

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

CASE NO. 22-2120-PET

PETITION OF INDUSTRIAL TOWER AND WIRELESS,
LLC REQUESTING A CERTIFICATE OF PUBLIC
GOOD, PURSUANT TO 30 V.S.A. SECTION 248a,
AUTHORIZING THE INSTALLATION OF WIRELESS
TELECOMMUNICATIONS EQUIPMENT OFF OF
BORDOVILLE ROAD IN ENOSBURGH, VERMONT --

January 12, 2023
9:30 a.m.

Via videoconference

Evidentiary Hearing held before the
Vermont Public Utility Commission, via GoToMeeting, on
January 12, 2023, beginning at 9:30 a.m.

P R E S E N T

HEARING OFFICER: Gregg C. Faber, Utilities Analyst

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1 MR. FABER: Let's go on the record,
2 Kim. Good morning. This is a remote evidentiary
3 hearing in Case No. 22-2120, the petition of
4 Industrial Tower and Wireless requesting a
5 Certificate of Public Good approving the installation
6 of a telephone facility in Enosburgh, Vermont.

7 My name is Gregg Faber. I'm the
8 hearing officer in this proceeding. And let's start
9 by taking appearances. I would ask that a
10 representative for each party state their name and
11 affiliation and then provide the names of all other
12 attendees from that entity.

13 So let's start with you, Mr. Sullivan.

14 MR. SULLIVAN: Okay. As I said before,
15 I'm Brian Sullivan. I'm the attorney for the
16 Petitioner, Industrial Tower and Wireless LLC. From
17 that company we have Kevin Delaney, and then Louis
18 Hodgetts, and Rick -- Richard Voci, each of whom
19 submitted prefiled testimony in the case and will be
20 available for cross examination.

21 We also have Eric Kallio who is
22 monitoring. It looks like he's connected by phone.

23 MR. FABER: Thank you. Ms. Dingleline?

24 (No audio)

25 MR. FABER: Can one of the neighbors

1 call Ms. Dingledine and tell her that we can't --
2 well let's get back to her. Mr. Guzman.

3 MR. GUZMAN: Yes. This is Eric Guzman
4 on behalf of the Department. Also with me is Michael
5 Swain who will be the primary attorney speaking on
6 behalf of the Department at this hearing. And also
7 joining us is the Department's witness, Gordon
8 Perkins.

9 MR. FABER: Okay. Thank you. Oh, what
10 happened? She is back. Okay. I still can't hear.
11 I don't know what to do.

12 MS. BRUHN: Sometimes it helps to log
13 out and then log back in. I don't know if you've
14 done that, Brooke.

15 MR. SULLIVAN: Or reboot your computer
16 entirely and then log back in.

17 MS. DINGLELINE: Can you hear me now?

18 MR. FABER: Yes. There you are. Thank
19 you.

20 MS. DINGLELINE: Sorry about that.
21 Sorry about that.

22 MR. FABER: No problem.

23 MS. DINGLELINE: We are so used to
24 these interruptions. Sorry about that.

25 Yes. My name is Brooke Dingledine, and

1 I am on a limited appearance for the evidentiary
2 hearing for several of the interveners; Cyrus House,
3 Sandra Bruhn, Philippa Dorfman, the church through
4 Debra Knutson-Bezerra, Tara Lombardi and Charles
5 Hungerford Fourie.

6 MR. FABER: Okay. Thank you. Let's
7 see. Well I'm going to go through the procedures for
8 this remote hearing. The parties have agreed to
9 conduct this proceeding remotely. I just want to
10 confirm that all parties have consented to the remote
11 nature of the hearing. Any objections?

12 (No response)

13 MR. FABER: Okay. Hearing none --

14 MS. SHEPPARD: I just had a question.
15 It's Colleen Sheppard.

16 MR. FABER: Sure.

17 MS. SHEPPARD: Can you hear me?

18 MR. FABER: Yes, I can, Ms. Sheppard.

19 MS. SHEPPARD: I'm here, Colleen
20 Sheppard and Derek Jones, we are part of the
21 neighbors' group. Derek Jones is one of the experts
22 at the hearing today. He's on -- telephone caller
23 number 2, I believe.

24 MR. FABER: Okay.

25 MS. SHEPPARD: I just wanted to add

1 that.

2 MR. FABER: Oh, okay. All right. Well
3 thanks. All right. Let's see. I'm going to just
4 remind anyone that I'm not going to be muting
5 anybody's microphone. You should keep yourself on
6 mute unless you're speaking. Whenever you do begin
7 speaking identify yourself by name. If someone has a
8 technical issue just reach out to the clerk's office
9 because I am of no help on that.

10 And any questions about that?

11 (No response.)

12 MR. FABER: Okay. With that covered,
13 we can actually do the sharing part. Mr. Sullivan,
14 do you have any thoughts on how best to proceed
15 today?

16 MR. SULLIVAN: Yes. My thoughts are
17 that since we are the Petitioner we would present our
18 witnesses first. I would ask each one of the three
19 who submitted prefiled testimony to affirm their
20 testimony and move for admission of their exhibits.
21 And then we could proceed to cross examination of
22 them.

23 As to which party goes next, as between
24 the Department and the neighbors, I don't know that
25 we have a preference.

1 MR. FABER: I'm assuming you have
2 questions for the neighbors and the Department, or is
3 that the case?

4 MR. SULLIVAN: Well we have some
5 limited cross examination for the witnesses of the
6 neighbors. I don't know that we have any cross
7 examination for the witness from the Department.

8 MR. FABER: Okay. All right. Well
9 that sounds reasonable. Why don't we go ahead and
10 get your witnesses sworn in and make them available
11 for cross examination.

12 MR. SULLIVAN: Okay. Since his
13 testimony was the shortest of the three, I'm going to
14 start with Richard Voci, and ask that he put his
15 camera on. I see he has his microphone unmuted.
16 Okay. There you are, Rick. Good morning, Rick.

17 MR. VOCI: Good morning.

18 MR. SULLIVAN: I would ask you if your
19 prefiled testimony in this case is still accurate to
20 the best of your knowledge?

21 MR. VOCI: Yes.

22 MR. SULLIVAN: I would ask you if the
23 one exhibit, I believe there was only one exhibit
24 that we submitted on your behalf, is still accurate
25 to the best of your belief?

1 MR. VOCI: Yes.

2 MR. SULLIVAN: Okay. With that, I
3 would move for the admission of Mr. Voci's testimony
4 and exhibit.

5 MR. FABER: Any objections? Motion is
6 granted.

7 MR. SULLIVAN: Okay.

8 (The Prefiled Testimony of Richard Voci
9 was admitted into the record.)

10 (Exhibit RV-1 and RV-2 was
11 admitted into the record.)

12

13 Prefiled Testimony of Richard Voci

14 <http://epuc.vermont.gov/?q=downloadfile/580423/169720>

15 RV-1

16 <http://epuc.vermont.gov/?q=downloadfile/580424/169720>

17 RV-2

18 <http://epuc.vermont.gov/?q=downloadfile/580425/169720>

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MR. FABER: Let me swear you in, Mr.

Voci.

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1 RICHARD VOCI

2 Having been duly sworn, testified
3 as follows:

4 THE WITNESS: Yes.

5 MR. FABER: Thank you. Who would like
6 to go first? Ms. Dingledine, Mr. Swain, any
7 preference? Let's start with you then, Ms.
8 Dingledine, provided you have questions.

9 MS. DINGLELINE: Thank you. I have a
10 few, if I might please. Trying find Mr. Voci on the
11 screen. Oh, there he is. Okay.

12 CROSS EXAMINATION

13 BY MS. DINGLELINE:

14 Q. Good morning, Mr. Voci.

15 A. Good morning.

16 Q. I understand that you have a lot of experience
17 in the New England area. You have been working for 36
18 years in this industry?

19 A. Yes.

20 Q. And you've indicated in your prefiled
21 testimony that you have been involved in successful
22 planning and permitting of over 100 telecommunication
23 tower sites in Massachusetts, New Hampshire, Rhode Island
24 and Maine; is that fair to say?

25 A. Yes.

1 Q. Okay. Have you been involved in any
2 unsuccessful planning and permitting of telecommunication
3 tower sites in any of those states?

4 A. Not that I can remember.

5 Q. So you have over a hundred towers, and you're
6 batting a thousand; is that accurate?

7 A. Yes.

8 Q. Okay. Have you been involved in planning or
9 permitting any towers here in Vermont prior to this case?

10 A. Just a couple. Yes.

11 Q. And where would those be located?

12 A. I do not know.

13 Q. What time period were you involved in them? A
14 long time ago or recently?

15 A. Just recently; past couple years.

16 Q. Okay. And were they for Industrial or for
17 another company?

18 A. For Industrial.

19 Q. Okay. Of the -- have you ever -- you're in
20 the business of finding sites and, you know, developing
21 them.

22 Have you encountered in that endeavor of yours
23 situations where you worked for Industrial where they have
24 made a proposal for a tower or an advance notice for a
25 tower and then they chose not to go forward with it and

1 decided to withdraw from the going forward with the
2 process?

3 A. Yes.

4 Q. And where would that have been at? What
5 localities?

6 A. Oh, I don't know. I don't know. There would
7 have been different reasoning, so I have no idea.

8 Q. Any that you can recall here in Vermont that
9 were say an advance notice was filed but then the petition
10 was not -- or was withdrawn later?

11 A. No. Not that I remember.

12 Q. So you feel pretty confident when you find
13 sites that you'll be successful in getting them permitted
14 for a Certificate of Public Good. Fair to say?

15 MR. SULLIVAN: Objection. I don't know
16 that it's been established that Mr. Voci himself
17 finds the sites.

18 THE WITNESS: Correct.

19 MR. FABER: Ms. Dingleline?

20 MS. DINGLELINE: Okay. Let me ask the
21 question then without the word finding sites.

22 BY MS. DINGLELINE:

23 Q. In terms of your endeavors to develop sites.

24 A. Can you restate the question? I don't
25 understand.

1 Q. Yeah. Well let me ask you a different way.
2 Have you encountered any situations where your sites that
3 you have located have had a contested hearing or
4 opposition to those processes of permitting?

5 A. I still don't understand what you're asking
6 me.

7 Q. When you go for -- of the 100 towers that
8 you've permitted, what percentage of those have been
9 contested cases where there was opposition in the
10 litigation in terms of getting a permit?

11 A. I don't know.

12 Q. The minority of them? The vast majority?
13 Majority?

14 A. I can't answer that.

15 Q. Don't know?

16 A. No.

17 Q. How many times have you been an expert witness
18 at a hearing like you're appearing here today?

19 A. This is my first one actually.

20 MR. SULLIVAN: I would -- sorry. I
21 should have objected to that question. We are not --
22 and we made it clear in our discovery responses -- we
23 are not putting forward Mr. Voci as an expert
24 witness.

25 MS. DINGLELINE: Understood.

1 BY MS. DINGLELINE:

2 Q. But you -- if there was a hearing to be had,
3 you typically would testify at that hearing even if there
4 is no opposition to explain the project design and the
5 plan to the permitting authority. Fair to say?

6 A. If need be.

7 Q. Okay. But the vast majority of these cases,
8 is it fair to say, there is no opposition? You go through
9 a process, you make your showing, and you get your permit
10 without groups of people who are opposing you?

11 A. Yes. Sometimes.

12 Q. Okay. I wanted to ask you a question. I'm
13 sorry. I have the wrong witness. I think I'll leave it
14 there. Thank you for your help.

15 I'm sorry. Beg your pardon.

16 MS. DINGLELINE: Before I let you off
17 the hook, Your Honor, may I share a screen before I
18 let him go?

19 MR. FABER: Sure.

20 MS. DINGLELINE: It's something that
21 happened to the -- I may need you to allow me to
22 share.

23 MR. FABER: Okay. Now you're testing
24 the limits of my -- I do not really know how to do
25 that.

1 MS. DINGLELINE: I can ask you, I
2 think. Let's see if I press this. Does it ask you?
3 We were practicing it before the hearing, and they
4 had to turn it on.

5 MR. FABER: Hold on a second. Let me
6 put you on mute for a second. I'll figure this out.

7 (A discussion was held off the record.)

8 MR. FABER: Okay. I think that worked.
9 So I think you should be able to share now, Ms.
10 Dingleline.

11 MS. DINGLELINE: Okay. Let's see.
12 Share. Okay. I think I've got it.

13 MR. FABER: I'm seeing something.

14 MS. DINGLELINE: All right. Okay.
15 Here we go. If you guys can see these two pictures
16 at once.

17 BY MS. DINGLELINE:

18 Q. Mr. Voci, what I was wondering is, this photo
19 simulation here on the left, I'll make it bigger for you
20 folks. That was submitted by DuBois & King as a
21 simulation from location one, I believe, as to what the
22 tower will look like when -- once it's erected.

23 Do you see that on the left? Maybe it's your
24 left, the photograph with the simulation in it.

25 A. Yes, I can see that.

1 Q. Okay. Now some of the discovery materials
2 that you folks provided showed materials off of your
3 website, I believe. And there were pictures of, for
4 example, this from Fitchburg, Massachusetts showing a
5 tower site with AT&T, Dish Wireless, T-Mobile and Verizon
6 Wireless. Just like you folks are trying to attract them,
7 as I understand, to the Enosburgh tower.

8 So what I'm wondering is why we are seeing a
9 simulation that this is a bare tower, naked it looks like,
10 versus what you folks -- what these look like once you get
11 these cell tower companies to put their equipment on the
12 towers.

13 There is this photo, there is these other in
14 Barnstable and in Upton, Mass. where you've permitted
15 them. And they look much more significant than what you
16 are showing in your simulations.

17 Would you be able to comment on that in terms
18 of whether this simulation is or is not an accurate
19 representation of what this tower will look like when you
20 get all of the equipment affixed in all of the locations
21 based on the height that you're asking for?

22 A. I did not prepare the simulation.

23 Q. Do you have any opinion or expertise to
24 comment on whether this simulation is or is not an
25 accurate representation based on your 36 years of

1 permitting these sites and knowing what they look like
2 before and after?

3 MR. SULLIVAN: Objection. Calls for
4 speculation.

5 MR. FABER: Yeah, Ms. Dingleline. You
6 know, get to the point here. What are you trying to
7 ask him?

8 MS. DINGLELINE: I'm asking if this is
9 an accurate simulation of the proposed tower with the
10 equipment that they are asking for the height for so
11 they can have all these collocators.

12 BY MS. DINGLELINE:

13 Q. I'm asking is this an accurate representation.
14 Because looking at your website once you have all that
15 equipment, it looks far different in the photographs you
16 have there. So I'm asking if DuBois & King's photograph
17 is accurate.

18 A. Again, I didn't prepare it, so I don't know.
19 I can't really see what that looks like either.

20 Q. You have permitted 100 towers in 36 years.
21 Have you ever gone to any of those 100 towers after they
22 were constructed and had the -- all of the equipment
23 attached to them?

24 A. After?

25 Q. Yeah. Yeah.

1 A. Typically not.

2 Q. How many towers have you seen in your 36 years
3 that you've observed that has had three or more cell
4 companies on it in addition to Industrial or a company
5 like that?

6 A. I see them on the highway.

7 Q. And do they look like the simulation that
8 DuBois & King provided? I was saying when you observed
9 them from the highway?

10 A. I said I really can't see that picture. It's
11 so small, I can't see it. I don't know if it has our
12 antenna on it or not.

13 Q. Okay. How's that? Is that better?

14 A. Okay. Not really. But I see it. I have a
15 zoom thing here that --

16 Q. Well let me ask you this. Here it is.

17 A. Yeah. Okay. I see that. So that shows our
18 antennas.

19 Q. Right.

20 A. That's how it would look with our antennas on
21 it.

22 Q. Right. But you have 100 feet above the tree
23 line to put all sorts of cell companies on. So my
24 question is, I see where these little antennas are on the
25 top, but what about the cell companies? This is not an

1 accurate representation of a tower with any cell equipment
2 on it, is it?

3 A. Well it has our equipment on it.

4 Q. Are you a cell -- a phone company? A cell
5 phone company? Or are you a radio company?

6 A. That, I really don't know the answer to that.

7 Q. Well you tell me from this photograph how many
8 carriers are on this tower.

9 A. Just the one.

10 Q. Industrial's antennas?

11 A. Correct.

12 Q. Okay. So Verizon's not represented on that
13 tower; correct? AT&T is not represented on that tower;
14 correct?

15 A. I don't think so.

16 Q. T-Mobile is not represented on that tower;
17 correct?

18 A. I don't think so.

19 Q. There is no other equipment represented on
20 that tower other than what Industrial's putting at the
21 tippy top; right?

