

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

December 7, 2018 - 9:00 a.m. DELIBERATIONS
49 Donovan Street
Concord, New Hampshire

DAY 5
Morning Session ONLY

{Electronically filed with SEC 12-20-18}

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 that are cited?

2 MR. IACOPINO: Saf-C 1600 which is the
3 blasting rules from the Department of Safety
4 does not have a dispute or enforcement mechanism
5 listed in those particular rules. That's
6 generally dealt with by the town Fire Chief and
7 in some cases where the town does not have a
8 fire chief or they don't have Fire Department by
9 the State Fire Marshal. So I have no particular
10 concern about the condition contained in the MOU
11 as written.

12 DIR. MUZZEY: Thank you.

13 PRESIDING OFFICER WEATHERSBY: Mr. Schmidt.

14 MR. SCHMIDT: I'm fine with that, thank
15 you.

16 MR. SHULOCK: I support that
17 recommendation.

18 MR. FITZGERALD: I would agree.

19 MR. WAY: Agree.

20 MS. DUPREY: Yes.

21 PRESIDING OFFICER WEATHERSBY: Nodding
22 heads to add that condition to our list should
23 the Application be approved.

24 Now we'll move on then to orderly

1 development, our next topic. First subcategory
2 would be tourism. Mr. Way, would you lead us
3 off, please?

4 MR. WAY: Susan, do you want to give an
5 overview first of what orderly development is?
6 Why don't we start with an overview of orderly
7 development, and then we can launch into
8 subtopics probably.

9 MS. DUPREY: Okay. So this is the
10 statutory language regarding the finding that we
11 have to make on orderly development. It's found
12 at RSA 162-H:16 IV(b). The site and facility
13 will not unduly interfere with the orderly
14 development of the region with due consideration
15 having been given to the view of municipal and
16 regional planning commissions and municipal
17 governing bodies.

18 Then there's the rule, our rule, Site
19 301.15 which states as follows. In determining
20 whether a proposed energy facility will unduly
21 interfere with the orderly development of the
22 region, the Committee shall consider: (a) The
23 extent to which the siting, construction and
24 operation of the proposed facility will affect

1 land use, employment, and the economy of the
2 region; (b) The provisions of, and financial
3 assurances for, the proposed decommissioning
4 plan for the proposed facility, and (c) The
5 views of municipal and regional planning
6 commissions and municipal governing bodies
7 regarding the proposed facility.

8 Then there's also, give me a minute to
9 scramble around to get it, Site 301.09, and this
10 rule is the rule that relates to the Application
11 and what must be filed with respect to it. So
12 it's the lens to some degree through which, or
13 the informational lens, if you will, that we
14 would address this segment of the statute.

15 It says, "Each application shall include
16 information regarding the effects of the
17 proposed energy facility on the orderly
18 development of the region, including the views
19 of municipal and regional planning commissions
20 and municipal governing bodies regarding the
21 proposed facility, if such views have been
22 exceeded in writing, and master plans of the
23 affected communities and zoning ordinances of
24 the proposed facility host municipalities and

1 unincorporated places, and the applicant's
2 estimate of the effects of the construction and
3 operation of the facility on:

4 (a) Land use in the region including the
5 following. A description of the prevailing land
6 uses in the affected communities, and a
7 description of how the proposed facility is
8 consistent with such land uses and
9 identification of how the proposed facility is
10 inconsistent with such land uses.

11 (b) The economy of the region including an
12 assessment of the economic effect of the
13 facility of the affected communities; the
14 economic effect of the proposed facility on
15 in-state economic activity during construction
16 and operation periods; the effect of the
17 proposed facility on state revenues, state tax
18 revenues and the tax revenues of the host and
19 regional communities; the effect of the proposed
20 facility on real estate values in the affected
21 communities; the effect of the proposed facility
22 on tourism and recreation; and the effect of the
23 proposed facility on community services and
24 infrastructure.

1 Employment in the region, including an
2 assessment of the number and types of full-time
3 equivalent local jobs expected to be created,
4 preserved or otherwise affected by the
5 construction of the proposed facility, including
6 direct construction employment and indirect
7 employment induced by facility-related wages and
8 expenditures; and the number and types of
9 full-time equivalent jobs expected to be
10 created, preserved, or otherwise affected by the
11 operation of the proposed facility, including
12 direct employment by the applicant and indirect
13 employment induced by facility-related wages and
14 expenditures."

15 That's it.

16 MR. WAY: Thank you. So the first order of
17 business today I think is the tourism
18 discussion, and in that good overview we touched
19 about some the requirements that touch tourism.
20 I particularly focus on definition of scenic
21 resources at 102.45. For scenic resource that
22 does tie to tourism, particularly in (c) lakes,
23 ponds, rivers, parks, scenic drives and rides
24 and other tourism destinations that possess a

1 scenic quality.

2 Then once again, when we look at the
3 effects on orderly development of the region,
4 when we're considering the economy of the region
5 we're asked to consider an assessment of the
6 effect of the proposed facility on tourism and
7 recreation. So it's beyond just tourism.
8 Recreation as well. Yes?

9 MS. DUPREY: Mr. Way, I just wanted to
10 interrupt for a moment because there were some
11 stipulations that relate to orderly development
12 that might be good for us to --

13 MR. WAY: Why don't we start with that.
14 Right.

15 MS. DUPREY: -- read into the record at the
16 beginning.

17 They're found in Applicant's Exhibit 184.
18 These are Stipulated Facts and Requested
19 Findings of Applicant and Counsel for the
20 Public. There are just four of them. They're
21 entitled Orderly Development of the Region, and
22 they're found at page 5, real page 5 of that
23 exhibit.

24 Paragraph 32. Construction and operation

1 of the overhead portion of the project will
2 occur entirely within existing distribution and
3 transmission rights-of-way.

4 PRESIDING OFFICER WEATHERSBY: Ms. Duprey,
5 I'm going to ask you to slow down just a little
6 bit.

7 MS. DUPREY: I'm sorry.

8 COURT REPORTER: Thank you.

9 MS. DUPREY: Construction and operation of
10 the underground portion of the Project will
11 occur in locally maintained roads on the former
12 Getchell property in Durham, now owned by
13 Eversource, and on private property on the UNH
14 campus area in Durham, and on the Gundalow
15 Landing area, Flynn Pit area, the Darius Frink
16 Farm and the Hannah Lane area in Newington, all
17 areas where the Project has contracted to
18 acquire new easements.

19 33. The Project will be located in four
20 host communities, Madbury, Durham, Newington and
21 Portsmouth. Neither Madbury nor Portsmouth has
22 sought to intervene in this docket or submitted
23 any concerns to the Site Evaluation Committee
24 about the Project.

1 34. The Applicant has entered into a
2 Memorandum of Understanding with the Town of
3 Newington. The Applicant indicates that it is
4 working with the Town of Durham and the
5 University of New Hampshire to execute MOUs.
6 And just as a side bar, we know that those MOUs
7 have been executed now by UNH and Durham.

8 And 35. The Application anticipates that
9 it will invest approximately \$84 million in
10 local and state infrastructure improvements with
11 approximately 19.1 million spent with local and
12 state business and labor. Thank you.

13 MR. WAY: No, thank you. So as we go into
14 the tourism discussion for the Applicant, we
15 have Mr. Robert Varney who spoke more broadly on
16 orderly development for the entire topic.
17 Mr. Robert Varney is with Normandeau Associates,
18 well-qualified former Regional Administrator of
19 EPA. Regional planning commissions, I think as
20 I recall Nashua, I know Nashua and I think Upper
21 Valley as well. Former Commissioner of
22 Department of Environmental Services and a
23 graduate of UNH. So I think he's quite familiar
24 with the area which as, I will mention later, is

1 I think important to me.

2 Mr. Varney identified, and actually I
3 should say as he went through his testimony, he
4 did get backup from Ms. Fraser on the
5 transportation issues, Dr. Shapiro on the
6 economy issues, and Mr. Raphael. He did offer
7 Prefiled and Supplemental Testimony. The bulk
8 of the information and reports apply to the
9 Supplemental. So if people want to tee that up,
10 we'll be looking at some point at Appendix 146
11 and the report is in Appendix 3.

12 Mr. Varney identified tourist-oriented
13 sites in the vicinity of the Project. He
14 reviewed information provided by the New
15 Hampshire Division of Travel and Tourism which
16 is the New Hampshire Visitors Guide. Good guide
17 for people to take a look at if you ever get a
18 chance. As well as info from regional Chambers
19 of Commerce, local communities, businesses and
20 other organizations. I think also, too, he did
21 a lot of online databases, Trip Advisor, et
22 cetera.

23 The distance of each Travel & Tourism
24 attraction was measured from the Project route

1 and potential temporary impacts associated with
2 construction. And visibility of the Project
3 from visitor attractions including scenic
4 resources identified by LandWorks was
5 considered.

6 He did receive business listings and events
7 from Newington, and in that response a list of
8 2018 events that have been approved by the Board
9 of Selectmen through May or early June, a
10 substantial list such as road races, church
11 suppers, talent show, egg hunt, weddings, baby
12 showers, anniversaries and receptions. Fairly
13 significant list of attractions.

14 For Durham the town estimated that probably
15 84 of 194 businesses have a nexus with tourism.
16 As Mr. Varney said in testimony though that
17 there wasn't much more information provided than
18 that so it was hard to really quantify the
19 impact. They did offer a number of conservation
20 areas that serve as a draw for tourism and
21 general recreation as well so once again, think
22 recreation, not just tourism.

23 Mr. Varney did visit tourist-oriented sites
24 in the vicinity of the Project. He concluded

1 that over the course of the route that there
2 really wasn't key tourism destinations but more
3 in the way of tourist-related activities. And I
4 think here it's important to say it's not that
5 there aren't key destinations, like, for
6 example, Strawberry Banke in Portsmouth or
7 Seacoast Science Center, but his impact was that
8 they're not impacted by the expanded activity
9 within the right-of-way.

10 Now, he did not perform a survey or other
11 analysis to determine construction impacts on
12 tourism. I think at this point he went with Ms.
13 Fraser. He acknowledged the potential impacts
14 from visual changes and construction activities.
15 He did consider whether the parking spaces will
16 be available during construction of the project
17 for tourists who will visit tourism-oriented
18 businesses and trails as well as events.

19 He concluded that construction of the
20 Project will have a temporary impact on UNH
21 events and athletic facilities, water-based
22 activities on Great Bay and Little Bay, and I
23 think included in tourism a couple companies
24 Portsmouth Harbor Cruises, Gundalow Company.

1 Those were two on the Bay. As well as a
2 Historic District in Newington and the Crossings
3 Mall in Newington.

4 He maintains that the impact, however, will
5 be limited and temporary and will be minimized
6 through outreach and communication with impacted
7 parties.

8 So his conclusion was that the Project will
9 not have an adverse effect on tourism or
10 regional recreation in the region.

11 Counsel for the Public. Counsel for the
12 Public did not file Direct Testimony addressing
13 the Project's impact on tourism. However, in
14 their brief they acknowledged the Applicant
15 provided a significant amount of detail about
16 area businesses and tourist attractions, but
17 they did suggest that his analysis is more in
18 the way of personal opinion and conclusions
19 about impacts and maybe lacking in supporting
20 analysis such as direct service.

21 Town of Durham. Mr. Selig opines that
22 based on the topography of Little Bay and his
23 observations of the shore that the Applicant may
24 understatement the amount of mattresses that

1 will be installed and consequently
2 underrepresents their impact on recreation. I
3 also think it's important to loop back to what
4 we mentioned earlier about the number of
5 businesses that he had mentioned that were
6 impacted by tourism.

7 Regarding individual Intervenors, we heard
8 from a number of Intervenors who stated the
9 Project will negatively impact their personal
10 recreation activities. So in most cases it was
11 recreation tied directly to bay activities such
12 as boating, walking, fishing.

13 Conservation Law Foundation states that New
14 Hampshire has long recognized that land subject
15 to the ebb and flow of the tide are held in the
16 public trust and are protected by New
17 Hampshire's public trust doctrine. This
18 includes boating, fishing, swimming and
19 recreation.

20 Durham Historic Association states the
21 Applicant has not met a burden of proof with
22 regards to recreational trails, the impact on
23 recreational trails. The Applicant's consultant
24 did not assess the many recreational trails

1 which the proposed Project crosses. Three
2 Historic Districts and several conservation
3 areas between the Durham/Madbury town line and
4 the Durham Point Road.

5 Dr. and Ms. Vivian Miller testified the
6 recreational use of the bay such as kayaking and
7 fishing would be curtailed or at the very least
8 impaired if concrete mattresses were to be
9 installed along the shores of the bay.

10 We also heard from Regis Miller concerning
11 that tourism of Little Bay will decrease due to
12 the negative impact the Project will have on
13 bay.

14 Bear with me here. I think there was also
15 concern by Mr. Miller about the boating
16 companies the waters of Little Bay. Gundalow.
17 And the ongoing boating, fishing and lobstering
18 by individuals. He's concerned that his
19 property value will decrease as a result of the
20 negative impact on Little Bay, unsightly
21 transmission lines, loss of tourism and loss of
22 privacy.

23 I think that was pretty much the extent of
24 what we have. I mean, there's a lot of

1 information in the Supplementary Testimony of
2 Mr. Varney.

3 My two cents in taking away from this I
4 found the testimony of Mr. Varney and his
5 exhibit to be persuasive. As I mentioned with
6 his qualifications, at least for me in
7 tourism-related activities, it's really
8 important that you have someone local that knows
9 the area, that has some feeling for the impacts.
10 I was persuaded that he does understand the
11 area, certainly if nothing else between his
12 stint as head of DES and even something like
13 being a graduate of UNH. I think he has an
14 appreciation of the campus and the activities
15 and the impacts that it might have. And so for
16 any of us that have gone to things like
17 graduation, you understand how critical it is
18 for traffic flow and parking and I get that
19 feeling that he understood that as well.

20 When I first looked at the Prefiled
21 Testimony and I think one of the parties brought
22 this up. It was a little bit sparse in its
23 testimony for tourism which discouraged me a
24 little bit, and then I looked at the

1 Supplementary and I was really pleased to see
2 that the game was up, and there was a lot of
3 activities and destinations that were
4 considered. I think I feel reasonably confident
5 that parking is not going to be a significant
6 issue as long as there is some management.

7 With regards to the tourism-related
8 businesses, the things that I look for is and as
9 I've done in past cases, if a business says, you
10 know, if this Project is constructed, then
11 certain things are going to happen which are
12 going to affect me as a tourism-related
13 business, and it may be such things as foot
14 traffic of customers coming through my door, my
15 ability to deliver goods and services, any host
16 of things that may then have an impact on my
17 business which then causes me to do other things
18 that curtail operations or reduce employees.

19 So I was really looking to see if there was
20 any quantification from that. Certainly as I've
21 seen in past dockets where someone's come and
22 said here's going to be the actual impact on my
23 business. So when I'm looking at things like
24 the Crossings Mall, and we kept trying to say

1 well, what would be the impact, and there
2 really, there wasn't anything forthcoming.

3 In the Town of Durham when we have a number
4 of businesses that are going to be impacted, to
5 what extent, and I'm sure there will be maybe
6 something, but I don't see anything that is a
7 deal killer there.

8 Same, the list I looked at Newington as I'm
9 looking at some of these other things down the
10 line.

11 So I think the impacts are indeed
12 temporary. I think with regards to recreation,
13 you know, I think that will be an issue for some
14 people. I also look at the fact that we have
15 ruled earlier that the aesthetics would not have
16 an unreasonable adverse impact.

17 So I think my two cents is I'm persuaded
18 that tourism is not going to be unreasonably
19 impacted and that the impacts would be
20 temporary. I'll open it up for questions at
21 that point.

22 PRESIDING OFFICER WEATHERSBY: Comments or
23 questions concerning tourism or recreation?
24 Director Muzzey?

1 DIR. MUZZEY: Thank you for that summary.
2 It was helpful and very thorough. Just two
3 points that I'd like to make. Regarding the
4 issue of trails which seem to be a very popular
5 pastime in this part of the state, I did want to
6 note that in Mr. Varney's other report in
7 Exhibit A that focused on review of land use in
8 local and regional planning which we will get to
9 shortly, I'm sure, he does have a section
10 specifically that discusses conservation lands,
11 open space and trails, and although it's not in
12 the tourism section of his report there
13 obviously is overlap in those two areas, and I
14 found that to be a thorough listing of the
15 trails in each of the communities in the Project
16 area including Madbury and Portsmouth.

