  
4 lot of concerns, and when I reread the  
5 testimony, I was left with a lot of the  
6 impression that it was yes, the concern may be  
7 met by DES, but we don't know. Because once  
8 again, we're not necessarily sure what the  
9 monitoring plan is going to have.

10 I think when you look at 208, I think one  
11 of the take-aways is that there was a lot of  
12 listening to the UNH team, I think incorporation  
13 of many of the things that they were looking  
14 for, and if nothing else, I agree with the  
15 Applicant when they said that at least there was  
16 a due consideration of their concerns. That  
17 that certainly is a big take-away.

18 And I think you can even see the notes of  
19 the UNH team, I think in Exhibit 204. I don't  
20 know if you need to pull that up, Dawn. I don't  
21 think so. But there are notes of that meeting  
22 as well. So this was not done in a vacuum.  
23 These concerns. There was pretty well, pretty  
24 well publicized.

1           I thought it might be good to also mention,  
2           if you don't mind, Michael, just a few other  
3           Intervenors that struck me. Jeff Baker from Fat  
4           Dog, you know, in terms of water quality. I  
5           mean clearly he has a stake in this as well.  
6           He's worried about temporary closure that might  
7           be due to the bacterial contamination that could  
8           occur, closure of his beds. Obviously, we'll  
9           talk about this maybe later but suspension of  
10          sales due to the sediment accumulation, and the  
11          poor product quality that might result. I think  
12          these, he said he was, loss of crop brought  
13          about by legacy pollutants, and I think that's  
14          referring more to some of these things that are  
15          there you just don't know, and I think that was  
16          one of the things that came up is there may be  
17          some unknowns here that we're not accounting  
18          for.

19          He's concerned about the immediate  
20          mortality brought about by the sediment  
21          disposal, basically covering his crops, and then  
22          some, once again some overwintering disposal of  
23          sediment that might cause anorexia which I think  
24          would also be mortality of his crops.



1           We also heard from Jeff and Vivian Miller.  
2           They argue it will have a negative impact on the  
3           water quality of Little Bay. I don't think  
4           there was anything to go beyond that but they so  
5           noted.

6           Ms. Heald was concerned about the quality  
7           and volume of available water during  
8           construction and the impact to her nursery. She  
9           may be without water during construction because  
10          the easement runs through her well. Applicant  
11          planning storing heavy equipment over the well.  
12          The Applicant has said that they will make sure  
13          she has water through that time, but obviously  
14          there's concerns about long-term impacts on her  
15          well.

16          So then we had the Conservation Law  
17          Foundation. Conservation Law Foundation I think  
18          echoed a lot of the concerns that was issued by  
19          UNH and the Town of Durham.

20          So I guess that's sort of the summary of  
21          what we heard and I think if you, once again, I  
22          think if we were to look to my two cents is that  
23          I think what DES put in place was fairly  
24          responsive. It was considerate of what had been

1 put before them, and then I think we just have  
2 to decide well, does that suffice. Do we have  
3 to go through each condition? We can do that,  
4 too, or but I think we're sort of at that place.

5 MR. FITZGERALD: So thank you, Chris, I  
6 think that was really helpful. Just to put some  
7 things in context, we did hear statements, I  
8 believe Mr. Irwin from CLF indicated that this  
9 Project would result in long-term permanent and  
10 irreparable harm. We heard a lot of comment  
11 regarding how important Great Bay is, that it's  
12 a nationally designated estuary and that it has  
13 a very fragile ecosystem. But a lot of those  
14 comments were presented as generalities without  
15 a lot of followup as to what the impact would  
16 be, and I think there were two or three things  
17 that were mentioned that deserve a little bit of  
18 consideration.

19 One was that it was mentioned that this  
20 Project could potentially release 300 times as  
21 much nitrogen during the course of the Project  
22 as the Town of Durham does in one day. I didn't  
23 hear any followup calculations or information to  
24 address that specifically, but it seems to me

1           that there's a difference in a short-term impact  
2           knowing that that impact will not be  
3           continuously adding as opposed to the nitrogen  
4           that comes from the use of fertilizers and all,  
5           of course, obviously, wastewater treatment  
6           systems discharging in, and I think we  
7           understand these towns have had to make  
8           significant efforts with regards to upgrading  
9           wastewater treatment and so on and so it  
10          probably, I don't know the right word to put  
11          this, but it may be a little bit offensive to  
12          them to know that those somewhat onerous  
13          conditions are put upon them, but their effluent  
14          contributions to the Bay are not going away.  
15          They're going to be there for a long time and  
16          they have been reduced dramatically. The Bay is  
17          improving in quality. This may be a short-term  
18          blip, but it doesn't seem to rise to the level  
19          at least from the information that I've seen  
20          presented of long-term irreparable impacts. It  
21          may be a little bit in reverse of the direction  
22          that all those around the Bay and all those who  
23          treasure it and so on want to see.

24                 And I think similarly, we heard concrete

1 mattresses, that they would be consuming space  
2 for eelgrass. I did a brief calculation of my  
3 own. I don't offer this as anything but when I  
4 looked at the amount of eelgrass and the amount  
5 of permitted requirement, the permitted amount  
6 of concrete mattresses, we heard, first we heard  
7 a lot of testimony that this would not be  
8 imposed on eelgrass beds and second, my  
9 calculation was that it would represent less  
10 than .01 percent of eelgrass beds, existing  
11 eelgrass beds in Great Bay. Not regarding the  
12 fact that's if it were falling on eelgrass and  
13 it's not. There was some testimony that it  
14 might be falling on, that the concrete  
15 mattresses might be placed on eelgrass,  
16 potential recovering eelgrass beds. Historic  
17 eelgrass beds. Thank you. And so but again,  
18 that impact seems to be infinitesimally small.

19 Total suspended solids, again, I did some  
20 rough calculations. I believe that we heard  
21 some testimony indicating that there was 7 to 9  
22 tons of erosion sediment coming into the Bay and  
23 I think it was annually from erosion around the  
24 Bay just due to storms and other ice scouring

1 and other things. That number equated to about  
2 9,000 tons annual, and this Project would, based  
3 on the information that I heard during the  
4 testimony, would present an addition of about  
5 one and a half tons.

6 Again, I don't offer these as expert  
7 testimony or anything. I just, you know, we  
8 seemed to hear some testimony that certainly  
9 expressed great alarm over the amounts of  
10 nitrogen, TSS, the amounts of eelgrass and so on  
11 that would be potentially impacted. And based  
12 on the testimony and the information that I  
13 received and the rough calculations that I did,  
14 those impacts, while I would not neglect them in  
15 any way or say that they are trivial or so on,  
16 they don't seem to rise to the level of being  
17 long-term permanent irreparable harm that would  
18 be caused by this project, and especially given  
19 the monitoring, the plans for sedimentation  
20 control, so on.

21 MR. WAY: If I can?

22 MR. FITZGERALD: Sure.

23 MR. WAY: We had talked about eelgrass, and  
24 one statement that I saw in Conservation Law

1 Foundation's brief sort of clarified I think  
2 where I was challenged to the opposition of the  
3 jet plowing, and it states importantly the fact  
4 that eelgrass does not currently exist in upper  
5 Little Bay does not mean that it will not exist  
6 there in the future.

7 So that sort of summarizes. It's very hard  
8 to account for all of these unknowns. You know,  
9 particularly, I think there's a transient nature  
10 to the impacts here. You know, if we're  
11 stirring up nitrogen, I don't think we're  
12 talking about a permanent impact that's going  
13 to, that's going to completely discourage the  
14 eelgrass population which may not even be  
15 present. Same thing for the concrete  
16 mattresses. So and I think in terms of the  
17 sediment disposal, like you said, 1.5 tons is  
18 being dispersed compared to all the movement  
19 that occurs does make you wonder just how  
20 permanent are some of these impacts that are  
21 being raised as major issues.

22 MR. FITZGERALD: So the only other thing I  
23 wanted to mention is that we will have  
24 discussion on natural environment so there's

1 sort of a cross-cutting set of issues with  
2 regards to impacts on shellfish and so on. I  
3 had planned to have most of that discussion  
4 under natural environment. So I wasn't getting  
5 into the impacts on all the wildlife and flora,  
6 fauna and various creatures that inhabit Little  
7 Bay.

8 So that concludes my introduction of the  
9 topic. And thank you, Chris, for your  
10 evaluation.

11 PRESIDING OFFICER WEATHERSBY: Director  
12 Muzzey?

13 DIR. MUZZEY: I'm wondering if we could  
14 have a short discussion about the idea of the  
15 Independent Environmental Monitor. I believe  
16 one is called for for two different DES permits,  
17 and I know in our discussion of historic sites  
18 it was, an Independent Environmental Monitor or  
19 historic sites monitor was a less common tool  
20 used in that resource area. But in the  
21 environmental permitting area, is this something  
22 that people are familiar with, does it seem,  
23 does there seem to be a clear path as to how an  
24 independent monitor would be hired and that

1 person's independence assured to the degree that  
2 the public would be comfortable with the person  
3 as well as that person's authority to stop  
4 construction as needed and address issues and  
5 given enough time to address issues.

6 MR. FITZGERALD: So that's a question I  
7 raised at the beginning of this and I feel  
8 pretty satisfied. The Project does require what  
9 are titled Independent Environmental Monitors in  
10 a couple of areas. I forget specifically.

11 The question in my mind is, and I think we  
12 had this same discussion although we didn't  
13 choose to go that route with historical and  
14 aesthetic. The question is what means  
15 independence? Is independence asserted by the  
16 fact that, you know, if the Applicant hires  
17 them, are they independent? They are required,  
18 the Applicant is required to name an independent  
19 monitor. They are required to submit that  
20 information to DES and to have that approved by  
21 DES.

22 I think if we are to consider what would be  
23 truly Independent Environmental Monitors we  
24 would need to think about an area that I'm a



1 little hesitant to go into which is the  
2 Committee or some agency being delegated to make  
3 that selection on behalf of the Committee and  
4 just require the Applicant to pay for it, and  
5 I'm not sure a lot of agencies want to get into  
6 that, you know, potentially selecting a monitor  
7 as long as an appropriate one is presented by  
8 the Applicant. So that's an open discussion  
9 area for me.

10 PRESIDING OFFICER WEATHERSBY: Ms. Duprey?

11 MS. DUPREY: Just following up on Director  
12 Muzzey's question and your answer to it, am I  
13 right in understanding that this method where  
14 the Applicant chooses the monitor and pays for  
15 it but probably gives the name for DES for  
16 approval, is that sort of standard operating  
17 procedure for DES?

18 MR. FITZGERALD: I'm in the air division,  
19 and we don't typically have an issue like this  
20 unless we have a concern that there's a  
21 compliance history or failure to comply that we  
22 would -- I'm not aware of a situation where  
23 we've done this, but I could not speak for the  
24 water division as to how they normally handle

1           this, but I think it is somewhat unusual for us  
2           to hire project monitors.