22 A. I'm pretty sure we are the applicant.

23 Q. And there is no other equipment represented in
24 the simulation other than what Industrial's putting on the
25 top of the tower? Yes or no. Is that a correct statement

1 or not?

2 A. Yes.

3 Q. Okay. So we should not -- this is not
4 reliable, therefore, to represent the application that is
5 being requested which is for as many as five additional
6 carriers to be located on this tower. Fair to say?

7 MR. SULLIVAN: Objection. That is not
8 the application that we presented.

9 THE WITNESS: I don't know.

10 MR. SULLIVAN: The application we
11 presented was for Industrial Tower and Wireless's
12 antennas solely, and I know Ms. Dingleline has come
13 into this at the 11th hour, but her clients have
14 repeatedly pointed that fact out in the process.

15 MR. FABER: Yeah. I'll sustain that
16 objection. That's -- this is an application -- the
17 application that's in front of us is for this tower,
18 Ms. Dingleline.

19 MS. DINGLELINE: I know. I understand.
20 But I'm just trying to get across the point this is
21 not what it's going to look like if they are
22 successful in collocating which they claim is the
23 reason why they need this height, I understand.

24 MR. FABER: Okay. And each one of
25 those collocations would require approval. You

1 understand that as well.

2 MS. DINGLELINE: Well yes. Not as
3 robust, unfortunately. So all right. I'll move on
4 then. Thank you. One last thing. In discovery --

5 MR. FABER: You're still sharing your
6 screen.

7 MS. DINGLELINE: One other item. Just
8 one sec.

9 MR. FABER: Go ahead.

10 BY MS. DINGLELINE:

11 Q. That's way too big. Let me make it smaller.
12 In discovery the interveners requested actual photographs
13 of what the tower would look like with equipment affixed
14 to it. And that request was denied but we were -- they
15 were referenced to the sketch drawing that was presented.

16 So Mr. Voci, is this typically what's
17 presented in terms of your applications, for example, in
18 Fairfax, Vermont? I think you were involved in that one.
19 Is this the normal typical 140-foot tower that Industrial
20 is trying to site in Vermont?

21 A. Each site is different. So --

22 Q. Okay. But in terms of this tower model, is
23 this what you would normally present instead of an actual
24 photograph of what the tower would look like absent
25 simulations being performed?

1 A. Yes.

2 MS. DINGLELINE: Okay. Thank you.

3 That's all I have. Thank you.

4 MR. FABER: Thank you. Mr. Swain?

5 MR. SWAIN: The Department doesn't have
6 any questions for Mr. Voci.

7 MR. FABER: Thank you. Mr. Sullivan,
8 redirect?

9 MR. SULLIVAN: No redirect.

10 MR. FABER: Okay. The next witness,
11 Mr. Sullivan.

12 MR. SULLIVAN: The next witness I would
13 call is Mr. Kevin Delaney. And when he comes on the
14 screen, I will be asking him the same questions I
15 asked Mr. Voci which are number one, Kevin, do you
16 affirm that the prefiled testimony that you've
17 submitted in this case is accurate to the best of
18 your knowledge?

19 MR. DELANEY: Yes.

20 MR. SULLIVAN: Do you affirm that the
21 exhibits that you submitted with your prefiled
22 testimony are accurate to the best of your knowledge?

23 MR. DELANEY: Yes.

24 MR. SULLIVAN: I would therefore move
25 the admission of the exhibits that Mr. Delaney has

1 submitted and make him available for cross
2 examination.

3 MR. FABER: Thank you, Mr. Sullivan.
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1 KEVIN DELANEY

2 Having been duly sworn, testified
3 as follows:

4 THE WITNESS: Yes I do.

5 MR. FABER: Thank you. Ms. Dingledine.

6 Yes. Any exhibits that are being
7 presented should be considered admitted.

8 (The Prefiled Testimony of Kevin Delaney
9 was admitted into the record.)

10 (Exhibits marked KD-1 through 10 were
11 admitted into the record.)

12
13 Prefiled Testimony of Kevin Delaney

14 <http://epuc.vermont.gov/?q=downloadfile/580427/169720>

15 KD-1

16 <http://epuc.vermont.gov/?q=downloadfile/580428/169720>

17 KD-2

18 <http://epuc.vermont.gov/?q=downloadfile/580429/169720>

19 KD-3

20 <http://epuc.vermont.gov/?q=downloadfile/580430/169720>

21 KD-4

22 <http://epuc.vermont.gov/?q=downloadfile/580431/169720>

23 KD-5

24 <http://epuc.vermont.gov/?q=downloadfile/580432/169720>

25

KD-6

<http://epuc.vermont.gov/?q=downloadfile/580433/169720>

KD-7

<http://epuc.vermont.gov/?q=downloadfile/593407/169720>

KD-8

<http://epuc.vermont.gov/?q=downloadfile/593408/169720>

KD-9

<http://epuc.vermont.gov/?q=downloadfile/593409/169720>

KD-10

<http://epuc.vermont.gov/?q=downloadfile/593410/169720>

CROSS EXAMINATION

BY MS. DINGLEDINE:

Q. Mr. Delaney, this is Brooke Dingledine. I represent some of the interveners. How are you today?

A. Good. Thank you.

Q. Trying to get your box to light up. I'm having trouble figuring out who you are on the Brady Bunch screen.

All right. Now you are a radio frequency engineer; correct?

A. I'm the RF engineering and regulatory compliance manager for Industrial Tower and Wireless.

Q. Regulatory compliance means what? What do you keep Industrial in line with?

A. So coverage studies are part of what I provide. As well as making sure we are in compliance with NEPA regulations which has to do with federal regulations for compliance for towers.

Q. Okay. And you're pretty active in going to municipalities and getting zoning permits and that kind of thing in other states; correct?

A. Yes.

Q. Okay. And have you done that before here in Vermont?

A. For municipalities?

1 Q. Yeah.

2 A. I haven't been presented anything in front of
3 a municipality in Vermont. No.

4 Q. But in the other states that you have been
5 working in, there is no process like this 248(a) process.
6 It's typically through zoning that -- at town levels that
7 you get your permitting; is that fair to say?

8 A. Yes.

9 Q. Okay. All righty. Now the -- you indicated
10 in your testimony that the objectives for the project were
11 to -- it says: Existing and proposed communications
12 support structures in and near Enosburgh can't serve the
13 area that you folks wanted to do due to distance, height
14 and terrain blockage.

15 Can you explain to me what your system really
16 is? It's not a regular cell phone like -- I can't call
17 somebody who has your device from a regular phone; right?

18 A. You can. The easiest way for people to
19 understand the type of technology that it is, is it's very
20 similar to the Nextel-type phones back in the early 2
21 thousands. They came out in the 90's, early 2 thousands.
22 And so it's a two-way radio enhanced network that is
23 capable of, you know, everything that normal phones are.

24 You can use it as a telephone. You can use it
25 for text messages, emails. And primarily it's a two-way

1 radio dispatch system.

2 Q. And who are the clients that you sell these
3 devices to typically down in the other New England states?

4 A. Also to different companies. Typically
5 contractors. Trucking companies. Oil companies.
6 Electrical contractors. Security businesses. And the
7 like.

8 Q. So how many users do you have in the state of
9 Massachusetts?

10 A. We don't break it out by the actual state. So
11 I couldn't answer that. But we have, you know, thousands
12 of users throughout the network.

13 Q. Is it that many? Because your website has all
14 this information about what towns or companies, and it
15 looked pretty -- like a small universe, like a couple
16 hundred. Is that not correct?

17 A. I'm not sure what you were looking at or -- on
18 the website. But there is definitely more than a few
19 hundred. I know that.

20 Q. Okay. And do you have any customers in
21 Vermont?

22 A. Not as of yet because we are designing network
23 now. So we don't have anything on the air in Vermont yet.
24 That's what we are doing, trying to find sites to build
25 the network.

1 Q. So is the height of this tower proposed at the
2 height it is, 140 plus the antennas on top, because you
3 were trying to reserve space for collocation of other
4 business carriers or other businesses? Or is it driven by
5 the need to have your antennas at a certain altitude?

6 A. Driven by both. We need the coverage and the
7 height for our internal system. And then to provide
8 capabilities for the carriers it doesn't make sense to
9 build the tower that would only be capable of providing
10 service for our services. We want to make it a
11 collocation site so another tower does not need to be
12 built in the same area to provide coverage for the
13 carriers.

14 Q. So when I was working for a developer several
15 years ago, they had towers where they could extend the
16 tower height with these lattice towers. So that, for
17 example, until they found out that they had contracts from
18 another carrier for collocation, they wouldn't have to
19 extend and pay for, you know, that taller tower until they
20 got somebody to come aboard.

21 Is that a possibility with the tower design
22 that you folks have?

23 A. It's not.

24 Q. Okay. In terms of the 140, is there a lower
25 height that you could mitigate the view of this by

1 reducing the height of, you know, say 20, 30, 40 feet,
2 where it would not make any significant appreciable
3 difference to your coverage of your antennas?

4 A. I believe we submitted that we could go down
5 to 120 feet. And then it would provide no collocation
6 opportunities for any additional carriers at that point.

7 Q. And why is that? If you're only losing 20
8 feet out of 100 that's above the tree line?

9 A. I submitted coverage maps that showed that the
10 difference between the height, and if you review those you
11 can see the difference when you start going down in height
12 how it affects coverage.

13 Q. Well but you were saying 120. Why don't we
14 take a look at those. Let me get them up on the screen.

15 Let's see. We have got this one, and we have
16 got -- hang on just a minute. Trying to get them both.
17 All right. So here is side by side. Can you tell me
18 which is which?

19 A. I don't see anything on the screen.

20 Q. You don't see anything? Is my screen not
21 being shared?

22 THE COURT REPORTER: Doesn't look like
23 it.

24 MR. FABER: No.

25 MS. DINGLELINE: I hid the entire

1 screen.

2 MR. FABER: Okay. Now we can see it,
3 Ms. Dingleline.

4 MS. DINGLELINE: Oh, good. Thank you.
5 BY MS. DINGLELINE:

6 Q. Okay. So these are the side-by-side
7 comparisons of your drawings. The one on the left is the
8 120. The one on the right is 140. Gosh, they look so
9 similar. Don't you think?

10 A. If you toggle back and forth between the two
11 when they are on one screen, you can see the difference
12 much better than you can on the screen here.

13 Q. Well let's try that then. Let me get that one
14 up.

15 All right. So let's go to the height -- this
16 is the biggest height, 140. And let me see if I can do it
17 quickly. No. That went two of them. Sorry.

18 All right. That's 140. 120. 140. 120
19 (changing screen) 140. 120. Do you see much difference
20 there?

21 A. I can see some difference, but at the same
22 time I did say that 120 would work for us.

23 Q. So 120 does work. And this mapping is for
24 your walkie-talkie radio system; right?

25 A. Yes. For the enhanced. That's the radio

1 system.

2 Q. Okay. So then if we go down even further
3 another 20 feet to 100 feet. Right now we are on 120. So
4 there is a much more drastic change in that 20 feet than
5 between 140 and 120.

6 So what you're saying is that one's not good
7 enough for you guys. You would rather have the coverage
8 at 120 at least; right?

9 A. Correct.

10 Q. Okay. So I want to go back to this issue of,
11 let me stop sharing for a sec.

12 All right. So if you cut this down to 120 and
13 did some reasonable mitigation like that, what does that
14 do to the other carriers? Maybe it bumps one of them off
15 or something; right? But they can still go on because
16 they are above the tree lines; correct?

17 A. No. I submitted some studies that showed what
18 happened at the available heights if we went down to 120
19 feet. It would reduce their coverage to a point where it
20 would almost be completely useless.

21 Q. Okay. How interested are they right now with
22 only a 20-foot higher tower than the 120 you say won't
23 work for anybody?

24 A. At this point we don't have a commitment from
25 a carrier.

1 Q. Okay. So explain to me from a vertical
2 standpoint if your antenna are being affixed on the top
3 that's 140, and they go up to 158 or whatever, who gets
4 the next vertical feet down? Where are these carriers
5 vertically on that tower that you have these other -- that
6 many spaces for cell carriers?

7 A. So the diagram that you had presented during
8 Mr. Voci's testimony displayed it fairly well. So --

9 Q. Okay. I'll bring it up for you. The one
10 that's the sketch drawing?

11 A. Yes.

12 Q. Okay. Let me get that up. Okay. I'm getting
13 better at this now. All right. So this guy?

14 A. You'll see -- a-hum.

15 Q. That's even better. Let me get it up so we
16 can see.

17 So you're at the top of the tower at 140. And
18 then somebody's going to go on at 122. Well they wouldn't
19 be able to if the top of the tower were at 120 because you
20 would be down here; right? At the top of the 120. So you
21 would lose that carrier. But what about -- these guys are
22 still there. These guys are still there. The 112, 102,
23 92 and 82 are still there.

24 So how is it that if it works for them on a
25 tower that has the height that you want and it works for a

1 carrier at 112, 102, 92 and 82, then why wouldn't it work
2 for the remaining four of them instead of five? Or 1, 2,
3 3, 4, 5. Yeah. You would lose these guys but that's all.
4 Right?

5 A. So we don't represent the individual carriers.
6 What this diagram is showing you is what the tower will be
7 structurally and physically capable of holding for
8 equipment on it. Those lower heights the coverage is
9 diminished quite a bit, and it is likely that they may not
10 use those lower heights because it doesn't provide the
11 coverage that they need.

12 Q. The only height that you are losing for a cell
13 carrier is at the 122 and-a-half foot level. Correct?

14 A. No. That's not correct. So if you take a
15 look at the diagram, and move everything down, you'll see
16 that at 120 feet the top antennas would go up vertically
17 above the tower. And then below the tower there is one
18 that goes down vertically. And so that's a 13-foot tower.
19 So that would knock the next available space for the
20 wireless carrier down to around 100-foot level.

21 Q. All right. So 120 and you needed 13 feet for
22 that antenna; is that right?

23 A. Correct.

24 Q. Okay. So that's 107 feet. You can put
25 somebody there.

1 A. Well they need 10 feet of vertical separation
2 between them, so you would need more than that.

3 Q. Well right now we are looking at a 13-foot
4 difference; right? Or was it 15 maybe. A little bit.

5 A. Those antennas --

6 Q. Okay. So right now the top of the tower is
7 140, and you're able to put a cell carrier at 122
8 and-a-half. Right? I can do my math, that's 117.5. So
9 you can put your first cell carrier at 117 and-a-half
10 feet.

11 And then it looks like you drop them every 10
12 feet. So you could have -- let's do this in steps.
13 You're at the tower at 120; right?

14 A. This is the scenario that she is presenting,
15 so yes, we are at 120.

16 Q. Okay. So if you go to 120 what's the height
17 at which the highest cell carrier guy can go?

18 A. Approximately 100 feet.

19 Q. Because we are going to need -- what was it?
20 I'm trying to understand what the isolation distance for
21 your 13-foot antenna is.

22 A. We need 10 feet of vertical separation between
23 the antennas of each carrier including ourselves.

24 Q. So you only need 10 feet or 13 from the top
25 cell carrier?

1 A. So in this case we are the top cell -- we are
2 the top carrier. And so we have one antenna that comes
3 down 13 feet. And then between that antenna and the next
4 available carrier we need 10 feet of vertical separation.

5 Q. Okay. So if we put somebody at 120, you at
6 120, tell me the number that the cell carrier can go at.

7 A. Approximately a hundred feet.

8 Q. A hundred feet. All right. And then there is
9 another cell carrier at 90; right?

10 A. Correct.

11 Q. And then at 80; correct? Yes?

12 A. If that height works for a carrier.

13 Q. Well you have 82.5 right here. Do you think 2
14 and-a-half feet is going to make that much difference that
15 they are not going to be able to get on the tower?

16 A. Again, that's -- this represents what the
17 tower is structurally capable -- physically capable of
18 handling as far as weight and antennas.

19 Q. Okay. All right. So is 120-foot tower
20 capable of holding one less cell carrier than what you
21 proposed at 140?

22 A. Physically and structurally, yes.

23 Q. Okay. So you don't expect anybody to rent
24 that 82.5 height level, do you?

25 A. I can't speak to that because I'm not the

1 wireless carriers, but from the coverage maps that I've
2 provided, I think it's unlikely because it's low.