17 I also wanted to agree with you in regard
18 to the local expertise that is showcased in this
19 report, and I also found that very helpful and
20 reassuring. Earlier in this proceeding I was
21 critical of the aesthetics report because it
22 seemed to have more of a focus from some
23 criteria and parameters that you might use
24 elsewhere in the country, and I did not find

1 that in this report. It was obviously written
2 by someone who understood the developmental
3 patterns in tourism and orderly development,
4 subjects that we're looking at on the Seacoast
5 so I agree with you and appreciated it.

6 PRESIDING OFFICER WEATHERSBY: Anyone else
7 care to comment concerning tourism or
8 recreation? Mr. Fitzgerald?

9 MR. FITZGERALD: I thank Mr. Way for his
10 good summary. And it seems to me that the
11 impacts of this Project are going to be fairly
12 temporary in terms, in the construction impact.
13 I would also say that they don't seem to
14 directly impact businesses in Durham, you know,
15 it doesn't go through the heart of the business
16 area in downtown Durham. It does pass through
17 the campus but along a rail line.

18 So it seems that overall the consideration
19 of tourism is primarily associated with
20 aesthetics, and the question to me is will
21 people not go to tourist locations. Will people
22 not take a cruise on Little Bay. Will people
23 not use trails, et cetera, because of the
24 aesthetic impacts which we've already discussed

1 in great detail.

2 So it seems to me that the impact on
3 tourism, I didn't see anything in the record
4 that suggested that there would be a major
5 impact on tourism.

6 PRESIDING OFFICER WEATHERSBY: Ms. Duprey?

7 MS. DUPREY: I would just note that having
8 been assigned the topic of orderly development
9 myself, I reviewed much of the same material
10 that has just been discussed, and I thought it
11 was a very good and accurate summary of it, and
12 I think in some cases that there are subjective
13 judgments that are going to have to be made like
14 will people still use a trail or not and I think
15 that those are judgments that are up to us to
16 make based on information that we've been given.

17 For my part, I believe people will still
18 use the trails so I did not find as I reviewed
19 this segment of materials that there would be an
20 undue impact to the orderly development with
21 respect to tourism. Thank you.

22 PRESIDING OFFICER WEATHERSBY: Anyone else?
23 I'd say that I agree with what you all have
24 said. I think that it's very clear to all of us

1 and to the Applicant that this area is of high
2 importance for recreation and to some extent
3 tourism, but the construction impacts are
4 temporary. There's not going to be any roads
5 closed, people can still get into businesses.
6 People can still get to the Bay.

7 And then the permanent impacts of having
8 the Project erected aboveground and across the
9 Bay are really aesthetic impacts which we've
10 already talked about and will not have a
11 significant negative impact on people using
12 those resources such as trails or the bay.

13 Just from personal experience I can say
14 that I frequently kayak in the Piscataqua River
15 where the overhead lines cross back and forth
16 between Maine and New Hampshire, and there are
17 many kayakers, in particular boaters and
18 fishermen that are going up and down that river
19 despite the large negative impact, aesthetic
20 impact of those lines.

21 So I think it goes back a little bit to the
22 people that are using -- and it does diminish my
23 experience, I will say, but it goes back to the
24 fact that people are using that resource for the

1 recreational opportunities and are willing to
2 perhaps look at a transition pole on the shore
3 and still use that resource. Ms. Duprey?

4 MS. DUPREY: Madam Chair, your remarks are
5 really important and also interesting in that
6 there's this interplay between all of our
7 standards, but particularly undue interference
8 in the orderly development and the public
9 interest standards, and as you were talking
10 about kayaking near lines, it struck me that
11 that might be something that we take up in the
12 public interest segment which is not the same
13 high level of a standard where here it's undue
14 interference. That's a pretty tough standard so
15 pretty high bar so I just wanted to comment on
16 that. Thank you.

17 PRESIDING OFFICER WEATHERSBY: Anyone else
18 like to chime in concerning tourism and
19 recreation? Do we want to do a straw poll then
20 as to what folks think, whether there's an
21 unreasonable adverse effect on tourism? And
22 recreation as a result of this Project?

23 MR. FITZGERALD: No.

24 MS. DUPREY: No.

1 MR. WAY: No.

2 MR. SCHMIDT: No.

3 MR. SHULOCK: No.

4 DIR. MUZZEY: No.

5 PRESIDING OFFICER WEATHERSBY: No.

6 Our next topic, Mr. Way, is employment or
7 community infrastucture?

8 MR. WAY: Actually, it's employment.

9 PRESIDING OFFICER WEATHERSBY: Employment.

10 MR. WAY: Because I think as we go through
11 these first rounds you're going to see a lot of
12 overlap. Employment, we talk about, you know,
13 is going to tie right back to the businesses
14 that we discussed with tourism more than likely.

15 As part of our discussion at 301.09, once
16 again, the effects of orderly development on the
17 region, we have to discuss employment in the
18 region which includes an assessment of one, the
19 number and types of full-time equivalent local
20 jobs expected to be created, preserved or
21 otherwise affected by the construction of the
22 proposed facility including direct construction
23 employment and indirect employment induced by
24 facility-related wages and expenditures. And

1 two, the number and types of full-time
2 equivalent jobs expected to be created preserved
3 or otherwise affected by the operation of the
4 proposed facility including direct employment by
5 the Applicant and indirect employment induced by
6 facility-related wages and expenditures.

7 To meet the burden of proof that employment
8 in the region has been studied, the Applicant
9 offered the Prefiled and Supplemental Testimony
10 of its expert, Dr. Lisa Shapiro. I would refer
11 you to Exhibit 9, her Prefiled, and Exhibit 83
12 which is her Supplemental.

13 I think just so we're all on the same page,
14 just talk about my understanding of a few terms.
15 When we talk about direct jobs, I think they're
16 just that. Jobs immediately employed by the
17 company or contractors for the purpose of the
18 Project. Indirect jobs, these result more from
19 the activities generated by the increase and
20 those supplying goods and services to the
21 Project. Induced jobs and this is one where
22 it's always hard to get a handle on. It's very,
23 kind of ethereal, but these are the jobs
24 typically brought about by increased spending

1 from direct and indirect jobs. Rising tide.

2 To make the estimates through modeling, Dr.
3 Shapiro utilized a standard economic modeling
4 package called REMI which stands for Regional
5 Economic Models, Inc., standard package, which
6 she uses to calculate some of the economic
7 benefits. I'm somewhat familiar with the
8 modeling concept based on REMI although I've
9 worked with others, but I think essentially the
10 same. Does give some baseline estimates for
11 employment, and it's based upon what you enter
12 for sector and wage information, and then it can
13 offer direct, indirect and induced jobs through
14 an input/output model.

15 The model itself or at least in this
16 circumstance doesn't really, as others have
17 pointed out, doesn't really account for
18 disruptive circumstances that might affect the
19 modeling. Things that might cost the model to
20 go in the other direction brought about by, say,
21 for example, economic conditions.

22 I think a lot of this came up, if you're
23 looking for a transcript that it was Day 6 of
24 the testimony.

1 Now, some of her modeling did account for
2 positions with higher wages due to the fact
3 there will likely be specialty work and hazards
4 that demand a higher rate of pay. So think
5 lineworkers and I would imagine the hand and jet
6 plowing. If the construction budget is fixed
7 which it is at least for the purpose of this,
8 this could mean an estimate of less workers
9 coming out of the modeling.

10 So in her Supplemental Testimony providing
11 estimates through modeling, using an estimate of
12 a fixed amount of 19.1 million which I think is
13 a little bit of an increase over the Prefiled
14 but that was in the Supplemental, and that will
15 be spent over four years of the project, she
16 believes that the annual average total number of
17 New Hampshire jobs during construction is
18 between 30 and 46 jobs. That's annual average
19 total number.

20 The peak number of total jobs, which I
21 think we've identified the peak as being year 3
22 of four years, the peak number of total jobs in
23 year 3 is estimated to be between 54 and 97
24 jobs. These are direct jobs, indirect jobs and

1 induced jobs. This is the whole thing. Of that
2 amount, Dr. Shapiro estimates that about half of
3 those jobs are going to be direct.

4 So in case you're interested in a breakdown
5 by sector, which I always am, Dr. Shapiro
6 utilizing the REMI model estimates that the
7 annual average total number of New Hampshire
8 jobs in the construction industry, all types,
9 will range from 13 to 24 per year with a peak of
10 approximately 28 to 58 in year 3. That's,
11 again, the peak year of construction.

12 The annual average number of New Hampshire
13 jobs in the professional and technical services
14 industry will range from 6 to 7 with a peak of
15 approximately 7 to 9 in year 3. The annual
16 average total number of New Hampshire jobs in
17 the retail trade sector will range from 2 to 4
18 with a peak of approximately 3 to 7 in year 3.
19 And the annual average total number of New
20 Hampshire jobs in all other industries involved
21 with the Project, that could be financing,
22 retail trade, anything that isn't in the other
23 bucket, will range from 7 to 10 with a peak of
24 approximately 13 to 20 jobs in year 3.

1 Now, these are all temporary jobs, you
2 know, and I'm not particularly bothered by that,
3 particularly in the construction industry as
4 I've said in other cases. That is sort of the
5 nature of the industry in construction, utility
6 construction. You go from job to job. So I
7 would never diminish the temporary job for the
8 utility sector.

9 The Applicant has indicated it will work to
10 maximize the use of construction-related jobs
11 for New Hampshire to the extent they're
12 available. They'll use a Project Labor
13 Agreement to make every effort to use New
14 Hampshire-based construction-related work to the
15 extent they're available. From offered
16 testimony particularly from the Construction
17 Panel on day 2, I think or I heard that there's
18 a reality that there may be a skill set for some
19 of the activities such as jet plowing that's not
20 embedded in New Hampshire and will have to come
21 from elsewhere. Have to imagine that jet
22 plowing which has not really been done in New
23 Hampshire, the skill set may not be there.

24 I think the positive side and this is where

1 we go back to tourism type activities is that
2 you'll see a bump in the retail and hospitality
3 sectors that's likely to occur.

4 Robert Varney, although he did not address
5 employment directly, he did talk about some of
6 the business interactions that were done for
7 touring companies, food establishments and other
8 tourism-related businesses, and I thought that
9 carried some weight. Overall, he did not
10 receive feedback that suggested or quantified
11 negative impacts to employment.

12 So I think it's always a discussion. If
13 you're going to add jobs on one end, at the very
14 least you have to consider and keep in mind jobs
15 that might be removed on the other end. Once
16 again, very in tune to hear from businesses that
17 their employment is going to be impacted as a
18 result of the Project and they are possibly
19 going to layoff employs. While that may not,
20 that does not negate the modeling, it's
21 certainly something that we have to keep in
22 mind.

23 Counsel for the Public states that job
24 creation is positive but fairly modest for this

1 project, and it lasts only for the construction
2 period of the project. No long-term jobs are
3 predicted, and that's pretty much, I think, what
4 I saw as well is that once this is done, that it
5 won't be, jobs will not be carried on.

6 In addition, to the extent Dr. Shapiro's
7 inputs to the REMI model exaggerate the net
8 economic impact from the Project, the job
9 estimates will overestimate actual job creation.
10 That's from the Counsel for the Public saying
11 that it was a little bit over, it's a little bit
12 exaggerated which would cause all the findings
13 to be somewhat exaggerated.

14 I'm not sure I really was persuaded that
15 that was the case for the REMI model.

16 So I mean, obviously, we're going to be
17 having job creation. We're going to be having a
18 set amount that will be created over the four
19 years of the Project. Once again, the peak year
20 will be in year 3. These are primarily
21 construction-related jobs. While they're
22 temporary, they will certainly be a benefit to a
23 sector. So when I look at the employment
24 assessment, I think they did a reasonable job.

1 I think the modeling is sound, and I think that
2 they've demonstrated that at the very least I
3 don't think there will be an adverse impact on
4 employment in the state. I think there will be
5 a benefit, albeit not a huge one. And with that
6 I'm going to open it up.

7 PRESIDING OFFICER WEATHERSBY: Thank you,
8 Mr. Way. Would anyone care to comment
9 concerning jobs and employment? Ms. Duprey?

10 MS. DUPREY: Just as an overview statement.
11 I think for this particular segment of the
12 testing that we do as opposed to the public
13 interest segment where the standard is undue
14 interference with the orderly development of the
15 region, I didn't find any negative information
16 in the record which I think would have been
17 necessary to go to this standard, and while I
18 would agree that I don't believe the employment
19 numbers are robust, there is a positive uptick,
20 but, again, looking at the standards I didn't
21 see any negative. Thank you.

22 PRESIDING OFFICER WEATHERSBY: Mr. Way?

23 MR. WAY: One other thing I wanted to
24 mention, too, is that, and it's hard to

1 quantify, but obviously if we're talking about
2 adding reliability to a region and that
3 reliability hopefully will translate to some
4 long-term economic growth, I see the seacoast is
5 an economic engine in a lot of ways. It may not
6 be at the huge level, but it certainly is
7 attractive. It's a recruitment area for sure,
8 and I think having that, having that reliability
9 in that area for manufacturers, others that may
10 want that assurance I think is attractive, and
11 those that come and create jobs. Is it
12 something that you can quantify right now? I
13 don't think it is. But I think we always have
14 to keep our eye on the ball about what we're
15 trying to do here and what the benefit is going
16 to be to the region.

17 PRESIDING OFFICER WEATHERSBY: Just
18 following up, this isn't a jobs project. It's a
19 Reliability Project.

20 MR. WAY: Right.

21 PRESIDING OFFICER WEATHERSBY: We do need
22 to bear that in mind. In my mind it's very
23 different than a merchant project where the
24 number of jobs created would have more bearing.

1 Mr. Fitzgerald?

2 MR. FITZGERALD: I just wanted to recall.
3 I believe there was testimony from Dr. Shapiro
4 that there was, the REMI model that she used did
5 not indicate any negative impacts, but then they
6 went on, and I'm not sure if anyone else
7 remembers or not, but I believe, my notes
8 indicate that she said that was because there
9 were no negative data put into the model, if I
10 recall. I just, is that, was that because there
11 wasn't any negative data?

12 MR. WAY: Well, if I might, I think that
13 was one concern. I think Counsel for the Public
14 brought up that issue that it didn't really
15 account for disruptive information, and I think
16 the hard part is that REMI is pretty much
17 forward thinking. It's linear. And I think
18 it's difficult to interpret what that disruptive
19 influence might be. So I think that the value
20 in the limitation of the model is it basically
21 says here are the types of jobs you can expect.
22 But in terms of things like induced jobs or
23 indirect jobs, if there's other things out there
24 that might cause it to go the other way, that's

1 not what this does. That's not the purpose of
2 it. So I think --

3 MR. SHULOCK: I'd like to stop and make a
4 correction now before you go on. The REMI model
5 does accept negative inputs.

6 MR. WAY: But you've got to know what it
7 is.

8 MR. SHULOCK: Right. So Dr. Shapiro stated
9 that she reviewed the testimony of all the other
10 witnesses, that no negative affects were really
11 identified from this Project that could be put
12 into the model. One effect that might have been
13 put into the model was the increase in electric
14 transmission rates on your bill but those had
15 been quantified to some extent, you know,
16 assuming that all of the costs of the
17 construction would be regionalized and we as a
18 state or PSNH bore nine percent of that cost.
19 The impact on an average customer's bill would
20 be about a dollar per year which is really de
21 minimis and doesn't really value putting into
22 the model because it would really have no
23 effect. It's meaningless within that model. So
24 she did review the testimony for negative

1 inputs. There just weren't any to put in.

2 MR. WAY: And I think it's hard to, there
3 are some things where you can work with like
4 that, but a lot of the other possible
5 disruptions and negative influences, it's hard
6 to quantify. The thing with this model is it's
7 only as good as what she put in.