3           MR. WAY: I don't have a problem with an  
4           Independent Environmental Monitor. I just want  
5           us to be clear why we're asking for one or why  
6           we think one might be appropriate or why others  
7           might think it might be appropriate because as  
8           you said, Mr. Fitzgerald, I'm not aware in a lot  
9           of other similar permits that it's done unless  
10          there's a compliance issue that has been raised  
11          that requires a secondary party to have  
12          oversight.

13          I'm trying to think, in this case, is it  
14          once again, does it get back to a level of  
15          trust. Is that really what we're talking about  
16          here? Is it trust? Or do we accept that if we  
17          have a permit in place that has appropriate  
18          conditions and if we have an Applicant that has  
19          met the other measures and gets a certificate,  
20          do we then have a process in place which  
21          satisfies the concerns. So the question is why  
22          do we need an Environmental Monitor.

23          PRESIDING OFFICER WEATHERSBY: So I think  
24          we definitely need one here.

1           MR. WAY: Let me say an Independent  
2 Environmental Monitor.

3           PRESIDING OFFICER WEATHERSBY: I think an  
4 independent monitor. There's so much that the  
5 Applicant is being asked to monitor. You know,  
6 sediment dispersal and mixing zone composition  
7 and wind speeds and all of that concerning the  
8 cable crossing, and we need to be sure that  
9 what, that not only is it modeled but also that  
10 the actual results conform to that model. And I  
11 think we need someone who is trained in this  
12 area and that's independent to say hey, this is  
13 an exceedance, and I think the issues concerning  
14 Little Bay are so critical that I know I would  
15 be much more comfortable with an independent  
16 monitor. The Applicant has agreed to an  
17 independent monitor. There's a stipulation  
18 between Counsel for the Public, and I think DES  
19 is requiring an independent monitor. So I think  
20 we can kind of put that issue to bed and assume  
21 that an independent monitor, unless we want to  
22 go back to DES.

23           MR. WAY: And like I said, I'm okay with  
24 that. I just want us to know why we're doing it

1 and why we're requiring it and I think your  
2 approach is the good answer and I think in part,  
3 too, because it makes us feel comfortable as the  
4 body that might be approving this.

5 PRESIDING OFFICER WEATHERSBY: Exactly. I  
6 would be uncomfortable without one, and I'm not  
7 even sure I would approve it. Just to be clear,  
8 the Independent Environmental Monitor, this is  
9 stipulation 25, if we choose to adopt it,  
10 they're going to oversee the construction of the  
11 Project, whole thing, and work with contractors  
12 to implement appropriate Best Management  
13 Practices to avoid or minimize environmental  
14 impact. The Applicant shall also use an  
15 Independent DES-approved Environmental Monitor  
16 to oversee work in Little Bay.

17 MR. FITZGERALD: If I could just, it seems  
18 to me, yeah, I think there's general agreement  
19 that an Independent Environmental Monitor. I  
20 guess what I was hearing during a lot of the  
21 testimony was concern as Chris mentioned that  
22 the Applicant could not be trusted and that  
23 there needed to be an Environmental Monitor  
24 completely separate from the Applicant.

1           Now, in my viewpoint, if the Applicant were  
2           to be the monitor, if employees of the Applicant  
3           were to be the monitor, I think that would be a  
4           great concern. Just from a general standpoint.  
5           Not because I have any information that suggests  
6           that. But the question in my mind is if the  
7           Applicant hires another party and that party is  
8           not part of the corporate, under the corporate  
9           umbrella of Eversource or anything else and they  
10          are charged and DES has approved them and in  
11          addition they have a set of plans and a set of  
12          requirements that they would have to go by.  
13          It's not just hiring a monitor and saying go out  
14          and monitor. There's a set of conditions that  
15          relate to plans, and the monitor would have to  
16          review the plans, ensure that the plans were  
17          being adhered to, et cetera. And I just, I  
18          guess to me, it comes down to does it have to be  
19          financially independent of the Applicant because  
20          if it's, if we're doing it for trust issues, if  
21          we're doing it because an Independent  
22          Environmental Monitor is appropriate due to the  
23          serious of Little Bay, I think that's another  
24          question.

1 MR. SHULOCK: I have a slightly different  
2 take on independent monitors. I think agencies  
3 would like to monitor the work that goes on in  
4 sensitive resources, but they don't have the  
5 staff to do it, and the independent monitor  
6 provides that agency with the ability to have  
7 eyes on the Project while the work is going on  
8 and report back to the agency.

9 And then independence, in my opinion, is a  
10 matter of first of professionalism and ethics on  
11 the part of that expert. Secondly, it's a  
12 contractual issue. Payment is probably less  
13 important because I mean ultimately unless the  
14 state agency is doing the work on its own dime,  
15 the Applicant will have to pay.

16 PRESIDING OFFICER WEATHERSBY: Director  
17 Muzzey?

18 DIR. MUZZEY: I also think there's  
19 particular value in having the independent  
20 monitor for the Little Bay work given that  
21 although jet plows have been, jet plow  
22 technology has been used in many other places,  
23 it hasn't yet been used here in New Hampshire,  
24 and I have a sense, sort of following up on what

1           you just said, that it will assist the  
2           Department of Environmental Services as well to  
3           have that extra set of eyes. This is the first  
4           time through for the agency. They have  
5           carefully considered the Application, they've  
6           placed many, many conditions on this Project,  
7           particularly as it relates to Little Bay. And  
8           so in this particular case, perhaps not  
9           necessarily precedent setting for the future,  
10          but for this particular case an Independent  
11          Environmental Monitor seems like a wise  
12          approach.

13                 MR. SCHMIDT: I think on large construction  
14          projects similar to this it's commonplace to  
15          have an independent monitor. I think the point  
16          that you pointed out that the wide variety of  
17          issues that are before us on this Project are  
18          all the more important to do that. I don't  
19          think they have to be an independent silo from  
20          Eversource as far as I don't think they should  
21          be an employee, but I think funding and so on it  
22          can be a relationship directly with Eversource.  
23          I do like the idea of having DES approve the  
24          ultimate contractor. Other than that, I think

1 it's a needed piece to this contract.

2 PRESIDING OFFICER WEATHERSBY: Another  
3 possibility if folks are uncomfortable, which I  
4 am not, but in addition to DES approval of the  
5 person, we could ask that that person be  
6 approved by Counsel for the Public or the SEC or  
7 some other body. Personally, I don't think  
8 that's necessary if DES approves the person, but  
9 if folks want to go that route we could put in  
10 an extra level.

11 MR. WAY: I think for my part DES approval  
12 would suffice.

13 MR. SCHMIDT: I agree. I'm not sure if, I  
14 think we want the expertise of DES approval.

15 PRESIDING OFFICER WEATHERSBY: Sounds like  
16 there's some agreement on an independent monitor  
17 for environmental issues. Pretty much as  
18 stipulated to in the Condition number 25 of the  
19 Stipulated Conditions between Counsel for the  
20 Public and the Applicant.

21 MS. DUPREY: Madam Chair, I'd just like to  
22 add to the discussion by stating that I think  
23 that it would also perhaps get the public some  
24 comfort as well to have an independent monitor,



1           that that is another worthy reason for requiring  
2           one.

3           PRESIDING OFFICER WEATHERSBY:   Where do we  
4           want to go next?   Ms. Duprey?

5           MS. DUPREY:   So I had wanted to talk about  
6           a few issues.   Maybe other folks don't feel the  
7           need to.   I wanted to talk about oysters for a  
8           minute.   I don't know if that's something that  
9           we're going to take up later so that it would be  
10          out of order.   So I wanted to make a few  
11          comments about nitrogen.   And the cable removal.

12          PRESIDING OFFICER WEATHERSBY:   We are  
13          talking about oysters later in some detail.

14          MR. FITZGERALD:   I was going to suggest  
15          that oysters be considered under natural  
16          environment.

17          PRESIDING OFFICER WEATHERSBY:   Let's talk  
18          about nitrogen because I think that is a subject  
19          worthy of more conversation as well.

20          MS. DUPREY:   One of the things that I  
21          wanted to specifically say about nitrogen was as  
22          I listened to all the expert testimony on this  
23          topic, it began to occur to me, and I'm not a  
24          marine person.   I don't have any knowledge about

1 sedimentation in bays and whatnot and of  
2 estuarial bays, but it began to occur to me that  
3 the sediment being stirred up is not an uncommon  
4 thing, that this goes on regularly which also  
5 just segues to DES. Even though DES hasn't had  
6 a jet trial project in front of it, it's  
7 certainly had other projects where sedimentation  
8 is stirred up. So I don't think we should  
9 really question DES's expertise in this area.  
10 It's just a different format of it happening,  
11 but they've I think through the permit have put  
12 a number of conditions in place to oversee that.

13 But at the end of I believe it was the ESS  
14 testimony which was Counsel for the Public, I  
15 asked a number of questions about nitrogen and  
16 specifically I was trying to get at isn't  
17 nitrogen being stirred up always an issue  
18 because nitrogen is what's pumped into every  
19 body of water through wastewater treatment  
20 plants and other means but that's one of the  
21 most common means of nitrogen getting into the  
22 sediment it. So therefore, if it's in the  
23 sediment in your jet plowing and jet plowing is  
24 something that occurs regularly why isn't this a

1 big issue everywhere, and they said that it  
2 wasn't. That it was a big issue here, that  
3 people had made it a big issue here, but in  
4 their experience in working on these projects  
5 that they had not heard very much about  
6 nitrogen. And I just wanted to point that out  
7 because I thought that that was an indicator  
8 that what seems to have been a huge concern here  
9 and has every bit as much of a reason to be a  
10 concern in other places, you know, hasn't been  
11 raised as one. I just thought that was an  
12 interesting point.

13 I did also want to say that with respect to  
14 the cable removal toxicity that, again, we're  
15 relying on DES's expertise with respect to their  
16 concern about how much toxicity there might be  
17 as a result of pulling up old cable, cutting it,  
18 and whatnot. And I feel like I have to rely on  
19 that expertise and I do in accepting the permit  
20 conditions that they've put forward.

21 There were also questions raised about the  
22 timing of the trial, the jet plow trial. Is  
23 that, another time appropriate to talk about  
24 that? Or is this the right time?

1           PRESIDING OFFICER WEATHERSBY: Do we want  
2 to talk more about nitrogen or cable removal  
3 plan? Maybe we'll just -- anyone want to talk  
4 more about nitrogen?