3 Q. So do you think it's likely that they would
4 rent the 92.5 level?

5 A. I can't answer that for the same reason.

6 Q. Well there's got to be -- you know, yes, they
7 would definitely want 112.5; is that fair to say?

8 A. Based on coverage studies I submitted. Yes.

9 Q. Okay. And what about the 102.5?

10 A. Yes.

11 Q. All right. So in your mind the top three
12 future panel antennas at 122, 112 and 102, those are
13 attractive to a cell carrier based on the proposed
14 coverage it will give them?

15 A. Yes. Based on the coverage studies.

16 Q. Okay. The bottom two are a no go. It would
17 not be satisfactory and would be unlikely to attract
18 anyone to want to take the lower positions?

19 A. Again, I'm not the wireless carrier so I can't
20 speak for them on that.

21 Q. Well you're the coverage guy.

22 A. Based on my coverage studies, unlikely.

23 Q. Okay. So we are proposing something that's
24 probably never going to be utilized. Fair to say?

25 A. No.

1 Q. The bottom two levels you think -- you just
2 said they are unlikely to be used.

3 A. Unlikely doesn't mean it won't be.

4 Q. Okay. Let's see. I think that's all I have
5 for you. Thank you.

6 A. Thank you.

7 MR. FABER: Thank you, Ms. Dingleline.
8 One thing I did want to fix here. I admitted the
9 exhibits of Mr. Voci and Mr. Delaney, and I didn't
10 ask folks if they had any objections to that.

11 Are there any objections to the
12 admissions of those exhibits or testimony?

13 MR. SWAIN: The Department doesn't have
14 any objection.

15 MR. FABER: Okay.

16 MS. DINGLELINE: May I ask just one
17 procedural question before we let the witness go? I
18 did have just a couple.

19 MR. FABER: Sure.

20 MS. DINGLELINE: I had a couple
21 questions about the locations for the simulations.
22 And I just want to be sure I would be asking Mr.
23 Hodgetts that information, or were the simulations
24 something Mr. Delaney was involved in?

25 MR. SULLIVAN: That would be Mr.

1 Hodgetts.

2 MS. DINGLEDINE: That would be. Okay.
3 Just one second, if you don't mind. I forgot he had
4 so many different testimonies.

5 MR. FABER: Okay. I think we covered
6 that. You clarified that.

7 BY MS. DINGLEDINE:

8 Q. Regardless of whether you folks get
9 commitments from other wireless providers, you intend to
10 build the tower anyway for your own purposes; is that
11 correct?

12 A. I'm sorry. Are you asking me?

13 Q. Yes. I'm sorry. I think it was in your
14 testimony.

15 A. That is correct. The answer is yes to that
16 question.

17 Q. Okay. Thank you very much, Mr. Delaney. I
18 appreciate it.

19 MR. FABER: Okay. Mr. Swain, do you
20 have any questions for Mr. Delaney?

21 MR. SWAIN: No questions for Mr.
22 Delaney. No. Thank you.

23 MR. FABER: Mr. Sullivan, any redirect?

24 MR. SULLIVAN: No.

25 MR. FABER: Okay. Ms. Dingleline,

1 could you stop sharing your screen for the moment.

2 MS. DINGLELINE: Oh, I'm so sorry. I
3 apologize. I forgot.

4 MR. FABER: No problem. Thank you.
5 Okay. Next witness, Mr. Sullivan?

6 MR. SULLIVAN: Our next witness is
7 Louis Hodgetts. Louis will probably want to share
8 his screen, I imagine, since his testimony involved
9 the preparation of the photo simulations. And I
10 would imagine that people would want to question him
11 about those.

12 But let me start off by asking Mr.
13 Hodgetts if he affirms the accuracy of his prefiled
14 testimony in this case. I saw your mouth move, but I
15 didn't hear anything.

16 MR. FABER: Where did he go?

17 MR. SULLIVAN: I don't know. His
18 camera is off now.

19 MR. HODGETTS: Can you hear me, Brian?

20 MR. SULLIVAN: I can, yes. Can
21 everyone else hear, Louis?

22 MR. FABER: Yeah. I think we can.

23 MR. HODGETTS: My camera is
24 malfunctioning and the microphone in there is not
25 working. So --

1 MR. FABER: That's fine.

2 MR. HODGETTS: I can have the camera on
3 or the microphone.

4 MR. SULLIVAN: I think the microphone
5 is more important. And then I would just ask if you
6 agree that your exhibits are accurate.

7 MR. HODGETTS: Yes.

8 MR. SULLIVAN: Okay. Then I would move
9 for the admission of Mr. Hodgetts' prefiled testimony
10 and exhibits into the record.

11 MR. FABER: Any objection to admitting
12 those?

13 (No response)

14 MR. FABER: Okay. Hearing none, those
15 exhibits and testimony are admitted.

16 (The Prefiled Testimony of Louis
17 Hodgetts was admitted into the record.)

18 (Exhibits marked LH-1 through 7 were
19 admitted into the record.)

20

21 Prefiled Testimony of Louis Hodgetts

22 <http://epuc.vermont.gov/?q=downloadfile/580414/169720>

23 LH-1

24 <http://epuc.vermont.gov/?q=downloadfile/580415/169720>

25

1 LH-2

2 <http://epuc.vermont.gov/?q=downloadfile/580416/169720>

3 LH-3

4 <http://epuc.vermont.gov/?q=downloadfile/580417/169720>

5 LH-4

6 <http://epuc.vermont.gov/?q=downloadfile/580418/169720>

7 LH-5

8 <http://epuc.vermont.gov/?q=downloadfile/580419/169720>

9 LH-6

10 <http://epuc.vermont.gov/?q=downloadfile/580420/169720>

11 LH-7

12 <http://epuc.vermont.gov/?q=downloadfile/580421/169720>

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1 LOUIS HODGETTS

2 Having been duly sworn, testified
3 as follows:

4 THE WITNESS: Yes, I do.

5 MR. FABER: Okay. The witness is
6 available for cross examination. Ms. Dingledine.

7 CROSS EXAMINATION

8 BY MS. DINGLELINE:

9 Q. Thank you so much. All righty. Mr. Hodgetts,
10 you work at DuBois & King. Are you in the Randolph office
11 or in South Burlington?

12 A. I work out of the South Burlington office.

13 Q. I'm interested in a -- in your analysis of
14 this as a professional engineer. In terms of talking
15 about the aesthetic impacts, the historic sites, natural
16 areas. Is that an area of expertise that you've developed
17 over the years?

18 A. Yes.

19 Q. Okay. Are you familiar with the Quechee
20 analysis?

21 A. I am.

22 Q. And that's something that you've dealt with
23 over the years in your practice for permitting before say
24 Act 250 as well as the PUC?

25 A. Yes.

1 Q. There didn't appear to be any historic site
2 issues. I understand that the Division for Historic
3 Preservation gave it a clean bill of health.

4 Did you give any thoughts to the church and
5 the fact that it is an ancient facility? It was -- its
6 very historical significance is quite robust. Is that
7 anything that you thought about, considered, did any
8 research on in coming to the conclusion that no historic
9 sites were adversely impacted?

10 MR. SULLIVAN: I would object. The
11 previous orders in this case which were entered
12 before Ms. Dingleline herself appeared, confined the
13 scope of this hearing to aesthetics and orderly
14 development.

15 The criterion or sub criterion dealing
16 with historic impacts was specifically excluded from
17 this hearing.

18 MS. DINGLELINE: I'll withdraw the
19 question.

20 MR. FABER: Thank you.

21 MS. DINGLELINE: I'll withdraw. Yeah.

22 BY MS. DINGLELINE:

23 Q. Now in your years of working in this area of
24 say aesthetics, how many times have you offered an expert
25 opinion under the Quechee analysis?

1 A. I have provided testimony on aesthetics on --
2 I have provided testimony on aesthetics on dozens, if not
3 more than a hundred, sites in Vermont. My -- I usually
4 defer to counterparts in our office for a full feature
5 analysis, if required.

6 Q. Okay. Are you familiar with the modified
7 Quechee test that the PUC employs versus Act 250's Quechee
8 analysis?

9 A. I am aware that there is a minor difference.
10 I'm not well versed in that difference.

11 Q. Okay. You conducted a balloon test or someone
12 did for Industrial; is that correct?

13 A. Yes. My staff conducted a balloon float at
14 this location.

15 Q. Okay. And was there any notice given to any
16 of the abutters or any of the other interveners in the
17 matter where they could have gone and observed and taken
18 their own pictures while the balloons were being flown?

19 A. There were -- we had not filed any
20 information. The site was not public when we conducted
21 the balloon float, and no notice was given to the adjacent
22 landowners.

23 Q. Okay. Do you know why the landowners would
24 not allow the -- another opportunity for a balloon to be
25 flown?

1 A. I do not.

2 Q. Were they asked if they would make their land
3 available for a balloon test for the parties to be able to
4 observe those balloons while they flew so that the
5 location and height could be assessed by everybody?

6 A. I do not know.

7 Q. Who was in charge of making the decision, do
8 you know?

9 A. Can you clarify that question?

10 Q. I'll withdraw that. Let me ask you this.
11 There was a lot of explanation about, you know, how the
12 balloon test took place, and where the vantage points were
13 observed from.

14 How many original vantage points did you map
15 out to begin with to assess whether or not, you know,
16 there was going to be visibility to that balloon?

17 A. Typically we conduct a desktop visibility
18 analysis using GIS modeling software to identify areas
19 where the balloon is likely to be visible from. That
20 provides a map of the overall community within two miles
21 of the proposed tower location. We use that as a basis to
22 identify areas.

23 However, when the balloon float is actually
24 being conducted we drive all local roads within a two-mile
25 radius looking for the balloons and identifying key

1 vantage points, are the most noticeable locations, typical
2 vantage points, and areas where the balloon also is not
3 visible to identify obstructions that would impede
4 visibility of the tower.

5 Q. So in this case how many vantage points did
6 you measure against for your view shed analysis or your
7 visibility analysis?

8 A. I believe we had over a dozen locations that
9 we identified as potentials. Of those, we took photos
10 from the majority of them, and then provided
11 representative samples that were provided in my prefiled
12 testimony.

13 Q. Were there any sites that you observed from,
14 took pictures of, whatever, that you did not put on your
15 final product with all the dots of where the views are
16 being taken from?

17 A. Yes.

18 Q. How many?

19 A. I don't recall off the top of my head.

20 Q. Let me see if I can refresh your recollection.
21 Let me try to share my screen here.

22 All right. So this is what was in your
23 report, and you're right, it's 11 it looks like. 11 dots.
24 Up to number 11. But this was provided with the discovery
25 materials, and I count as many as 17 on that -- 18 maybe.

1 So I'm wondering why so many were discounted.
2 You ended up with almost half of what you were planning on
3 inventorying?

4 A. Most were duplicative. So there was no --
5 there was negligible difference between the photo views
6 and the impact, the visibility impact, so they were not
7 included.

8 Q. Now in terms of the road views, you have
9 static locations, but did you do any drive test, for
10 example, you know, driving the speed limit down 108 and
11 determining what the duration of the views are that you
12 can see as you're driving?

13 A. We did not time or record the amount of time
14 that they were visible. They can be -- some are inferred
15 from the photo locations. I do not have any timing issue
16 or any timing recordings for how long the visibility will
17 last.

18 Q. Okay. Now I have a burning question that I am
19 really interested in the answer to. Why two miles? Why a
20 two-mile radius?

21 A. In the approximately 100, 120 balloon floats
22 that I've conducted in like 10-plus years doing this, two-
23 mile radius has become the industry standard in Vermont.
24 Outside of two miles it is very hard to identify a tower
25 structure given the overall view shed.

1 Q. Have you seen any towers denied in Vermont
2 that were half of that distance perimeter for the view
3 shed? For example, well let me ask this a different way.
4 Strike that.

5 How many towers to your knowledge and
6 experience have actually been denied a CPG in Vermont at
7 the PUC?

8 A. I do not have that knowledge.

9 Q. Do you know if any have ever been denied at
10 the PUC in Vermont?

11 A. Yes.

12 Q. Do you know on what basis they were denied?

13 A. I do not. Only the ones that I have been
14 involved in.

15 Q. Okay. Was it an aesthetics issue?

16 A. No.

17 Q. Okay. So would you agree -- well let me ask
18 you this. What does aesthetics mean?

19 A. That is a hard-to-define term. I do not have
20 a perfect definition of it by any means.

21 Q. Okay. Does it include visibility?

22 A. It does include visibility. Or that's not the
23 sole item. Just because it's not visible does not mean
24 that is aesthetically adverse or unduly adverse.

25 Q. Okay. Have you ever taken the position that

1 an Industrial application like a tower or a solar array is
2 not adverse in its setting here in Vermont wherever it
3 might have been proposed to be sited? Have you ever made
4 -- I'm sorry. Go ahead.

5 A. I have sites that I have claimed that were not
6 adverse, that the effect would not be adverse. I have
7 never worked on a site that I have considered unduly
8 adverse.

9 Q. Okay. Do you consider the -- this tower to
10 cause an adverse impact, the first step of Quechee.
11 What's your opinion about that?

12 A. This site does change a portion of the local
13 characteristics especially on 108. It would qualify as an
14 adverse impact to the local aesthetics.

15 Q. Out of character with the neighborhood; right?
16 If it's surrounded by trees or houses, fair to say?
17 Doesn't fit in the context, that kind of thing; right?

18 A. It is out of context with the neighborhood,
19 but I would not say it is adverse because of its proximity
20 to residents or the character of the community.

21 Q. What if the town has conditional use approval
22 required for telecommunications towers? And does the
23 character of the neighborhood come into it if that is
24 required as a standard under conditional use permitting?

25 MR. SULLIVAN: I'm going to object to

1 this line of questioning. Mr. Hodgetts did not
2 perform a Quechee analysis. And we did not put him
3 forward as an expert on that type of analysis.

4 MS. DINGLELINE: I'll withdraw the
5 question.

6 BY MS. DINGLELINE:

7 Q. And I would like to ask why wasn't a Quechee
8 analysis performed by the applicant. Do you know?

9 A. At the time of the submission it was not
10 requested.

11 Q. Was one requested for Fairfax? Were you
12 involved in anything to do with aesthetics there?

13 A. Yes. I believe so.

14 Q. Did you perform a Quechee analysis up there?

15 A. Our office did. Yes.

16 Q. Okay. What about Eden? Were you folks
17 involved at Eden?

18 A. I was not involved in Eden, I don't believe.

19 Q. Have any knowledge of whether there was a
20 Quechee analysis performed on that one?

21 A. I do not.

22 Q. Were you involved in the Worcester tower that
23 was advance noticed but the petition was not filed?

24 A. I was. Yes.

25 Q. Was there a Quechee analysis performed on that

1 one?

2 A. Not -- no. There was not.

3 Q. Let me take this off of the -- stop sharing.
4 Sorry about that. Okay.

5 Could you explain to me how -- well you may
6 not be the -- never mind. Just one moment.

7 Would you agree with me that a balloon test is
8 a great way to on the ground accurately determine, weather
9 permitting, where you can see it from in reality, and
10 there is -- would you agree with me that it's an excellent
11 way to determine visibility is to see if it's visible with
12 a balloon test?

13 A. No.

14 Q. Why not? You have been conducting them for
15 years. Haven't you?

16 A. We have. Yes. I conduct them routinely on
17 projects. I believe I have become an expert in
18 identifying balloon floats and their effective visibility.
19 I think the general public would not necessarily be as
20 understanding of the nuances of a balloon float.

21 Q. What do you think is the most accurate way to
22 predict where the tower would be visible from, what
23 methodology, if it's not a balloon test?

24 A. I believe the overall potential visibility is
25 best represented by visible analysis conducted on -- using

1 a GIS platform.

2 Q. How does the coverage of like leaf-on
3 conditions play into that kind of data?

4 A. There is a level of interpretation there. In
5 our case, we use a digital elevation model and a digital
6 surface model. The digital elevation model is purely a
7 terrain-based service. So no buildings, no obstructions,
8 no trees. A digital surface model is a -- usually a first
9 return Lidar-based GIS map which includes the over -- any
10 trees, buildings, signs, that were identified or that were
11 recorded during a Lidar operation.