8 MR. SHULOCK: Exactly.

9 MR. FITZGERALD: That clarifies the issue
10 for me.

11 DIR. MUZZEY: And thinking of those
12 possible negative ramifications that can't be
13 predicted at this point, when we were talking
14 about that topic and sort of following that out
15 into the future, we then talked about the
16 dispute regulation process that's been put into
17 this Project so if a business did feel it had
18 adverse economic impacts from the Project the
19 business would have that available to it in
20 order to seek some sort of compensation.

21 PRESIDING OFFICER WEATHERSBY: Any other
22 comments or concerns regarding employment?
23 We'll poll everyone then as to whether you
24 believe they'll be an undue interference. Ms.

1 Duprey?

2 MS. DUPREY: No.

3 PRESIDING OFFICER WEATHERSBY: Whether it
4 be an undue interference with the employment in
5 the region. Mr. Fitzgerald?

6 MR. FITZGERALD: No.

7 MS. DUPREY: No.

8 MR. WAY: No.

9 MR. SCHMIDT: No.

10 MR. SHULOCK: No.

11 DIR. MUZZEY: No.

12 PRESIDING OFFICER WEATHERSBY: No. Our
13 next topic, Mr. Way?

14 MR. WAY: I don't know if we want to
15 mention this now. Because as I said earlier,
16 you start to see a lot of overlap here in
17 different topics so we started off with tourism
18 and tourism-related businesses, and then we
19 launch into employment, but I think it's also
20 important to note that as we look at some of the
21 business interests that may not necessarily fall
22 into tourism, but they certainly have weight
23 nonetheless, and I don't really have anything
24 that's formally prepared, but I would bring up

1 the businesses that may have registered some
2 concern. And the Heald McCosker testimony with
3 regard to gardening and the right-of-way. I
4 thought also, too, Mr. Baker with Fat Dog, I
5 found him to be a very persuasive witness. And
6 those were primarily the two operations that I
7 saw coming before us to say that their business
8 operations could be seriously curtailed. I
9 think the one where the most concern, Ms. Heald
10 who has a gardening business directly in the
11 right-of-way is seeing that they'll be an impact
12 on her operations. I think the Applicant has
13 certainly made every effort to work with her. I
14 think they're trying to come out obviously with
15 an agreement. As a matter of fact, I was
16 looking at the Applicant's exhibit, the letter,
17 Exhibit 229 to Ms. Heald McCosker, too, that
18 highlights some of the things that they've
19 suggested, and I know that there's been quite a
20 bit of back and forth. And I wanted to make
21 sure that we gave her her due and had that
22 discussion if there was anything more that we
23 thought we needed to do in that situation.

24 Now, it's a challenge because her business

1 is in the right-of-way, solidly in the
2 right-of-way, and that means that for
3 construction to happen, plants are going to have
4 to move. And I think it all comes back to, as I
5 think, Director Muzzey, as you said that Dispute
6 Resolution Process, and when we get to that,
7 making sure that that Dispute Resolution Process
8 is responsive and nimble, not overly burdensome
9 because we know that there's probably going to
10 be a few impacts in certain areas like Ms. Heald
11 McCosker's property. So, and I don't think,
12 correct me if I'm wrong anybody, but I don't
13 think there was a joint use agreement there in
14 that instance. So I do think we want to be
15 sensitive to that issue.

16 With regards to Fat Dog, he did bring up
17 some pretty good concerns. As a matter of fact,
18 I thought he did a good job in starting to
19 quantify and to evaluate what his impacts could
20 be. Once again, the Dispute Resolution Process
21 is there. However, in that, that's one case
22 where as much as we can do to maybe mitigate it
23 before it happens and which, and I feel
24 relatively good that it won't be impacted, it's

1 outside of the mixing zone, and I think the
2 shellfish program has paid a lot of attention to
3 it, but once again, I think it rises to the
4 level where we have to at least make sure that
5 we certainly give Mr. Baker his listen and due.

6 With regards to other types of businesses
7 that will be impacted, like once again, I didn't
8 hear anything from the mall, not surprised on
9 that. I didn't hear anything from other types
10 of businesses that said, you know, hey, wait, if
11 this happens, bad things will occur. I didn't
12 hear that. The impacts would be temporary. So
13 I just offer that up as something if we want to
14 discuss it or any other comments.

15 PRESIDING OFFICER WEATHERSBY: I think it
16 would be helpful to go through those two
17 businesses in particular with a little more
18 detail and decide. I mean the Applicant has
19 made great efforts to work those two business
20 owners to try to accommodate their businesses
21 and personal needs, but I think if we take a
22 little look at them in a little more detail and
23 see if there's anything else that we can think
24 of, and I also think at some point we should go

1 through that Dispute Resolution Process and see
2 if it's adequate, but I think before we do that
3 I'd like to have us make sure we understand the
4 impacts to businesses and property values before
5 we, we understand the problem before we work on
6 the solution. Mr. Fitzgerald?

7 MR. FITZGERALD: So with regards to those
8 two businesses, Ms. McCosker, I have a great
9 deal of empathy for her concerns and distress
10 over the impacts of this Project. However, you
11 know, she indicated that she purchased that
12 property back in the 1970s. There was a utility
13 easement on it at the time, and I sort of put
14 that under buyer beware as, you know, prior, had
15 been prior transmission lines and existing
16 transmission lines and -- distribution. I'm
17 sorry. Yes. I'm somewhat empathetic also, we
18 had several people, one other couple who
19 indicated that when they purchased their
20 property they had been told that, you know,
21 certain representations had been made to them,
22 but I don't think those representations were
23 ever official positions of the Applicant who had
24 the conservation easement. I don't think they

1 ever stated anywhere that they would not use
2 this line again, and to me those were mostly
3 anecdotal.

4 So again, while I'm feeling somewhat
5 sympathetic, I think it's a -- and Ms. McCosker
6 chose to develop her business knowing this was
7 on an utility easement and not even thinking to
8 obtain a Joint Use Agreement that would, that
9 may have protected her in certain issues and
10 certain instances, but I do think, you know, the
11 Dispute Resolution Process needs to be looked at
12 carefully to ensure that if her business is
13 impacted that there is a way for her to be
14 appropriately compensated. And I think one
15 thing that needs to be considered is that she
16 sort of indicated her business was in a
17 transition now and I don't know exactly how the
18 way she put it, but she almost implied that she
19 was moving into a semi-retirement phase where
20 the business, it would be a different business
21 model, and I think she was greatly concerned
22 because her model was going to be more, you
23 know, less the active gardening and going out
24 and working for people and so on and more the

1 sale of plants and flowers. So I think that's
2 something that we need to keep in mind.

3 With regards to Mr. Baker, I, too, found
4 him compelling and the one thing that I think we
5 really need to consider is his concern that even
6 though he might lose certain business and be
7 compensated for that, he stood to potentially
8 lose customers who when you are a supplier to a
9 customer, particularly, again, he was
10 transitioning his business into a different
11 business model, and when you lose restaurants
12 because you can't supply them when they need
13 them and somebody else can, and the transitory
14 nature, I think he described it as the shiny
15 apple or whatever, the shiny new oyster. So I
16 think there are some concerns with both of those
17 businesses that we need to just make sure that
18 we're taking a careful look at.

19 PRESIDING OFFICER WEATHERSBY: Mr. Way?

20 MR. WAY: So I was looking at Ms. Heald's
21 testimony, and it was July 20th, 2018. The
22 letter I mentioned earlier, 229, Exhibit 229,
23 came out August 3rd of 2018. I think some of
24 the concerns that Ms. Heald specifically has,

1 the well, position of her well, maybe digging of
2 a new well, she did say, she did make a request
3 for compensation for use of her property. And I
4 think the idea being that this would impact
5 beyond the right-of-way into her nonright-of-way
6 type activities. So she was looking for some
7 sort of compensation concern.

8 Obviously, she can't be there full-time to,
9 you know, to advise or she maintains she can't
10 advise full-time during the construction of the
11 project because part of her gardening business
12 is working with other gardeners and other
13 vocations so she's going to be off doing that.
14 So then I think there's obviously concern about
15 the movement of her other inventory.

16 Looking at the Eversource letter on 229
17 you're going to see there was a discussion or
18 offer to purchase property, plans on how they're
19 going to do the communication. I think there
20 was discussions about relocating the structure,
21 but there's only so much that they can do in
22 that respect. I think that's already been
23 addressed. They talk about a planting
24 mitigation plan, direct accommodation and

1 restoration plan for her gardening business.
2 They would help with the inventory of her plant
3 stock, develop a relocation plan for the plant
4 stock and actually relocate the plant stock.

5 PRESIDING OFFICER WEATHERSBY: Mr. Way, I'm
6 just going to pause you just for a second. I
7 think it might be helpful if everybody goes to
8 Exhibit 229 and kind of follow along?

9 MR. WAY: Thank you, Dawn.

10 PRESIDING OFFICER WEATHERSBY: So we'll go
11 through issue by issue.

12 MR. WAY: You'll see on the first page --

13 MS. DUPREY: Excuse me. Can I just ask a
14 procedural question here? Because I'm not
15 exactly sure where we're going or what we're
16 trying to do or whether this is the right
17 category to be doing it in. So the standard for
18 this segment is regional. So that, it just
19 concerned me that we're getting down to the
20 granular level of a particular business for a
21 couple of reasons. One. Because I don't feel
22 like it fits within the standard of regional.
23 And two, because if we're going to try to remedy
24 a particular business, then I think we ought to

1 be looking at the dispute resolution procedure
2 and saying whether we feel like that fails this
3 particular business. If we think the Dispute
4 Resolution Process that's been developed between
5 Counsel for the Public and the Applicant is
6 sufficient, I'm not sure why we're going through
7 the specifics of any one business, particularly
8 under the standard which is regional, and I'm a
9 little mixed up as to what exactly we're trying
10 to do. Thank you.

11 PRESIDING OFFICER WEATHERSBY: Mr. Way?

12 MR. WAY: I admit it's a little bit of a
13 segue here away from regional, but it seemed to
14 make sense, at least to me, as we're talking
15 about businesses and the business impacts were
16 so limited as to ones that came to our
17 attention. I agree with the Dispute Resolution
18 Process that if you have a good Dispute
19 Resolution Process and we agree with it that
20 takes care of, I think, most of the issues. We
21 don't have to talk about this now, but I do
22 think it's important. We have two businesses in
23 particular, just two, that rose to our attention
24 that may require something a little bit more

1 than a dispute resolution or may not, but once
2 again, I think we want to give them some degree
3 of attention.

4 I'm fine if we don't do it now. We can
5 certainly say let's put this in the parking lot,
6 and we can address it later. But as we look at
7 tourism to employment to businesses, you know,
8 and certainly that will dovetail with Mr.
9 Shulock's as he goes over the economy of the
10 region, we can talk about it more then. But I
11 think at some point we just want to give it a
12 little bit more discussion than simply to say
13 that dispute resolution, I know that's not what
14 you're saying, that dispute resolution will take
15 care of it.

16 MS. DUPREY: I think what I'm saying is in
17 this case there were two people. In another
18 case there could be 25 people. And I'm just not
19 certain -- so one, I'm looking forward here and
20 trying to understand what it is specifically
21 that we're supposed to be trying to do, and
22 whether we are supposed to be on this Committee
23 trying to make a determination business by
24 business about what sort of compensation they

1 should have and where in the statute we would be
2 doing that work.

3 So I'm perfectly willing to do it. I'd
4 just like to understand what the parameters are
5 in the statute or the rule that would cause you
6 to do this. Again, more with the forward look
7 than here. I mean, you know, there are two
8 here, but in another case there could be a lot
9 more and that's just my question.

10 MR. WAY: And I think you're right, we're
11 trying to take a regional approach here so it's
12 the impacts to any one business is not, maybe is
13 not as critical as the whole once we can
14 identify the region. But what I'm saying is
15 that there's something that we can do or if not
16 that's fine, but at the very least, acknowledge
17 that we have a couple businesses that are
18 Intervenor, and by the fact that they're
19 Intervenor, I think that rises to a different
20 level. Once again, I'm comfortable to put it
21 off, talk about it with Mr. Shulock's area if we
22 want to talk about it at all.

23 PRESIDING OFFICER WEATHERSBY: I think it
24 is important to talk about. Our approval or

1 disapproval of the Project itself is based on a
2 regional analysis, but when you talk about
3 employment, economics, there are certain
4 businesses that are uniquely affected. In this
5 Project, it's the oyster farms and Ms. Heald's
6 property. In Northern Pass, for example, what
7 comes immediately to mind were the downtown
8 Plymouth businesses. So when there's certain,
9 when certain businesses are affected differently
10 than others along a Project route or Project
11 area, I think that they should be talked about,
12 and particularly in this case where the two that
13 we're about to discuss, I think, are
14 Intervenors, have participated in this process,
15 and the Applicant has worked hard to develop
16 mitigation plans for them which I think we
17 should review and decide as to whether we are
18 going to require Eversource to comply with the
19 offers that they've made. So I certainly would
20 be much more comfortable addressing these two
21 businesses. Whether we do it here or later,
22 I'll defer to the Committee, but my personal
23 opinion is that these businesses are rather
24 uniquely affected by this Project and even

1 though our overall analysis is a regional
2 analysis that these businesses deserve a closer
3 look.

4 MS. DUPREY: I'd just like to put on the
5 record my disagreement with that position. I
6 don't think that the purpose of the SEC in
7 reviewing these types of cases is to get to that
8 granular level. I applaud CFP and the Applicant
9 for coming up with a dispute resolution
10 procedure which I think is the appropriate
11 venue. I feel like if we do this, we're
12 basically saying to the public intervene in
13 these cases and we're going to take care of your
14 problem, and I don't think that's what the
15 statute intended nor is it what I feel like we
16 should be spending our time doing. Particularly
17 whereas here the level of outreach that was
18 engaged in by the Applicant I think was really
19 exemplary, and when you look through all those
20 letters the effort that they made to try to
21 solve these problems, and we're sort of stepping
22 over that.

23 I would say that the situation with the
24 town of Plymouth, I didn't sit on that case or

1 the city of Plymouth, I'm not sure, I think it's
2 a city, where you said the downtown businesses.
3 That's different to me. That's a little more
4 regional. It's a group. It's not a singular
5 business, and it just, you know, for whatever
6 it's worth it just makes me uncomfortable to
7 watch us get to that particular case level, not
8 because I feel like folks aren't entitled to
9 redress for these situations, you know, and I
10 would like to see that, but because I feel like
11 there's been a process that's been put forward
12 and I think that's what should be used. Thank
13 you.

14 PRESIDING OFFICER WEATHERSBY: Okay. Why
15 don't we think about that. Let's take a
16 ten-minute break, we'll come back and we'll
17 resume.

18 MS. DUPREY: Just before we take a break,
19 just so I can be ready next, originally I was
20 going to talk about construction, but given the
21 sorts of discussions that we're having now and
22 your stated desire earlier to take up the
23 Dispute Resolution Process later, I think it
24 would be a mistake to address construction

1 without addressing the Dispute Resolution
2 Process. So do you want me to put that towards
3 the end? How would you like me to proceed after
4 our break? Or do you want to think about it.

5 PRESIDING OFFICER WEATHERSBY: Let me think
6 about that.

7 MS. DUPREY: All right. Thanks.

8 (Recess taken 10:17 - 10:34 a.m.)

9 PRESIDING OFFICER WEATHERSBY: We will
10 resume our deliberations concerning affected
11 businesses. Mr. Way?

12 MR. WAY: I just want to follow up so we
13 don't leave something hanging from the last
14 discussion. And when I brought up the two
15 businesses, as we talked about, I think it is a
16 good segue into the Dispute Resolution Process.
17 It's not my intent to get and micromanage
18 agreements that may be in place with businesses,
19 and frankly, in terms of a spoiler alert here, I
20 think the Dispute Resolution Process in my mind
21 and combined with the efforts of the Applicant
22 probably will suffice at least in the Ms. Heald
23 case, but I do think it's worth a discussion
24 because they are, they are two out of all that

1 sort of had some unique concerns and impacts as
2 it's come to us in this hearing. So using them
3 in the discussion of a dispute resolution, I
4 think, Susan, you're prepared to talk about
5 that, but I think that's my intent is that we
6 have a couple Intervenors that have unique
7 issues with their business operations and it
8 will be good to see how they fit into this
9 Dispute Resolution Process that's frankly going
10 to apply to the entire region.