5           MR. FITZGERALD: I would just say with  
6 regards to nitrogen that I agree with Ms. Duprey  
7 that there is continual current and storms and  
8 so on that can raise amounts of sediment and  
9 nitrogen and be released. I think our job is to  
10 determine whether this Project will have an  
11 unreasonable adverse impact as opposed to those  
12 continuing, ongoing continuing, and I will note  
13 that the PREP report notes that the Bay is  
14 becoming healthier in general. That significant  
15 efforts have been made but that this Project  
16 impact would be fairly small and temporary in  
17 nature.

18           And so, you know, I think when you consider  
19 everything that's going on, continuing additions  
20 of nitrogen, again, as I said, the towns that  
21 have had to makes these tremendous efforts to  
22 reduce nitrogen, I can understand their reason  
23 for taking some offense at allowing a Project  
24 that would introduce some, but my overall

1 conclusion is that it's pretty small and  
2 compared to the natural processes that are  
3 occurring and the existing amounts.

4 PRESIDING OFFICER WEATHERSBY: Mr. Way?

5 MR. WAY: Yes. I agree with everything  
6 that was said. I think, you know, the idea that  
7 this would be a setback in terms of the efforts  
8 to reduce nitrogen in the bay, it's certainly a  
9 valid concern. I'm sympathetic to it. But I  
10 think the amount of nitrogen we're talking is  
11 not going to increase in the Bay. It's just how  
12 it's going to be dispersed. And I keep coming  
13 back once again to what I perceive to be maybe  
14 the temporary nature of this dispersal. And the  
15 idea being that it could also come from the  
16 cable removal as well stirring up the sediment.  
17 I think its going to be temporary but certainly  
18 something to keep an eye on.

19 PRESIDING OFFICER WEATHERSBY: So I  
20 disagree a little bit with what's been said. I  
21 think that the jet plowing is fairly different  
22 than the disturbances that are naturally  
23 occurring or may occur by an anchor or a wave or  
24 a wind or whatever. I think that, you know,

1 going down four feet is different than what is  
2 naturally occurring and more significant.

3 I understand completely why CLF, Town of  
4 Durham, other towns and other interested parties  
5 that have been working so hard to try to restore  
6 this Bay are frustrated and angry that the  
7 Applicant will be introducing -- they're not  
8 introducing new nitrogen, but they are stirring,  
9 perhaps stirring up nitrogen and that may get  
10 dispersed, and they have a right to be  
11 frustrated about that. But that's not what  
12 this, what I need to look at in making my  
13 determination. I feel as though I need to look  
14 at what is the actual impact of that nitrogen.  
15 And it is fairly small, and it is fairly limited  
16 in duration. So while they feel as though  
17 they've been working so hard and why should  
18 someone else start to undo some of our efforts,  
19 I mean, the impact I think is relatively small.  
20 So I certainly couldn't deny it on that basis.

21 MR. FITZGERALD: If I could also, I think  
22 it's important to understand this is part of the  
23 reason for the trial run. That the trial run  
24 would monitor for nitrogen. That there was a

1 lot of testimony relative to nitrogen in  
2 interstitial water between the grains of  
3 sediment that's going to be exposed and so on.  
4 A lot of uncertainty was raised but the trial  
5 run will tell us whether nitrogen in excess of,  
6 you know, amounts that would be of concern to  
7 DES, that will provide us with some valuable  
8 information.

9 PRESIDING OFFICER WEATHERSBY: Based on  
10 that, it can't exceed certain levels, that they  
11 would have to slow it down or stop or wait for a  
12 different day so that the process is fairly  
13 tight in not allowing significant damage,  
14 significant nitrogen release or other  
15 contaminants. Ms. Duprey?

16 MS. DUPREY: I totally agree with what  
17 you've said, especially with why people are  
18 concerned about this. I would just also add  
19 though that while it's not the same, because  
20 this will go on over a period of days, that when  
21 we put in bridge abutments and even docks and  
22 breakwaters, that those are also going down deep  
23 into the sediment and stirring it up. Again,  
24 it's not the same as going across the Bay





1 MR. SCHMIDT: Existing Cable Removal Plan.

2 MR. IACOPINO: 106.

3 MR. FITZGERALD: Okay. Well, I guess one  
4 thing is this has to be put in context because  
5 there's excavation for the cable and then  
6 there's cable removal. So I didn't spend a lot  
7 of time reviewing the cable removal plan. I  
8 wanted to refer, I believe, in CFP had made some  
9 comments about it, and I don't know that I have  
10 those marked.

11 MR. WAY: If it's helpful, DES has the  
12 Condition number 49 in their October spreadsheet  
13 addressing the existing cable removal remedial  
14 response plan where they find it adequate, and  
15 obviously the concern is what happens if these  
16 things disintegrate upon pulling them up which  
17 could very well happen that these things are so  
18 old and if they disintegrate, then what happens  
19 to all the lead, the potential lead, the pieces,  
20 what does it do to the water column as well.  
21 And so it's a critical plan to have in place.

22 MR. FITZGERALD: So again, I would suggest  
23 it's a condition that requires DES to approve  
24 the plan and to account for the environmental

1 impacts. I'm not sure it -- was the questioning  
2 that the cable removal plan did not adequately  
3 address environmental impacts? Because I mean,  
4 the cable removal plan has a section, you know,  
5 there's some analysis and so on, but it's also  
6 covered by the overall project plans and BMPs  
7 and stipulations that state that sediment shall  
8 be controlled, that there shall be analysis for  
9 contaminants of concern.

10 I think the only issue that I saw raised  
11 relative to cable removal were that it's  
12 possible that the cable will break, that there  
13 will be, this is very old cable. That it won't  
14 come up in one pull. That it could, sections  
15 could break off. So DES was tagged with the  
16 responsibility for ensuring that it was removed  
17 in accordance with our requirements that it was,  
18 that it was all places were accounted for. You  
19 know, they would possibly have to send divers  
20 down to get pieces if they didn't, you know,  
21 they'd broken off or using other retrieval  
22 techniques and ensure as much old cable was  
23 removed as possible and that the same monitoring  
24 and environmental requirements would apply

1           regarding sediments.

2           PRESIDING OFFICER WEATHERSBY: Director  
3 Muzzey?

4           DIR. MUZZEY: It seems the cable, the need  
5 for a cable removal plan and the uncertainty  
6 that the public feels about it is like a lot of  
7 things with this Project. The Applicant has a  
8 good idea of where the cables are. It's  
9 important to note that not all the cables will  
10 need to be cleared so we're not talking about  
11 the entire Bay area. There are specific places  
12 where clearance is needed. It's the type of  
13 activity that the Applicant cannot be sure  
14 about. They cannot be sure as to whether they  
15 will find the cables. They cannot be sure of  
16 the condition of the cables and whether or not  
17 they can be successfully retrieved back to the  
18 surface without breakage or some of the cable  
19 sections being lost. It's just not that type of  
20 activity that you can be sure of those things.

21           So a plan is in place, our Department of  
22 Environmental Services has approved the plan,  
23 and it's the type of activity where the  
24 Applicant needs to depend on a plan instead of a

1 specific scope of work. And I think that has  
2 raised concern with the public. Obviously, the  
3 public would prefer a specific scope of work  
4 that said exactly what would happen, where and  
5 what the exact results will be, and that's not  
6 possible in this case, and we are left with  
7 seeing whether the plan is an adequate document  
8 and whether it addresses all the possible  
9 environmental issues.

10 DES has been our reviewer in this case,  
11 given their expertise, and they certainly feel  
12 it is. They have not felt that way about other  
13 plans, and they have asked for changes so we  
14 know that DES is not shy about asking for  
15 changes and plans, and they have grounded  
16 reasons for doing so if needed.

17 So although I can understand the wish for  
18 more certainty about this on behalf of some of  
19 the comments we have heard, I'm comfortable with  
20 the plan being adequate to address this type of  
21 activity.

22 PRESIDING OFFICER WEATHERSBY: I've been  
23 hunting for the part of their testimony where  
24 they, Counsel for the Public addressed this and

1 had a concern, and I think it was that asking us  
2 to add Condition 49 which DES had done. So I  
3 can't find it, but that's my recollection about  
4 their comment concerning the cable removal plan.

5 MR. WAY: As I recall from the Town of  
6 Durham they also had concerns about that as  
7 well, and I think, I think their concern was the  
8 potential for lead which I think we heard from a  
9 couple of other sources as well, and if you look  
10 at the plan that was put in place and what's  
11 been done in testing around the cables to date,  
12 I think, well, I know they tested for lead, and  
13 I think they were, the levels were below  
14 significance, but they also tested for PCBs and  
15 asbestos as well, two other things I think that  
16 were raised as issues as I recall in testimony.

17 PRESIDING OFFICER WEATHERSBY: All right.  
18 The condition I was thinking of was actually  
19 suggested by Durham. They have a number of  
20 suggestions for us in Town of Durham UNH Exhibit  
21 3. But concerning the cable removal plan it was  
22 to add Condition 49 concerning what happens if  
23 there's a break in the cable.

24 Do you want to talk anymore about the cable

1 removal plan?

2 MR. WAY: I would also expect, too, that as  
3 we go through this process, the whole process  
4 itself I would imagine is going to be is  
5 somewhat flexible and responsive. That if  
6 you're pulling up cable and all of a sudden it's  
7 disintegrating, then other things occur. You  
8 have an Independent Environmental Monitor that  
9 can certainly either stop or put other  
10 conditions or request other conditions as well,  
11 but it's not going to be something where they're  
12 just going to charge across the Bay and whatever  
13 happens happens. I think we're going to see  
14 some good information that comes from the jet  
15 plow trial run, and then I think we also have to  
16 believe that as we go through this process  
17 you're going to have people that are going to be  
18 responsive to what they see in front of them for  
19 conditions.

20 MR. SCHMIDT: I think Applicant Exhibit 106  
21 as we talked about a little earlier gets very  
22 detailed on what would happen. If the cable  
23 breaks, they'll send a dive team down. In one  
24 case they say they'll send an ROV down to look

1 for loose debris. So I think they've addressed  
2 the concerns. As you stated earlier, some of it  
3 won't be identified until we actually have a  
4 break, and then we'll -- but I think the ground  
5 work is in place to address those, the issues.

6 MR. FITZGERALD: So Condition 49 certainly  
7 does require a plan. The plan shall apply in  
8 the event existing cable is deteriorated, that  
9 it disintegrates upon removal resulting in loose  
10 debris in the water column. Plan shall identify  
11 remedial actions to contain the cable debris,  
12 actions required to remove the debris. Shall  
13 also include specific means of controlling  
14 turbidity. That in no instance will any debris  
15 remain in the substrate. And the Applicant  
16 shall implement the removal plan if cable  
17 failure occurs. Impacts ordinarily anticipated  
18 from intact cable removal or cut section would  
19 be limited to the turbidity from sediment  
20 disturbance accounted for in the Application.  
21 So and that plan was submitted to DES and  
22 approved by DES. So I think we're good.