12 Q. And how does that take the leaf on/leaf off
13 into account, if at all?

14 A. So the digital surface model does account for
15 trees that are used during the early spring once snow is
16 gone and leaves are still off the trees to get the most
17 accurate leaf-off condition. The modeling software is not
18 -- and the return rate on the Lidar is not accurate enough
19 to really identify between a leaf-on and leaf-off
20 condition.

21 We assume, in my expertise, we have assumed
22 that the Lidar data, the digital surface model fairly
23 accurately represents a leaf-on condition, just with the
24 nature of the data. We then confirm that with the balloon
25 float and photo simulations. This site was conducted --

1 the balloon float was conducted in a leaf-off condition.

2 So --

3 Q. So you guys did mapping first and then you did
4 the balloon test? To confirm what you had thought in your
5 computer model?

6 A. Correct.

7 Q. Okay. Gotcha. Now here's my question for
8 you. While you're predicting where the geography might
9 allow you to see something, you know, visibility as well
10 as duration of view we know are important. Did you take
11 into account private people's property and the duration of
12 the views that they will be subject to when you were
13 determining whether there would be any undue adverse
14 impacts to the close-in neighbors?

15 A. We recognize that there are some views from
16 the neighboring property. However, the general public
17 does not have access to the neighbors' property on a
18 regular basis.

19 Q. But as part of the Public Utility Commission
20 process, there could have been engagement for a balloon
21 test during the time period that the case was being
22 prepared. Fair to say?

23 A. There could have. Yes.

24 Q. Okay. And is it your experience that often
25 there are neighbors and municipalities who are invited to

1 balloon tests so that everybody can get a good view of it,
2 and see some representation on the ground of where it will
3 be, and how high it will be, and what the visibility will
4 be so that people can figure out, gee, should I be
5 concerned about this? Is this going to impact me? Are my
6 interests being represented? Would you agree with me?

7 A. In my experience that has been the exception,
8 not the rule.

9 Q. Oh, goodness.

10 A. And there have been far fewer instances where
11 a public balloon float was conducted.

12 Q. Okay. So in your report you quote some
13 language and issues out of the regional plan as well as
14 talking about the town. And one of the things you pointed
15 out in the regional plan is the development of a high
16 quality affordable telecommunications infrastructure that
17 provides the most efficient and effective as well as the
18 least obtrusive system possible.

19 So to me that sounds like mitigation is
20 important to make sure that you don't over build. Would
21 you agree with me that language suggests to minimize or to
22 mitigate the impacts?

23 A. Yes.

24 Q. Okay. So do you see reducing the tower by 20
25 feet as reasonable mitigation considering those two

1 coverage maps look almost identical and you would still be
2 able to get four of the five other carriers on the tower?

3 A. I am not an RF expert. But in my limited
4 expertise in the matter, I would say no. It is not a
5 reasonable mitigation method.

6 Q. Why not?

7 A. As Kevin stated, it would significantly limit
8 the ability for future collocation and reduce the coverage
9 of the proposed applicant -- application.

10 Q. The coverage of what under the application?

11 A. The coverage of the Industrial's service.

12 Q. Those are those two maps that I was showing
13 side by side, and I kept toggling back and forth on. Do
14 you think those are substantially different?

15 A. I would defer to Kevin on that.

16 Q. But you would agree with me there would still
17 be space for four of the five other carriers in the math
18 that we did. Two feet difference to get them on the
19 tower.

20 A. As Kevin stated, that is not accurate. And I
21 would not agree with that.

22 Q. Why not?

23 A. Because as Kevin stated, the lower carriers on
24 our plan as shown as future potential collocation
25 capabilities would likely have limited serviceability,

1 limited coverage ability.

2 Q. Well if the bottom cell company is only 2 or 1
3 and-a-half feet lower than they would have been previously
4 on the tower, then what are you telling me? That this is
5 all a farce? That these cell companies are not going to
6 be able to collocate on this because they will not be
7 given any satisfactory coverage? So why in the world
8 would they pay to get on a tower where they are not going
9 to have any cell coverage?

10 MR. SULLIVAN: I have multiple
11 objections to that question. Obviously, it's
12 argumentative, but more fundamentally Mr. Hodgetts is
13 not a radio frequency engineer. He was not put
14 forward as an expert in that area. Mr. Delaney was.
15 He was cross examined. So this line of questioning
16 is improper.

17 MS. DINGLELINE: Well he's offered --

18 MR. FABER: I think you've already
19 asked these questions of Mr. Delaney. I'm not sure
20 Mr. Hodgetts is the best witness to answer these.

21 MS. DINGLELINE: Well this gentleman
22 has the other expert opinion, and he just was
23 explaining his expert opinion and why this would or
24 would not comply with the language of the regional
25 plan that says you need to have the least obtrusive

1 system possible. So if cutting 20 feet off the tower
2 and having one less cell carrier at almost the
3 identical heights is not the least obtrusive system
4 possible or at least an effort at that which is what
5 he was talking about, I think that's important
6 information.

7 And I don't think it's objectionable
8 because he put that in his report. I asked him about
9 it, and this is follow-up question to what he bases
10 that on and why he is saying that this can't happen
11 or it's not the least obtrusive measure or they don't
12 have to mitigate it.

13 I don't understand and I'm trying to
14 figure it out why these folks are saying --
15 apparently the height works with their application,
16 but if they lose 20 feet, then all of a sudden it's a
17 disaster at the exact same heights. It makes no
18 sense.

19 MR. FABER: Well I think that's
20 something you would normally put in a legal brief.
21 But if you have a specific question for Mr. Hodgetts
22 that he can answer, please go ahead.

23 MS. DINGLELINE: Okay.

24 BY MS. DINGLELINE:

25 Q. How does this tower promote universal access

1 to high speed broadband?

2 A. I would defer to Kevin on that.

3 Q. Well you put that in your report. Okay?

4 A. It provides an opportunity for other carriers
5 to collocate on this tower. That is a regional or a
6 national or regional cell provider or a regional broadband
7 provider. There is capacity on this tower for their
8 service.

9 Q. But apparently really bad coverage for them.

10 A. That is not necessarily true. I don't
11 believe.

12 Q. At 82 feet do you think someone's going to go
13 on that tower?

14 MR. SULLIVAN: Again, objection.
15 Calling for speculation.

16 MR. FABER: Yeah, Ms. Dingleline, could
17 you just ask him questions that he can answer,
18 please. You're asking him to speculate on things
19 that are not in -- yeah, it's pure speculation.

20 MS. DINGLELINE: Okay. But let's point
21 out that his prefiled testimony is complete
22 speculation then. Because I am literally reading out
23 of his prefiled testimony, and you're telling me my
24 questions are speculation. Well then maybe we need
25 to look more carefully at what he is saying because

1 I'm trying to get follow-up information and
2 understanding as to where he comes up with these
3 opinions because it is speculation.

4 MR. SULLIVAN: The problem is, Ms.
5 Dingledine, the problem is that you're assuming facts
6 in the questions that you're putting to him and they
7 are neither facts that have been proven nor ones that
8 Mr. Hodgetts could prove. Because they are outside
9 his area of expertise.

10 MR. FABER: You're asking him to
11 speculate on hypothetical equipment placement. If
12 you could just stick to the actual case in front of
13 us, that would be great.

14 MS. DINGLELINE: Thank you. That's all
15 I have for the witness.

16 MR. FABER: Thank you, Ms. Dingledine.
17 Mr. Swain, do you have any questions for Mr.
18 Hodgetts?

19 MR. SWAIN: No questions for Mr.
20 Hodgetts. No.

21 MR. FABER: Thank you. Mr. Sullivan,
22 any redirect?

23 MR. SULLIVAN: One redirect.

24 REDIRECT EXAMINATION

25 BY MR. SULLIVAN:

1 Q. Louis, you mentioned the fact that -- or your
2 opinion that there would be places within the two-mile
3 study radius where there would be adverse visual impacts.
4 Can you explain where you believe those impacts would take
5 place?

6 A. The -- yes. Along Route 108 for approximately
7 one mile extending north from Bordoville Road. That is
8 where the tower is most visible. It does break the
9 skyline. It would be considered an adverse view from that
10 location.

11 Q. And not from any others in your opinion?

12 MS. DINGLELINE: Objection. Leading.

13 BY MR. SULLIVAN:

14 Q. Are there any other -- I'm going to restate
15 the question.

16 Other than the Route 108 corridor that you
17 just mentioned, are there any other areas from which you
18 believe there would be an adverse aesthetic impact?

19 A. There are no areas that I'm aware of that
20 would meet the threshold for adverse beyond the 108
21 corridor.

22 MR. SULLIVAN: Thank you. That's all I
23 have. Thank you.

24 MS. DINGLELINE: I have recross,
25 please.

1 MR. FABER: Yeah. Sure.

2 RECROSS EXAMINATION

3 BY MS. DINGLELINE:

4 Q. You did not consider any private property
5 views; correct? When you made that determination of no
6 other areas where there would be an adverse impact.

7 A. That does take in some private landowners, but
8 overall it is from the public's view.

9 Q. Thank you.

10 MR. FABER: Okay. I believe that
11 concludes all of the Petitioner's witnesses. Mr.
12 Sullivan.

13 MR. SULLIVAN: Yes. That's correct.

14 MR. FABER: Thank you. Mr. Swain,
15 should we present Mr. Perkins next?

16 MR. SWAIN: That will be fine. Yes.

17 MR. FABER: Okay. Do you want to move
18 that -- move his exhibits and testimony in? That
19 would be great.

20 MR. SWAIN: Of course. Thank you. Mr.
21 Perkins, you submitted, I believe, about four
22 documents in this matter. One is some prefiled
23 direct testimony that made reference to two exhibits.
24 And then some responses to questions from neighbors.
25 Is that correct?

1 MR. PERKINS: That is correct.

2 MR. SWAIN: And the first exhibit that
3 is a copy of your Resume; is that right?

4 MR. PERKINS: Yes.

5 MR. SWAIN: And the second one is your
6 aesthetics analysis that you conducted; is that
7 correct?

8 MR. PERKINS: Correct. Yes.

9 MR. SWAIN: I would like to move for
10 the admission of the testimony and exhibits into the
11 record.

12 MR. FABER: Any objection to the
13 admission of this testimony and exhibits?

14 (No response.)

15 MR. FABER: Okay. Then they are
16 admitted.

17 (The Prefiled Testimony of Gordon
18 Perkins was admitted into the record.)

19 (Exhibits marked PSD-GP-1 and 2 were
20 admitted into the record.)

21

22 Prefiled Testimony of Gordon Perkins

23 <http://epuc.vermont.gov/?q=downloadfile/625411/169720>

24

25

1 PSD-GP-1

2 <http://epuc.vermont.gov/?q=downloadfile/625412/169720>

3 PSD-GP-2

4 <http://epuc.vermont.gov/?q=downloadfile/625413/169720>

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1 GORDON PERKINS

2 Having been duly sworn, testified
3 as follows:

4 MR. PERKINS: Yes.

5 MR. FABER: Thank you. Mr. Sullivan,
6 do you have any questions for Mr. Perkins?

7 MR. SULLIVAN: I do not.

8 MR. FABER: Ms. Dingleline, do you have
9 any questions for Mr. Perkins?

10 MS. DINGLELINE: Yes, I do.

11 MR. FABER: Okay. Proceed.

12 CROSS EXAMINATION

13 BY MS. DINGLELINE:

14 Q. Thank you. Mr. Perkins, you're new to
15 Vermont?

16 A. In terms of an administrative hearing, yes.

17 Q. In terms of work.

18 A. No. I have completed visual analyses in the
19 State of Vermont and supported applications in the past,
20 but I have never testified as an expert in Vermont.

21 Q. How many times have you supported an
22 application with an expert opinion?

23 A. Off the top -- with an expert opinion?

24 Q. Here in Vermont. Yeah.

25 A. I have never testified or provided an expert

1 opinion in the State of Vermont.

2 Q. Okay. Did you not testify in the Ira case?
3 Ira, Vermont?

4 A. I apologize. Yes. They were so close -- I
5 had forgotten that we actually had submitted prefiled
6 testimony on that project. So yes, that is correct.
7 Thank you for the correction.

8 Q. Okay. So the Ira case, very similar to this
9 case, is that true? In terms of the tower model that was
10 being proposed and for the same purposes that Industrial
11 has for their radio program or network?

12 A. My understanding is that the proposed action
13 is somewhat similar. Yes.

14 Q. Same kind of tower? Lattice?

15 A. That is correct.

16 Q. Remember how tall that one was?

17 A. I don't recall off the top of my head.

18 Q. The reason why I was kind of surprised when
19 you didn't remember it is because it was December 23, a
20 couple weeks ago that you filed your testimony in that
21 case. And I was absolutely struck by how similar it was
22 to your prefiled testimony in this case.

23 Is it -- is that something that you sort of
24 cut and paste over and over from case to case because it's
25 similar standards, and you just kind of changed the facts

1 in your work product?

2 MR. SWAIN: Objection. What is the
3 relevance of this question?

4 MS. DINGLELINE: It goes to
5 credibility. I'm sorry. I didn't understand.

6 MR. FABER: I guess I don't understand.
7 What are you asking him?

8 MS. DINGLELINE: So this other case
9 that he filed his testimony December 23 of 2022, I
10 was struck by how similar it is to his testimony in
11 this case. So I'm asking him is this sort of a cut
12 and paste between these two cases where it was the
13 same legal standards, but he was inserting different
14 facts or names of the towns.

15 MR. FABER: Well yeah, you can answer
16 that, I guess.

17 THE WITNESS: I'm happy to answer the
18 question. I disagree. I don't think the testimony
19 is similar. You will see that we did use the Quechee
20 analysis, so there is some repetition associated with
21 the administrative law associated with aesthetics.
22 However, our conclusion in the Ira report was
23 different than that presented here in this case.

24 BY MS. DINGLELINE:

25 Q. Tell me why -- how it was different.

1 A. I'm not entirely sure how my findings on the
2 Ira report is relevant to the findings on this particular
3 one. However, we did suggest that mitigation could be
4 effective in reducing the potential visual effect of the
5 Ira tower.

6 Q. And mitigation by what method were you
7 recommending?

8 A. We recommended mitigation in the form of
9 dulling or painting the galvanized steel associated with
10 the tower.

11 Q. And were there any residences within 2,000
12 feet of that tower?

13 A. I do not recall.

14 Q. Are there any residences within 2,000 feet of
15 this tower?

16 A. Yes. There are.

17 Q. How many?

18 A. I couldn't give you an answer to that off the
19 top of my head.

20 Q. What about within one mile?

21 A. Also could not give you an answer to that.

22 Q. All right. Well let's go with your standard.
23 You did this analysis of yours based on sight, vision to
24 this location within a two-mile radius. How many humans
25 live within that two-mile radius, live or work within that

1 two-mile radius of that tower?

2 A. I do not know the answer to that.

3 Q. Doesn't that matter? In terms of these
4 notions of visibility, isn't it important how many people
5 are going to see these -- these effects, if they are
6 negative?

7 A. I think the most important thing in visibility
8 and visual impact assessment is to certainly characterize
9 the study area, the quantity of residents, you know, it is
10 accounted for in terms of the characterization of the
11 area. For example, we say that there are essentially two
12 landscape types within this two-mile study area. One of
13 which is upland forest. And the other is the rural
14 valley.

15 And we state in our report that the, you know,
16 primarily the rural valley is the center for residential
17 properties and they will have the opportunity to view the
18 project. I think it's very important to acknowledge that.

19 Q. That the people living in a valley area view
20 this tower all the time; right?

21 MR. SWAIN: Objection.

22 THE WITNESS: Correct.

23 MR. FABER: I'm sorry. What's your
24 objection, Mr. Swain?

25 MR. SWAIN: The question asks Mr.

1 Perkins to -- the question asks Mr. Perkins to assume
2 visibility of the tower without mention of particular
3 locations. It's a speculative question.

4 MS. DINGLELINE: Well let me re-ask it.
5 BY MS. DINGLELINE:

6 Q. Mr. Perkins, if you can see this tower from
7 your front porch of your house, isn't it going to be
8 visible from your front porch at your house 24/7 unless
9 it's so cloudy that the tower happens to be obscured?

10 A. Obviously there is a great deal involved in
11 determining visibility. And I might add too, that
12 visibility and particularly in the case of towers like
13 this, does not necessarily equate to visual impact.

14 And residents that has a view from, you know,
15 a mile away or as far out as a mile or two miles away,
16 there will be times when the tower is screened. I think
17 as everyone is aware, weather conditions can go a long way
18 to creating atmospheric perspective which is the degree to
19 which there are particles in the air including particulate
20 matter or moisture that can reduce visibility.