11 So I think to your point, and I actually, I
12 very much agree that we want, we're trying to
13 look at the impacts to the region, and I think
14 that's where we're all, I think we're kind of
15 getting to the same place, but where we're
16 trying to look at the impacts to the region, but
17 here's a couple examples that we should
18 consider.

19 PRESIDING OFFICER WEATHERSBY: I think
20 that's a great approach. Let's talk about
21 dispute resolution now rather than later as I
22 first suggested, and then kind of test the model
23 a little bit. So Ms. Duprey, could you talk a
24 little bit about the Dispute Resolution Process

1 that's been proposed?

2 MS. DUPREY: Yes, I can. There are two
3 segments to the process. Actually, there are a
4 number of steps, but it's found in two places.
5 The first place where it's found is in
6 Applicant's Exhibit 193. Those are the
7 conditions that have been stipulated as proposed
8 between the Applicant and the Counsel for the
9 Public. And if you turn to page 3 of the
10 document itself, starting with paragraph 17, the
11 mitigation and Dispute Resolution Process is
12 begun there.

13 Now, I do want to note that with respect
14 to, and we'll go to it in a minute, Applicant's
15 Exhibit 268 which is the Dispute Resolution
16 Process that would begin to be referred to,
17 these steps that are set forth here in the
18 proposed conditions must be taken before going
19 into the Dispute Resolution Process. So I just
20 want folks to understand that you don't just
21 jump into the Dispute Resolution Process. That
22 these proposed stipulations are a part of that.

23 So at the beginning at paragraph 17 the
24 Applicants agree that they're going to publicize

1 on their website through its Project outreach
2 communications contact information for everybody
3 about the potential contact information for
4 business and property owners concerned about the
5 potential impacts of construction or operation
6 of the Project on their business or property to
7 communicate their concerns.

8 And then within ten calendar days of
9 contact by a business or property owner, the
10 Applicant shall initiate direct discussions with
11 said business or property owners to identify and
12 implement appropriate strategies to avoid or
13 mitigate potential Project impacts on a
14 case-by-case basis.

15 So what we're starting with here is you
16 feel that you have had a problem come up, you go
17 to the Applicant's website, you tell them you're
18 having a problem, and within ten calendar days
19 the Applicant is going to initiate discussions
20 with you. That's step number 1.

21 Step number 2. If you're unsatisfied with
22 the outcome of that discussion, you may request
23 an executive review, including an investigation
24 and determination through the Eversource

1 customer resolution process independent of the
2 Project team. That's called an executive
3 review. This review will be initiated within
4 ten days of the request and shall be completed
5 no later than 30 calendar days thereafter.

6 So starting with step 1, ten days. After
7 you file a complaint with Eversource they have
8 to contact you and start discussions. If you're
9 unsatisfied with that, you have the right to ask
10 for an executive review, and that review will be
11 initiated within ten days of receipt of your
12 dissatisfactory complaint, and it has to be
13 completed no later than 30 days. So that so far
14 is feeling fairly expeditious, to me anyway.

15 Then there's 19. If you're still
16 unsatisfied, with those first two steps that the
17 Applicant agrees to participate in nonbinding
18 mediation with any such business or property
19 owner, and an independent mediator shall be
20 selected among the list of New Hampshire
21 Superior Court Neutrals found at a website
22 that's listed there.

23 I don't know how a mediator is selected.
24 There's no timing set forth here. Although I

1 would say that this does seem to be in the hands
2 of the person who is unhappy with where things
3 went so they're going to get the ball rolling so
4 I'm not as concerned about the timing.

5 Then, in step 20, if a concern remains
6 unresolved following mediation, a business or
7 property owner can elect to have the dispute
8 resolved through the Dispute Resolution Process
9 that is described below which I'm not going to
10 read because it actually has been put into
11 place. Going to the Dispute Resolution Process
12 is not mandatory. But if you do go to it, then
13 you have waived your right to go to court to
14 resolve the issues and that will become the
15 exclusive forum for deciding issues.

16 So when you get to this step after the
17 mediation, you have the right to go to court if
18 you're unhappy with where everything is or you
19 can go through the Dispute Resolution Process
20 which means you abandon your right to go to
21 court.

22 Now, meanwhile, I think it's fair to say
23 and Attorney Iacopino, you can correct me if I'm
24 wrong, no one has to go through this process.

1 You can go right to the court; is that correct?

2 MR. IACOPINO: That is my understanding.

3 Yes.

4 MS. DUPREY: Well, I don't see how they
5 could make it any other way because they don't
6 have any authority to make any rulings over
7 third parties that aren't not part of this so
8 I'm going to go with they can go to court.

9 MR. IACOPINO: Nor do we.

10 MS. DUPREY: Exactly. So this process is
11 being set up in an effort to provide some direct
12 contact between the property and business owners
13 and Eversource to try to resolve this. Failing
14 that resolution, you can go to a normal
15 mediation process, and if you're still
16 unsatisfied with the mediation process you've
17 got two venues. You can either go to court and
18 continue to pursue your claim or you can go to
19 the Dispute Resolution Process which we're going
20 to talk about next.

21 I do want to alert you to the fact that
22 under this process if we adopt it through these
23 conditions it says that the SEC shall appoint an
24 attorney or retired judge who shall

1 independently administer the Dispute Resolution
2 Process. And there's a mechanism for funding it
3 initially with \$100,000 to establish the Dispute
4 Resolution Fund, and thereafter the Applicant
5 shall deposit any additional funds that are
6 necessary to pay awards made by the Dispute
7 Resolution Administrator and to pay the Dispute
8 Resolution Administrator's compensation and
9 expenses.

10 MR. WAY: Question?

11 MS. DUPREY: Yes.

12 MR. WAY: Just to be clear, when we look at
13 the Dispute Resolution Process and they refer to
14 Administrator, they're referring to that retired
15 judge SEC-chosen entity, correct?

16 MS. DUPREY: Correct. It's a defined term
17 in paragraph 21.

18 MR. WAY: Thank you.

19 MS. DUPREY: Yes. So do we feel like we
20 have a handle on it so far?

21 DIR. MUZZEY: One thing I would just add to
22 that very thorough explanation is under item 17,
23 one thing that's reassuring to me is that this
24 is not something, this is not a process that

1 occurs once some sort of negative impact has
2 already happened. Property owners, business
3 owners, can approach the Applicant with concerns
4 about potential impacts, and then they are able
5 to talk about those with the Applicant and
6 hopefully stop the negative impact from
7 happening in the first place which is a far
8 better way probably for the business and
9 property owners to go through this construction
10 and operation of this facility.

11 The other thing that I find advantageous
12 about 17 is that within ten calendar days of
13 contact, the Applicant both, the Applicant,
14 well, I guess this is one of necessary
15 grammatical things that could be read either
16 way. When I first read the last sentence which
17 is the second sentence under 17, the Applicant
18 shall initiate direct discussions with said
19 business or property owners within ten calendar
20 days to identify and implement appropriate
21 strategies to avoid or mitigate, I had first
22 thought that the Applicant was responsible to
23 implement the strategies within ten calendar
24 days, but on my second read of that sentence it

1 appears that only direct discussions are
2 initiated within ten calendar days. Is that how
3 you read it as well?

4 MS. DUPREY: It is.

5 DIR. MUZZEY: Okay. Thank you.

6 PRESIDING OFFICER WEATHERSBY: I would
7 point out that there's a discrepancy between
8 what's in paragraph 17 of the Stipulation and
9 what's found in Exhibit 268 concerning the
10 timing of this. Paragraph 17 indicates, as
11 Director Muzzey just indicated, if someone has a
12 concern about potential impacts of construction
13 they can initiate this process whereas in 268
14 there actually has to be harm done to initiate
15 the process and documentation submitted, et
16 cetera. So that's something we probably should
17 talk about.

18 MR. WAY: So my impression of 17 onward,
19 it's a precursor to dispute resolution, and I
20 think as I understand it that's what I like.
21 Much to what Director Muzzey said is I think the
22 idea of dispute resolution is sort of onerous
23 for businesses because they see that as a very
24 bureaucratic process where they've got to come

1 up with lots of evidence whereas I look at 17 as
2 a precursor to that process where we're talking
3 about concerns that can at least be in some sort
4 of forum and be discussed.

5 I like having that. I think that is a
6 level of responsiveness that we should be
7 embracing because I do think that that's a good
8 outlet for businesses. But what it says to me
9 is you're having outreach with the company, if
10 you cannot come to some sort of agreement it's
11 good, it's done within a limited amount of time,
12 you know, limited amount of calendar days, and
13 if you can't do that, then we're going to be
14 heading into dispute resolution where the stakes
15 get a little bit higher in terms of proof and
16 responsiveness. That's how I'm reading it.

17 PRESIDING OFFICER WEATHERSBY: Ms. Duprey?

18 MS. DUPREY: I definitely noted that same
19 tension between processes in the Stipulated
20 Conditions and the Dispute Resolution Process.
21 And I think, one, we could clarify it ourselves,
22 but I think it bears some further talking about
23 before we do try to clarify it.

24 I would say that paragraph 20 says you're

1 going to be able to go into the Dispute
2 Resolution Process. I'm thinking that that
3 overrides this. But I would point out that in
4 this process, it talks about supporting
5 evidence, and we're going to go through this in
6 a minute, but the supporting evidence is not
7 forward looking. It is what did you actually
8 suffer. So I do think that that's an
9 inconsistency between these two pieces and
10 either we need to correct it after discussing it
11 or we need to say that you need to have suffered
12 some actual harm in order for the process to
13 work. So we could look at it like -- but even
14 so I think we should clarify it.

15 We could look at it like the Stipulated
16 Conditions are a place to start, and if you
17 haven't had any harm, number one, yay, but two,
18 this is the time to try to avoid that harm, but
19 before you can go into the actual dispute
20 resolution, you have to have suffered the harm
21 so that there's evidence for a Committee to rule
22 on. And Attorney Iacopino, I see you nodding
23 your head, and I'm just wondering if you have
24 any wisdom that you can give to us with respect

1 to this. Are we making something out of nothing
2 or is there a real issue here? I'm thinking
3 there is.

4 MR. IACOPINO: That's actually the way that
5 I read sort of the process when you took Exhibit
6 193, Condition 17 through 21, and compared it
7 with the Applicant's 268. I actually read 268
8 to be sort of a stage in the process when harm
9 did in fact occur. There appears to be ample
10 opportunity to try to mitigate anticipated harms
11 or problems, but when you get to the ultimate
12 dispute resolution determination where the
13 Judicial Administrator is determining something,
14 you're actually talking about something that has
15 to have actually occurred. So I read these as
16 sort of going in order.

17 MS. DUPREY: And that would be true in
18 court, too, correct? You couldn't go there, I
19 suppose you could through an injunction process
20 to try to stop it if there was going to be
21 irreparable harm, but otherwise, you would have
22 to go with some evidence that in fact the harm
23 had occurred so that would ameliorate that.

24 MR. IACOPINO: That's correct.

1 PRESIDING OFFICER WEATHERSBY: I think as a
2 practical matter when you go through the time
3 frames, there's going to be harm before you get
4 to this point.

5 MR. FITZGERALD: So that's, in looking at
6 these two documents, I was a little bit
7 confused. If you look at Exhibit 268, the first
8 line of text says the Dispute Resolution Process
9 may be initiated after the Mitigation Process
10 outlined in the Stipulated Proposed Conditions
11 17 to 19.

12 MS. DUPREY: That's right.

13 MR. FITZGERALD: So this is basically just
14 an expansion as I see it or a more detailed
15 process description, you go through 17, 18, and
16 then if you're not satisfied, this explains in
17 more detail. So is this basically a supplement
18 to the Stipulated Conditions?

19 MS. DUPREY: I don't think I would describe
20 it that way. I think this is one process that
21 has four steps in it. First being you make your
22 complaint and meet with the Applicant. Second
23 is you don't like it, it bumps up to an
24 executive review with the Applicant. Third, if

1 you don't like that you go to mitigation.
2 Fourth, if you don't like mitigation, you go
3 into this process. This is an iterative
4 process, and I think the effort here is an
5 attempt to try to provide a number of efforts
6 along the way to get your problem resolved
7 without going into a courtroom.

8 You can go into a courtroom at any point
9 and certainly -- any point up until you enter
10 into the Dispute Resolution Process which is the
11 last step. At that point you have waived your
12 rights to go to a court, but that's what the
13 object is here. Try to resolve issues quickly,
14 as Director Muzzey points out, either before
15 they've happened such as what's already happened
16 in this case where the Applicant has met with a
17 number of parties and tried to work out
18 resolutions. A continuation of that. And then
19 when all else fails, you either go to a
20 courtroom or you go through the Dispute
21 Resolution Process that has the fund, that has
22 the Administrator selected by the SEC.

23 MR. WAY: Question. Make sure I understand
24 it. I think I like the sequence as I've said.

1 It makes sense to me. The only question I still
2 have that was raised that when you jump over
3 from this discussion process about what the
4 mitigation is going to be over to dispute
5 resolution, even though it says the mitigation
6 process in paragraph A as described by
7 Mr. Fitzgerald, there is the assumption that
8 something has already happened. So if you take
9 a concern that might have happened in 17, and
10 you're going through the process and you don't
11 think that concern, and I'm thinking back to the
12 couple that we talked about, you don't think
13 that concern might be correctly identified and
14 mitigated, you're having more discussions and
15 more discussions, then both parties hold up
16 their hands. And then you go to dispute
17 resolution. But that concern and hopefully
18 we've got to it before that concern has become a
19 reality, if it does become a reality. That's
20 the only thing I'm trying to wrestle with. That
21 jump from 20 over to dispute when you have
22 something that is not hard and fast impacted but
23 more of a concern that could be realized.

24 MS. DUPREY: I think what we've just said

1 in our previous discussion, so let me try to be
2 a limit clearer about it. Number one, you
3 cannot just jump into the Dispute Resolution
4 Process in Exhibit 268. You must go through the
5 other steps first.

6 DIR. MUZZEY: That's actually not my
7 reading of it all.

8 MS. DUPREY: Okay. Let's have a look at
9 that then.

10 DIR. MUZZEY: I mean, If there are concerns
11 about potential impacts, there is the process
12 found in 193, Section 17, 18 and 19, and these
13 are to address concerns about potential impacts,
14 try to work out a process for addressing them.

15 If we flip to 268, I think the operative
16 word is "may" in the first sentence, and it
17 "may" be initiated by eligible business or
18 property owners after the mitigation process
19 outlined, but that's not a "shall." It's a
20 "may." So my sense is someone went through the
21 mitigation process, they thought the impacts had
22 been addressed, the impacts weren't as expected
23 for any number of reasons, perhaps the
24 mitigation wasn't as effective as expected, that

1 owner now has the ability to enter the Dispute
2 Resolution Process.

3 Also perhaps someone didn't have the
4 foresight for whatever reason to anticipate a
5 potential impact. Perhaps the Project gets
6 constructed and they say oh, no, this isn't what
7 I was expecting. Despite the fact that they
8 haven't gone through Conditions 17 to 19, I read
9 this first paragraph dispute resolution is still
10 open to them regardless of whether or not they
11 went through 17 to 19.

12 MS. DUPREY: I read it that way, too, the
13 first time, but then on further looking, I
14 changed my mind about it because I felt like the
15 word "may" meant you can institute the process
16 but you don't have to. I mean, it's open to the
17 person to decide whether they want to institute
18 the process.

19 DIR. MUZZEY: Which process?

20 MS. DUPREY: 268, the Dispute Resolution
21 Process. But I will say that you are fairly
22 characterizing paragraph 17 which does talk
23 about potential impacts of construction or
24 operation and doesn't talk about ones that have

1 actually happened.

2 So Attorney Iacopino, do you have any
3 thoughts on this?

4 MR. IACOPINO: I think if we look at
5 paragraph 21, what happens is that's where you
6 sort of, in the conditions, not the process, but
7 that's where you sort of transition from the
8 mitigation to the dispute. That's where you
9 transition from the mitigation process or the
10 mediation process into the actual Dispute
11 Resolution Process if you read that first
12 sentence. The Administrator is appointed for
13 all disputes relating to damage to property,
14 loss of business or loss of income.