23 PRESIDING OFFICER WEATHERSBY: There's a  
24 comment with regard to Town of Durham's

1 suggestions to the Committee in its Supplemental  
2 Testimony. Exhibit 3. July 20, 2018. They  
3 have a number of suggestions from their experts  
4 concerning water quality. However, that was  
5 prior to, or since July 20, 2018, they've had an  
6 opportunity to raise any of these concerns with  
7 DES, and we've seen the DES has incorporated a  
8 number of their suggestions into the final  
9 permit. So I originally thought let's go  
10 through these and see if there's something we  
11 can use, but I think we've cross-referenced  
12 everything, everything had been considered by  
13 DES.

14 Director Muzzey?

15 DIR. MUZZEY: One of the conversations,  
16 well, one of the pieces of testimony that I  
17 remember talking with the Town of Durham/UNH's  
18 experts on this subject involves something that  
19 I don't know a lot about so I hesitate to talk  
20 about it too in-depth. But it was revolving  
21 around the question as to whether additional  
22 testing could add some certainty to this  
23 process. You know, much like the cable removal  
24 plan, there are other aspects of the work that



1 will be done that we can't be sure of until we  
2 get into it. There's heavy reliance on plans  
3 and responses. If things exceed certain limits,  
4 that type of thing. And there was some  
5 conversation about RIM Tier III toxicity  
6 testing. We know that Tier 1 and Tier II  
7 testing was done, but Tier III has not yet been  
8 done so the question is whether we could add  
9 some certainty to this process, some  
10 predictability if that testing was done, and I'm  
11 looking at TD 3, PDF page 4 at the bottom. And  
12 then continuing on to page 5 lays out the ground  
13 work as to why these experts feel that may be  
14 important. And then if we go to the Applicant's  
15 chart that shows what happened when Durham's  
16 experts went and talked with the Department of  
17 Environmental Services.

18 MR. WAY: If I could, I was drawn to that  
19 condition as well because my understanding it  
20 helps to further characterize the mixing zone.

21 DIR. MUZZEY: Yes.

22 MR. WAY: Because something, obviously  
23 what's going on in the mixing zone and what  
24 happens outside of the mixing zone is there's no

1 excesses, but within the mixing zone there's  
2 obviously some variation. So when I saw that, I  
3 thought that seemed reasonable to me, but then I  
4 looked at 208 and I looked at Condition number 5  
5 and DES did not accept that condition.

6 DIR. MUZZEY: Yes.

7 MR. WAY: Like you, I don't know enough  
8 about that to second guess what DES offered.

9 DIR. MUZZEY: That was my question as well.  
10 On PDF page 2 at the top, number 5, the  
11 Applicant shall perform RIM Tier III water  
12 column tests to evaluate potential toxicity of  
13 the dissolved and suspended portions of the  
14 sediments expected to be mobilized during SRP  
15 construction, and then there are more details as  
16 to how and why that would be helpful. And --

17 MR. SCHMIDT: What exhibit are you on  
18 again?

19 DIR. MUZZEY: I'm on Applicant's Exhibit  
20 208. This is the big chart that shows what the  
21 Durham experts were recommending, and then what  
22 DES's responses were when they met with those  
23 experts.

24 So during testimony, during the hearing, it

1           seemed in talking with the Durham experts that  
2           this type of testing would not necessarily be  
3           overly expensive or taking a large amount of  
4           time that would interfere with the Project  
5           schedule and create undue delay, but we do see  
6           in the third column of this chart in 208 that  
7           DES did not incorporate this condition. We  
8           don't have any additional explanatory material  
9           as to why DES did not accept this condition  
10          which at this point in our deliberations I would  
11          find tremendously helpful. Has anyone else  
12          found any material in the record that addresses  
13          that? During our hearing they described it as a  
14          real-world check that would take some of the  
15          theoretical information and clarify impact,  
16          according to my notes.

17                 MR. WAY: I think maybe some of the concern  
18                 as well is that the Applicant will be putting  
19                 together a Mixing Zone Plan which is something  
20                 that DES would like to see. Maybe the issue is  
21                 sort of like the environmental monitoring plan.  
22                 It isn't before us. It's something that will  
23                 come at some point before construction. DES  
24                 would be delegated to approve that plan prior to

1 construction, and I would imagine that in that  
2 plan they found that there wasn't a need for  
3 that RIM Tier III testing. I don't know though.

4 I'm also looking at the notes from the UNH  
5 team when they were, this is at Exhibit 204.

6 DIR. MUZZEY: Can you read those notes?

7 MR. WAY: Somewhat I can because it's like  
8 my writing, but I'm looking for something that  
9 refers to the testing and unless I'm reading it  
10 incorrectly, I'm not seeing it. But it may very  
11 well be they're just not calling it out by the  
12 name we're using right here.

13 PRESIDING OFFICER WEATHERSBY: It may be  
14 that the condition concerning the Mixing Zone  
15 Plan includes this but not specifically. This  
16 is one method of helping to determine the mixing  
17 zone. But if you look at Condition 44  
18 concerning the mixing zone, they have submit the  
19 mixing zone request to DES 60 days before  
20 construction. That plan must include a  
21 description and map showing the proposed mixing  
22 zone in Little Bay and justification for the  
23 proposed limits of the mixing zone and  
24 documentation demonstrating the proposed mixing

1 zone complies with the minimum criteria and  
2 administrative rules.

3 I get the sense that they weren't trying to  
4 dictate exactly how that Mixing Zone Plan should  
5 be done, but that it needs to show justification  
6 for whatever it proposes.

7 DIR. MUZZEY: So is your assumption that  
8 then that Tier III testing isn't necessarily  
9 excluded. It may be one way that the Applicant  
10 gets to an approved mixing plan, but there may  
11 be other ways as well.

12 PRESIDING OFFICER WEATHERSBY: Yes.

13 MR. WAY: Although that I think if that  
14 were true that on Exhibit 208 under that  
15 condition there would be at least a partial  
16 recognition of the request. So my impression is  
17 that it probably is not something that was  
18 embraced. In terms of the DES October  
19 spreadsheet, isn't there a redline version out  
20 there?

21 MR. IACOPINO: Yes. 12d. Committee  
22 Exhibit 12d is what they called the Annotated  
23 Final Decision which is a redline. 12c is the  
24 combination document.

1 MR. WAY: Okay. You said 12d is the  
2 redline?

3 MR. IACOPINO: 12d is the redline, yes.

4 PRESIDING OFFICER WEATHERSBY: I think  
5 we'll take a short break and people can look  
6 into this if you'd like. Maybe ten minutes.  
7 We're going to take a break for ten minutes.

8 (Recess taken 4:57 - 5:06 p.m.)

9 PRESIDING OFFICER WEATHERSBY: Okay. When  
10 we left off, we were talking about RIM Tier III  
11 testing. Does anyone have any further comments  
12 concerning that proposed condition?

13 DIR. MUZZEY: Well, during the break I had  
14 the opportunity to review what was discussed  
15 during our hearings and this is with Mr. Famely,  
16 and it was on Day 13, page 188 of the testimony  
17 and continuing from there. So he does note that  
18 they probably had reviewed the testimony as well  
19 as his recommendations and they did not ask for  
20 the type of Tier III testing we've been  
21 discussing. So we really don't have a lot of  
22 information to go on besides the fact that they  
23 probably reviewed those recommendations and did  
24 not feel they were appropriate for this Project.

1           Being a historian I don't want to second  
2           guess the work of the Environmental Services so  
3           rereading this, I'm left with the idea that we  
4           need to depend on our reviewers at the  
5           Department of Environmental Services to  
6           recommend the best approach.

7           PRESIDING OFFICER WEATHERSBY: Point of  
8           clarification when you say they had the  
9           information, are you referring to NHDES?

10          DIR. MUZZEY: Yes. That was Mr. Famely's  
11          assumption.

12          PRESIDING OFFICER WEATHERSBY: Mr. Way?

13          MR. WAY: I agree with that as well. I had  
14          a little bit of opportunity to look a little  
15          more. And as I said earlier, none of this was  
16          done in a vacuum and DES I think was pretty  
17          aware of the concerns. I didn't find it in the  
18          notes in Exhibit 204, and yes, I pretty much  
19          could read them, and I didn't see it there. So  
20          I think I'm going to err on the side of trusting  
21          DES that they've got this one covered with  
22          regards to the testing regimen for the mixing  
23          zone.

24          MR. FITZGERALD: If I could. Also in

1 looking at the Exhibit 208 chart presented by  
2 GeoInsight and that requirement number 5 on page  
3 2, I believe, electronic page 2, requirements  
4 listed, and then the comment in the next column  
5 is N/A which I assume means not applicable, and  
6 then NHDES did not incorporate. So it would  
7 seem to me that this was a significant concern  
8 of GeoInsight there would be some discussion in  
9 that second column. Mike? Page 2. Exhibit  
10 208. Electronic page 2.

11 MR. WAY: I actually think column 2 was  
12 more the DES response and the comments would be  
13 over on the right-hand side and I would have  
14 expected more comment than simply DES did not  
15 incorporate the condition. That would have been  
16 a good place to maybe make the case.

17 MR. FITZGERALD: What does the N/A in  
18 column 2 imply or is it --

19 PRESIDING OFFICER WEATHERSBY: The heading  
20 on that column is condition issued by NHDES.

21 MR. FITZGERALD: So they're saying that  
22 there is none there.

23 PRESIDING OFFICER WEATHERSBY: That's my  
24 understanding.



1 MR. WAY: At every point where they didn't  
2 incorporate the condition, an N/A is found in  
3 the second column.

4 DIR. MUZZEY: It's one of three places  
5 where that happens.

6 MR. FITZGERALD: Okay.

7 PRESIDING OFFICER WEATHERSBY: So correct  
8 me if I'm wrong, but I'm sensing reluctance on  
9 the part of at least most Committee members to  
10 incorporate this condition but instead leave it  
11 to NHDES to determine what they will require in  
12 the plan. I see nodding heads. Is there anyone  
13 who disagrees with this or wants to talk about  
14 it further?

15 (No verbal response)

16 PRESIDING OFFICER WEATHERSBY: Okay. Let's  
17 move on then.

18 Let's talk about the need for a jet plow  
19 trial run. Ms. Duprey?

20 MS. DUPREY: I thought it was a good idea  
21 until I started reading or listening to  
22 Conservation Law Foundation who, I believe it  
23 was them, did not think it was a good idea to  
24 have a trial run. That having a trial run was

1 just going to stir up more sediments and DES  
2 never did require one. So I'm up in the air  
3 about it. I don't know what to say.

4 PRESIDING OFFICER WEATHERSBY: I think it's  
5 a great idea. I think that there's a fair  
6 amount of uncertainty as to what's going to get  
7 stirred up and concentrations. How the  
8 equipment is going to work, how long it's going  
9 to take. There's a number of uncertainties  
10 about the whole process, and I think a lot of  
11 good information will be gained from a jet plow  
12 trial run.

