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TOWN OF KENNEBUNK
AND
KENNEBUNK LIGHT & POWER DISTRICT
COUNTY OF YORK
STATE OF MAINE

- - -

TRANSCRIPT OF RECORDED PROCEEDINGS
OF THE
JOINT MEETING OF THE
KENNEBUNK BOARD OF SELECTMEN
AND THE
KENNEBUNK LIGHT AND POWER DISTRICT
BOARD OF TRUSTEES

- - -

KENNEBUNK TOWN HALL AUDITORIUM
ONE SUMMER STREET
KENNEBUNK, MAINE 04043

- - -

TUESDAY, JANUARY 17, 2017
6:30 p.m.

- - -

- TOWN OF KENNEBUNK BOARD OF SELECTMEN:
- CHAIRMAN: RICHARD A. MORIN - (PRESENT)
- VICE CHAIRMAN: CHRISTOPHER L. CLUFF - (PRESENT)
- TOWN MANAGER: MICHAEL PARDUE - (PRESENT)
- SECRETARY: DEBORAH A. BEAL - (PRESENT)
- SELECTMAN: DANIEL S. BOOTHBY - (PRESENT)
- SELECTMAN: EDWARD KARYTKO - (PRESENT)
- SELECTMAN: SHILOH A. SCHULTE - (PRESENT)
- SELECTMAN: L. BLAKE BALDWIN - (PRESENT)

1 KENNEBUNK LIGHT & POWER DISTRICT BOARD OF TRUSTEES:

2 PRESIDENT: JONATHAN KILBOURN - (PRESENT)

3 VICE-PRESIDENT: WAYNE E. BERRY - (PRESENT)

4 GENERAL MANAGER/TREASURER: TODD SHEA - (PRESENT)

5 CLERK: ROBERT EMMONS - (PRESENT)

6 TRUSTEE: DAVID CLUFF - (PRESENT)

7 TRUSTEE: DAN BARTILUCCI - (PRESENT)

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**Town of Kennebunk - Board of Selectmen
Kennebunk Light & Power District - Board of Trustees**

1 A P P E A R A N C E S:

2 DRUMMOND WOODSUM
3 BY: JOANNA TOURANGEAU, ESQ
4 84 Marginal Way
5 Suite 600
6 Portland, Maine 04101

7 DRUMMOND WOODSUM
8 BY: ADAM COTE, ESQ
9 84 Marginal Way
10 Suite 600
11 Portland, Maine 04101

12 TOWN OF KENNEBUNK
13 BY: MERTON BROWN, TOWN CLERK
14 One Summer Street
15 Kennebunk, ME 04043

16 SAVE THE MOUSAM
17 BY: DONNA TEAGUE
18 BY: DAVID WAYNE
19 Kennebunk, Maine

20 FREE THE MOUSAM
21 BY: JOHN BURROWS
22 Kennebunk, Maine

23 GOVERNOR PAUL R. LePAGE
24 One State House Station
25 Augusta, ME 0433

26 ALSO PRESENT:

27 Peter Valentino, Recording Secretary, Kennebunk Board
28 of Selectmen

29 Kathleen DeMarre, Transcriptionist/Recording
30 Secretary, Kennebunk Light & Power District

31 Michael Davis, Video Creations, Video Specialist

**Town of Kennebunk - Board of Selectmen
Kennebunk Light & Power District - Board of Trustees**

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TRANSCRIPT OF RECORDED PROCEEDINGS

THIS TRANSCRIPT is supplied to you on the condition that receipt thereof will certify the accuracy of the spoken word but not that of the speakers.

THIS TRANSCRIPT is a transcript of the recorded proceedings and since the proceedings were not taken in front of a court reporter, accuracy in the depiction of speakers cannot be guaranteed in the colloquy of the transcript.

THE CERTIFIED TRANSCRIPT is the only official transcript which may be relied upon for purposes of verbatim citation of the proceedings.

**Town of Kennebunk - Board of Selectmen
Kennebunk Light & Power District - Board of Trustees**

1 Whereupon, the meeting was called to order at 6:30
2 p.m.

3 TOWN MANAGER PARDUE: Good evening and welcome to the
4 joint meeting between the Kennebunk Board of Selectmen
5 and the Kennebunk Light & Power District trustees. I'd
6 ask each of the board chairs to please call their
7 respective boards to order.

8 CHAIRMAN MORIN: I'd like -- I'd like to call to
9 order the Board of Selectmen for this special meeting
10 for January 17, 2017.

11 PRESIDENT KILBOURN: Let me call to order the
12 Kennebunk Light & Power District Board of Trustees this
13 Tuesday, January 17th at 6:30 p.m.