15 So the way that I read this is before you
16 get to that, you try to work it out, you have a
17 nonbinding mediation, then if you do suffer
18 damages, however that mediation works out, if
19 you do suffer damages, you have the right to go
20 into the Dispute Resolution Process which is
21 then set forth in paragraph 21 and in more
22 detail in the other exhibit, Applicant's 268.
23 That's the way I read this.

24 MS. DUPREY: I'm not trying to be overly

1 lawyerly about this, but let's take an example
2 of a person who has through construction
3 suffered harm. This Dispute Resolution Process
4 is open for a period of two years from the time
5 that the line goes into service. So a person
6 could have suffered the harm subsequent to the
7 line and would suffer, but they might not raise
8 it until -- like let's take the case of Fat Dog
9 Oyster.

10 Suppose he says to himself well, I'll see
11 what happens here, and he suffers damage as a
12 result of the line going in through the jet
13 plowing or whatever to his oyster business. The
14 question that I think Director Muzzey is
15 raising, does he even have a right to go through
16 17, 18 and 19 where he has suffered the damage.
17 It's now not prospective. And does he go
18 directly into the Dispute Resolution Process?
19 Or is he still required to go despite the
20 prospective looking language of 17 through 17,
21 18 and 19 because the parties were really hoping
22 that an informal way of managing this was going
23 to solve the problem rather than going into the
24 Dispute Resolution Process.

1 And finally, if we don't, aren't
2 comfortable with it, I suppose we could change
3 paragraph 17 or the initial paragraph of the
4 Dispute Resolution Process and clarify it one
5 way or the other.

6 PRESIDING OFFICER WEATHERSBY: Couple
7 points. First, no one's forced to do any of
8 this. They can always tomorrow go to court.

9 Second, this is a proposal before us that
10 we can change. I have a couple issues that I
11 think we should talk about how we want to do it.

12 One is do we want everyone to go through
13 the various steps before getting into the final
14 step that's being proposed which is the Dispute
15 Resolution Process involving the SEC. My
16 opinion is yes, it's always better to start with
17 a dialogue with the Applicant, see if it can be
18 resolved given a review of mediation, to me
19 that's a very reasonable escalation of a
20 concern. So I would be in favor of requiring
21 those steps before it gets to the Dispute
22 Resolution Process involving the SEC.

23 How do people feel about requiring those
24 steps?

1 DIR. MUZZEY: I think it's important to
2 offer a path for people both who are concerned
3 about potential harm as well as the business or
4 property owner who didn't see the harm coming.

5 MR. FITZGERALD: Yes.

6 DIR. MUZZEY: So if we weren't, were to
7 change 17 through 19 in 19 I think it needs to
8 cover both people who anticipate harm who have
9 been harmed and want to go through this less
10 formal process first but then not close the door
11 in 268 to a business or property owner who
12 didn't anticipate harm.

13 PRESIDING OFFICER WEATHERSBY: I actually
14 agree with you, and I don't like 268 for a
15 number of reasons, but that's one of them. I
16 think that 17, 18 and 19, 20 do deal with
17 potential impacts. I disagree a little bit with
18 counsel that 20 requires actual damage. I think
19 the way it's worded that if -- that in number 20
20 if the concern, so a potential concern if it
21 remains unresolved, you can elect to go through
22 this Dispute Resolution Process. I will say
23 that in 21 which is my big complaint I think
24 with 263 is how it conflicts with 21.

1 So in 21, the procedure for the SEC Dispute
2 Resolution Process is proposed by the Applicant
3 and Counsel for the Public and then the SEC puts
4 in those terms or works through that and creates
5 the rules. That is different than in 268 which
6 is basically Applicant's proposal. Here's the
7 form you're going to use, et cetera.

8 So maybe I'm getting ahead of myself, but
9 with regards to the various steps of 17 through
10 21, I did believe that those are appropriate and
11 also deal with potential impacts as well as
12 actual impacts.

13 MR. FITZGERALD: I have some, I also have
14 some concerns about the connection of these two
15 documents. It is my understanding also though
16 that there is a separate process for filing a
17 claim if you have been damaged that is not this
18 process.

19 PRESIDING OFFICER WEATHERSBY: I think this
20 process is taking the place of what was talked
21 about very early on in the procedure, in this
22 docket. This will be the, as I understand it,
23 this is going to be the procedure.

24 MR. FITZGERALD: Okay. Well, obviously

1 this, when you read 17, it's only with regards
2 to potential. So if that's not the case, if
3 that's not -- because I think 17 needs to be
4 changed, then if there isn't a separate process
5 to deal with actual damages, needs to be changed
6 to say potential or actual impacts. Okay? I
7 still have a question. I still thought that I
8 remembered that there's a property damage claim
9 process that may ultimately go to this process.
10 But in any case, I can try to look for that.

11 But it seems to me that you, when you get
12 to 20, and first of all, this is all talking
13 about mitigation so if it is limited only to
14 potential, someone comes in and says, you know,
15 Ms. McCosker comes in and says my business is
16 going to be impacted, I need you to mitigate
17 those potential impacts, and the Applicant is
18 required to work with her to come up with
19 potential mitigation.

20 And then the remainder of this process is
21 just escalation relative to those mitigation
22 procedures that would be put in place to prevent
23 something happening. Then if something actually
24 happened, it's not covered under this process.

1 PRESIDING OFFICER WEATHERSBY: I think your
2 point is an excellent one, and I like your
3 suggestion of adding "or actual" to the language
4 of 17 if we are to adopt this. Does anyone want
5 to comment on that or care to agree or disagree?

6 MR. WAY: I absolutely agree with that. I
7 think as much as possible if we can solve the
8 issue in this set of stipulations where the
9 Applicant is working directly with the business,
10 and see if we can resolve it to the extent we
11 can, then we should absolutely do that. So if
12 we can turn 17 into something whether it's
13 anticipated or actual and it can be worked out,
14 I think that's good. And as Mr. Fitzgerald
15 said, we're looking at this as an escalation.
16 Hopefully, we address I before it gets to the
17 point of the dispute, and I think also, too, as
18 we talked about in the dispute process, I mean,
19 a perceived issue could go through that whole
20 escalation process as well. So I would think
21 that the dispute document should keep that and
22 take that into account as well.

23 PRESIDING OFFICER WEATHERSBY: Is there
24 anyone who disagrees that this should cover both

1 anticipatory as well as actual impacts?

2 Mr. Fitzgerald?

3 MR. FITZGERALD: I don't know if this is
4 appropriate or not, but are we able to ask
5 either the Applicant or Counsel for the
6 Public --

7 PRESIDING OFFICER WEATHERSBY: No.

8 MR. FITZGERALD: -- whether there's a
9 dispute?

10 PRESIDING OFFICER WEATHERSBY: No. We're
11 not, but I would guess that this actually was
12 their intent of this process because to address
13 both potential and actual impacts, but we can't
14 reopen the record and get more information.

15 MR. FITZGERALD: I'm not asking to reopen
16 the record. I'm simply asking to ask if there
17 is a separate process for property damage in the
18 record.

19 PRESIDING OFFICER WEATHERSBY: Okay. I
20 think early on though the business loss
21 procedure -- I'm reminded it was during the
22 Construction Panel's testimony where they
23 indicated there was this procedure. I think
24 we've seen it in other dockets where somebody

1 fills out a form and sends in it in about the
2 losses.

3 MR. FITZGERALD: Right.

4 PRESIDING OFFICER WEATHERSBY: It's my
5 understanding that this procedure that's being
6 outlined here is to replace that, but we should
7 probably just verify that.

8 MR. FITZGERALD: That's my concern.

9 PRESIDING OFFICER WEATHERSBY: If there's
10 something in the record that says whether that's
11 true or not. Mr. Shulock?

12 MR. SHULOCK: So I don't disagree that
13 there should be ADR for actual and for lack of a
14 better word unanticipated damages that weren't
15 attempted to be mitigated when they were seen to
16 be just potential damages, but I would hesitate
17 to try and just modify what we have here. I
18 think that we should design that process and
19 then impose it as a condition and do it
20 separately from this one.

21 PRESIDING OFFICER WEATHERSBY: I'm sorry
22 I'm not quite understanding.

23 MR. SHULOCK: We're trying to take their
24 product which has been pretty much every single

1 paragraph is interrelated, right? And refers
2 back to the previous one. So there's an entire
3 process laid out and rather than try and take
4 that and bend it to our desires, I think we
5 should just come up with a process that we
6 believe that they should go through for those
7 after-the-fact damages and impose it.

8 PRESIDING OFFICER WEATHERSBY: Director
9 Muzzey?

10 DIR. MUZZEY: I also had concerns about
11 trying to fit one process into the other and
12 initially it was a concern about the wording
13 that would be added to Condition 17 because I
14 didn't feel that actual damage versus
15 anticipated impact, potential impact or actual
16 impact really covered what is covered under 268
17 which is physical damage to real or personal
18 property, loss of business income, diminution in
19 the value of real property owned by the
20 Applicant or unreasonable interference with
21 access to or use of real property owned by the
22 Applicant.

23 So one way that we may be able to do it
24 more neatly is looking at 268 and the process

1 laid out there clarified by the first sentence a
2 bit, but then also enables someone who has
3 suffered some sort of damage of the four I just
4 read, and say that rather than going to dispute
5 resolution directly they are also eligible to go
6 through the process in 17 to 19. And then leave
7 17 to 19 intact. Does that make sense?

8 MS. DUPREY: I would just point out in
9 paragraph 21 which is part of 17 to 19 it's
10 pretty clear that the damage has to have
11 happened. So they're looking at it like you're
12 not going into dispute resolution for things
13 that might happen but in fact do happen, as I
14 read that.

15 So going back to 17 to 19, it still seems
16 to me that with the addition of those few words
17 that it covers these things. I don't know what
18 we would put in a separate process. But if
19 people want to go through that exercise we
20 certainly could, but I think that at the end of
21 the day, the Dispute Resolution Process is
22 about, as we discussed, damage that has actually
23 occurred.

24 MR. FITZGERALD: I would disagree with

1 that. I read 21, and I was just focusing on
2 this, is that it says shall administer a Dispute
3 Resolution Process for all disputes relating to
4 damage to property. I would read that to say
5 all meaning potential or real.

6 MS. DUPREY: I think that's a pretty tough
7 interpretation of that language.

8 PRESIDING OFFICER WEATHERSBY: Regardless
9 of how it reads, what do we want it to read? Do
10 we want this whole process to deal with
11 potential disputes? You know, my cages aren't
12 being cleaned. Dispute over how a stone wall
13 may be being traversed. Those sorts of things.
14 Do we want them to be able to go through all of
15 these stages, including the SEC-involved Dispute
16 Resolution Process or do we want to when we get
17 to that final step require actual damage to have
18 occurred.

19 My personal opinion is that if someone has
20 a concern about a potential impact of
21 construction on their business or property that
22 they should be able to go through all of these
23 stages and resolve it through this process. My
24 fear is that if it does not, then somebody will

1 attempt to or will go to court which is an
2 alternative for them at any point because they
3 can't get resolution through this process.

4 MR. FITZGERALD: I still would like to know
5 if there is a property damage claim process
6 which I believe there is and potentially if that
7 process ends in paragraph 21 also.

8 PRESIDING OFFICER WEATHERSBY: 21 certainly
9 covers damages to loss of income, loss of
10 business, but there may be a separate process.
11 I think it's subsumed by this, but maybe we can
12 take a few minutes. If this is that important,
13 we'll take a few minutes and we'll find the
14 answer to that.

15 MS. DUPREY: Madam Chair, could I just ask
16 a question related to your previous statement?
17 Because at the moment I'm just trying to get my
18 arms around what a process would look like. And
19 one of the questions that jumps to mind for me
20 if we open 268 up to things that haven't yet
21 occurred, what does that mean for the
22 construction? Like it's going along, the person
23 has this issue, they're going through this
24 process. This process could take a couple of

1 months. I mean, does construction stop? So I
2 just wasn't sure what the impact of that was.
3 Whereas, if you went to court trying to do this,
4 it would be very clear because you would either
5 file for an injunction or you wouldn't. But I'm
6 just wondering about what you're thinking about
7 that.

8 PRESIDING OFFICER WEATHERSBY: So my
9 understanding of this process is it does not
10 impact the construction schedule in any manner
11 unless there's resolution by the SEC Dispute
12 Resolution Administrator that says to stop and
13 to avoid whatever impact it is. But my
14 understanding is this does not stay any
15 construction.

16 MS. DUPREY: If that's so, why would you
17 not ask the individual to wait until they
18 actually suffered the harm. Why would you put
19 them into a process that the SEC has to to some
20 degree administer, although it's totally paid
21 for by somebody else with damages, why wouldn't
22 you say okay, we've done everything we can to in
23 talking and trying to make this work, and now
24 when you suffer the damage, then we'll resolve

1 it with actual money.

2 PRESIDING OFFICER WEATHERSBY: So my
3 personal opinion is that there's some damages
4 that are difficult or impossible to quantify and
5 cannot be made up by money damages. Perhaps
6 there's an important historic site that is being
7 impacted despite everyone's efforts. And that
8 concern is raised and goes through this to me.
9 To me, that would be a reason to go through this
10 process for a potential impact rather than wait
11 until there's some damage to it.

12 MS. DUPREY: So you're looking to this
13 process to mediate, if you will, those kinds of
14 issues, to be a further mediation, a fourth step
15 of mediation if you will. I'm looking at this
16 process as we're going to pay you money.

17 PRESIDING OFFICER WEATHERSBY: I think this
18 process is a lot more than that. I think it's a
19 way to work through issues. Just take, for
20 example, Ms. Heald that first she has to talk to
21 the Applicant about what kind of mitigation will
22 you agree to. They've already agreed to a lot
23 of things. She needs to respond to that, you
24 know, work through this and kind of come to some

1 final offer. If she still doesn't like it, she
2 elevates it to the executive review and it goes
3 through that process. So to me it's an
4 issue-resolving process and not just a
5 compensation process.

6 MS. DUPREY: That may be what we want it to
7 be, but that's not how it's drafted.

8 MR. SHULOCK: I read that provision a
9 little differently because she has to be
10 unsatisfied with the outcome of the mitigation
11 efforts. So those mitigation efforts have to
12 proceed, and if after that she suffers damages,
13 then it goes to executive review. The executive
14 review may result in some more work on her
15 property, it may result in a money offer, and if
16 she doesn't like that, then she can go to
17 mediation and maybe they can work up a plan that
18 works because the outcome was unsatisfactory to
19 her, and then following mediation if she's still
20 unsatisfied, then she can go through this
21 process that replaces a court process.

22 PRESIDING OFFICER WEATHERSBY: Right, but
23 that process deals with all of her issues and
24 not just I want "X" amount of dollars. In Ms.

1 Heald's case, just for an example, dealing with
2 her nursery stock and well water, et cetera.

3 MR. SHULOCK: But I think by that time her
4 well may be damaged because the mitigation plan
5 was to put down some protective stuff and the
6 well is damaged. So she's unsatisfied with the
7 mitigation, she would go to executive review,
8 but, I mean, it's not going to, I think, solve
9 the problem of her saying I don't think that the
10 pads that you're going to place down are
11 protective enough. I think you should dig me a
12 new well right away.

13 MS. DUPREY: I also don't see it as I want
14 a pole moved or that sort of thing, at least as
15 I read this, and again, it may be that we want
16 something else. This seems to me to be talking
17 about actual harm and compensation for that harm
18 when you look at the eligible Applications and
19 Applicants and the supporting evidence. It
20 seems like a "we're going to reimburse you for
21 the harm process" once you establish that you've
22 been harmed.

23 PRESIDING OFFICER WEATHERSBY: So this is a
24 good time to get an opinion from our counsel as

1 to what this covers? And if you want to take a
2 break and look it over and give us an opinion.

3 MR. IACOPINO: That would be good. Thank
4 you.

5 PRESIDING OFFICER WEATHERSBY: In
6 attorney/client nonmeeting we can do that.
7 Before we break for that then, Director Muzzey?