21 The lighting condition is very important when
22 determining whether or not something is going to be
23 visible. So I can't really answer that question with a
24 definitive yes or no. There are so many factors involved
25 that visibility changes minute by minute, day by day, hour

1 by hour.

2 Q. If I'm living less than a half a mile from
3 that tower and I can see it from my front porch, how many
4 hours a day on average in a year am I going to be able to
5 see that tower?

6 A. We did not do a meteorological or particulate
7 matter assessment of this study area. But again --

8 Q. Okay. That's true.

9 A. The degree of visibility from that residence,
10 if it's viewed amongst trees or partially screened by
11 topography, that changes the degree of visibility.

12 Q. Absolutely it does. And you have not done one
13 review of any of my clients' properties, have you, to
14 determine the facts that you're talking about so that you
15 can render an opinion about whether there is an adverse
16 impact at all or an undue adverse impact from those
17 private properties. Correct?

18 A. We have analyzed every square foot of the
19 study area within the two-mile visual study area.

20 Q. Yes. But here's the problem with that. The
21 only thing that all of your math of a two-mile massive
22 radius, which you picked it, but all you're doing with
23 your mathematical calculations is determining on the
24 ground what amount of acreage would be able to see this
25 according only to your computer models and the data that

1 you have put into those models, which may be imperfect.
2 Follow me?

3 MR. SWAIN: Objection.

4 MS. DINGLELINE: In other words, in
5 other words, you don't know when you give your
6 percentages of, oh gee, it's going from 3 percent
7 down to even less, well of course, because you're
8 diluting -- you're starting with this massive area of
9 two-mile circle.

10 And then what you're doing is you're
11 diluting that to say, oh, and it's going to get even
12 smaller if people can't see it. And the problem is
13 you don't account for how many people are seeing it.
14 This circle that you've created, how does that tell
15 us anything about public good? We don't know whether
16 one person is going to be impacted or a hundred.

17 MR. SWAIN: Objection.

18 MR. FABER: Ms. Dingleline, do you have
19 any specific questions for the witness?

20 BY MS. DINGLELINE:

21 Q. So you don't know how many people live in your
22 two-mile radius. Right?

23 A. Correct.

24 Q. Okay. And you don't know how many people are
25 in the one-mile radius.

1 MR. SWAIN: Objection. This question
2 was asked and answered by Mr. Perkins before.

3 MS. DINGLELINE: Yeah. Well I'm trying
4 to put the building blocks together so that I can ask
5 the fourth question.

6 MR. FABER: Go ahead.

7 MS. DINGLELINE: If you let me get
8 there.

9 BY MS. DINGLELINE:

10 Q. So you have a two-mile radius, don't know how
11 many people. One mile radius, how many people. You have
12 no idea. Yet what you're doing is saying in your
13 mathematical calculations you think that your some kind of
14 importance to running numbers that are meaningless because
15 you have not ever identified who is being impacted;
16 correct?

17 MR. SWAIN: Objection again on multiple
18 counts. The question is argumentative. And Mr.
19 Perkins already explained how his analysis -- how his
20 analysis translates into the actual visual impact
21 experienced by individuals.

22 MR. FABER: Yeah.

23 MS. DINGLELINE: Mr. Perkins, let me
24 move on then.

25 MR. FABER: The objection is sustained.

1 Ms. Dingleline, please, you're sort of lapsing into
2 legal argument here. Great material for a brief, but
3 if you have questions, please ask them.

4 BY MS. DINGLELINE:

5 Q. Sorry about that. I will. Mr. Perkins,
6 what's the modified Quechee test?

7 A. The modified Quechee tests, test, sorry,
8 essentially asks one question as the first pass, and that
9 is, you know, what is the description of the action and
10 how -- what is the degree of visibility within the --
11 within a defined study area which is not defined in the
12 Quechee analysis. But and then it asks the question is
13 there an adverse visual impact associated with the
14 project.

15 The second part of the Quechee analysis
16 determines whether or not the project is in line, or
17 sorry, I'm actually going to go and read this verbatim so
18 that I don't get it wrong.

19 Q. No. I would prefer that you testify from your
20 own knowledge, not reading things.

21 MS. DINGLELINE: If you could instruct
22 the witness to testify please, Your Honor.

23 THE WITNESS: Yes, I can do that.

24 MR. FABER: Okay.

25 THE WITNESS: So it determines whether

1 or not the project ignores any specific community
2 standard, a written community standard, regarding a
3 protected resource or aesthetics. It determines
4 whether or not the applicant has taken reasonable and
5 necessary measures in order to mitigate visual
6 impacts. And then it also determines whether or not
7 the visual impacts associated with the project are
8 undue, i.e., shocking or offensive to a reasonable
9 individual.

10 BY MS. DINGLELINE:

11 Q. Are you done? That's your definition of
12 modified Quechee analysis?

13 A. Correct.

14 Q. Okay. In some of your materials you actually
15 were referencing some New York standards, I think, in
16 terms of how you make your own analysis or determinations
17 of aesthetics and standards that you use to make those
18 judgment calls.

19 Do you remember that testimony?

20 A. Can you tell me which standards you're
21 referring to?

22 Q. I'll come across it. I'll have to come back
23 to it because I didn't tab it. But I thought it was very
24 curious that you were referencing a different state's
25 standards in coming to your conclusions.

1 Do you have a reason why you did that instead
2 of following Vermont case law or -- either from the
3 Supreme Court or from the Public Utility Commission?

4 A. I think it's pretty normal for consultants to
5 refer to other standards where they feel state standards
6 don't fill all of the gaps. For example, in the
7 definition of a visual study area we may take other state
8 precedence. It's just like any other professional field
9 where we feel a standard could be beefed up or made more
10 vigorous by introducing standards from other states, we do
11 so. And in particular, you know, New York has a
12 relatively prescribed visual impact assessment process.
13 And we feel that aspects of that are appropriate to apply
14 to other states.

15 Q. So did you apply any standards in this case in
16 rendering your opinions other than your definition of your
17 Quechee analysis?

18 A. Well certainly the New York State Department
19 of Environmental Conservation provides a really good basis
20 for determining what mitigation options are available to
21 projects. And we always subject projects to that test to
22 determine whether or not any of them would be effective
23 mitigation options.

24 Q. What do you mean "effective litigation
25 options"?

1 A. I'm sorry. You may have misheard me. I said
2 "mitigation."

3 Q. Oh, mitigation. Okay. Sorry. You had me
4 confused there.

5 Okay. Do you have an opinion about the
6 conversation and the testimony we had earlier about
7 reducing the height of this tower 20 feet? Do you think
8 that's a reasonable mitigation to be employed here?

9 A. So as -- I cannot speak to the coverage in
10 terms of whether or not the tower can function at a lower
11 height to the degree that the applicant intends it to
12 function. However, in our visual impact assessment and
13 orderly development review, we did run a view shed of the
14 tower at 120-foot height to see whether or not it would
15 make a substantial difference. And when compared to the
16 140-foot height that we ran, the difference was
17 incremental at best. It did not substantially reduce the
18 visibility of the tower within the visual study area. And
19 there were no substantial reductions in the locations
20 where the tower would be visible.

21 So I don't feel that, again, performance
22 standards aside completely, I don't feel from a visual
23 standpoint that the height reduction to 120 feet would be
24 an effective mitigation measure.

25 Q. And you would stand by that position even for

1 people that are in the Vermont Route 100 area, the valley
2 floor who are getting uninterrupted views of the tower
3 according to your report. It would make no difference to
4 them? Really?

5 A. We don't feel it would make a difference to
6 the visual environment, and certainly that includes areas
7 where we did find that an adverse visual impact may occur.

8 In fact, from one of the most open
9 unobstructed views of the tower we actually did a height
10 analysis in the visual simulations. And the fact of the
11 matter remains that that tower it breaks the tree line and
12 it breaks the skyline which is the source of its visual
13 impact. And it would continue to do so at 120 feet, you
14 know, with the height reduction.

15 Q. So you just said that it breaks the skyline
16 and what was the other?

17 A. The tree line and the skyline from that
18 particular vantage point which is one of the most open and
19 unobstructed views of the project.

20 Q. Okay. So is that an adverse impact?

21 A. We feel that, yes, from this location the
22 project does result in an adverse impact.

23 Q. All right. So what is your final final answer
24 whether or not the Quechee analysis, step one, there is or
25 is not an adverse impact from this project?

1 A. Step one we found that there is an adverse
2 impact from very localized areas.

3 Q. So that's it. That's now your opinion, and it
4 stops there; is that right?

5 A. I'm sorry. I'm not sure what you're asking.

6 Q. Well I was unclear from reading your opinion
7 whether you were saying there was an adverse impact or
8 there was not an adverse impact. Because in your report
9 at one point you're, like, well even if it isn't -- even
10 if it is an adverse impact it's not undue. The way that I
11 read your opinion you were like, no, there is no adverse
12 impact. And then you seemed to say, oh, maybe a little
13 bit around the people that are actually affected by it.

14 So can you plant your feet definitively today
15 to tell me as a Quechee analysis expert, is there or is
16 there not an adverse impact under step one from the
17 project?

18 MR. SWAIN: Objection. The question
19 conflates an undue adverse impact with an adverse
20 impact. Can you please ask the question more clearly
21 of Mr. Perkins?

22 MS. DINGLELINE: I didn't mean to say
23 undue if I said undue.

24 BY MS. DINGLELINE:

25 Q. I'm asking him if step one Quechee adverse

1 impact, yes or no, to this project.

2 A. Step one, I think that report makes it very
3 clear that the step one test we determined that, yes, the
4 project does result in an adverse impact from localized
5 areas.

6 Q. Okay. So we have a yes on number one. What
7 was your opinion on adverse impact in Fairfax?

8 A. I'm sorry. I don't know what you're referring
9 to.

10 Q. The Fairfax tower that you did a couple weeks
11 ago.

12 MR. SWAIN: Objection. This is beyond
13 the scope of Mr. Perkins' testimony in this case. I
14 don't see why the Fairfax tower is relevant.

15 MS. DINGLELINE: Beg your pardon. I
16 meant Ira. Not Fairfax.

17 MR. SWAIN: I'll object to that as
18 well.

19 MR. FABER: I guess I don't understand
20 this then. Do you have any further questions for the
21 witness?

22 MS. DINGLELINE: Yeah. I do. Just a
23 minute.

24 BY MS. DINGLELINE:

25 Q. Did you use NEPA standards in this case when

1 -- in forming your opinions?

2 A. You know, again, in terms of whether or not we
3 use different standards in order to form opinions or
4 analyses, certainly aspects of NEPA come into, you know,
5 came into our analysis. I can't say exactly which aspects
6 of it. But to some degree, yes.

7 Q. Now one of the questions that you answered in
8 discovery you indicated that it was worth noting, as you
9 described in your view shed analysis, that being located
10 within the DSM view shed i.e., where the visibility of the
11 tower is, does not necessarily mean that the visual
12 impacts will be adverse.

13 And then you went on to say: And it is
14 necessary to consider other visibility factors; distance,
15 color, glare, scale with surroundings, et cetera, to
16 determine visual impacts.

17 Now can you tell me how you factored in
18 distance into your analysis about whether or not impacts
19 would be adverse?

20 A. Yes. We used several things. And probably
21 the most useful of which were the applicant's visual
22 simulations that were produced from various distances.
23 But then also the character of the visibility. And I
24 should go back to the view shed analysis which you had
25 mentioned is just a percentage. And I could contend that

1 the view shed analysis is actually much more than a
2 percentage. You can characterize, with an experienced
3 eye, you can characterize the degree of visibility through
4 the use of view shed analysis which can tell you how much
5 of the tower is visible, and, you know, what portions of
6 the tower is visible.

7 And just by the character of how the view shed
8 lays on the land in certain areas, you can determine
9 whether or not this is a typical view, a discrete view, or
10 a type of view that you would literally have to search for
11 on the property in order to find it.

12 So we used all of those factors,
13 notwithstanding, you know, the factors of just experience
14 in viewing communications towers in the landscape. One of
15 the hazards of my job is I spent 22 years staring at every
16 piece of infrastructure in the landscape ad nauseam and
17 forming opinions about it. And a lot of that can be
18 relayed to -- into a report like this in order to form an
19 opinion.

20 Q. So how did you figure out or factor in glare?

21 A. Glare is a very difficult thing to determine
22 from the standpoint of frequency. However, you know,
23 there are certain times of day, as we stated in our
24 report, when the sun is low in the sky, where glare can
25 become a, you know, very discrete short-term issue

1 associated with galvanized steel when it's brand new. And
2 essentially that is the reflection of light. It depends
3 on the position of the receptor.

4 I think the most important thing about glare
5 is to acknowledge that it can happen. It can happen at
6 particular times of the day. And that it could
7 potentially increase over -- in some cases decrease the
8 visibility of the tower.

9 Q. In Ira you said that painting it or steel
10 dulling technology could significantly reduce the color
11 contrast presented by the tower. Why didn't you suggest
12 something like that here to mitigate or say that they
13 should have to mitigate?

14 MR. SWAIN: Objection. This is, again,
15 it's beyond the scope of Mr. Perkins' testimony in
16 this matter.

17 MR. FABER: Well I see your point
18 there, Mr. Swain. But I think if Ms. Dingledine asks
19 him directly why didn't he recommend that mitigation
20 measure, that might work. If you could try that, Ms.
21 Dingledine.

22 MR. SWAIN: Very well.

23 BY MS. DINGLEDINE:

24 Q. Why didn't you try that mitigation technique
25 or suggest it?

1 A. Yes. So we didn't suggest it in this
2 particular case because the areas in which the -- we
3 determined there was an adverse visual impact, in
4 particular the state highway that runs through the valley
5 floor, the tower is viewed against the sky. And in that
6 particular situation, it's unlikely that the color
7 contrast is going to be the major contributing factor to
8 visual impact. In other cases where the tower is viewed
9 against a backdrop of trees or mountains, for example, it
10 is possible that color contrast could become an issue,
11 particularly against evergreen trees. And in those cases
12 we would recommend dulling or painting in order to reduce
13 that visual contrast.

14 However, the only caveat I'll put on that is,
15 you know, galvanized steel most people think that once
16 galvanized steel is put up, it's going to be this shiny
17 reflective component. In actuality galvanized steel does
18 oxidize. In fact, its purpose is to oxidize. The zinc
19 itself becomes the oxidizing agent with the air and
20 moisture and that is what protects the steel members of
21 the tower.

22 Once that oxidation happens, the tower will
23 naturally dull. It's just in situations where there would
24 be that sort of, you know, interim period where glare and
25 the shine from the tower could potentially be reduced

1 through the use of painting or immediate dulling.

2 Q. So when you did your -- you got to go on a
3 site visit; right? They let you on the property, didn't
4 they? The landowner and the applicant, did you go?

5 A. I apologize. You broke up. Can you restate
6 the question?

7 Q. Did you visit the tower site property when you
8 were doing your visiting and analysis?

9 A. I did not personally perform the field
10 visibility analysis. My colleague did. And at that time
11 he did not visit the site itself.

12 Q. Were you present during the balloon test that
13 was conducted by DuBois & King?

14 A. No. We were retained after all of the initial
15 visual analyses were completed.

16 Q. Okay. As to the -- I threw the number a
17 hundred feet around earlier saying that's the approximate
18 amount of height of the tower that is above the tree line
19 according to the drawings that we saw.

20 Would you agree with me that in your
21 estimation and your analysis that that was the reality of
22 what you were analyzing?

23 A. No. I fundamentally take issue with the
24 concept that the tower is a hundred feet above the trees.
25 I think it misrepresents, you know, the tower visibility

1 throughout the study area.

2 One of the things that you have to take into
3 consideration is the siting of the tower on a hill
4 approach which is one of the reasons we think this tower
5 is well sited. Because as the -- as you go east, or
6 sorry, as you go west from the tower location or south
7 from the tower location, the topography increases
8 dramatically. It may be a hundred feet above the trees
9 that are immediately surrounding the towers. But the
10 trees that are on the uphill slope in some cases are
11 substantially taller than the tower.

12 Q. It's your expert opinion that field
13 observations of communication towers that can confirm
14 photo simulations are the best method available in visual
15 assessment; correct?

16 A. I'm sorry. Can you say that again?

17 Q. You have made thousands of field observations
18 -- let me shorten it.

19 Can you confirm that it is your testimony that
20 photo simulations are the best method available for visual
21 assessment?