14 TOWN MANAGER PARDUE: Thank you. My name is Mike
15 Pardue. I serve as -- excuse me -- as your new town
16 manager and it's a pleasure to be here. For those of
17 you that don't know me, I've lived in town with my wife
18 Karen for the last 24 years, where we've enjoyed raising
19 three children who all attended the Kennebunk school
20 system. For the full sake of disclosure, we, too, own
21 property that borders the Mousam.

22 On the rear table, as most of you may have seen when
23 you entered, you'll find copies of the meeting agenda,
24 bios for our presenters, and the meeting rules of order.

25 Just a reminder that our emergency exits are located

1 both in the front and the back of the building depending
2 upon which way you're facing, so if I did that like they
3 do on Jet Blue, it would be like this and like that. At
4 the entrance, you'll find a restroom, and then down the
5 stairs you'll find additional restrooms should you need
6 those.

7 Tonight's meeting will be facilitated by two
8 attorneys that were carefully vetted by both the Town
9 Board of Selectmen, and town leadership, and KLPD
10 leadership. The facilitators will be Joanna Tourangeau
11 and Adam Cote, both are lawyers with Drummond Woodsum
12 law firm located in Portland. So, please join me in
13 welcoming Joanna and Adam as they lead us through
14 tonight's proceedings.

15 I have been asked to also remind you, if you are
16 speaking tonight, to please hold the mic very close to
17 your mouth. That will provide us with the best audio so
18 we can hear not only here but for our television viewing
19 audience.

20 Joanna and Adam.

21 MS. TOURANGEAU: Good evening. Thank you, Mike. My
22 name is Joanna Tourangeau. I am an attorney with
23 Drummond and Woodsum. We have been, Adam Cote, my
24 colleague, and I, have been retained by both the Board
25 of Selectmen for the Town of Kennebunk and the Board of

1 the Kennebunk Power & Light District with a letter
2 agreement which specifies that we will be conducting a
3 fully transparent process for both boards to get up to
4 speed on next steps with regard to the dams and to
5 figure out whether there is a path forward for those
6 boards to work together to resolve some of those issues.

7 We -- I have been -- our agreement states
8 specifically that we will be fully transparent about the
9 terms of our agreement, that we are representing both
10 boards, and that they are sharing fully in the -- and
11 equally in the costs of our work that we're doing. They
12 both have separate counsel that represent them
13 individually.

14 I, as Mike said, am an attorney. I have been
15 practicing primarily in the environmental law area in
16 Maine since 2000. So, I like to say, you know, I've
17 been practicing for about ten years since I started in
18 2000. It's closer to 16 at this point. I started at
19 Pierce Atwood. I was there for eight years. I worked
20 there with Adam at the time. I then transitioned over
21 to Drummond Woodsum where I've been for another eight
22 years and Adam joined us a few months ago.

23 My practice is, as I said, in the environmental realm
24 and there is a large overlap with the environmental law
25 arena in Maine and at the federal level and the energy

1 law practice. Both of those go hand in hand and Adam
2 will speak to his expertise as well, but his expertise
3 is more in that energy area, and so we compliment each
4 other, in terms of this particular project, quite
5 nicely.

6 I am a native Mainer. I think I can say that. My
7 parents were both born in Maine, as well, in the Bangor
8 area. I grew up -- I was born in Ellsworth and I grew
9 up on Mt. Desert Island and so, you know, I have some
10 experience with coastal areas and communities that are
11 in many ways very similar to the community down here.

12 I'm going to turn it over to Adam for a few minutes
13 to introduce himself and then we will move forward
14 culminating, for us anyway, with a presentation
15 regarding the options for the dams.

16 MR. COTE: Thanks. Thanks for having us here
17 tonight. I love working with Joanna. It's great to be
18 back at Drummond Woodsum and be working with her and I
19 love the town of Kennebunk and I'll tell you why in a
20 minute.

21 My name is Adam Cote. I'm the head of the energy and
22 utilities practice at Drummond Woodsum and I used to
23 work with Joanna at Pierce Atwood. I was in the energy
24 department, worked primarily in renewable energy. I've
25 worked with hydro. I've worked with wind, solar,

1 biomass. I've also done some natural gas work. I also
2 did some work in Europe, Eastern Europe primarily, on
3 behalf of USAID advising countries how to restructure
4 their energy sectors. I worked in Albania, Bosnia,
5 Croatia, Moldova, and essentially helped them write
6 their energy laws. They were kind of used to having the
7 prime minister's cousin get all the energy contracts and
8 couldn't understand why they weren't getting any outside
9 investments, so they -- they called some folks in to
10 focus on transparency, rule of law, those sorts of
11 processes that are important to not only inspire the
12 public that things are being done correctly, but also to
13 encourage and strengthen the sector and make the whole
14 -- whole process better.