8 DIR. MUZZEY: Not on the subject of what
9 our attorney is doing, but to get back to Mr.
10 Fitzgerald's concerns, I was looking, concerns
11 about another process out there, I was looking
12 back through my notes, and early in our
13 proceeding, I believe when Mr. Quinlan was
14 testifying there was a property value guarantee
15 which was a concept discussed as part of the
16 Northern Pass Project. Again, given that it was
17 a merchant project and given this is a
18 reliability project, that property value
19 guarantee is not part of what we're talking
20 about now, but I'm wondering, is that what you
21 had in your memory?

22 MR. FITZGERALD: No.

23 DIR. MUZZEY: No? Okay. I tried.

24 MR. FITZGERALD: There may have been some

1 coincident discussion there because a person may
2 assert that they have had damage as a result of
3 their property value being lowered, okay?

4 DIR. MUZZEY: Right.

5 MR. FITZGERALD: But I believe I remember
6 there being some discussion of a property damage
7 claims process.

8 This document is entitled Mitigation and
9 Dispute, and it talks, starting with paragraph
10 17, it talks about potential damage, and then it
11 talks about mitigation and then mitigation,
12 there's a difference between being unsatisfied
13 with the mitigation and actual harm. You may be
14 unsatisfied with the mitigation, but you may not
15 have, you know, had actual damage. So I think
16 this process is different from the process, from
17 the process of someone whose business or
18 property has been in some way harmed.

19 DIR. MUZZEY: So getting back to what our
20 Chair asked us a couple minutes ago, in your
21 opinion, if someone is unsatisfied with the
22 mitigation options that are discussed, they've
23 gone through the 17, 18, 19 and 20 and they're
24 still not satisfied, well, 17, 18 and 19, do you

1 feel that dispute resolution should be open to
2 them even if harm has not yet, actual
3 construction and operation has not begun yet?

4 MR. FITZGERALD: Absolutely. I think 17
5 envisions, 17 through 19 envision that, and I
6 think if you go back to 268, the beginning
7 paragraph says the Dispute Resolution Process
8 may be initiated by an eligible business or
9 property owner after the mitigation process
10 outlined in the Stipulated Proposed Conditions
11 17 to 19 including informal resolution,
12 executive review and mediation.

13 I think 17 envisions this as being a
14 process to resolve disputes about mitigation,
15 and I think that 268 says this is what follows
16 after you have reached that, and I think their
17 actual property damage is a separate process.

18 PRESIDING OFFICER WEATHERSBY: Why don't we
19 get an opinion of counsel as to what they
20 believe this covers. Why don't we take a break
21 and go into a nonmeeting and see if we can
22 resolve some of these issues?

23 MR. IACOPINO: Mr. Fitzgerald, there was
24 some discussion regarding property damage claims

1 in the testimony of Mr. Quinlan on Day 1 in the
2 morning session. Page, around page 24 and
3 around there. Just so that, if you wanted to
4 take a look at that.

5 MR. FITZGERALD: Can I also ask you why are
6 you precluded from asking -- I don't believe
7 that that is reopening up the record. Why are
8 we precluded from simply asking the Applicant if
9 there is such a process or the Counsel for the
10 Public?

11 MR. IACOPINO: Because the record is
12 closed, and there are parties other than Counsel
13 for the Public and the Applicant who
14 participated, and they then have questions and
15 want to expand the record even more in which
16 case we would have to address that.

17 MS. DUPREY: Can I just read a paragraph
18 from Counsel for the Public's brief that may
19 help to address this? It's found at page 19 so
20 paragraph B, and it's entitled the Applicant's
21 agreed-upon Dispute Resolution Process mitigates
22 the potential adverse effect of the Project on
23 property values. To mitigate against potential
24 property value impacts, the Applicant has agreed

1 to mitigation and Dispute Resolution Process
2 that includes adjudication of diminution in
3 value claims by an independent claims
4 administrator. Proposed conditions number 20 to
5 21 set out a procedure whereby affected property
6 owners can obtain an independent view of claims
7 of a loss in property value arising from the
8 construction or operation of the Project. If
9 imposed by the Subcommittee as a condition of
10 the certificate, the Dispute Resolution Process
11 would provide an unbiased avenue for affected
12 property owners to be compensated for any
13 diminution in value that could be adequately
14 demonstrated through an appraisal for other
15 evidence acceptable to the Administrator.

16 And I raise this --

17 MR. SCHMIDT: I'm sorry. Where are you
18 reading from?

19 MS. DUPREY: I am reading from Counsel for
20 the Public's brief. It's Page 19. It's
21 paragraph B. It's really in the discussion of
22 Dr. Chalmers' report.

23 The paragraph concludes, although I don't
24 think that this is that relevant to this

1 discussion, less to the extent that
2 Dr. Chalmers' testimony underestimates the
3 amount of property value losses. The Applicant
4 would be obliged to pay such losses if awarded
5 by the Claims Administrator.

6 And the reason that I raise this is that I
7 feel like if there were an additional process
8 that certainly that would have been cited in
9 this paragraph because this is the segment of
10 the brief where essentially, if I may
11 paraphrase, the Counsel for the Public is
12 criticizing Dr. Chalmers' report and
13 methodology. And he winds up by saying in the
14 end that omission or whatever is mitigated
15 against by this process so that property owners
16 will be able to get restitution if their
17 property values are damaged. And my whole point
18 in all this is if there was another process, I
19 think it certainly would have been stated here.

20 MR. FITZGERALD: I don't disagree with
21 that, and I also if I go to paragraph 21, it
22 states that, after the part that I read, for all
23 disputes relating to damage to property and loss
24 of business or loss of income and/or diminution

1 in value of real property. So seems to me that
2 21, as I said, whether there's a separate
3 process to get to it or not, 21 certainly seems
4 to be intended to resolve both potential
5 mitigation disputes and disputes over property
6 damage. It seems to me that the language may
7 not connect greatly or there may be some gap
8 here and I apologize, as I said, I just have in
9 the back of my head that that was a property
10 damage claim process. But this 21 seems
11 intended to resolve both, although 17 to 19
12 going up to it seem to only be prospective
13 damage. So I don't disagree with Ms. Duprey's
14 solution.

15 PRESIDING OFFICER WEATHERSBY: I agree that
16 this process seems to be the exclusive process
17 for resolving all claims and is intended to deal
18 with both potential and actual harm, and that's
19 further supported in my mind with the
20 Applicant's brief, page 18, when they discuss
21 Dispute Resolution. They talk about this
22 process exclusively and no other business loss
23 process, and they indicate that this process is
24 designed to address any concerns that arise, any

1 concerns that arise during or post-construction,
2 and then they cite some examples about physical
3 damage to real or personal property, loss of
4 business, diminution of value, interference with
5 access, noise, littoral rights.

6 So to me this is -- two of the questions
7 that we have, is this the only process for
8 resolving issues, I think the answer is yes.
9 And two, is it both actual and potential, and I
10 think the answer is yes.

11 MR. FITZGERALD: I'm far less concerned
12 about whether there's a separate process knowing
13 that 21, understanding that 21 is intended to
14 resolve both issues. There still may be a
15 somewhat of a disconnect here that we have to
16 consider, and one, as I suggested, there's, we
17 can add potential and actual impacts or this
18 says, 17 says contact information for business
19 and property owners concerned, about and we
20 could just strike potential and say about
21 concerned about impacts because concerned can be
22 before, during or after. So that's --

23 MR. SHULOCK: I was just about to suggest
24 that because when I look at this, it looks like

1 they may have put in the word "potential"
2 because they didn't want to have a preadmission
3 that there was an actual impact on their
4 property, and sometimes that word "potential" is
5 put in there to sort of stave off the impression
6 that something bad actually has happened.

7 MR. FITZGERALD: That's a possibility.
8 Yes.

9 MR. SHULOCK: Because eventually this is
10 going to have to go to a Dispute Resolution
11 Process and the party wouldn't want to have
12 admitted to the full extent of what another
13 party was claiming to have an effect.

14 MR. FITZGERALD: Right.

15 MR. SHULOCK: So that may be the actual
16 purpose of those words in there.

17 PRESIDING OFFICER WEATHERSBY: So your
18 suggestion is to strike "potential."

19 MR. SHULOCK: I think we want to sit back
20 and think about that for a while and work
21 through the document, but I think if we get rid
22 of that word "potential," then what would that,
23 what I think it would do is it would require
24 people who are concerned about something that's

1 actually happened to go through a mitigation and
2 mediation prior to going to the Dispute
3 Resolution Process which would satisfy me.

4 MR. FITZGERALD: I think at this point I'd
5 like to, as far as what the, understanding what
6 we want to do, I'd like to hear from counsel as
7 to what they think the best approach is to do
8 that. I apologize for belaboring the point
9 about the separate process.

10 PRESIDING OFFICER WEATHERSBY: Why don't we
11 break and meet with counsel who won't
12 necessarily advise us as to the best route to go
13 but will advise us on the legal aspects of what
14 we're considering. So why don't we take a
15 little break, we'll meet with counsel and we'll
16 come back and plow on.

17 MS. DUPREY: Madam Chair, could I just say
18 that it is my preference that we add the word
19 "actual" instead of deleting the word whatever
20 it is. And I say that because it isn't clear to
21 me that "concerned about impacts" means things
22 that might happen as opposed to already have
23 happened. I raise that because I think that
24 it's important that to the extent things can be

1 resolved before they actually happen that that
2 occur. And I saw this language as being a
3 jumpstart on things and not having to wait until
4 they've become a reality, and I just, I don't
5 know why we couldn't add the word "actual" and
6 take care of it rather than deleting this word.
7 So just for whatever it's worth.

8 PRESIDING OFFICER WEATHERSBY: So it sounds
9 like we all want the same thing, we're just
10 trying to decide the best way to word this,
11 whether it's striking "potential" or adding "and
12 actual." Let's think about that. Let's meet
13 with counsel, and we'll come back.

14 (Nonmeeting with Counsel 11:37 - 12:29 p.m.)

15 PRESIDING OFFICER WEATHERSBY: We are going
16 to resume talking about this whole Dispute
17 Resolution Process. It's become clear through
18 our deliberations that there's some disagreement
19 as to exactly what the process should include.
20 Rather than trying to wordsmith the proposal
21 that's before us, I'm going to ask folks that
22 would like to speak, not everyone needs to speak
23 but if you'd like to speak and outline what you
24 believe the process should include that would be

1 helpful, and then what I think we'll do is once
2 we have a consensus, we'll talk about the
3 different ideas, we'll try to reach a consensus
4 as to what the process should include, and we'll
5 leave it to our counsel to draft the actual
6 process.

7 So if you'd like to speak, don't try to
8 wordsmith paragraph 17 through 21 but really
9 talk more in concepts as to what you'd like to
10 see. Such things as future impacts to the
11 property as well as actual impacts had I guess
12 come up as an issue. Timing issues, whether
13 actual damage needs to be occurring before you
14 get to the last step involving the SEC. Those
15 sorts of issues.

16 So if anyone would like to speak as to what
17 they believe the process should look like, that
18 would be appreciated. Mr. Shulock, are you
19 going to start, okay?

20 MR. SHULOCK: I'm happy to start. So I
21 would like to see the Dispute Resolution Process
22 under 21 and the procedures that they've given
23 us in --

24 PRESIDING OFFICER WEATHERSBY: That's the

1 Dispute Resolution Process involving the SEC
2 Dispute Resolution Administrator?

3 MR. SHULOCK: That's correct. I would like
4 to see that apply only to damages that have
5 already occurred or to things like prospective
6 business damages after the construction had
7 completed.

8 And then I would like to see 17 through 19
9 apply to damages that a business or property
10 owner anticipates will happen or have actually
11 happened.

12 And then I would like to see the process
13 include some review and possibly mediation of
14 mitigation plans for those anticipated or feared
15 damages that a property owner might have. I
16 don't think that's necessary for when damage has
17 actually already occurred because the process
18 would cover that.

19 And I would, with those features I think
20 I'm happy. I don't think that the language is
21 entirely clear on those issues. So I would like
22 to see some redrafting to clarify that if
23 Counsel believes that those are current features
24 of the way that it works.

1 PRESIDING OFFICER WEATHERSBY: Mr. Way?

2 MR. WAY: Clarifying question. And I
3 believe I agree with everything you just said,
4 and in 21 you're dealing with actual damage.
5 When you go into 268, you're dealing with actual
6 damage, correct?

7 MR. SHULOCK: Right. Well, it would be
8 damages that have already occurred or some types
9 of anticipated damages like lost future business
10 income, right? Which would occur after, there
11 would have to have been some action taken and
12 that would be a foreseeable harm in the future.

13 MR. WAY: Thank you. And I agree with the
14 changes to 17 as well.

15 MR. SHULOCK: If I can add, I think that it
16 is appropriate to have that process substitute
17 for court process so that people would be
18 waiving going to court and having a jury trial.

19 PRESIDING OFFICER WEATHERSBY: Ms. Duprey?

20 MS. DUPREY: I had a question. I think to
21 the extent that we can tie in our comments to
22 the actual exhibit is useful.

23 So are you feeling, Mr. Shulock, that B(2)
24 loss of business income and the evidence that is

1 required to support it in paragraph D is
2 insufficient?

3 MR. SHULOCK: I don't know. I'll leave
4 that to counsel, but, you know, we're talked
5 about actual damages or damages that have
6 occurred. It's just that some of those damages
7 may occur in the future, even though the harm
8 has been done today, and I don't want to
9 preclude that. I don't know how that would have
10 to be worded.

11 PRESIDING OFFICER WEATHERSBY: Okay. We've
12 got the concept out there, and thank you for
13 sharing with us your thought of what the process
14 should look like.

15 Ms. Duprey, would you like to comment on
16 what you believe the process should look like?

17 MS. DUPREY: Sure. First of all, I'd like
18 to say that Exhibit 268 is a document that was
19 proposed to us by both Counsel for the Public as
20 well as the Applicant and so that carries a lot
21 of weight for me. It's not a document the
22 Applicant put into the record but was an agreed
23 upon condition that they have both asked us to
24 adopt. So I don't really want to stray very

1 far.

2 The same with paragraphs 17 through 21, I
3 don't really want to stray very far from that.
4 I don't want to be in the business of doing
5 that.

6 So my approach to this is to keep it as
7 close to the language that these two parties
8 have put into the record.

9 With that said, I think that paragraphs 17
10 through 20 work perfectly well for actual
11 damages as well as for prospective damages, and
12 I am opposed to setting up a separate procedure
13 as was suggested previously. I think that's
14 complicated and burdensome for us to try to
15 draft, and it also seems unnecessary to me. I
16 think these paragraphs manage it perfectly well.

17 I'm opposed to anything that implies in any
18 way that construction is going to be held up
19 while this goes, on. And I think that if people
20 are concerned about prospective damage they need
21 to immediately engage in this process, and so I
22 don't think we should be in the business of
23 legislating when construction should begin. I
24 think that this is up to people who feel like

1 they want to have these discussions with the
2 Applicant and that they should do it right away.

3 I do think conceptually with respect to
4 paragraphs 17 through 20 that it should be
5 clarified that they relate to, in the case of,
6 that it relates to mitigation plans as well as
7 to damage that's actually been done to both
8 things.

9 I also want to make it clear that with
10 respect to waiving of the right to go to court
11 it is also waiving the right to a jury trial so
12 we're clear about that.

13 And I think for me the most important thing
14 is that the process of 268 and paragraph 21 is
15 for damages that have occurred. If it gets to,
16 as has been suggested, to damages that are
17 prospective other than perhaps the business
18 damages that Mr. Shulock refers to, I think that
19 we put the SEC in the position of becoming
20 essentially a court, and that is not what was
21 envisioned by this document. It's not what was
22 asked for by Counsel for the Public or by the
23 Applicant. They asked for quite a narrow thing
24 which is resolution of essentially financial

1 damages for specific kinds of harms. And I
2 don't know why we would put ourselves in the
3 position of drafting up a whole procedure for
4 something else, what differentiates this case
5 from any other that we would insert ourselves in
6 that way and so I would be opposed to that.
7 Thank you.

8 PRESIDING OFFICER WEATHERSBY: Thank you.
9 Anyone else care to comment as to what they
10 believe the dispute resolution should look like
11 conceptually?