13 I think Counsel for the Public's experts  
14 agreed that that would, trial run would be  
15 beneficial. DES had suggested it. They're not  
16 going to require it, but if it had no merit they  
17 wouldn't have suggested it. Applicant is  
18 certainly willing to do it. The risk is more  
19 sediment is stirred up, but to me the data that  
20 is gained by doing the trial run allows them  
21 then to adjust their construction techniques and  
22 monitoring on everything so when it goes longer  
23 that that information is incorporated and  
24 adjustments could be made.

1           The same thing is happening when they do  
2           the first cable, they're using that data to help  
3           them reduce impacts to the second cable and so  
4           on and so on so I think starting with the small  
5           trial run, thousand feet is not so small but  
6           it's not the whole length, and using that  
7           information to adapt the methods and means would  
8           be certainly beneficial.

9           MR. WAY: I agree with everything you just  
10          said. I think it would also be a good means to  
11          instill confidence in the process. That  
12          hopefully that it won't be having the impacts  
13          that everyone thinks, well, not everyone but  
14          some think might happen.

15          The only area of concern I have is that  
16          when DES is going to be looking at the results.  
17          I seem to remember that they went from needing  
18          90 days down to like 14, 15, which seemed pretty  
19          tight to me. Once again, I don't think I'm  
20          going to second guess them on that because  
21          obviously they've made an internal decision that  
22          they can have the quick turnaround on this, and  
23          I'll trust them with that because this trial run  
24          is going to provide valuable information. I

1 think it would allow the company maybe to get,  
2 for lack of a better phrase, get the kinks out  
3 of the system before they do the real thing.  
4 And with the same exact equipment with the same  
5 operators, at the same time of year, I think  
6 there's a lot of benefit to doing that, and I  
7 think you can get some good information.

8 MR. FITZGERALD: I raised some question  
9 about this during the various testimonies and  
10 one of my concerns was that this was a thousand  
11 feet, the crossing was 6000 so it represented  
12 almost, you know, 20 percent of the entire  
13 project, but rethinking that, I realized later  
14 that the project is three crossings so it's  
15 almost 20,000 feet so a thousand foot is five or  
16 six percent of the entire Project. My first  
17 thought was well why not 500 feet or what are we  
18 going to learn that wouldn't require such a  
19 significant piece of it.

20 But I would concur that I think that the  
21 trial run is almost like a tuneup for the  
22 operator. It gives them a chance to run, get  
23 all the equipment and run it and so uncertainty  
24 the question of time I'm not as concerned about

1           because we had testimony that it was possible to  
2           deliver the results and report in the time frame  
3           required and I think that the time frame is open  
4           because DES has to approve and so if they,  
5           either if the information isn't delivered to  
6           them in a timely manner or they see something  
7           that is inappropriate that needs to be resolved,  
8           that time frame is going to be expanded. So  
9           it's not a hard and fact 21-day. It's a certain  
10          amount of time to provide the information to  
11          DES. I think we had sufficient testimony that  
12          suggested that that could be done and that DES  
13          could review it in that time frame, but if DES  
14          doesn't agree that the trial run meets its  
15          criteria and the reason that it asked for a  
16          trial run, they would say no, don't get ahead  
17          until you answer these questions.

18                 MR. SCHMIDT: I think there's a lot more to  
19                 be gained to having it even like we've discussed  
20                 the construction operation itself. The  
21                 operators being the same and so on. But also we  
22                 heard how the speed of the propeller will be,  
23                 can be adjusted and I think this trial run would  
24                 just give that much more information before they

1           dive right into the overall crossing.

2           MR. WAY: I was also going to mention, too,  
3           because we talked about the Conservation Law  
4           Foundation and they were having some issues with  
5           the concept of a trial run, but I think their  
6           problem as I recall mostly centered on the fact  
7           that the run and the data gathered would happen  
8           after we've issued a certificate, and we  
9           wouldn't have that information before us. So I  
10          didn't get the sense that they were really  
11          opposed to the trial run. I may be wrong. But  
12          I know that that was one of their objections was  
13          that there would be some data available and it  
14          would not be available to any of us. It would  
15          be available to DES.

16          MS. DUPREY: That was definitely an issue,  
17          but it wasn't the only issue. It was another  
18          disturbance of the Bay. I'm not suggesting  
19          against the trial runs. The Applicant agreed to  
20          it. I just find it surprising that DES did not  
21          require it. It's had plenty of bites at that  
22          apple, hasn't taken one yet. And with CLF  
23          objecting the way that it did, it's just a  
24          remark more than anything else.

1           MR. FITZGERALD: I would see DES's lack of  
2 making this a requirement to be more a comment  
3 that this is something that we suggest. I think  
4 it would help with the public confidence in the  
5 Project. It would help to confirm the  
6 assumptions that are made in modeling and  
7 nitrogen release and sediment dispersion and  
8 other impacts and so on. It would give an  
9 opportunity to determine whether all of the many  
10 "ifs" that have been raised by Intervenors, you  
11 know, and especially comments that we just don't  
12 know and we can't tell, well, to me a trial run  
13 is yes and we've analyzed it and we've  
14 determined that it tells you the Project  
15 assumptions are appropriate and the planning and  
16 the requirements or something has shown up that  
17 we didn't anticipate and they're not appropriate  
18 and we need to make an adjustment. I think it's  
19 a very positive thing.

20           MR. SHULOCK: I have a question about who  
21 would make that adjustment. Would it be DES  
22 placing additional requirements on the process  
23 or would the contractor be making those  
24 adjustments voluntarily and then immediately

1 proceeding to the full run?

2 MR. FITZGERALD: My assumption would be  
3 that DES would receive the information and the  
4 report on the trial run, would review it. If  
5 they had concerns, they would address them with  
6 the contractor. If they felt adjustments needed  
7 to be made to permit conditions that they could  
8 do that at that time. But if it were just, you  
9 know, the contractor agrees to run it at a  
10 slower speed or do, make adjustments to the  
11 propeller or how they locate, I mean I think  
12 there's a wide range of what could happen from  
13 everything zero, everything planned is fine, up  
14 to there's major unanswered questions that, you  
15 know, major things that were raised by  
16 Intervenors have been determined to potentially  
17 be true and we need to back up. So I see a  
18 pretty broad range of possibilities.

19 But I think by delegating the approval of  
20 the trial run plan to DES and conditioning that  
21 DES make a determination as to whether the  
22 Project can continue as, with the conditions or  
23 revised conditions would handle that. I don't  
24 think that's in our area of expertise if they



1 came back to us.

2 PRESIDING OFFICER WEATHERSBY: Director  
3 Muzzey?

4 DIR. MUZZEY: I'm looking at Committee  
5 Exhibit 12c on page 17, item 60b, Jet Plow Trial  
6 Run, which is the summary of the condition that  
7 would govern how the trial run would work.

8 MR. FITZGERALD: Would you repeat that?

9 DIR. MUZZEY: 12c, top of page 17 which is  
10 both PDF and paper 17.

11 MR. FITZGERALD: Oh, it's the October DES.  
12 Yes.

13 DIR. MUZZEY: Okay.

14 MR. FITZGERALD: What are you looking at?

15 DIR. MUZZEY: I was just confirming the  
16 details of how DES was looking at how the jet  
17 plow trial would work. Just confirming the time  
18 frames. At least 90 days prior to the trial,  
19 the Applicant will submit a jet plow trial run  
20 to DES for approval and then it will implement  
21 the plan. Then the time frame of at least 14  
22 days prior to the scheduled start of submarine  
23 cable installation of Little Bay the Applicant  
24 shall submit a jet plow trial run summary report

1 to both the Site Evaluation Committee and NHDES  
2 and it will address six bullets. And as  
3 Mr. Fitzgerald noted, installation of submarine  
4 cable in Little Bay shall not proceed until  
5 authorized by New Hampshire DES and the Site  
6 Evaluation Committee. So we are both given a  
7 role in reviewing the report and authorizing  
8 further work.

9 MR. FITZGERALD: Does that mean that we  
10 have to meet again?

11 PRESIDING OFFICER WEATHERSBY: We may want  
12 to take out that the SEC has that approve, not  
13 just for the inconvenience of meeting again, but  
14 if we're trusting DES, we should trust DES. I'm  
15 not sure that we would know what to do with that  
16 plan.

17 DIR. MUZZEY: Do we want the Applicant to  
18 submit a summary report to the SEC and NHDES in  
19 order to keep it on file and potentially provide  
20 greater public access to it.

21 PRESIDING OFFICER WEATHERSBY: I think that  
22 would be a good idea. I think what comes to the  
23 SEC would put on the website so everyone could  
24 access it.

1           DIR. MUZZEY: And then we'll delegate the  
2 authority to authorize the installation of the  
3 cable to DES.

4           PRESIDING OFFICER WEATHERSBY: Yes. That's  
5 my understanding.

6           MR. FITZGERALD: Attorney Iacopino?

7           MR. IACOPINO: Yes.

8           MR. FITZGERALD: When something is  
9 referenced like that and it says authorized by  
10 DES and SEC, is that the normal way of --  
11 because if DES approves it with our delegation  
12 or our normal delegation, that's a tacit  
13 approval by the SEC, isn't it?

14          MR. IACOPINO: Yes, and I read this as DES  
15 just being solicitous to this agency. Normally  
16 when we do delegate things, especially if it's  
17 in a specialty area like this, we delegate it  
18 for the state agency to make the necessary  
19 approvals and an informational copy goes to us.

20          MR. FITZGERALD: Thank you.

21          MR. IACOPINO: And Iryna reminds me that  
22 this is not a condition. It's a suggestion. So  
23 that there should be no question of having to go  
24 back to DES to take the SEC out of this. So

1           just, I'm not sure even if that was a condition  
2           that that would be a problem anyway, but  
3           nonetheless, it's not a consideration here today  
4           because the jet plow trial run is not a  
5           condition, it's a suggestion, and if you all  
6           decide to approve it you can do it without the  
7           SEC having to approve the results of the jet  
8           trial jet plow.

9           MR. FITZGERALD: This starts out, this  
10          paragraph starts out and says SEC determines  
11          that jet plowing should be allowed, so I guess  
12          my question would be that, seems to be something  
13          circular here.

14          MR. IACOPINO: It also says and if a jet  
15          plow trial run should be conducted. So it's in  
16          there and also at the beginning of this document  
17          I'm at 12c as well, at the beginning of the  
18          document, the second paragraph, Jet Plow Trial  
19          Run.

20          DIR. MUZZEY: What page are you on?

21          MR. IACOPINO: Page 1. Also describes that  
22          this was a recommendation and starts off in the  
23          event that, third paragraph, in the event the  
24          SEC determines so it's a recommendation.