15 I've also spent some time in the private sector.
16 I've worked primarily -- I started an energy company
17 with some other folks from Maine. We worked primarily
18 in energy storage and we worked mostly with utilities.
19 It's kind of balancing the loads, the problems that
20 utilities have often times that come up with renewable
21 energy because they're intermittent. As they say, you
22 can't control when wind the blows and the sun shines, so
23 balancing the load that is on the electricity lines
24 through various -- called distributed energy, demand
25 response, smart grid. So, I've worked a lot in that

1 area, as well. I'm very happy to be back practicing law
2 at Drummond Woodsum.

3 In my other life, I have been a member of the Maine
4 National Guard for about 20 years. I've had deployments
5 to Bosnia, to Iraq, to Afghanistan. And in my personal
6 life, I was born and raised in Sanford. My dad was a
7 history teacher at Sanford High School for 30 years and
8 a coach there. I still live there. My wife and our
9 five kids, the oldest is twelve, the youngest is five.
10 And I love Kennebunk for many reasons, but mostly we
11 spend a lot of time during the summer at Mother's Beach,
12 Parson's Beach, Kennebunk Beach. We started out at
13 Mother's Beach because of the playground and now that
14 the kids are a little older we're mostly at Parson's.

15 So, it's great to be here. We're excited to be a
16 part of this. I just want to reiterate what Joanna
17 started out -- when the Selectmen reached out to us and
18 KLPD, they were very clear that they are very concerned
19 about a transparent and open process. We weren't told
20 or asked to advocate on behalf of any one perspective or
21 point of view. In fact, I think it's important that --
22 that we don't do that because it's important as a
23 community that you understand this process. I know that
24 that's important to both boards.

25 So, with that, I wanted to go over and sort of

1 transition now into the rules of procedures, so to
2 speak, and the most important one that I'll put out
3 there is that to -- to try to be respectful to
4 everybody. We'd really ask that -- that we're going to
5 stick to the -- to the agenda, to the time limits. It's
6 not meant as a slight to you. It's meant as an
7 opportunity to make this process that applies for
8 everybody. We understand that these tend to be
9 emotional at many times and certainly everyone comes in
10 and feels a real vested process in wanting to put their
11 -- put their perspective out there.

12 A couple of other points. This is being broadcasted
13 and recorded, so we ask that when you speak, when we
14 have the time for public comment, that you come up and
15 you do speak into the microphone. Please turn off your
16 cells -- cell phones. That's sort of the standard
17 comment, or mute them.

18 Presenters, when you come up -- we have presenters
19 from the Save the Mousam and the Free the Mousam group.
20 We would ask that you do stick to ten minutes. Joanna
21 and I will -- there will be a timer up there and you can
22 follow it, but we'd ask that you stick to that and,
23 again, it's for the purpose of getting this for
24 everybody.

25 We would ask the audience to save your questions to

1 the end. We're -- if you look at the agenda, those
2 folks are going to speak from the two sides. We're
3 going to have the -- the heads of each board go through
4 and provide some of their comments. Jay's will probably
5 be a little bit longer, because he's going to be
6 providing more of an update on where they stand, but
7 Dick is also going to speak a little bit on behalf of
8 the selectmen. And lastly, for those folks at home, or
9 for all of you, the copies of this presentation will be
10 available on the websites of both boards.

11 So, with that, next on our agenda, I'd ask Merton
12 Brown to go through the summary of the non-binding
13 referendum vote from November 8th.

14 MR. BROWN: Good evening. What I'm going to do is
15 just read the questions and give you the results of the
16 vote. This was the vote that was last November 8th in
17 this room and they were non-binding questions.
18 Non-binding questions, certainly my definition would be,
19 it's kind of like a glorified survey. It kind of gives
20 the pulse of what the people are thinking, but it's
21 non-binding as far as the results are concerned.

22 The first question was Article V, Referendum Question
23 Number 4: Do you favor the Kennebunk Light & Power
24 District continuing to invest into the hydropower
25 generation facilities along the Mousam River? Yes were

1 5,061; no, 2,261; 334 blanks, meaning that 334 people
2 chose not to answer that question.