12 MR. SCHMIDT: I will. First of all, I
13 think it should be a very straightforward
14 document and that goes pretty much without being
15 said, but I want it to promote early action and
16 not enable a construction delay.

17 I like the idea of the existing outline,
18 the opportunity to negotiate in good faith and
19 the executive review opportunity, and then I
20 think it's important to have a mediation session
21 like there is, but if it's unsuccessful, the
22 Resolution Administrator or similar title I
23 think is important but not until there was clear
24 evidence of the damage, be it a business setback

1 or a physical damage. Personally, 17 to 21 I
2 think is fairly decent and I'd like to keep as
3 close to that and 268 as close as possible.

4 PRESIDING OFFICER WEATHERSBY: Thank you.
5 Anyone else? Mr. Way?

6 MR. WAY: To expand on my earlier comments,
7 I'm agreeing pretty much with what I'm hearing
8 so far. I mean, I keep coming back to my
9 original thought that as I'm thinking about, for
10 example, some of the instances that have been
11 brought before us, for example, like the Heald
12 property or Fat Dog, how they might go through
13 this mitigation process. It's good to kind of
14 put yourself in their place as you think through
15 this, and I keep coming back to the thought that
16 I think that this process is going to be
17 satisfactory.

18 I do agree that we might want to clarify on
19 17 to open the door for maybe concerns that
20 might be anticipated. I'm going to leave it to
21 Counsel for that. I think as I understand it,
22 you know, as we get down do 20 and 21, we're in
23 realized damage and that is we get into 268
24 that's damage that has occurred.

1 Like Ms. Duprey, I'm hesitant to wordsmith
2 on 268 if I think that it's a process that
3 overall will work. Thank you.

4 PRESIDING OFFICER WEATHERSBY: Anyone else
5 care to chime in?

6 MR. SHULOCK: There was one other issue
7 that I saw that I forgot to raise. I don't know
8 that I have a problem with it. I just thought
9 I'd raise it. And that is the two-year period
10 for filing claim. I was wondering if others
11 thought that that was an adequate amount of time
12 given that there's a different statute of
13 limitations for property damage and business
14 claims. It's been a while since I looked, but I
15 think three years.

16 PRESIDING OFFICER WEATHERSBY: Director
17 Muzzey?

18 DIR. MUZZEY: So I agree with a number of
19 things that have been said. I also see the
20 value of early consultation on potential impacts
21 so I, in cases where we have owner concerns
22 about potential impacts, 17 to 19 seems to lay
23 out a good process. I think the phrase of
24 "unsatisfied with the outcome of the Applicant's

1 mitigation efforts" that appears in 18 and 19
2 could be clarified. That we're not talking
3 about the outcome of mitigation itself but
4 rather the Applicant's proposal to do either
5 avoidance or mitigation.

6 At the end of 19, with the scenario of
7 potential impacts, we're left with either an
8 agreement on how to avoid or mitigate potential
9 impacts or no agreement as to how to avoid or
10 mitigate potential impacts. In either case, I
11 recommend the potential impact process stopping
12 at this point, and we can turn to the scenario
13 that damage has happened as it's defined in 268
14 B, items 1 to 4.

15 For people who have had damage that has
16 happened, I think we can encourage them, the use
17 of the word "may" to go through the process as
18 outlined in 17 to 19, but I don't feel it should
19 be mandatory. I think it also raises timing
20 issues if it's made mandatory. Let's see.

21 But in either case, whether you've gone
22 through 17 to 19 with a potential concern or
23 not, I think you still should have the right to
24 go through dispute resolution, and if any

1 agreements made with the Applicant to avoid or
2 mitigate damage are not successful, I feel you
3 should also have the right to continue through
4 dispute resolution.

5 My one question with 19 and the idea of
6 mediation, I'm not certain who is paying for the
7 independent mediator. And I also had a question
8 of the two year versus something longer and I
9 would be open to the idea of a three-year
10 timeline.

11 MS. DUPREY: I'm sorry, Madam Chair. I
12 didn't understand what Director Muzzey was
13 proposing. I don't think I understand whether
14 you want the 268 process, the dispute, the
15 actual Dispute Resolution Process which as it's
16 written now is for damage that's actually been
17 done or are you looking to expand it into a
18 review of mitigation plans that an Administrator
19 would somehow oversee.

20 DIR. MUZZEY: No.

21 MS. DUPREY: Okay. Thank you.

22 DIR. MUZZEY: I'm envisioning 268 to be
23 used for cases where damage has been done.

24 MS. DUPREY: Okay, good. Thank you.

1 DIR. MUZZEY: Damage for the various types
2 of impacts as they've defined in B, 1 to 4.

3 MS. DUPREY: All right. Thanks.

4 PRESIDING OFFICER WEATHERSBY: Mr. Way.

5 MR. WAY: Just a question on the two year
6 date. When I look at it -- bear with me here.
7 I just lost my place. Shall accept written
8 requests for dispute resolution until the two
9 year anniversary date of the date when the
10 transmission line is placed in service.

11 So given the fact that construction can
12 occur for several years, you know, we're not, we
13 have time to resolve these issues through the
14 process. It's just that you have two years
15 after the transmission line is in place to
16 finalize it. So when we're talking about three
17 years, it's already three years in place or four
18 years in place, maybe even up to five in certain
19 places. So I just want people to think about
20 that. If we're going to expand it to three
21 years, that's above and beyond when the impact
22 might actually happen which could be years
23 earlier.

24 MR. SHULOCK: Point taken.

1 PRESIDING OFFICER WEATHERSBY: Quick
2 question for Counsel. In mediation generally,
3 if two parties can agree go to mediation, are
4 the costs shared equally, the cost of the
5 mediator and any mediation process charges
6 shared by the parties in equal amounts or does
7 one party absorb those costs?

8 MR. IACOPINO: In the Superior Court in
9 civil litigation the costs are usually shared
10 between the parties. Sometimes in marital
11 litigation with marital mediation sometimes one
12 party or the other is determined to bear the
13 cost generally because of an inequity in earning
14 capacity. So both methods are used to pay for
15 mediators.

16 PRESIDING OFFICER WEATHERSBY: Thank you.
17 Listening to everyone, I'm actually feeling like
18 we're a lot closer than we thought we were. I
19 think there's agreement on a number of points.
20 Chime in if I'm incorrect. But I'm hearing the
21 consensus that the mediation process in general
22 should start as outlined in 17 through, should
23 be as outlined in general in what has been
24 proposed by Counsel for the Public and the

1 Applicant starting with talking with the
2 Applicant and the affected property business
3 owner talk, try to work things out. If they
4 can't, it goes to an executive review. If
5 they're still dissatisfied, mediation, and then
6 goes on to the Dispute Resolution Process
7 involving the SEC.

8 So I'm sensing an agreement that those
9 steps should be there. I'm also sensing an
10 agreement that for the steps through informal
11 talks through mediation that that should be both
12 for anticipated damages as well as actual harm
13 that has occurred, but with the last step which
14 is the SEC-involved Dispute Resolution Process
15 there needs to be actual damages having
16 occurred, including anticipatory lost business
17 as a result of a harm.

18 Does anyone disagree with what I've just
19 summarized as at least two points of what I
20 thought was agreement? Mr. Fitzgerald?

21 MR. FITZGERALD: In general, yes, I agree.
22 I would like to have Counsel give us some input,
23 not necessarily right now but after he's had
24 some time to study it, to provide opinions on

1 the -- I, too, am not in favor of changing this
2 language significantly. It was negotiated
3 between the two parties and not knowing what
4 their intent was and so on there's not -- so I
5 would just like Counsel to advise us on his
6 thoughts on in paragraph 17, line 3, what the
7 term "potential" means. Further in that
8 paragraph -- go ahead.

9 PRESIDING OFFICER WEATHERSBY: This was to
10 be sort of a conceptual -- I don't want to
11 wordsmith those right now.

12 MR. FITZGERALD: I understand, but in order
13 to ensure myself that this says what I think it
14 says, I would like Counsel's opinion. There's
15 been several things that have been raised.

16 PRESIDING OFFICER WEATHERSBY: What is your
17 concept for Section 7, for --

18 MR. FITZGERALD: I agree with the concept
19 that you outlined. Whether or not this
20 accomplishes it or not depends to me on some
21 definitions.

22 PRESIDING OFFICER WEATHERSBY: So what I
23 thought the process would be, and I thought was
24 that Counsel is then going to work up some

1 language for us which we will review and then
2 approve. So he's going to take our concepts
3 that we're talking about now, work it in, and
4 then we'll have a chance to examine every word
5 that is put forward before we approve any
6 condition for a Dispute Resolution Process.

7 MR. FITZGERALD: I'm going to give you one
8 example and then we can hash it out or not. But
9 further on that paragraph it says the Applicant
10 shall initiate direct discussions. I'd like to
11 know what does that mean. Does that mean that
12 they've made a phone call to them? Does that
13 mean that they have actually had a meeting?

14 So I have a few questions that I need to
15 answer to better understand what this language
16 is. I can wait and look at proposed language if
17 that's the desire. My intent was to raise these
18 so this Counsel could consider them in his
19 deliberation to come up with revised language.

20 PRESIDING OFFICER WEATHERSBY: If you want
21 to --

22 MR. FITZGERALD: I can raise them with him
23 separately or individually also.

24 PRESIDING OFFICER WEATHERSBY: Okay. I'm

1 also sensing agreement that what is being
2 elevated at each step of the process is the
3 proposed mitigation for the alleged harm and not
4 a specific --

5 MR. WAY: Could be both.

6 PRESIDING OFFICER WEATHERSBY: -- outcome
7 or --

8 MR. SHULOCK: The problem is is that's
9 ambiguous.

10 MR. FITZGERALD: That's what I wanted --
11 another one that I wanted to know about is what
12 is the term "outcome" in 18 and 19 --

13 MR. SHULOCK: We've identified ambiguity on
14 the word "potential," right? And we've
15 identified ambiguity as raised by Director
16 Muzzey, the outcome of the Applicant's
17 mitigation efforts. And the ambiguity on that
18 is whether that means that they will have
19 actually taken the mitigation plan and --
20 whether that applies to a mitigation plan or
21 whether that applies to mitigation that has
22 already been done and perhaps has failed.
23 Right? So there's a little ambiguity there for
24 some of us. And I think some people would like

1 to see this process applied to the plan so that
2 there's some hope for, if necessary, a mediated
3 agreement for a mitigation plan, and then we
4 would need clear wording to get us there if
5 that's what people wanted or whether this just
6 applies to, once they said how they're going to
7 do the mitigation whether everything just flows
8 from that and there's no opportunity for that
9 review.

10 So I think we should probably take a straw
11 for our attorney on whether people want to see
12 that kind of process for review of the
13 mitigation plan and then maybe we can come up
14 with clearer wording for that.

15 PRESIDING OFFICER WEATHERSBY: So the
16 alternatives are as Director Muzzey I think had
17 suggested that what gets elevated is the
18 Applicant's proposed mitigation, their plan
19 they're putting forward to address the concerns.
20 To avoid, right, to avoid or mitigate the harm
21 that is proposed or actually had occurred.
22 Obviously you can't avoid something that's
23 already happened.

24 Alternatively, Mr. Shulock, you're

1 proposing, I am not hundred percent sure of what
2 you're proposing.

3 MR. SHULOCK: I'm just saying that it's
4 unclear. So I think if we agree with Director
5 Muzzey that it's the plan that's going to be
6 elevated to the executive review and then to the
7 mediator, we should specify that. If it's the
8 outcome after mitigation has been taken and
9 failed that's elevated to that executive review
10 and to the mediator for resolution, then we
11 should specify that. If we want it to be both,
12 we should specify that, but I believe that we
13 need more clear language to get to any of those
14 three outcomes.

15 PRESIDING OFFICER WEATHERSBY: Okay. So we
16 have the proposal that if you don't like the
17 mitigation proposal to address the actual or
18 anticipated harm, you can then elevate it down
19 this process.

20 The alternative way of looking at it is
21 that the Applicant has to actually do the
22 mitigation that's been proposed that the
23 property owner is dissatisfied with, find it
24 still insufficient to continue the process. Is

1 that a summary of your, what you're suggesting,
2 Mr. Shulock? I'm suggesting the issue. It's
3 not adopting it.

4 MR. SHULOCK: I see three ways that it
5 could go. One is that it's only review of the
6 plan, right? Or only review of the outcome of
7 mitigation which may or may not have worked. Or
8 this could apply to both.

9 And I think the first thing we need to
10 decide is do we want it to apply to one or the
11 other or both. And then I think our attorney
12 can draft us language that clarifies that.

13 PRESIDING OFFICER WEATHERSBY: So before I
14 lose the thought, I'm going to comment on the
15 suggestion of having the Applicant actually do
16 the proposal in that there's elements of that
17 proposal that the property owner or business
18 owner has found distasteful in some manner, and
19 I would be hesitant to require them, mitigation
20 to occur, to actually be implemented if that
21 could have long-lasting impacts on that property
22 owner or the business.

23 You know, for example, to pick on Ms. Heald
24 again, if she didn't want a new well but that

1 was their solution, you know, they put in the
2 well, she didn't want it to begin with. I'd
3 question whether they could actually even have
4 the right to do it on their property, but that's
5 another issue.

6 So I guess I would be more in favor of what
7 this process is is let's resolve what the plan
8 is before it gets implemented. So to me this
9 process is elevating the Applicant's proposed
10 mitigation efforts to avoid or mitigate the
11 potential or actual harm. Director Muzzey?

12 DIR. MUZZEY: I would suggest that if we do
13 both, in cases where we're talking about
14 potential impacts, that would cause the
15 Applicant as well as the business or property
16 owner to go through an endless loop of 17
17 through 19 over and over again. I think that if
18 17 and 19 are written in a manner to address
19 potential impacts that language can be clarified
20 to be addressing proposed or going through
21 mitigation strategies. If an Applicant is
22 unsatisfied with the outcome of those, then
23 dispute resolution would be their option.

24 If we're also going to encourage people who

1 didn't anticipate impacts and find their
2 properties were damaged, if we're going to
3 encourage them to do 17 through 19 prior to
4 going directly into dispute resolution, I
5 suggest we need a whole new sentence that our
6 Counsel can work on to address the fact that
7 this is different than potential impacts.

8 MR. FITZGERALD: Madam Chair.

9 PRESIDING OFFICER WEATHERSBY: Yes, Mr.
10 Fitzgerald.

11 MR. FITZGERALD: I would also request an
12 opinion from Counsel on his understanding of the
13 relationship between paragraph 17 through 21 and
14 Exhibit 268 whether, specifically whether 21
15 supplants 268 or whether -- because 268 has
16 things in it such as the Application form, and
17 procedures and so on and so on. But nothing in
18 17 to 21 refers to 268. So I'd like to please
19 get an opinion on how that -- I don't need it
20 right now. I'd like that as part of our
21 overall.

22 MR. IACOPINO: This is an easy one. I
23 think the parties that agree to paragraph 17
24 through 21 agree that they would present a

1 Dispute Resolution Process and they did that
2 with Exhibit 268. So that's the relationship.

3 PRESIDING OFFICER WEATHERSBY: Ms. Duprey?

4 MS. DUPREY: I bet Attorney Iacopino has
5 enough input and can draft something.

6 PRESIDING OFFICER WEATHERSBY: So I think
7 there's a couple issues that we need to resolve.
8 One is that what I'm going to call the statute
9 of limitations here. Whether the time period in
10 which to submit a claim should be two years,
11 I've heard it should be perhaps three years. Do
12 people care to comment on the time frame for
13 filing a claim? Ms. Duprey?

14 MS. DUPREY: I would again say that this is
15 a agreed upon process, I'm sure with some
16 negotiation through the two parties that
17 represent both the public as well as the
18 Applicants. I don't want to overstep that
19 process. And also this is supposed to be an
20 expedited process. If people want longer, they
21 can go to court. There's nothing stopping
22 someone from going to court and taking advantage
23 of the three years. And in addition, this is
24 going to go on for years so I feel like there's

1 plenty of time for people to accommodate this.
2 Thank you.