1           MR. FITZGERALD: The requirement to do a  
2 jet plow trial run is in the proposed stipulated  
3 conditions.

4           MR. IACOPINO: It is, but it's got that  
5 prefatory language to it. All the "if"  
6 language. If the Committee decides this is  
7 what.

8           MR. FITZGERALD: So we need to make an  
9 affirmative declaration that jet plowing is the  
10 right condition. Because referencing this  
11 condition in the DES permit references an "if."

12          MR. IACOPINO: Right. You would have to  
13 make an independent finding that one of the  
14 conditions you were going to impose is that the  
15 Applicant perform a jet plow trial run and  
16 obviously in accordance with whatever conditions  
17 of that that you approve, and what I'm hearing  
18 you all say is you just approve what DES is  
19 recommending.

20          MR. FITZGERALD: So we could just reword  
21 this 60b to say that jet plowing should be  
22 alluded and a jet plow trial run should be  
23 conducted?

24          MR. IACOPINO: Sure. Or I think more to

1 the point of the question is you could simply  
2 take the requirement that authorization from the  
3 SEC out and just leave it as par of the  
4 delegation to DES.

5 MR. FITZGERALD: Delegating whether to do a  
6 jet plow trial run or not?

7 MR. IACOPINO: The last line of 60b says  
8 installation of submarine cable in Little Bay  
9 shall not proceed until authorized by NHDES and  
10 the SEC. You could take out the SEC. I  
11 recommend that you do have them file a copy of  
12 it with you though.

13 MR. FITZGERALD: Yes.

14 MR. SHULOCK: Can I test this by taking it  
15 to the extreme for a second? So one of the  
16 things that they would be looking at is whether  
17 the results suggest a cable installation by jet  
18 plowing is likely to meet New Hampshire surface  
19 water quality standards. What if DES determines  
20 that under no circumstances will they meet New  
21 Hampshire water quality standards after they've  
22 done all this testing. Are we delegating to DES  
23 the ability to say this is it, that's the end of  
24 the project, you can't do it?

1           MR. IACOPINO: Can't do it with a jet plow.  
2           Actually, most wetlands permits start off with  
3           the condition that you shall not violate water  
4           standard qualities. I'm just going back in this  
5           one to see if that's the first -- because the  
6           standards are not, standards are standards.

7           MR. FITZGERALD: With regards to David's  
8           hypothetical situation, I think that as I said  
9           before there's a whole range of answers, but  
10          isn't one of them no, you haven't demonstrated  
11          to us. Please come back to us and tell us how  
12          you're going to refine your, you know, make  
13          changes to address this, and then either issue  
14          revised permit conditions or say you've got to  
15          go back and do another trial run. You've got to  
16          fix this and do another trial run to assure that  
17          we have addressed the problem. Is that within  
18          DES's authority?

19          MR. SCHMIDT: I think if we word it that  
20          upon successful trial run, and approved by DES  
21          that will enable that, right? I think you're  
22          right. We need to have a comfort level that  
23          it's going to be successful.

24          MR. FITZGERALD: I guess I'm concerned that

1 an unsuccessful trial run, whatever that means,  
2 results in project termination, and I don't see  
3 that as being --

4 MR. WAY: And I think that's a really good  
5 point. I know I didn't think about that is what  
6 happens if it fails. The problem with giving  
7 the option of doing the same thing until you get  
8 it right, I'm sure if you're on the Bay and  
9 you're already concerned about the impacts of  
10 one trial run that you're probably not too  
11 interested in seeing multiples to get there.

12 I don't think there's a, we're not putting  
13 in place a Plan B. We're not saying well, if  
14 this doesn't work, off to HDD you go. That's  
15 not in the cards. I don't think that's in the  
16 cards. So I don't know how we put limits on  
17 that, but --

18 PRESIDING OFFICER WEATHERSBY: So we're not  
19 saying they have to meet the, that during the  
20 trial run they have to meet the water quality  
21 standards. They're saying when you look at your  
22 data, will your results suggest that cable  
23 installation by jet plowing is likely to meet  
24 the surface water quality standards. So given



1           what you plan to tweak, and you're going to slow  
2           it down, and you're only going to go when  
3           there's no wind and all the other changes you  
4           want to make. They need to demonstrate that  
5           based on everything they've learned they can  
6           meet those water quality standards. If they  
7           can't, if they can't tweak this at all and meet  
8           those standards, then they can't cross Little  
9           Bay. I mean, but what we're not saying is that  
10          you need to meet it on your trial run.

11           MR. WAY: It's sort of fair to say that at  
12          this point in the game if they're crossing the  
13          Bay they fail the test so egregiously that they  
14          couldn't do it without doing another test run, I  
15          think there's more concerns coming from that. I  
16          would imagine as you said that when they get  
17          data from the test run, they'll be able to tweak  
18          their approach. I'd like to think that's what  
19          will happen. But at the end of the day I think  
20          DES has that ability or should have that ability  
21          to say no, no confidence, or we think you can  
22          move forward.

23           MR. SHULOCK: And would we want to stick in  
24          there and you can do another trial run just to

1 give the DES the flexibility and the Applicant  
2 the flexibility that they need or maybe?

3 MR. FITZGERALD: I'd make that pretty  
4 general and say something to the effect of until  
5 DES receives information that satisfies, you  
6 know, these bullets, because we are saying they  
7 can't proceed without DES approval. So if  
8 there's some back and forth and that back and  
9 forth is some adjustments and even revised  
10 permit conditions or something or maybe DES says  
11 this has opened a giant can of worms here and we  
12 think you need to do another trial run, but I  
13 think we need to give that latitude to be what  
14 DES feels it needs in order to authorize the  
15 Little Bay crossing.

16 I have one further question, and I don't  
17 know if, I wasn't able to attend any of the  
18 Project hearings and presentations and so on, is  
19 the crossing of Little Bay going to occur at the  
20 same time, I mean, the Project starts in  
21 Madbury. Does it proceed sequentially? So if  
22 they go to Madbury and Durham and get to Little  
23 Bay and then do a trial run, I'm unsure of the  
24 sequence there.

1           PRESIDING OFFICER WEATHERSBY: There's all  
2 Time of Year restrictions for all the different  
3 activities.

4           MR. FITZGERALD: Right.

5           PRESIDING OFFICER WEATHERSBY: It's my  
6 understanding this is happening in  
7 September/October time frame. So fall. Is that  
8 everybody else's recollection?

9           MR. SCHMIDT: We were told they would be  
10 working in multiple areas at one time.

11          MR. FITZGERALD: Okay. Seems to me you'd  
12 want to do the trial run in the Little Bay thing  
13 right up front because if you find that is not  
14 going to work, Madbury to Durham Point is of  
15 little value.

16          MR. WAY: When they say prior to  
17 construction, are they talking about  
18 construction of the Project or just that one  
19 piece of the Project?

20          MR. SCHMIDT: I haven't seen a construction  
21 schedule, but I would imagine they wouldn't  
22 invest on all of the approach of other work  
23 without some sort of --

24          MR. FITZGERALD: Seems to be pretty

1           inappropriate. This is by far the biggest  
2           concern of the Project.

3           PRESIDING OFFICER WEATHERSBY: Director  
4           Muzzey?

5           DIR. MUZZEY: This says at least 14 days  
6           prior to the scheduled start of submarine cable  
7           installation. So it's up to the Applicant to  
8           manage the Project appropriately and take  
9           whatever risks they feel are appropriate to  
10          begin their project in the best way.

11          I have concerns about leaving this too far  
12          open and with the suggestion of well, keep  
13          trying the trial until you get it right. I  
14          think the trial is meant to address the six  
15          bullets that we see here. And then we haven't  
16          talked at all about allowing additional trial  
17          runs, and I have concerns about doing that and  
18          I'm wondering whether it would be prudent to  
19          somehow address that.

20          I mean, my assumption is that the trial run  
21          will happen, will inform how things should be  
22          done during the actual cable installation. If  
23          they then proceed with the cable installation,  
24          and there are water quality issues that they do

1 not meet the conditions of their permit, the  
2 Project will need to stop and address those in  
3 an appropriate manner.

4 MR. FITZGERALD: I think there's some  
5 self-limiting situations here because the trial  
6 run has to occur before the construction.  
7 Construction has to occur at a certain period of  
8 time. The trial run has to be approved and so  
9 on. And one of the reasons for moving that time  
10 frame down from 90 days was so that mobilize  
11 once, you brought your equipment in, you did  
12 your trial run and so on. I think the Applicant  
13 would certainly have to evaluate at some point  
14 is another trial run, do we have to wait another  
15 trial run to get another trial run in before we  
16 start construction or can we do it now.

17 I mean, I think there are whole host of  
18 things. Whether another trial run, I think it  
19 should be worded in a way to say that until DES  
20 receives, until DES receives information that  
21 satisfies these conditions or however we put it.  
22 So whether that's another trial run or whatever,  
23 I mean, if there's five trial runs, at some  
24 point the Applicant is going to say wait a

1 minute, this is out of control.

2 MR. WAY: I guess I would say to that, that  
3 would be at the expense of people and those that  
4 use the Bay. And I would, one, I don't think  
5 that's going to be necessary. I mean, all we've  
6 heard to date in terms of the technical  
7 capability, I think it means nothing if we think  
8 they're going to have to do like five trial  
9 runs. I would expect that they'll have this  
10 covered to the extent that they can satisfy DES.

11 If we get to the point where it's so  
12 egregious that it doesn't satisfy DES, I think  
13 we have another issue on our hands, but I guess  
14 I'm not too comfortable with giving that, you  
15 know, I'm okay satisfying DES with information.  
16 I'm not sure I'm okay by doing it with more than  
17 one trial run.

18 PRESIDING OFFICER WEATHERSBY: I have to  
19 say that I agree completely with Mr. Way. I  
20 think one trial run is what should be allowed.  
21 If the data comes back so far off that they  
22 cannot show that it's likely they can meet the  
23 water quality standards that just to me calls  
24 into question all of their technical and

1 managerial capabilities and everything that has  
2 been presented to us. It doesn't have to be  
3 perfect, but they need to show with some  
4 tweaking here and there in their methods that  
5 they can meet those standards and all their  
6 plans that have been carefully developed by  
7 experts.

8 So I don't think it's fair to this process,  
9 fair to the environment or to the users of the  
10 Bay to allow more than one trial run.

11 MR. FITZGERALD: The last bullet says "if  
12 any sediment suspension reduction measures are  
13 needed to help ensure surface water or quality  
14 standards will be met." By no means I'm  
15 advocating for multiple trial runs, but I think  
16 the Applicant has to conclude whether they're  
17 appropriate. There has to be a prudence  
18 determination of the PUC at some point on this  
19 Project and whether what they did was  
20 appropriate. I have no problem with saying only  
21 one trial run, but the question in my mind is,  
22 you have a trial run, you have some questionable  
23 results, the Applicant comes back and says well,  
24 I think if I do this, the results will be

1 different, and then DES only has the authority  
2 to either say yes or no.