22 A. That's correct. Yes.

23 Q. Now you took a lot of photographs when you
24 were out there, or whoever did, not you, somebody else.
25 And they were put into the report. Why was there no

1 indication on your photographs as to where in the view of
2 each photograph the tower would be located?

3 A. We completed our field analysis for the sole
4 purpose of -- well not the sole purpose. I'm sorry. For
5 three distinct purposes.

6 The first was to document the existing
7 conditions within the visual study area.

8 And then the second purpose was to confirm
9 that our view shed analysis -- analyses results were, in
10 fact, correct.

11 And the third purpose was to obtain
12 photographs that confirmed the review completely by the
13 applicant and also to confirm their visual simulations.

14 We felt that the visual simulations provided
15 by the applicant did a fair job of characterizing the
16 project from multiple representative locations, and they
17 fairly characterized the visibility of the proposed tower.
18 And therefore, we didn't feel it was necessary to repeat
19 the process in our -- after our field review.

20 Q. So you testified that low profile mitigation
21 concept parenthesis, height reduction, is not a practical
22 option for mitigation because it would diminish the
23 intended function of the project. What do you mean by
24 that?

25 A. We have to assume when we do a visual impact

1 assessment, that the tower is being designed to the
2 specification necessary to either make the project
3 practical or necessary. So we have to assume that the
4 applicant is proposing a project that meets their minimum
5 standard, their minimum needs. And that is the reason
6 that we said that low profile was not a reasonable option.

7 But in addition to that, when we ran the view
8 shed analysis on the one tower we determined that the
9 mitigating effect of that height reduction was not
10 significant in any way from areas where we thought adverse
11 visual impact could occur.

12 Q. So you have introduced into your factors that
13 you are analyzing, and saying that they can't change their
14 project, so they shouldn't have to be made to mitigate it?

15 MR. SWAIN: Objection.

16 MS. DINGLELINE: Okay. Let me restate
17 it.

18 BY MS. DINGLELINE:

19 Q. Mr. Perkins, so you have accepted the premise
20 that this application is the bare minimum. That is
21 exactly what you said of the needs of this applicant. So
22 you were assuming that it will not work if they reduce the
23 height.

24 A. Well we also, as I just stated, we also
25 completed an analysis of a reduced height and found that

1 it would not be effective in reducing the visual impacts.

2 Q. Let's not get to that step yet. I want you to
3 answer my question first, please.

4 A. Can you restate the question please.

5 MS. DINGLELINE: Kim, would you be able
6 to restate that question?

7 (The record was read as requested)

8 THE WITNESS: Where we are operating
9 under the assumption that the significant height
10 reduction that it would take to effectively mitigate
11 the project would also render the project non
12 functional from the standpoint of the applicant.

13 BY MS. DINGLELINE:

14 Q. And what height is that?

15 A. Well it's stated in our report, we looked at
16 multiple heights. And it would -- I mean in order for the
17 tower -- and let me just find this section of my report.
18 I need to refresh my memory here.

19 So as I stated previously, the tower from the
20 areas where we feel adverse visual impacts can occur, the
21 tower would still break the skyline if it were reduced to
22 a height of 80 feet. And it's our assumption that 80 feet
23 would not be, you know, the applicant would no longer have
24 a project with that type of height reduction.

25 Q. What locations were you referring to?

1 A. So the analysis was completed from a specific
2 location on Route 108 which is presented in the
3 applicant's visual simulations. That's where we
4 determined, you know, the various -- that's where we
5 determined the various heights at which the, you know, the
6 tower would exceed the skyline and the tree line.

7 Q. So you have not considered landowners'
8 properties or their views from their properties; right?
9 Those are not views that you have commented on in terms of
10 specific mitigation would not help them, would not improve
11 their situation. Fair to say?

12 A. Well we did run multiple view shed analyses to
13 assess whether or not height reduction could potentially
14 reduce visibility from residential properties. Again, the
15 view shed analysis analyzes everything within a two-mile
16 study area, and we are able to see when we run multiple
17 heights whether or not visibility would be substantially
18 reduced from properties surrounding the tower.

19 And we found that that height reduction would
20 not be effective in mitigating views from those locations.

21 Q. So how many residences were impacted by what
22 you just described, would not be impacted? How many? How
23 many people? How many properties?

24 A. I don't know off the top of my head how many
25 individual properties. We didn't do a parcel overlay with

1 this. But we can see, you know, in our view shed analysis
2 we can see where development occurs, and we can see that
3 the footprint of the DSM view shed analysis results did
4 not substantially decrease when a height reduction was
5 analyzed.

6 Q. What does that mean? Can you explain what
7 that last sentence means? What didn't happen? Explain
8 how -- what you're telling us with these words. I don't
9 understand.

10 You're crunching a bunch of numbers, and
11 you're saying gee, this massive huge circular area, gosh,
12 it's 3 percent or something that you can see it from in
13 this massive area. Well guess what? If you went 20 miles
14 out it would be .0001 percent of the property that you
15 could see it from. And if you get it smaller in --

16 MR. SWAIN: Objection. The question is
17 -- it's argumentative. If you have a pointed
18 question for Mr. Perkins --

19 MR. FABER: Yeah. Is there a question
20 in there, Ms. Dingleline?

21 BY MS. DINGLELINE:

22 Q. So Mr. Perkins, in that mile circle have --
23 and a mile from a cell tower, are you familiar with any
24 Vermont case that has even considered views from outside a
25 mile radius in terms of evidence that was considered and

1 acted on at a Public Utility Commission case in Vermont?

2 A. I am not familiar. Our study area of two
3 miles was based on, you know, the visual acuity of an
4 average human being. And it presents a conservative
5 analysis of where the tower could reasonably be viewed by
6 a member of the public. And two miles, I'll admit, is a
7 conservative study area. But the idea behind that was to
8 make sure that we capture resources of concern as it
9 pertains to project visibility.

10 Q. But you're doing it at the expense of the
11 people that live within a half of a mile. Mathematical
12 percentages because of the physical area; correct? That's
13 really what's going on here.

14 MR. SWAIN: Objection.

15 BY MS. DINGLELINE:

16 Q. You're running -- right?

17 MR. SWAIN: This question is also
18 argumentative.

19 MS. DINGLELINE: Are you able to answer
20 that question?

21 MR. FABER: I'm sorry. Yeah. I don't
22 understand the question, Ms. Dingleline. Could you
23 please, like, phrase it in a way in a manner -- the
24 question in a manner that the witness can actually
25 answer it.

1 MS. DINGLELINE: I don't think he's
2 going to answer it, Mr. Faber, so I'll move on.

3 MR. FABER: Okay.

4 BY MS. DINGLELINE:

5 Q. Oh, my goodness. Has a tower in Vermont been
6 considered shocking and offensive under the Quechee
7 analysis by the Public Utility Commission?

8 A. I do not know the answer to that.

9 Q. Do you know the case Rutland Renewables and
10 what it stands for?

11 A. No.

12 Q. Have you ever read either the Apple Hill Solar
13 or the Chelsea Solar case out of Bennington that have gone
14 to the Supreme Court and back a couple times in the last
15 few years?

16 MR. SWAIN: Objection. What is the
17 relevance of these cases?

18 MS. DINGLELINE: The relevance of these
19 cases is whether he has that information, knowledge,
20 and expertise to be able to apply the current law of
21 the Supreme Court in this state to his analyses, to
22 correctly provide an expert opinion that is reliable
23 and is based on the law of the State of Vermont.

24 MR. FABER: I'll allow the question.
25 Go ahead. You can answer that.

1 THE WITNESS: Yeah. I'm not entirely
2 sure how my familiarity with those cases is relevant.
3 The laws of Vermont in terms of the Quechee analysis
4 are very clear, and we apply, you know, my 22 years
5 of experience in visual impact assessment to answer
6 the questions asked by the Vermont law.

7 And I feel as though we have answered
8 those to the best of our ability through the use of
9 scientific analysis.

10 BY MS. DINGLELINE:

11 Q. Well Mr. Perkins, I recommend that you look
12 into the Quechee standard, because it is different at the
13 Public Utility Commission. And it's called the modified
14 Quechee analysis, and you did not describe it accurately.

15 MS. DINGLELINE: So I'll leave it
16 there, Your Honor.

17 MR. FABER: Okay. Any redirect, Mr.
18 Swain?

19 MR. SWAIN: Yeah. Just one quick
20 question. Thank you.

21 REDIRECT EXAMINATION

22 BY MR. SWAIN:

23 Q. Mr. Perkins, several times you mentioned how
24 your analysis functions and how your aesthetic analysis
25 sort of translates into actual visual impact that an

1 individual would experience.

2 Can you explain how that works?

3 A. Yes. And I'll try to keep it as pointed as
4 possible. I think the first most pressing thing is the
5 project description, you know, where the project is, what
6 are the various elements that make up the project, and
7 what will be its visual character.

8 The next step is to analyze the visibility.
9 And as mentioned in our report, we use a DSM analysis that
10 has a 0.7 meter resolution. And what that means is every
11 0.7 meter square within that two-mile radius we predict
12 visibility from every single square in that two-mile
13 radius. And what that gives us is an extremely accurate
14 picture of visibility within the visual study area.

15 The next intent of our analysis is to then
16 analyze typical or representative views within areas where
17 the view shed predicts visibility, and also to be able to
18 verify the view shed visibility results. And one of the
19 misnomers view shed is often misunderstood in that, you
20 know, we are not just producing a percentage of the study
21 area in order to characterize visibility. We can learn a
22 lot from how that visibility manifests within the two-
23 mile study area.

24 And I'll give you an example. So if you see a
25 spire of visibility, and hopefully everyone can see here,

1 but it's in a shape of a V and runs up a very narrow
2 corridor through the study area. That would be something
3 that we define as a discrete view. I.e., you have to be
4 standing on a very particular site on a property sometimes
5 in locations that are not accessible to the public in
6 order to see that project.

7 When views manifest like that in the view shed
8 analysis, we know that that is a discrete view that would
9 -- may only include a portion of the project.

10 The next step in the analysis is to review a
11 couple of different heights to get a better understanding
12 of what portions of the project may be potentially visible
13 from given locations. And then of course, we analyze
14 visual simulations of the project. In other words, visual
15 simulations produced by the applicant and confirmed
16 accurate by EDR by my team. And we use those visual
17 simulations to characterize and illustrate the potential
18 visibility of the project.

19 And in most cases, and particularly in this
20 case, you can transpose the impacts that result from a
21 certain distance with particular screening, you can
22 transpose those results to other areas within the study
23 area that have similar visibility characteristics. And
24 that's why it's important to have representative visual
25 simulations, including the most open and unobstructed view

1 which the applicant successfully illustrated.

2 Q. Thank you.

3 A. Hopefully that answers the question.

4 MR. SWAIN: I think so. I have no
5 other questions.

6 MR. FABER: Thank you. Ms. Dingleline,
7 anything further?

8 MS. DINGLELINE: I'll leave it there.
9 Thank you.

10 MR. FABER: Okay. Well it's about
11 12:00 folks. I think we will take half an hour
12 break. We will meet back here at 12:30.

13 And we can begin with Ms. Dingleline's
14 witnesses, and yeah, that's what we will do. All
15 right. See you all about half an hour.

16 MR. SULLIVAN: Thank you.

17 (Recess was taken.)

18 MR. FABER: Okay, folks. I see people
19 are here. But their mics are off. I'll assume that
20 folks are here. I'm not seeing -- Oh, okay. There
21 is Ms. Dingleline. Ms. Dingleline, are you there? I
22 would like to get started.

23 MS. DINGLELINE: Sorry. I couldn't get
24 my camera to come on.

25 MR. FABER: That's fine. So when we

1 left this, I guess we are at the point where you put
2 your witnesses -- Ms. Dingleline, you put your
3 witnesses up for cross examination.

4 MS. DINGLELINE: Okay.

5 MR. FABER: And so why don't we start
6 with that. And whatever order you want to go in,
7 that's fine.

8 MS. DINGLELINE: I guess we should
9 start with Sandra Bruhn.

10 MR. FABER: Okay. And are you going to
11 move her testimony and exhibits into evidence?

12 MS. DINGLELINE: Yes. Okay. Here she
13 is. Actually I E-filed a correction of her prefiled
14 testimony. There is an answer -- question and answer
15 number 11. She altered a sentence to make it read
16 better and convey what she was meaning. So that was
17 E-filed. It has that one correction in it.

18 So Sandra, can you verify that all the
19 exhibits and your prefiled testimony which is today
20 being corrected are your testimony under oath?

21 MS. BRUHN: Yes.

22 MS. DINGLELINE: And that was the --
23 that's the only correction that we have is the
24 modified answer number 11 in your prefiled testimony.

25 MS. BRUHN: Correct.

1 MS. DINGLELINE: Okay.

2 MR. FABER: So before we move that into
3 evidence, so I just want to be clear. So I have
4 prefiled testimony, an affidavit, and exhibits 1, 2
5 and 4 for Ms. Bruhn. I don't have an Exhibit 3. And
6 I just wanted to make sure that was intentional.

7 MS. DINGLELINE: Let me read off the
8 numbers. I have SB-1 is the Resume. Or it's NI-SB
9 -1. And there is NI-SB-2 which is the aesthetics
10 report. Part one Quechee. Then we have 4. It's
11 NI-SB-4. The letter from the church.

12 MR. FABER: Correct. And that's all I
13 have for Ms. Bruhn.

14 MS. DINGLELINE: Yes. I don't think
15 that there is a 3, is there, Sandra?

16 THE WITNESS: We have -- the Exhibit 3
17 was just some of the policies, the town plan and
18 policies, but --

19 MS. DINGLELINE: Let me interrupt. Mr.
20 Faber, there is a Joint Exhibit that's NI-DJ-SB. For
21 both Derek and Sandra. And that's the number 3. And
22 that's the Town and Village of Enosburgh, Vermont
23 comprehensive municipal something.

24 MR. FABER: Okay. And that's Ms. -- so
25 that's a Joint Exhibit.

1 MS. DINGLELINE: Yeah. It's a Joint
2 Exhibit. That's where 3 is.

3 MR. FABER: Okay. All right. Any
4 objection to moving that into evidence?

5 MR. SULLIVAN: No.

6 MR. FABER: Okay. Then that's
7 admitted.

8 (The Prefiled Testimony of Sandra Bruhn
9 was admitted into the record.)

10 (Exhibits marked NI-SB-1 through 4 were
11 admitted into the record.)

12
13 Prefiled Testimony of Sandra Bruhn

14 <http://epuc.vermont.gov/?q=downloadfile/625339/169720>

15 NI-SB-1

16 <http://epuc.vermont.gov/?q=downloadfile/625341/169720>

17 NI-SB-2

18 <http://epuc.vermont.gov/?q=downloadfile/625342/169720>

19 NI-DJ-SB-3

20 <http://epuc.vermont.gov/?q=downloadfile/625361/169720>

21 NI-SB-4

22 <http://epuc.vermont.gov/?q=downloadfile/625343/169720>

23

24

25

1 MR. FABER: And so Mr. Sullivan, would
2 you like to go first?

3 MR. SULLIVAN: Yes, please.

4 MR. FABER: Okay. Go ahead.

5 CROSS EXAMINATION

6 BY MR. SULLIVAN:

7 Q. Good afternoon, Ms. -- is it Bruhn or Bruhn?

8 A. Bruhn. Good afternoon.

9 Q. Good afternoon. In looking at your prefiled
10 testimony you were asked about how your background
11 informed your testimony in the case. That's question and
12 answer 4. Your response is that you have a background in
13 visual merchandising and aesthetic training from your
14 career at Gap, Inc./Banana Republic.

15 Do you have any other experience or training
16 in visual aesthetic analysis?

17 A. Just other than my experience of 36 years with
18 the global brand, I haven't -- that's my experience that I
19 have with the visual training and visual merchandising.
20 With that training I had aesthetic training specifically.
21 Really to, you know, look at more than just what you would
22 think in a visual merchandising, you know, setting in a
23 store. But actually to be trained in spacial consent,
24 symmetry, balance, you know, adaption -- adoption of, you
25 know, product to different architecture within my breadth

1 of stores. So that has been my visual training.