3 PRESIDING OFFICER WEATHERSBY: Mr. Shulock?

4 MR. SHULOCK: So I raised it but then I was
5 persuaded by Mr. Way's comments that the
6 triggering date is not the date of harm. It's
7 the date that the Project becomes operational.
8 So in most cases the step, it would match or
9 exceed, and there would only be some cases where
10 it didn't.

11 PRESIDING OFFICER WEATHERSBY: Director
12 Muzzey?

13 DIR. MUZZEY: And I was only open to the
14 idea of three years if that was necessary in
15 order to make this agreement compatible with
16 other existing state laws. So it's entirely a
17 legal matter for me and whatever our attorney
18 recommends is fine.

19 PRESIDING OFFICER WEATHERSBY: I don't
20 think he's going to recommend a time period.

21 DIR. MUZZEY: Whatever he informs us as to
22 whether it conflicts with other state law.

23 PRESIDING OFFICER WEATHERSBY: So I'm
24 hearing some consensus that two years from the

1 date the line is in service is sufficient. It's
2 been agreed upon by the Applicant and Counsel
3 for the Public and also allows the process
4 involving the SEC Administrator, Dispute
5 Resolution Administrator, to resolve sooner. So
6 I'm guessing there's some consensus for a two
7 year? Does anyone feel different that it should
8 be something other than a two-year date from the
9 date of service in which to file a claim?

10 (No verbal response)

11 PRESIDING OFFICER WEATHERSBY: Okay. I
12 think the other issue is payment for the
13 mediator if they do go into mediation. We heard
14 from counsel that that's usually shared in
15 Superior Court except perhaps in domestic
16 matters or when there's a great disparity of
17 income. Does anyone care to comment on the cost
18 of mediation? Mr. Fitzgerald?

19 MR. FITZGERALD: Yes. I would just assert
20 that certainly in this case we're talking about
21 disputes between individuals, small businesses
22 and so on with a major corporation. I believe
23 there is a significant inequity in resources.
24 That being said, I think that there should be

1 some sharing that would give the small entity
2 making the dispute, you know, make them think a
3 little bit, do I, you know, do I want to carry
4 on with this and give them certainly some
5 financial concern to suggest that they don't
6 carry on with frivolous claims.

7 PRESIDING OFFICER WEATHERSBY: So I would
8 point out that when they get to the last step if
9 they're following this process through the
10 dispute resolution involving the SEC Dispute
11 Resolution Administrator, the cost of that
12 process are paid for out of that Dispute
13 Resolution Fund which is funded by the
14 Applicant.

15 What we're talking about here is that
16 there's not a provision for who's going to pay
17 for the mediation step where they select a
18 mediator through the state list of mediators.
19 That person would need to be compensated.

20 MR. FITZGERALD: Could that be a topic that
21 could potentially go to the Dispute Resolution?
22 In other words, if they don't agree on who's
23 going to pay?

24 PRESIDING OFFICER WEATHERSBY: I think it

1 would be helpful if we decided, you know, with
2 it being shared, it can be shared 75/25, whether
3 it can be a hundred percent the Applicant who
4 most likely would have the greater ability to
5 pay. But should there be some obligation of the
6 property owner or the small business owner or
7 perhaps large business owner to pay something,
8 have some skin in that game. Director Muzzey?

9 DIR. MUZZEY: Given that the Applicant and
10 Counsel for the Public have agreed to these
11 conditions, and the Applicant has agreed to fund
12 decisions made during Dispute Resolution Fund, I
13 feel it would be consistent and also recognize
14 the disparity in financial resources between the
15 two parties who may be involved to have the
16 Applicant pay for the mediation as well.

17 PRESIDING OFFICER WEATHERSBY: Does anyone
18 feel differently than Director Muzzey? Okay.
19 Mr. Fitzgerald?

20 MR. FITZGERALD: I did already express a
21 different opinion.

22 PRESIDING OFFICER WEATHERSBY: I'm sorry.
23 Could you express it again?

24 MR. FITZGERALD: There should be some

1 sharing.

2 PRESIDING OFFICER WEATHERSBY: What would
3 you propose?

4 MR. FITZGERALD: I don't have a specific
5 proposal at this point. I believe there should
6 be some, whether it's a flat dollar amount or a
7 90/10 or whatever, but I think that there should
8 be some reason for the aggrieved party to
9 consider do I want to carry on with a frivolous
10 claim.

11 PRESIDING OFFICER WEATHERSBY: Ms. Duprey?

12 MS. DUPREY: I actually agree with that. I
13 think that the point of this process is to try
14 to get it to an end, and if you feel like I can
15 just keep going where there's no bracketing, at
16 least in the last, 21, you have to have suffered
17 actual harm as we're anticipating it now. Up
18 until now you might not have. And so it seems
19 to me that an interest in trying to bring these
20 claims to a conclusion before they get to 21,
21 that having some sharing makes sense. I would
22 agree it shouldn't be 50/50. I think it should
23 be something like 80/20 but just something.

24 PRESIDING OFFICER WEATHERSBY: Mr. Shulock?

1 MR. SHULOCK: Well, there may be some
2 issues with choosing Neutrals from the Superior
3 Court list, and one is that list is divided
4 between paid Neutrals and volunteer Neutrals.
5 So some people can volunteer their time. I know
6 that for disputes that haven't reached the court
7 level yet, sometimes those mediators will ask
8 that it go through the court program as a
9 prelitigation mediation through the Office of
10 Arbitration and Mediation in which case parties
11 have to pay a \$50 fee even to access -- I think
12 it's still \$50 to access that program. And then
13 whether they're using a free or paid mediator,
14 you know, they have their charges posted. So
15 maybe the property owner pays the \$50 fee, if
16 it's necessary. I think that would be fair.

17 PRESIDING OFFICER WEATHERSBY: Go ahead,
18 Mr. Schmidt.

19 MR. SCHMIDT: I think there has to be a
20 little more buy-in on behalf of the property
21 owner. So I share the philosophy of a cost
22 sharing percentage-wise. 70/30, 80/20 work as
23 well.

24 PRESIDING OFFICER WEATHERSBY: Mr. Way?

1 MR. WAY: I think I'm persuaded as well
2 that there needs be some level of buy-in. I
3 think as we look at some of these concerns, we
4 want to have at least some motivation to settle
5 this if at all possible, and we don't want to
6 give an incentive to just to carry on just
7 because it can to its endpoint. So I would
8 agree that there should be some buy-in. Mr.
9 Shulock's suggestion, that's intriguing and
10 so -- but however we do it there's something.

11 MR. SHULOCK: If I may, I think there's
12 probably sufficient buy-in for the property
13 owner in that if the mediation doesn't work, the
14 company is going to proceed and construct
15 without that agreement. Right? So at some
16 point the company is just going to say enough.
17 I'm not going to try and work this out with you
18 anymore. Right? And because it's mediation,
19 the property owner is stuck with that.

20 So if you have an unreasonable property
21 owner which may exist out there, and I'm not
22 saying that people who are passionate about
23 their property are unreasonable, I'm saying that
24 somebody who can't take "yes" for an answer,

1 right? The Applicant can always walk away from
2 that. So I don't know that we need to
3 incentivize or get buy-in from the property
4 owner on a monetary level.

5 MR. WAY: I think that's a good point.

6 PRESIDING OFFICER WEATHERSBY: Actually, I
7 don't think the Applicant can just walk away.
8 They have to follow through this process, and if
9 there's dissatisfaction on one level, the
10 property owner can elevate it to the next, and
11 the Applicant has to participate right down to
12 the SEC Dispute Resolution Process, the final
13 step, the applicant applies, the property owner
14 applicant applies and Eversource has to
15 participate is my understanding.

16 MR. SHULOCK: I think it's true that they
17 have to participate in the mediation in good
18 faith. They have to go in willing and with some
19 ideas on how they're going to settle it, but if
20 they run into a property owner who can't take
21 "yes" for an answer, they can say we're done
22 mediating. We've come here in good faith and we
23 can stop.

24 So if the property owners are motivated by

1 trying to get to an agreement that will actually
2 work for them, you know, making some gains on it
3 rather than just having the Applicant walk away
4 and say okay, we can't come to agreement, we're
5 going to do what it is we think we need to do.

6 PRESIDING OFFICER WEATHERSBY: In that case
7 though the property owner could then use the
8 final step in Dispute Resolution Process which
9 the Applicant would be required to participate
10 in and there would be a binding outcome.

11 MR. SHULOCK: Agreed.

12 PRESIDING OFFICER WEATHERSBY: If there's
13 damage or they decide there's no damage. Ms.
14 Duprey.

15 MS. DUPREY: I still stand by my original
16 position that I think both parties should share
17 in this because I think, again, we're trying to
18 get this resolved at the earliest level that we
19 can, and there's no incentive for a property
20 owner not to move to mediation because it's
21 another bite at the apple and then the Applicant
22 has no choice. It has to go, it has to pay for
23 it. Not only does it have to go, it has to pay
24 for it. So I'm just a little uncomfortable with

1 that and feel like if both parties had some skin
2 in the game that there might be more of an
3 incentive to try to reach that resolution
4 instead of saying you know, I think I'll take
5 another bite of the apple. I already got this
6 so I'll take another bite of the apple.

7 MR. FITZGERALD: Is it possible that the
8 mediator could be empowered to make a
9 determination on the allocation?

10 MR. SHULOCK: If I may, I don't think
11 that's possible.

12 PRESIDING OFFICER WEATHERSBY: So I'd like
13 to make a proposal and that is because we have
14 heard that the mediator may be a volunteer, I
15 don't think it's fair to say the Applicant shall
16 pay \$500 to participate in this process. I
17 think there should be a percentage, and I think
18 the Applicant should pay 75 percent of all costs
19 of mediation, the Applicant being Eversource
20 should pay 75 percent of the cost, and the
21 property or business owner who is going through
22 this process should pay 25 percent. I'm
23 throwing that out there for discussion.

24 MR. FITZGERALD: Do we have any idea of the

1 magnitude that we're talking about of costs? 75
2 percent of \$10,000 is one thing. 75 percent of
3 a couple thousand is -- in talking about
4 individual property owners and their ability to
5 pay.

6 PRESIDING OFFICER WEATHERSBY: My proposal
7 was that the individual or small business or the
8 affected party pays 25 percent.

9 MR. FITZGERALD: Right.

10 PRESIDING OFFICER WEATHERSBY: And then
11 Eversource --

12 MR. FITZGERALD: Still, 25 percent of 2000
13 is different than 25 percent of 10.

14 PRESIDING OFFICER WEATHERSBY: Typical
15 costs for mediation perhaps? Mr. Iacopino? If
16 you can give us a general range without pinning
17 you down too much?

18 MR. IACOPINO: In my experience the various
19 mediators just charge an hourly rate. They
20 usually anticipate, for instance, in Superior
21 Court, there's going to be a four-hour
22 mediation, they require two hours' payment from
23 each party in advance and then if it goes over,
24 they bill each party an equivalent amount for

1 whatever their hourly rate is.

2 MR. FITZGERALD: So we're possibly talking
3 1 to \$5,000 or something like that?

4 MR. IACOPINO: I would say if the lawyer is
5 charging \$300 an hour, and it's an 8-hour
6 mediation, that's \$2400. Just to give you an
7 example of what I would say it probably a high
8 end when you're talking about the Superior Court
9 mediators.

10 MR. SCHMIDT: Isn't it true though that
11 they could go on for at least a couple of days?
12 Mediation session?

13 MR. IACOPINO: Sure. It could. You all
14 could limit it as well.

15 PRESIDING OFFICER WEATHERSBY: Also an
16 incentive if everyone's paying a percentage to
17 work things out or to reach a decision that
18 we're not going to work it out after several
19 hours of attempts. That would be another
20 advantage of the percentage method.

21 MS. DUPREY: I support your proposal.

22 MR. WAY: I do as well.

23 MR. SCHMIDT: I do as well.

24 MR. SHULOCK: I think that cost is too high

1 for your average property owner who's put into
2 this position just because somebody is going to
3 step in their backyard.

4 DIR. MUZZEY: I have concerns as well for
5 the cost for the property owner because we just
6 don't know what that person's resources are and
7 we don't know what the damage will be.

8 I would note that I just did a quick check
9 in Rockingham County of the Superior Court list.
10 There were about 40 people on the list, and 7 of
11 those were volunteer mediators. So there does
12 seem to be a selection of them. A number more
13 were both noted as volunteer and paid so I don't
14 know how they decide which they do.

15 PRESIDING OFFICER WEATHERSBY: Director
16 Muzzey and Mr. Shulock, do you have a different
17 proposal you'd like to float?

18 MR. SHULOCK: My proposal was a flat fee of
19 \$50.

20 PRESIDING OFFICER WEATHERSBY: What do
21 people think about a flat fee of \$50?

22 DIR. MUZZEY: I agree with that.

23 PRESIDING OFFICER WEATHERSBY: Mr. Schmidt?

24 MR. SCHMIDT: I like to see it a little

1 more.

2 PRESIDING OFFICER WEATHERSBY: Mr. Way?

3 MR. WAY: I'm thinking.

4 PRESIDING OFFICER WEATHERSBY: Ms. Duprey?

5 MS. DUPREY: I was talking out of school
6 and I didn't hear the proposal.

7 PRESIDING OFFICER WEATHERSBY: The proposal
8 is a flat fee of \$50 for the property owner and
9 the rest paid by Eversource.

10 MS. DUPREY: I say no. I think we're
11 blowing this all out of proportion. To me, if
12 you had a mediator who is \$300 an hour and you
13 had four hours which is perfectly reasonable to
14 me for something like this, you're talking
15 \$1200. 25 percent of that is 300. I don't
16 think that that's too much to ask people to pay.
17 I think it's reasonable.

18 MR. FITZGERALD: I would agree with that.

19 PRESIDING OFFICER WEATHERSBY: Agree to the
20 \$50 or the percentage?

21 MR. FITZGERALD: To the percentage.

22 PRESIDING OFFICER WEATHERSBY: I also think
23 \$50 is not enough. I'd be fine going 80/20.

24 MR. FITZGERALD: What about a flat fee of

1 200 or 25 percent, whichever is, I mean --

2 MS. DUPREY: Not to exceed.

3 PRESIDING OFFICER WEATHERSBY: We could do
4 25 percent not to exceed \$500 or \$300 or
5 something like that. It does change the
6 incentives a little bit, once you reach that 500
7 bucks or whatever it is, but I don't think
8 anyone's going to drag this out necessarily.
9 Everyone wants this done. This is not a fun
10 process to go through, and everyone that is
11 involved is going to try to reach agreement or
12 resolution in some manner. So I'd be fine
13 with -- all right. Next proposal. 75/25, cap
14 of \$300.

15 MR. SCHMIDT: Good.

16 MS. DUPREY: Good.

17 MR. FITZGERALD: Agreed.

18 MR. WAY: Agreed.

19 PRESIDING OFFICER WEATHERSBY: Mr. Shulock
20 is going to say no. Cap of 300.

21 MR. SHULOCK: I think that cap is too high.

22 PRESIDING OFFICER WEATHERSBY: Director
23 Muzzey?

24 DIR. MUZZEY: I would have preferred

1 Mr. Fitzgerald's \$200 limit.

2 PRESIDING OFFICER WEATHERSBY: We have five
3 of us that are in agreement so I think we're
4 going to move on. Attorney Iacopino, do you
5 need anything else?

6 MR. IACOPINO: I need to know what you're
7 in agreement on. I missed the amount.

8 PRESIDING OFFICER WEATHERSBY: Cost of
9 mitigation will be shared by the parties; 25
10 percent on the property or business owners, 75
11 percent by Eversource. The property
12 owner/business owners contribution will be
13 capped at \$300.

14 Do you need any more clarification from us
15 for the Dispute Resolution Process? Do you want
16 to think about it over lunch?

17 MR. IACOPINO: We'll do our best. We'll do
18 our best.

19 PRESIDING OFFICER WEATHERSBY: Let's break
20 for lunch. Off the record.

21 (Discussion off the record)

22 PRESIDING OFFICER WEATHERSBY: Let's come
23 back at 10 minutes after 2.

24 (Recess taken at 1:23 p.m.)

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 16th day of December, 2018.

Cynthia Foster, LCR