3 PRESIDING OFFICER WEATHERSBY: Say yes to  
4 go, you know, how far out is it, I guess. And  
5 that will be DES's determination whether it's so  
6 far out that they say no or they say, you know,  
7 you're getting close we'll, start answer. Of  
8 course, there's monitoring along the whole way  
9 during the live run. The data is used to make  
10 sure that they stay within their plans in the  
11 water quality standards.

12 MR. FITZGERALD: My personal opinion is  
13 that any additional trial runs would probably be  
14 out of the question for the Applicant. It means  
15 remobilizing, et cetera, et cetera. I assume  
16 that they're going to seek to do a trial run,  
17 get any issues resolved and move ahead. So I  
18 have no problem with limiting it, but my, like I  
19 said, if you're in this gray area at the end and  
20 DES says well, we don't know, and that is the  
21 end of the project.

22 MR. SHULOCK: So I fully expect that the  
23 Applicant is going to put in its best  
24 engineering effort to bring the trial run in



1 within water quality standards or just need to  
2 make a couple tweaks to that process, right?  
3 And will most likely be able to demonstrate how  
4 with a few tweaks they can do the trial run.

5 My concern is they will have invested tens  
6 of millions of dollars by that point and that if  
7 they have the opportunity to make another  
8 adjustment that can make that Project possible  
9 for them, I think we should allow that. A  
10 thousand feet is one 20th of the Project, 2000  
11 feet is one-tenth. It looks like these trial  
12 runs would have to be spaced about two weeks  
13 apart to allow for the testing and the DES  
14 review. So within a month they could proceed  
15 and do the Project.

16 DIR. MUZZEY: Three weeks.

17 MR. SHULOCK: Three weeks. So six weeks.  
18 And it's up to them whether they actually do it  
19 or not, but we would not have foreclosed that  
20 opportunity.

21 PRESIDING OFFICER WEATHERSBY: So another  
22 possibility is that if NHDES cannot or will not  
23 make a determination as to whether to allow the  
24 live run to go forward, is the Applicant, it can

1 be approved by DES or the SEC. They can come  
2 back here with information from DES and the  
3 Applicant and we can, this Committee can make  
4 that determination as to whether, how close are  
5 they. It's sort of a failsafe in case.

6 MR. FITZGERALD: Can I change my mind?

7 MR. SHULOCK: I appreciate that process,  
8 but I think the timing of that would probably  
9 take them out of the construction season for  
10 that year because they have to do it within a  
11 certain period of time to protect the oyster  
12 beds.

13 MR. FITZGERALD: I want to go back to,  
14 first of all, this is not a requirement, it's a  
15 recommendation. And therefore, the Applicant  
16 has agreed to it. That to me says they presume  
17 that there's value to be gained from this and  
18 that it's worth doing and that they take the  
19 risk that a trial run will not be successful for  
20 some reason or another. So as I say, my normal  
21 thought process was, you know, how much latitude  
22 are we going to give DES and so on, but it seems  
23 given the fact that the Applicant agreed to it  
24 as a reasonable measure, there's a risk inherent

1 with that.

2 MR. SCHMIDT: I agree. We also have to  
3 remember we have a contractor that's an expert  
4 on it. So we have to trust that contractor or a  
5 contractor that's done this as many times, and  
6 it is a risk. Like you said, you know, the  
7 Applicant has taken and said that they would do  
8 a trial run. If it doesn't succeed, it's at  
9 their loss basically. And then they would have  
10 to revisit it at that time.

11 PRESIDING OFFICER WEATHERSBY: There's a,  
12 if I could direct everyone's attention to this  
13 paragraph 60b in Exhibit 12c, the clause I think  
14 we should talk about concerning jet plow. It's  
15 in the first main paragraph entitled Jet Plow  
16 Trial Run. It's the last full line in there.

17 The Applicant shall unless otherwise  
18 authorized by NHDES comply with the following,  
19 and then there's all the conditions concerning  
20 sediment suspension, modeling, et cetera.

21 So under this condition as I read it, DES  
22 is given itself or suggesting that it should  
23 have the ability to change those bullet points.  
24 So in some ways it addresses some of concerns

1 that have been raised, but it raises in my mind  
2 other concerns. I think we should be really  
3 clear on what authority we're giving to New  
4 Hampshire DES.

5 DIR. MUZZEY: Do we have any sense of what  
6 DES would otherwise authorize and what that may  
7 be referring to? If the SEC determines that jet  
8 plowing should be allowed, and that a jet plow  
9 trial run without cable should be conducted  
10 prior to installation of the cable, the  
11 Applicant shall unless otherwise authorized by  
12 DES comply with the following.

13 MR. WAY: In my mind that suggests with  
14 all, what is it, the six or seven bullets, six  
15 bullets down below that DES has the ability to  
16 modify those bullets and the requirements.

17 MR. FITZGERALD: I think you have to  
18 remember the open circled bullets are not  
19 conditions. They are that the Applicant shall  
20 submit a jet plow trial run report that  
21 addresses the following. They don't impose any  
22 conditions. They just say the report has to  
23 address this. So the two conditions are the  
24 Applicant shall submit a jet plow trial run

1 plan, and at least 14 days prior the Applicant  
2 shall submit a jet plow trial run summary  
3 report. It's not six more conditions.

4 PRESIDING OFFICER WEATHERSBY: I think I  
5 agree that the, I think what DES probably  
6 intended was that it could alter those time  
7 frames in the two solid bullets. I have a  
8 different interpretation. I think it does go  
9 beyond that and allows them to alter the  
10 content, what they're requiring in the report  
11 and the open bullets. Maybe we could ask does  
12 Counsel have a legal interpretation of that  
13 phrase that you'd care to share in public?

14 MR. IACOPINO: I agree just reading the  
15 plain language, I would think that DES could  
16 otherwise authorize changes in any of the bullet  
17 points there.

18 MR. WAY: Would it be tied just to the  
19 bullet points or to the whole process?

20 MR. IACOPINO: Yes, it's specific to unless  
21 otherwise authorized by New Hampshire DES comply  
22 with the following. So yes, I would say that it  
23 is limited to what's in the, actually 8 bullets  
24 points, two solid ones and six open bullets

1 points.

2 PRESIDING OFFICER WEATHERSBY: So what I'm  
3 sensing is that this Committee is not wishing to  
4 allow DES to modify the open bullet points but  
5 will allow them to modify the solid bullets  
6 concerning timing?

7 MR. WAY: Just the time frame is what  
8 you're talking about?

9 MR. FITZGERALD: I have a significant  
10 issue. The open bullet points are only things  
11 that the report is supposed to address. They  
12 are not requirements.

13 PRESIDING OFFICER WEATHERSBY: So we have a  
14 legal opinion by counsel that DES can modify  
15 what is required in the report.

16 MR. FITZGERALD: We certainly can. I'm  
17 just saying --

18 PRESIDING OFFICER WEATHERSBY: I don't want  
19 to debate this.

20 MR. FITZGERALD: No, I agree with that.  
21 I'm just saying they aren't conditions to the,  
22 the only thing that, I mean, DES has to address  
23 those first two bullets. Like the DES could  
24 allow more than 14 days or whatever and they

1           could say the report should address something  
2           else. I've got no problem with that, but --

3           PRESIDING OFFICER WEATHERSBY: So how do  
4           folks feel about DES being able to modify the  
5           type frames? You want to --

6           DIR. MUZZEY: Aren't those time frames in  
7           other conditions, suggested conditions elsewhere  
8           in our proceeding?

9           MR. FITZGERALD: Probably in MOAs and MOUs.

10          DIR. MUZZEY: I'm not sure about the 90  
11          days prior to the trial the Applicant shall  
12          submit a jet plow trial plan. That may only be  
13          here. But it seems like we've been talking  
14          about 14 days prior to the scheduled start of  
15          submarine cable a report goes to DES.

16          MR. WAY: Are we talking about extenuating  
17          circumstances. So at least 14 days prior to the  
18          start, scheduled start, maybe something happens  
19          that indicates that that time frame may be 15  
20          days or 17 days, and DES needs the ability to  
21          say okay, we can take it that amount of time.

22          MS. DUPREY: It says at least 14. So that  
23          would cover that. It would have to go the other  
24          direction.

1           MR. WAY: And I doubt it's going to go in  
2           the other direction.

3           PRESIDING OFFICER WEATHERSBY: So we heard  
4           considerable testimony and a lot of people  
5           pushed on this issue of can you get the data  
6           that fast and turn it around, and we were  
7           assured time and again that that would work.  
8           I'm kind of inclined to just strike that clause.

9           MR. WAY: I agree.

10          PRESIDING OFFICER WEATHERSBY: Unless  
11          otherwise authorized by DES. Because this is  
12          what's been agreed to by the Applicant. What  
13          we've been talking about. Cross-examination is  
14          what's been presented to us. That's my feeling.

15          MR. WAY: I agree.

16          MR. SCHMIDT: I agree as well.

17          PRESIDING OFFICER WEATHERSBY: All right.  
18          So it sounds like we are in favor of a trial  
19          run. Mr. Way.

20          MR. WAY: I'm trying to remember. Did we  
21          decide, I think we decided to make the results  
22          public?

23          PRESIDING OFFICER WEATHERSBY: This plan  
24          needs to be filed with the SEC.



1 MR. WAY: On this website and be public  
2 because I think that was one of the requested  
3 conditions from Durham.

4 DIR. MUZZEY: Just to be, just to look at  
5 the first bullet where there's first the plan  
6 submitted, as this is worded in front of us,  
7 only DES gets the plan for approval. What comes  
8 back to both SEC and DES is the summary report  
9 following the trial.

10 MR. FITZGERALD: Right.

11 PRESIDING OFFICER WEATHERSBY: I think  
12 that's typical that we don't approve each of the  
13 monitoring plans, et cetera, the plans outlining  
14 the methods.

15 Maybe we can add that they provide us a  
16 copy and maybe we want to do that with all the  
17 plans, but that we certainly get the summary  
18 report of the results of the trial run and that  
19 would be made public.

20 DIR. MUZZEY: I think your suggestion of  
21 perhaps we need to make all of the environmental  
22 plans public, that would be a great thing to  
23 hold on to and make sure that we talk about  
24 because there was considerable public concern

1 about those plans, and one way of hopefully  
2 addressing those concerns would be to make sure  
3 that they are public.

4 PRESIDING OFFICER WEATHERSBY: No time like  
5 the present. Is that a condition that people  
6 generally want to say?

7 MS. DUPREY: I don't have a problem with  
8 it, but they are public in the agency. All the  
9 stuff is public.

10 PRESIDING OFFICER WEATHERSBY: But it's  
11 nice to have it in one place.

12 MS. DUPREY: I'm not saying it's not  
13 easier. I just want to be careful about the way  
14 that this makes it sound. They are public.