2 But I would also just say as, you know, being
3 a landowner and property owner 50 years --

4 MR. FABER: Let me interrupt for a
5 second because I'm remiss. I did not swear you in,
6 Ms. Bruhn.

1 SANDRA BRUHN

2 Having been duly sworn, testified
3 as follows:

4 THE WITNESS: Yes.

5 MR. FABER: Thank you. Go ahead.

6 BY MR. SULLIVAN:

7 Q. Thank you. Were you still speaking, Ms.
8 Bruhn?

9 A. Yeah. You know my experience, you know, is
10 mainly through the retail merchandising visual training
11 and aesthetic training lens at Banana Republic/Gap. The
12 global brand.

13 Q. Right. So before your involvement with the
14 case that has us here today, did you ever perform an
15 aesthetic impact review due to a proposed commercial
16 development?

17 A. No. I have not.

18 Q. Okay. Before your involvement in this case,
19 did you ever attempt to perform what we have here referred
20 to as a Quechee or Quechee Lakes analysis?

21 A. Before this case, no.

22 Q. Before this case. Yeah. Have you ever prior
23 to today testified in any court or administrative law
24 cases as an aesthetics witness?

25 A. No, I have not.

1 Q. Have you ever prior to your proffer as an
2 expert witness today, have you ever been granted expert
3 witness status in any court case or administrative
4 proceeding?

5 A. No, I have not.

6 Q. Okay. With your prefiled testimony we
7 received a document called "Report on Adverse Aesthetics
8 Analysis of Proposed Enosburgh Industrial Tower."

9 Did you prepare that report?

10 A. I did.

11 Q. Okay. In preparing that report, did you use
12 any type of digital or computer modeling software to
13 predict visibility?

14 A. Well the only thing that I did was I used, you
15 know, basically what was on the website for the case
16 22-2120. And I used Google Earth just to understand where
17 the point of the tower is based on the coordinates that
18 were listed in the case.

19 Q. Okay. Beyond those sources, though, did you
20 employ any kind of software to assist in your prediction
21 of aesthetic impacts?

22 A. No. I did not.

23 Q. Okay. So that means you didn't use what we
24 heard referred to this morning as a digital elevation
25 model; is that correct?

1 A. That is correct. I used mainly what was
2 already logged into the system with the view shed analysis
3 of already, you know, filed in the case of ITW and what
4 was already logged in there.

5 Q. Okay. So you're referring, I believe, and
6 please correct me if I am wrong, you're referring to the
7 visual analysis and photo simulations that Industrial
8 Tower and Wireless submitted as part of our case; is that
9 correct?

10 A. Yes. And no. I would say no because I have
11 the 50 years of being a landowner and I have intricate
12 knowledge of the area. And I have been there long enough
13 to know every nuance of people's properties and, you know,
14 where the view shed is on and off the main roadways. So I
15 relied on my knowledge and that expertise to help with my
16 visual analysis.

17 Q. Okay. But you didn't conduct, for example,
18 what we heard referred to this morning as a digital
19 surface model; is that correct?

20 A. That is correct. Yes.

21 Q. Okay. Did you rely at all on any drone flight
22 in predicting visibility?

23 A. There was a public utility's comment used. I
24 believe the person's name was Kevin. I don't have it
25 right in front of me. I did use his drone data to show

1 what could be seen at the tower's site.

2 So he flew -- according to his public
3 utility's comment, he flew the drone at the tower site at
4 153 feet. So I used some data in there that indicated
5 what the drone could see from that vantage point.

6 Q. Do you have the name of the person who floated
7 the drone and provided that information?

8 A. It's in the PUC, Public Utility's comments for
9 July 25. And I don't know if I have it right in front of
10 me. No.

11 Q. Okay.

12 MS. DINGLELINE: I believe -- excuse
13 me. I believe it was produced in discovery.

14 MR. SULLIVAN: Understood. But what
15 I'm getting at here is we have only received prefiled
16 testimony from Ms. Bruhn, Mr. Tirrito, and Mr. Jones.
17 And unless the person who conducted that drone flight
18 and made observations based on it submitted prefiled
19 testimony, we have no way of cross examining him.

20 Therefore, without that, assuming I'm
21 correct, I would object to any parts of Ms. Bruhn's
22 testimony and report that rely on that drone flight
23 because there is no opportunity to cross examine. In
24 other words, it's hearsay.

25 THE WITNESS: So can I just --

1 MS. DINGLELINE: Sandra, hang on. This
2 is an objection that the lawyers have to discuss.

3 I believe that the time period within
4 which the Petitioner was obligated to object to the
5 prefiled testimony has already passed. Has it not,
6 Mr. Faber?

7 MR. FABER: That is correct. You
8 should have objected to this sooner, Mr. Sullivan.
9 You had all the prefiled since December 9. I
10 understand your objection.

11 However, Ms. Dingleline is correct, why
12 didn't you object to this previously?

13 MR. SULLIVAN: Because they didn't
14 identify who the drone floater was, so I didn't know
15 if it was one of their identified witnesses or not.

16 MS. DINGLELINE: We did answer in
17 discovery under oath and provided that information,
18 and Mr. Sullivan did not act on it.

19 MR. FABER: Yeah. You could have found
20 that out fairly easily. I'm not going -- I'm going
21 to overrule that objection, and just go on.

22 MR. SULLIVAN: Okay.

23 BY MR. SULLIVAN:

24 Q. Briefly, do you know, Ms. Bruhn, whether the
25 person who floated that drone did so from the property on

1 which the tower is proposed to be located?

2 A. In his public comments, he stated it was. So
3 personally if I were to ask -- for personal knowledge, I
4 do not know because it's only based on what he posted in
5 the public utility's comments. So I don't know
6 personally.

7 MR. SULLIVAN: Okay. So not beating a
8 dead horse here. That's it for my cross examination.
9 I do have an overall objection which I believe is
10 ripe at this point in time, which is that based on
11 Ms. Bruhn's prefiled and her answers to my cross
12 examination questions, she should not be considered
13 an expert witness on aesthetics in this case.

14 MS. DINGLELINE: Again Mr. Faber, those
15 should have been made long ago.

16 MR. FABER: You're absolutely right,
17 Ms. Dingleline. You should have -- I totally
18 understand your objection. Mr. Sullivan, not clear
19 why you didn't file that before. But what I will say
20 is that you are free to argue in your legal brief
21 that will be filed after this proceeding as to what
22 weight, if any, should be given to any of this
23 testimony. So you'll have that opportunity. I'm
24 going to allow the testimony and exhibits in because
25 you did not file the objection in a timely manner.

1 But again, you will have that
2 opportunity to argue what type of weight I should be
3 giving to that testimony.

4 MR. SULLIVAN: That's fine. Mr. Faber,
5 my objection goes to the weight rather than the
6 admissibility. So with that, I have no further
7 questions for Ms. Bruhn.

8 MR. FABER: Thank you. Mr. Swain, do
9 you have questions for Ms. Bruhn?

10 MR. SWAIN: No questions for Ms.
11 Bruhn. Thank you.

12 MR. FABER: Any redirect, Ms.
13 Dingleline?

14 MS. DINGLELINE: Yes. I do have a
15 quick question.

16 REDIRECT EXAMINATION

17 BY MS. DINGLELINE:

18 Q. Sandra, in observing and gathering data and
19 then analyzing it and providing us with an opinion, do you
20 believe that you have employed an objective reasonable
21 person standard in terms of your analysis and your expert
22 report?

23 A. Yes. Because I used the Quechee analysis and
24 I employed my knowledge of the area. I looked at all the
25 reports and documents that were filed in the PUC regarding

1 this case. And I applied just the general steps,
2 photographs, and I was able to conclude my opinion based
3 on taking myself through those steps. And I might not
4 have used models, but I used the models that have been
5 already submitted into the Petitioner's application. So
6 that's how I was able to be objective to my findings.

7 Q. Do you believe that your testimony is
8 credible?

9 A. I do.

10 Q. And compared with this two-mile radius expert
11 that the Department of Public Service hired, do you think
12 that your opinion regarding the residents and the impact
13 on them is more reliable or less reliable?

14 A. It's more reliable. And I would just say
15 that, you know, some of the answers didn't take into
16 consideration the petition of the Rutland Renewable Energy
17 which is the, you know, the Board should consider all
18 vantage points including from private property. And
19 because of my knowledge of the area, and my longevity in
20 the area, and also looking at topography, the impact is
21 really adverse to those people that live in the view shed.

22 And if you look at some of those maps, you can
23 see that the residents really are in a small area along
24 108. Along the Chester Arthur and along Bordoville. And
25 that's where most of the people live. So if you think

1 about the percentage of the view shed where it is visible,
2 that's where almost 90 percent of the residents that will
3 be impacted live.

4 Q. So you would disagree with the mathematical
5 calculations of the Department's expert in terms of trying
6 to convey who or how much impact is going to visit this
7 community?

8 MR. SULLIVAN: I object to this
9 questioning as being beyond the scope of the cross
10 examination that I did.

11 MR. FABER: Yeah. It's gone a little
12 far, Ms. Dingleline. Do you have anything to wrap
13 this up?

14 MS. DINGLELINE: Yeah.

15 BY MS. DINGLELINE:

16 Q. So just to wrap up, while there was no digital
17 elevation model, you employed a reasonable person standard
18 from an objective position in assessing whether or not
19 there was an adverse impact. Fair to say?

20 MR. SULLIVAN: Objection. Leading.

21 MR. FABER: It is. And it's already
22 asked and answered, Ms. Dingleline. Do you have
23 anything else?

24 MS. DINGLELINE: No. We are all set
25 then. Thank you.

1 MR. FABER: Okay. Thank you, Ms.

2 Bruhn.

3 THE WITNESS: Thank you.

4 MR. FABER: Who is next, Ms.

5 Dingledine?

6 MS. DINGLELINE: Is Derek with us? I
7 don't -- I don't see him.

8 MR. FABER: I do not see Mr. Jones on
9 the phone anymore.

10 MS. BRUHN: He would be under Colleen's
11 laptop.

12 MR. FABER: I see Colleen Sheppard.

13 MS. BRUHN: Yes.

14 MS. SHEPPARD: No. Derek Jones is my
15 husband, but I'm at a different location than him.
16 So he was joining -- he was on the phone. He is not
17 caller number 2?

18 MS. DINGLELINE: Caller 2.

19 MR. FABER: I saw caller 2 before, but
20 I don't see that anymore unless I'm missing
21 something.

22 MS. SHEPPARD: I see it on.

23 MS. DINGLELINE: Yeah. I see it.

24 MR. FABER: Oh, okay.

25 MS. SHEPPARD: Wait. Where did it go?

1 MR. FABER: I still don't see it.

2 MS. DINGLELINE: It just disappeared
3 from my screen.

4 MR. FABER: That's not good. Perhaps
5 we should go with somebody -- your other witness, Ms.
6 Dingleline. Maybe get back to Mr. Jones.

7 MS. DINGLELINE: Yeah. I see Victor
8 there. Victor, can you unmute?

9 MR. TIRRITO: Yeah, I'm unmuted.

10 MS. DINGLELINE: Great. All right.
11 Victor -- say your last name, Victor. I don't know
12 how to pronounce it properly.

13 MR. TIRRITO: It's Tirrito.

14 MS. DINGLELINE: Tirrito. Okay. We
15 offer Victor Tirrito. And his affidavit, prefiled
16 testimony, and his CV or Resume which is actually his
17 prefiled testimony has all of the exhibits. Oh no.
18 It's just a Resume. I'm sorry. I was looking at the
19 wrong one. So it's only NI-VT for Victor Tirrito-1.
20 It's his Resume. So we would offer those three
21 documents into evidence.

22 MR. FABER: Any objections?

23 MR. SULLIVAN: No objection.

24 (The Prefiled Testimony of Victor
25 Tirrito was admitted into the record.)

(Exhibit marked NI-VT-1 was admitted
into the record.)

Prefiled Testimony of Victor Tirrito

<http://epuc.vermont.gov/?q=downloadfile/625381/169720>

NI-VT-1

<http://epuc.vermont.gov/?q=downloadfile/625380/169720>

1 VICTOR TIRRITO

2 Having been duly sworn, testified
3 as follows:

4 THE WITNESS: Yes, I do.

5 MR. FABER: Thank you. Mr. Sullivan,
6 would you like to go first?

7 MR. SULLIVAN: Yes, please.

8 CROSS EXAMINATION

9 BY MR. SULLIVAN:

10 Q. Good afternoon, Mr. Tirrito. In looking at
11 your prefiled testimony and Resume, am I correct in seeing
12 that you have experience working for IBM and AT&T; is that
13 correct?

14 A. Yes. That's correct.

15 Q. Are you presently working for either of those
16 companies?

17 A. Fortunately I retired on November 2 last year.

18 Q. Congratulations.

19 A. After 43 and-a-half years.

20 Q. Congratulations. In your work at those two
21 companies, were you ever called upon to design a network
22 of wireless communication sites?

23 A. Yes, I have. When you mean, wireless, okay.
24 Most of my work has been done at let's say the Burlington
25 IBM campus, okay? Where we had extensive wireless

1 technology deployed throughout the whole campus
2 environment which was between two sites of Essex Junction
3 and Williston. So yes, I have had extensive wireless when
4 it comes to communications for intercompany on site on
5 premise.

6 Q. Thank you for that clarification. So within
7 the company, have you had that experience in the broader
8 context of service to the public beyond the company?

9 A. Not to the general public. Just to those who
10 subscribed to the IBM offering --

11 Q. Okay.

12 A. -- and AT&T offering at the time.

13 Q. Right. Are you a radio frequency engineer by
14 training or by licensure?

15 A. No.

16 Q. Okay. Do you hold any other Federal
17 Communications Commission licenses?

18 A. No.

19 Q. In your work with IBM and AT&T, were you ever
20 called upon to design a network of sites beyond the
21 immediate campus, as you called it, of your employer?

22 A. Yes. At one time I was manager of what they
23 called the northeast region which was a combination of
24 sites between Endicott, New York; Fishkill, New York and
25 Poughkeepsie, New York and Burlington, Vermont. It was

1 part of their microelectronics business entities. And we
2 used the various technologies, mostly fiber and mostly
3 wide-area networks, which was basically circuits and long
4 lines connecting the sites.

5 Q. So if I understood that response correctly
6 those sites that you just referred to were not solely
7 connected wirelessly, but they had some kind of wired
8 connection between them; is that correct?

9 A. They had ground connections between the sites.
10 But each was a campus, like I described in the Burlington,
11 Vermont one, where there was wireless deployed on the
12 sites for communications. And then, of course, you hooked
13 up to a landline situation which is basically what happens
14 with cellular service today; right? You connect to a cell
15 tower. What do you think, it's magic going cross the sky?
16 No. You connect through fiber through the normal
17 infrastructures to get to wherever you need to go, and
18 that's how that works.

19 But to answer your question, I did, but the
20 connectivity between the sites was definitely circuitry.
21 Landlines.

22 Q. Okay. And again, this may be asked and
23 answered, but I just want to make sure I understood
24 correctly. These sites were not for use of the general
25 public; is that correct?

1 A. That would be correct.

2 Q. Okay.

3 A. I just want to offer one other thing. Some of
4 the sites were connected to line-of-sight microwaves.
5 Okay. So, for example, they had two sites; one in
6 Williston, Vermont and one in Burlington, for example.
7 Essex actually. And there is a river in between. Well to
8 connect them we either had to run cable under the river or
9 across the bridge, or we connect to microwave towers line
10 of sight so the communication was there. So it wasn't
11 just land connectivity.

12 Q. Thank you for that clarification. So when you
13 said that these microwave locations needed line of sight,
14 does that mean that their path had to be free of things
15 that would obstruct the signal between them?

16 A. Yes. Like trees for one thing. And
17 mountains.

18 Q. Trees and mountains. Is it your understanding
19 that things like trees and mountains would also have a
20 negative effect on the transmission of the types of
21 signals that Industrial Tower and Wireless uses?

22 A. To my knowledge not the radio frequency. But
23 potentially any cellular connectivity that was lower that
24 may be affected by that. Yes. I would think so.

25 Q. Okay. When you say the radio frequency, what

1 frequency are you referring to?

2 A. I'm talking about like a radio transmissions,
3 like what's proposed here. Okay? A special radio that
4 would connect, you know, have connectivity to the tower or
5 that kind of thing as opposed to cellular which is a
6 little different. It's not exactly the same.

7 Q. I'm sorry. I'm not understanding. Are you
8 saying that there would be a problem with connectivity for
9 cellular if there was something blocking the signal, but
10 there would not be for the technology that Industrial
11 uses?