3 Article Number VI, Referendum Question Number 5: Do
4 you favor the Town of Kennebunk maintaining and
5 improving the existing conditions along the Mousam
6 River, in particular, mill pond areas and water levels
7 sufficient to allow the continuation of existing
8 recreational activities by keeping the Dane Perkins,
9 Twine Mill and Kesslen Dams in place whether or not said
10 dams continue to generate hydropower? Yes, 5,318; no,
11 2,048; and 290 people chose not to answer that
12 question.

13 Article Number VII, Referendum Question Number 6:
14 Do you want the opportunity to vote on any, and/or all
15 of the following questions before the Trustees of the
16 Kennebunk Light and Power District make a final decision
17 on them: Whether the Dane Perkins Dam, Twine Mill Dam,
18 and/or Kesslen Dam should continue to generate
19 hydropower, remain in place, and/or be removed? Yes,
20 5,852; no, 1,493; and blank, 311.

21 MR. COTE: Thanks, Merton. Next we'll have
22 introductory comments from the board chairs. Dick, as
23 the Chairman of the Board of Selectmen, could you go
24 first, please?

25 CHAIRMAN MORIN: Certainly. Good evening and thank

1 you all for attending. Thank you, also, to our
2 colleagues from the Kennebunk Light & Power District,
3 our Town Manager, Mike Pardue, and our facilitators,
4 Joanna and Adam from -- both from the law firm of
5 Drummond and Woodsum.

6 The future of the dams in Kennebunk is significant;
7 so significant that the Boards of the Light & Power
8 District and the Selectmen have convened this meeting to
9 gather information and facts to better understand the
10 options available and the implications associated with
11 each.

12 Frankly, the majority of the Board of Selectmen had
13 not had the benefit of the numerous meetings and
14 information sharing that started some 15 months ago,
15 because they were not yet elected. So for that reason,
16 it's extremely important that we conduct this and future
17 meetings to assure that the best information is
18 considered and decisions are rendered for the benefit of
19 the Town as a whole.

20 The non-binding referendum questions presented at the
21 November election provided guidance for the Board,
22 certainly. However, they lacked a number of ingredients
23 such as costs, and funding methods and mechanisms, and
24 how we were able to -- excuse me -- how those would be
25 able to contribute to a reasonable verdict. Again, our

1 mission tonight is to gather as much information as we
2 can.

3 No decisions will be made tonight and, hopefully, the
4 facilitators, speakers, and exchange between the two
5 boards will pave the way for a better understanding of
6 options and shed light on the best means to proceed.

7 I want to thank you all again for your interest, your
8 participation, and most importantly your patience, as we
9 complete the tasks at hand. Our collective mission
10 tonight and beyond is to do what is best for the
11 community, past, present, and future, so let's get the
12 meeting underway.

13 PRESIDENT KILBOURN: Thank you, Dick. Good evening.
14 I'm Jonathan Kilbourn. I'm the president of Kennebunk
15 Light & Power District. You can call me Jay. You know,
16 the Kennebunk Light & Power District, affectionately
17 known as the KLPD, has been working so long on this dam
18 issue -- or should I say dam issue -- that we have --
19 someone had to start with that -- that we have two new
20 board members and a new general manager as we proceeded
21 with the process.

22 Todd Shea, our General Manager, tonight suggested
23 that we all wear our galoshes, because it looked like we
24 could be in for a mess. Well, now, I know he was
25 referring to the weather, but -- and I'm sure that we

1 are all going to try and make sure we don't have a mess
2 tonight. And after Bosnia, this should be easy.

3 We are here in a continuing effort to obtain the
4 critical facts, to get some key questions answered, to
5 listen for new opportunities, and to solve our challenge
6 together as one community. Kennebunk has an important
7 stake in what happens with the Kennebunk Light & Power
8 District hydro facilities along the Mousam. Kennebunk
9 Light & Power District has a charter, mission, and
10 regulatory responsibilities that are relatively narrow
11 specifically to deliver low cost power to our ratepayers
12 in four towns, reliably, sustainably, and safely, in
13 accordance with law and regulation.

14 Now, in this regard, and after extensive study and
15 financial analysis, KLPD decided -- the trustees decided
16 early last year that the District will not seek to
17 re-license the hydropower facilities. You'll hear more
18 about this tonight.

19 Our community has a larger stake and range of
20 concerns than would typically come under the purview of
21 an electric utility and for this reason, among others,
22 the KLPD Board has not addressed the fate of the dams
23 themselves. It's important to be clear. There's a
24 difference between hydropower production and the dams.

25 Kennebunk is impacted beyond the KLPD's business

1 responsibilities by the way the rivers and the dams are
2 managed. Including, just for example, recreation,
3 fisheries, tourism, clean water, property values,
4 historic and scenic considerations, among others.