15 DIR. MUZZEY: Yes, they are, although I  
16 think it's more a matter of convenience versus,  
17 accessibility versus whether or not we're going  
18 to argue about whether or not they're public.

19 MR. FITZGERALD: I think we had a lot of  
20 public testimony that they felt that they were  
21 not, they had difficulty navigating this process  
22 and having all the information in one place  
23 would be at least a step towards that.

24 PRESIDING OFFICER WEATHERSBY: So I'm

1 hearing some consensus on the requirement that  
2 plans that are developed if not already provided  
3 to the SEC as part of its process, if they are  
4 to be developed after the certificate is issued,  
5 if a certificate is issued, will be, a copy will  
6 be provided to the SEC. Is that a consensus on  
7 that? Nodding heads. Anybody feel differently  
8 or want to talk about it some more?

9 (No verbal response)

10 PRESIDING OFFICER WEATHERSBY: Okay. Let's  
11 go back to the trial run. I'm sensing a  
12 consensus that we would like to have a trial  
13 run. That the condition of the trial run will  
14 be as laid out in 60b except for that clause  
15 about DES authorization. In the trial run  
16 should be, the first, let's, is there a  
17 consensus about a trial run? And the consensus  
18 about taking out that cause about DES  
19 authorization to change the terms.

20 MR. SCHMIDT: Yes.

21 PRESIDING OFFICER WEATHERSBY: Director  
22 Muzzey?

23 DIR. MUZZEY: My only concern is we don't  
24 have the plan yet, the jet plow trial plan yet,

1 and if in reviewing that the DES would like to  
2 make the recommendation that additional  
3 information be part of the summary report, I  
4 would hate to tie their hands and not allow them  
5 to make those changes in order to facilitate a  
6 more comprehensive and useful report.

7 PRESIDING OFFICER WEATHERSBY: So the  
8 report gets provided to the SEC and DES. DES  
9 wants changes to that, it would be revised and  
10 it would again be provided to DES and SEC as I  
11 understand it.

12 MS. DUPREY: I don't think that this  
13 language allows really for expansion of the  
14 report. I think it allows for diminution or  
15 change because it says you're going to comply  
16 with the below unless otherwise authorized by  
17 DES. I don't see where it authorizes DES to  
18 impose new conditions.

19 PRESIDING OFFICER WEATHERSBY: Correct me  
20 if I'm wrong, Director Muzzey, but I took your  
21 comment to be like I would, DES says I want a  
22 more thorough explanation of exactly how you're  
23 reading this and I want to see more, I want to  
24 see all your data, not just a summary of your

1 data, something like that. Is that what you  
2 intended or was it more modification?

3 DIR. MUZZEY: Well, if you like at the six  
4 open bullets, how well the model predicts the  
5 sediment plume, how well the Water Quality  
6 Monitoring Plan works, including the  
7 communications between the monitors, and what,  
8 if any, modifications to the plan are needed,  
9 water quality results with the mixing zone at  
10 the boundary, how measures taken to reduce  
11 sediment suspension due to jet plowing impact  
12 water quality. If results suggest the cable  
13 installation by jet plowing is likely to meet  
14 water quality standards, and if any additional  
15 sediment suspension reduction measures are  
16 needed.

17 I'm just wondering if there's some other  
18 piece of information that may be useful or that  
19 type of thing. And that's, I'm not sure what  
20 those would be, but something might come up in  
21 the plan.

22 MR. WAY: Well, also, too, I think you look  
23 at the bullets, the bullets don't really tell  
24 you how detailed you're supposed to be. It

1 doesn't tell you to what extent. I mean, the  
2 answers could be very surface level, and DES  
3 might want the ability to say no, we're going to  
4 need more of an explanation than this. I don't  
5 know if I'm at a change-my-mind place, too, but  
6 yeah, I don't know.

7 PRESIDING OFFICER WEATHERSBY: I think we  
8 agreed that DES can't modify the requirements of  
9 the plan, but they can ask for more information  
10 on those bullet points. So that would be sort  
11 of an amended plan that would then get filed  
12 again with the SEC and DES.

13 MR. FITZGERALD: Wouldn't the DES approval  
14 of the plan and so on, isn't that tacitly  
15 understood by the last sentence that says shall  
16 not proceed until authorized by DES? If DES  
17 doesn't give its authorization, they haven't  
18 approved the plan, they haven't approved the  
19 report, whatever, so --

20 PRESIDING OFFICER WEATHERSBY: I think  
21 maybe some of this goes back to I just want to  
22 be sure we're on the same page about multiple  
23 trial runs. Whether it's one trial run or we  
24 want to authorize more than one trial run. I

1 think I've made it clear how I feel, but is  
2 there anyone who wants to have them have more  
3 than one trial run? Do you want to talk about  
4 this some more? Mr. Schmidt?

5 MR. SCHMIDT: I was one of the ones  
6 advocating for multiple but after hearing the  
7 discussion I'm satisfied with one.

8 MR. FITZGERALD: I'm satisfied with one.

9 MR. SHULOCK: I would prefer the  
10 opportunity for a second. I would still prefer  
11 that they have the opportunity to conduct a  
12 second.

13 DIR. MUZZEY: I'm satisfied with one.

14 MR. WAY: One.

15 PRESIDING OFFICER WEATHERSBY: Sounds like  
16 the majority of the Committee would like there  
17 to be limited to one trial run. So therefore  
18 that kind of goes back to the amended plan. It  
19 wouldn't be amended to include additional trial  
20 run data from the second trial run.

21 MR. FITZGERALD: Can I just ask if that  
22 means that, again, I'm taking a position on the  
23 risk assumed and so on, but if DES were to come  
24 back to the Committee and say, write a letter

1 and say we viewed this report and so on and we  
2 think the following information and that another  
3 trial run would be appropriate here, whatever,  
4 is there a vehicle for the Committee to consider  
5 the communication from DES like that? And I  
6 think that would satisfy Mr. Shulock's concern.

7 MR. IACOPINO: It would be an amendment of  
8 the certificate. You'd have to have a hearing.

9 MR. FITZGERALD: Right, but to do another  
10 trial run is a huge undertaking anyway, but it  
11 would seem like, it doesn't have to be this, it  
12 could be another assigned Subcommittee.

13 MR. IACOPINO: Just as a practical matter,  
14 it probably will be. But yeah, it could be a  
15 Subcommittee would make that determination. And  
16 I think the Administrator would make the  
17 determination whether that amendment comes in  
18 this docket or whether it becomes a new docket.

19 MR. WAY: As a practical matter, that's not  
20 the same construction season.

21 MR. FITZGERALD: All I'm concerned about is  
22 that one trial run, if for some reason something  
23 comes out it's not that one trial run is not  
24 just automatically the end. DES could come back



1 and make the case that --

2 PRESIDING OFFICER WEATHERSBY: I think it  
3 would be the Applicant.

4 MR. IACOPINO: So could the Applicant.

5 MR. FITZGERALD: Right.

6 PRESIDING OFFICER WEATHERSBY: The  
7 Applicant could come back and ask for an  
8 amendment.

9 MR. FITZGERALD: I think they would do it  
10 jointly, but --

11 PRESIDING OFFICER WEATHERSBY: All right.  
12 Is there any, sounds like we're on the same page  
13 concerning the jet plow trial run. Condition  
14 60b. Anything else we want to talk about the  
15 jet plow trial run?

16 MR. IACOPINO: Can I just ask a question  
17 just so we're clear in terms of how it's  
18 written. My understanding is that with respect  
19 to Condition 60b, we want this change to reflect  
20 that "unless otherwise authorized by NHDES" will  
21 be eliminated from that language in the first  
22 paragraph.

23 Secondly, that there will be an indication  
24 in here that there will be a second trial run,

1 and there's also going to be a delegation to DES  
2 to authorize proceeding assuming that the report  
3 complies with what they want, and a copy of the  
4 report is to go to SEC, but SEC isn't going to  
5 make that determination. So I'm going to have  
6 to sort of wordsmith the condition a little bit  
7 here.

8 PRESIDING OFFICER WEATHERSBY: That's my  
9 understanding. Anyone feel differently?

10 (No verbal response)

11 PRESIDING OFFICER WEATHERSBY: I think  
12 you've got it. All right. I guess we can  
13 conclude our water quality topics. There were a  
14 number of plans. The Benthic habitat monitoring  
15 plan, the infaunal community plan, the mixing  
16 zone plans, water quality monitoring adaptive  
17 management plan, the DES shellfish program  
18 monitoring reporting requirements, plan to  
19 assess shellfish tissue before and after Little  
20 Bay crossing. Spill prevention and cleanup  
21 plan. Of course, we talked about the cable  
22 removal plan. Anybody have anything they want  
23 to talk about those or we've had -- the plans  
24 are in the record, those that have been already

1 done. Those that have not been completed will  
2 be provided to DES for approval. The shellfish  
3 things we probably want to talk about when we  
4 talk about the natural communities. Mr. Way?

5 MR. WAY: I just going to suggest that we  
6 sort of I wouldn't say put aside shellfish, but  
7 we haven't really talked in detail about  
8 potential impacts, and we should discuss that,  
9 but my suggestion would be that we discuss that  
10 when we get into the natural environment issues.

11 MR. FITZGERALD: As I mentioned earlier, I  
12 think there's a number of cross-cutting issues  
13 that are water quality and natural environment  
14 habitat related. So I would think it would be  
15 prudent for us to hold any final opinions on  
16 water quality until we get through natural  
17 environment.

18 PRESIDING OFFICER WEATHERSBY: I certainly  
19 agree, and I think there's some nodding heads.  
20 I think there's a sense of whether we're going,  
21 but it would be helpful to see how the impacts  
22 of water quality affect the oysters and the  
23 sturgeons and all the other creatures that call  
24 the Bay home.

1           MR. FITZGERALD: There's a lot to consider  
2 there.

3           PRESIDING OFFICER WEATHERSBY: Probably a  
4 good time to wrap things up for tonight. When  
5 we come back on Thursday, we'll start in with  
6 the natural environment and the communities and  
7 finish up with water quality and environmental  
8 issues.

9           We're adjourned for the day.

10           (Hearing recessed at 6:09 p.m.)

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C E R T I F I C A T E

I, Cynthia Foster, Registered Professional Reporter and Licensed Court Reporter, duly authorized to practice Shorthand Court Reporting in the State of New Hampshire, hereby certify that the foregoing pages are a true and accurate transcription of my stenographic notes of the hearing for use in the matter indicated on the title sheet, as to which a transcript was duly ordered;

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this transcript was produced, 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.

Dated at North Sutton, New Hampshire, this 14th day of December, 2018.

\_\_\_\_\_  
Cynthia Foster, LCR