12 A. Well the radio tower would be above any
13 blockage; right? Unless a mountain got in the way; right?

14 Q. Okay.

15 A. The diagrams that were shown, it's well above
16 the tree line. But the closer you get to cellular stuff
17 which is below the wireless antennas, and you get closer
18 to the tree line, yes, you're going to lose your
19 saturation; right? You're going to lose that penetration
20 to the clients that are, you know, below the tree line;
21 right?

22 Q. Okay. So you're saying that that loss of
23 saturation as you called it, is a function of the presence
24 of things obstructing the signal path such as mountains,
25 trees, et cetera; is that correct?

1 A. Yeah. That would be right. Building.
2 Anything.

3 Q. Okay. And that would affect both Industrial
4 Tower and Wireless and future carriers that might
5 collocate at this location; is that correct?

6 A. That is correct.

7 Q. Okay. In your analysis for this project did
8 you contact any representatives of other wireless
9 carriers?

10 A. No.

11 Q. Okay. So for example, you didn't ask them
12 whether they would be interested in locating on this tower
13 if it's built?

14 A. No. I didn't ask them directly. But I did
15 solicit their pages, their websites for what they were
16 planning to do, like for what AT&T was planning to do,
17 what Verizon was planning to do, and some of the
18 technologies -- arising technologies like virtual
19 radioactive -- access networks.

20 That's a big one coming up too. That's where
21 these towers would come in handy; right? Because what
22 you're doing now is you're expanding your 5G across a
23 radio signal as opposed to cellular. And that's evolving
24 technology.

25 Q. Okay. I'm not sure what you mean when you

1 used the terms radio signal and cellular separately. Are
2 you saying there is a difference between the two?

3 A. The only obvious difference is if one is a
4 radio signal which, you know, obviously you have antennas.
5 And the cellular technology is a different -- it's a
6 different based wireless technology. And then you also
7 have wifi which is another wireless technology. They are
8 all similar, but different in how they work.

9 Q. But you would agree with me that they all
10 function on the principle that an electromagnetic signal
11 within a certain frequency band is transmitted from an
12 antenna to an area where individuals themselves have
13 receiving equipment.

14 Isn't that common to all three of the things
15 that you just mentioned?

16 A. That's right. You're right.

17 Q. Thank you. I have no further questions.

18 MR. FABER: Thank you, Mr. Sullivan.

19 Mr. Swain, do you have any questions for Mr. Tirrito?

20 MR. SWAIN: No. No questions for Mr.
21 Tirrito. Thank you.

22 MR. FABER: Ms. Dingledine, do you have
23 any redirect?

24 MS. DINGLELINE: I'm all set. Thanks.

25 MR. FABER: Okay. I see caller number

1 5. That may be Mr. Jones.

2 MR. JONES: Hello?

3 MR. FABER: I think that is him.

4 MS. DINGLEEDINE: Derek, do we have you?

5 MR. JONES: Can you hear me?

6 MS. DINGLEEDINE: We can. Terrific.

7 MR. JONES: I could hear you before but
8 for some reason you couldn't hear me, so I just
9 jumped off and got back on.

10 MS. DINGLEEDINE: Then Mr. Faber, we
11 would like to introduce Derek Jones. He has prefiled
12 testimony and an affidavit. And exhibits NI-DJ-1, 2,
13 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13. And then we
14 understand that 14 was refiled this morning, I think.
15 It appeared that it got bolloxed up with a different
16 exhibit. 4. Accidentally. So I think that that was
17 refiled this morning, or conveniently, sometime this
18 morning.

19 MR. FABER: Okay. I didn't see Exhibit
20 13 for Mr. Jones. I did see a 14. I did not see a
21 13.

22 MS. DINGLEEDINE: I'm sorry. Was I
23 saying 13? I was looking at the wrong number. 14 is
24 what we refiled. I beg your pardon.

25 MR. FABER: Okay. So 1 through 12 and

1 14.

2 MS. DINGLELINE: No. 1 through 13.

3 And then 14 I believe is the one that was refiled.

4 MR. FABER: Yeah. I didn't see a 13.
5 You're saying it's filed?

6 MS. DINGLELINE: So 13 is actually a
7 Dropbox. And it is contained, I believe, in the
8 report; is that correct, Derek?

9 MR. JONES: In the report, I don't
10 think so.

11 MR. FABER: But there is no separate
12 exhibit numbered 13?

13 MS. DINGLELINE: Okay. Let me figure
14 it out. And if you would like him to be cross
15 examined, I hopefully will figure it out before the
16 end.

17 MR. FABER: Okay. Remind me to move
18 the exhibits into evidence then.

19

20

21

22

23

24

25

1 DEREK JONES

2 Having been duly sworn, testified
3 as follows:

4 THE WITNESS: I do. I would just add
5 reading -- rereading the report I submitted when I
6 read it this morning, I noticed that there had been
7 some text deleted regarding the statutes on page 12.
8 So it's a quote that had been dropped. So I have
9 just resubmitted that. It's three lines as a
10 correction on page 12.

11 MR. FABER: Okay. 12 of your prefiled
12 testimony you're saying?

13 THE WITNESS: Correct.

14 MR. FABER: Okay. All right. Mr.
15 Sullivan, do you have any questions for Mr. Jones?

16 MR. SULLIVAN: Just a few.

17 CROSS EXAMINATION

18 BY MR. SULLIVAN:

19 Q. Good afternoon, Mr. Jones. In looking through
20 your Resume, it appeared to me that you are a practicing
21 lawyer. Is that still correct?

22 A. I am a practicing lawyer, yes. Largely as
23 consultant. I have been admitted to the Bars in
24 Massachusetts and Maine.

25 Q. Okay.

1 A. But my work by and large has been in Canada
2 over the last few years as an advisor or member of
3 government on biotechnology, cost benefits analysis.

4 I also teach part time at McGill for 25 years
5 in this area.

6 Q. Okay. And I take it that you are not acting
7 as an attorney in this case; is that correct?

8 A. Correct.

9 Q. Okay. Have you, in the course of your career,
10 ever testified as an expert witness in any court or
11 administrative proceeding?

12 A. I've never testified in court. I have
13 testified before the parliament of Canada, if you include
14 that within administrative proceedings.

15 Q. I wasn't actually. I would consider that
16 legislative. So I was just asking about judicial or
17 administrative.

18 A. No.

19 Q. So you just -- I can reconnoiter. You have
20 not testified in any court or administrative proceeding in
21 your career; is that correct?

22 A. Correct.

23 Q. Do you hold any -- have you gotten, I should
24 say, any education or hold any credentials as an urban
25 planner?

1 A. No.

2 Q. Okay. Do you have any experience, education
3 or credentials as a landscape architect?

4 A. No.

5 Q. Before your involvement in this case, had you
6 ever -- have you ever performed an analysis of the
7 aesthetic impacts of a proposed commercial development?

8 A. No.

9 Q. Before this case have you ever attempted to
10 employ what we have referred to as the Quechee or Quechee
11 Lakes analysis?

12 A. No.

13 Q. As part of your work in this case did you use
14 any kind of digital modeling software?

15 A. No.

16 Q. And did you in this case use a digital
17 elevation model?

18 A. No.

19 Q. Did you use a digital surface model?

20 A. No.

21 MR. SULLIVAN: Okay. I have no further
22 questions of Mr. Jones.

23 MR. FABER: Thank you. Mr. Swain, do
24 you have any questions?

25 MR. SWAIN: No questions for Mr. Jones.

1 Thank you.

2 MR. FABER: Do you have any redirect,
3 Ms. Dingleline?

4 MS. DINGLELINE: I guess if I could
5 very briefly.

6 REDIRECT EXAMINATION

7 BY MS. DINGLELINE:

8 Q. So Derek, let me just ask him, if you don't
9 mind, I have found Exhibit 13.

10 Derek, we have your report which is Exhibit 2.
11 And on the front page of that there is a listing for NI-
12 DJ-13. And there is a Dropbox link.

13 Is that your Exhibit 13 that is embedded in
14 your report which is Exhibit 2? Derek?

15 A. Yes. I thought that was a separate link
16 Dropbox that I don't see in my report.

17 Q. Okay. On the front page of Exhibit 2 which is
18 your report, there is a listing of exhibits. And it goes
19 from 1 all the way to 14. And under 13 it has an HTTPS
20 WWW Dropbox link.

21 A. Correct.

22 Q. Is that the link -- and that's the link to
23 Exhibit 13; correct?

24 A. Correct.

25 MS. DINGLELINE: Okay. Then we would

1 move to admit the prefiled testimony, affidavit, and
2 exhibits NI-DJ-1 through 14.

3 MR. FABER: Any objections?

4 MR. SULLIVAN: No objection.

5 MR. FABER: Okay. The exhibits are
6 admitted into part of the -- the prefiled testimony
7 and exhibits are admitted into evidence.

8 (The Prefiled Testimony of Derek Jones
9 was admitted into the record.)

10 (Exhibits marked NI-DJ-1 through 14 were
11 admitted into the record.)

12
13 Prefiled Testimony of Derek Jones

14 <http://epuc.vermont.gov/?q=downloadfile/625493/169720>

15 NI-DJ-1

16 <http://epuc.vermont.gov/?q=downloadfile/625359/169720>

17 NI-DJ-2

18 <http://epuc.vermont.gov/?q=downloadfile/625494/169720>

19 NI-DJ-SB-3

20 <http://epuc.vermont.gov/?q=downloadfile/625361/169720>

21 NI-DJ-4

22 <http://epuc.vermont.gov/?q=downloadfile/625362/169720>

23 NI-DJ-5

24 <http://epuc.vermont.gov/?q=downloadfile/625363/169720>

25

1 NI-DJ-6
2 <http://epuc.vermont.gov/?q=downloadfile/625364/169720>
3 NI-DJ-7
4 <http://epuc.vermont.gov/?q=downloadfile/625365/169720>
5 NI-DJ-8
6 <http://epuc.vermont.gov/?q=downloadfile/625366/169720>
7 NI-DJ-9
8 <http://epuc.vermont.gov/?q=downloadfile/625367/169720>
9 NI-DJ-10
10 <http://epuc.vermont.gov/?q=downloadfile/625368/169720>
11 NI-DJ-11
12 <http://epuc.vermont.gov/?q=downloadfile/625369/169720>
13 NI-DJ-12
14 <http://epuc.vermont.gov/?q=downloadfile/625370/169720>
15 NI-DJ-13
16 No link
17
18 NI-DJ-14
19 <http://epuc.vermont.gov/?q=downloadfile/629344/169720>
20
21
22
23
24
25

1 MR. FABER: Now do you have further
2 redirect, Ms. Dingledine?

3 MS. DINGLELINE: Very briefly.

4 BY MS. DINGLELINE:

5 Q. So Derek, you have significant legal training.
6 You are a lawyer; right?

7 A. Correct.

8 Q. Okay. And did you have any difficulty
9 understanding and applying the Quechee analysis?

10 A. Difficulty I would say not. I think it
11 involved -- well there is two things. One, I can come to
12 it from my legal training applying, you know, basic case
13 law principles to the facts, giving them an objective
14 legal opinion or an opinion even if I'm not acting as a
15 Vermont lawyer in this instance.

16 And I join Sandra in being a 30-year resident
17 of Bordoville. My wife and I own the proposed Bordoville
18 ancestral home. The Bordoville family built the house for
19 which the road is named. And that means we have risen and
20 worked and played there. She bicycled and wandered, you
21 know, the high roads and low roads through the seasons.

22 And it's very interesting to note that over
23 the years, you know, trees have grown up on our property.
24 And it has begun to obscure some of Cold Hollow which
25 presides and has presided over the region over the last

1 hundred years, older than the church.

2 I must say the old Bordoville house is 2
3 and-a-half stories. And we wake up on a clear winter
4 morning, we see Cold Hollow clearly. It's 20 feet above
5 the line of the foundation. And, you know, our objective
6 concern -- our subjective concern is that that will
7 imperil, obscure, be out of character with the
8 neighborhood and character of the historic and aesthetic
9 character of one of, I think, Vermont's beautiful hamlets.

10 That subjective experience, I think, is shared
11 by so many people on the street which is why we want the
12 PUC to hear that aesthetic impact on our lives. You know,
13 every day not just a drive by, which also affects the
14 people visiting and the other neighbors. But it also has
15 -- part of the objective analysis in that as I think has
16 been stated a couple times today, that the visual and
17 aesthetic impact from private property ought to be noted
18 by the PUC in their understanding of aesthetic impact and
19 whether it's undue.

20 MR. SULLIVAN: I'm going to object at
21 this point as the answer being well beyond the scope
22 of my cross examination.

23 MR. FABER: Yeah. I agree. Do you
24 have something more pointed, Ms. Dingledine?

25 MS. DINGLELINE: No. That was all I

1 wanted to ask.

2 MR. FABER: Okay. So anything else?

3 Any other questions for Mr. Jones?

4 MS. DINGLELINE: Thank you. I'm set.
5 Appreciate it.

6 MR. FABER: Okay. All right. Well
7 thank you, Mr. Jones.

8 THE WITNESS: You're welcome.

9 MR. FABER: Now we have concluded with
10 the -- with this part of the witness testimony.

11 The next step will be for parties to
12 file legal briefs. How -- I'm open to what kind of
13 time folks need to file that. What are you folks
14 thinking? A couple weeks?

15 MR. SULLIVAN: I was hoping, Mr. Faber,
16 that we could file ours on or before January 27th
17 which is two weeks from tomorrow.

18 MR. FABER: That seems reasonable. Any
19 problems with that, Mr. Swain? Ms. Dingleline?

20 MR. SWAIN: Just -- go ahead please.

21 MS. DINGLELINE: Go ahead.

22 MR. SWAIN: Just one thing that comes
23 to mind is I'm taking the place of Attorney Benjamin
24 Civiletti in this matter, and I don't know when he'll
25 be returning, if he'll be resuming in my place to

1 file -- write and file the brief.

2 So I would just like a little bit of
3 time to confer with my colleagues to figure out when
4 an appropriate timeline to file the brief would be.
5 I'm really sorry if that causes a delay, but frankly
6 I'm just not sure who is handling it.

7 MR. FABER: Well I don't -- how much
8 time do you need?

9 MR. SWAIN: Gosh, just a moment to
10 speak with -- sorry. Go ahead.

11 MS. DINGLELINE: I was going to beg for
12 another week, frankly, because I have two other
13 deadlines. And to try help these folks where I am
14 very new to this, sorry if I wasted folks' time.
15 I've done the best that I could today. Maybe into
16 that next week or --

17 MR. FABER: All right. Let's do
18 February 3. Gives everybody an extra week.

19 MR. SULLIVAN: Just to be clear, I'm
20 going to be leaving on vacation on January 30th. So
21 and there is -- there are time constraints on this
22 process.

23 I have no objection to having my
24 deadline be January 27th. And the other parties'
25 deadline being February 3. But I'm going to file

1 mine before I leave.

2 MR. FABER: Yeah. No. That's fine.
3 Do folks want to file reply briefs or just one round?

4 MR. SULLIVAN: I favor one round.
5 Again, there are state and federal constraints on the
6 length of the process. And it seems to me that at
7 this point having repeated iterations of filings just
8 drags that out even further.

9 MR. FABER: Yeah. No. I tend to
10 agree. The issues are pretty discrete in this
11 hearing. So let's just have a single round of
12 briefing due on February 3.

13 Mr. Sullivan, you're free to file
14 earlier if you would like. That will give Mr. Swain
15 and Ms. Dingledine the benefit of seeing your brief
16 before they have to file theirs.

17 So is there anything else we need to
18 discuss here?

19 MR. SULLIVAN: I don't believe so.

20 MR. FABER: All right. Well thank you
21 folks. We are adjourned.

22 (Whereupon, the proceeding was
23 adjourned at 1:21 p.m.)

24

25

C E R T I F I C A T E

I, Kim U. Sears, do hereby certify that I recorded by stenographic means the Evidentiary Hearing re: Case No. 22-2120-PET, via videoconference, on January 12, 2023, beginning at 9:30 a.m.

I further certify that the foregoing testimony was taken by me stenographically and thereafter reduced to typewriting and the foregoing 135 pages are a transcript of the stenograph notes taken by me of the evidence and the proceedings to the best of my ability.

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

Dated at Williston, Vermont, this 14th day of January, 2023.

A rectangular box containing a handwritten signature in cursive script that reads "Kim U. Sears". The signature is written in dark ink on a light-colored background.

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