5 The KLPD has maintained direct communications with
6 the Town and the Board of Selectmen, and, of course,
7 with the broader community, but now is the time for the
8 Town and Kennebunk citizens to build upon this dialogue
9 and the recent referenda that was just described to you.

10 Our board has been and will remain open to proposals
11 from the Town about how the Town might wish to address
12 these broader issues of community concern. We expect to
13 continue an ongoing process of collaboration as the Town
14 considers how and whether to apply its resources and its
15 broader mandate to address the dams.

16 Unfortunately, the long process had been contentious
17 at times, but I would like to offer my appreciation to
18 every member of the community who is engaged in the
19 process. It's been quite a challenge and this is what
20 it takes to arrive at a good decision. And I will just
21 second that -- note that neither board anticipates
22 making any decisions, other than, perhaps, the next
23 meeting tonight. This is an informational and dialogue
24 meeting.

25 And, if I could, before we move on, I'd like to yield

1 the floor to David Cluff for just a moment on a -- on a
2 procedural matter.

3 TRUSTEE CLUFF: Thank you. My name is David Cluff.
4 I am the sole owner of Duffy's Tavern and Grill, located
5 on Main Street, which overlooks the Mousam River and the
6 dam. It is perceived that there is a potential for a
7 conflict of interest for me because of where my business
8 is located and also the potential for a financial gain
9 or loss depending on what happens to the dams.

10 When I got on the Kennebunk Light & Power board, I
11 was looking for a way to give back to the community. I
12 was on the Downtown Committee, I then got off that
13 committee, got onto the Kennebunk Light & Power
14 committee because I thought that would be a great board
15 to be apart of that would be noncontroversial. Little
16 did I know that the dam issue was going to come about
17 and thrust me and my business right in the middle of
18 this and the community.

19 So, with this, based on that perceived conflict of
20 interest, at this time I will be recusing myself of any
21 further discussion this evening on the dams. We -- we
22 -- the Board has asked our attornies to come to our next
23 meeting on the 31st of this month, and at that time our
24 attornies will advise us, as well as other Board members
25 who also currently have a financial possibility of

1 losing or gaining because they have property along the
2 river, as well. But for me, I will be recusing myself
3 from any further disclosure for this evening. Thank
4 you.

5 VICE CHAIRMAN CLUFF: Good evening, everybody. My
6 name is Chris Cluff. I am David Cluff's son, as a full
7 disclosure here. I am not an owner in Duffy's Tavern
8 and Grill. I am an employee of that corporation. I am
9 also an appointed officer of that corporation in a non
10 compensatory role for business continuity purposes in
11 case the plane went down on a Saturday night and someone
12 needed to run the business. So, I -- there is also a
13 perceived conflict of interest on my part. At this
14 point, I am not going to recuse myself. I don't see a
15 financial gain for myself. We'll have that discussion
16 as a board as we get through discussions, as we
17 continue, whether the Board feels comfortable for me to
18 continue to do that, so, thank you.

19 CHAIRMAN MORIN: Before we move further on the
20 agenda, I'd like to repeat what I said earlier about the
21 importance of this matter and in doing so I'd like to
22 acknowledge the presence of -- the presence of our fine
23 Governor, Governor LePage, and thank him for attending
24 tonight. The breadth of this topic far exceeds the
25 borders of this community and we thank you, Sir, for

1 being here tonight and we appreciate what you can do to
2 help us out.

3 MR. COTE: Okay. With that, we're going to move to
4 our public presentations. The first one up will be the
5 Save the Mousam group, Dr. David Wayne and Donna Teague.
6 10 minutes, please. Thank you.

7 MS. TOURANGEAU: I'm going to hop in, too, just to
8 clarify that when there was discussion of attorney's
9 analyzing conflict issues for the individual boards,
10 they were referring to their individual attorney's. We
11 will not be conducting that analysis for them. It would
12 be not appropriate for us to do that.

13 So, I have a lovely egg timer for you. I practiced
14 myself with it to see if it held time accurately and we
15 should set it on the twelve, because it stops at two
16 minutes and it's just a small ding. It's not an
17 offensively loud timer. All right?

18 MR. WAYNE: We're set. I'm David Wayne. I run an
19 international consulting company, formerly the dean at
20 the University of New England in the medical school, I
21 resident of Kennebunk, and live on the river about a
22 quarter of a mile up from the Kesslen Dam.

23 MS. TEAGUE: Good evening. I'm Donna Teague. I am a
24 volunteer coordinator for a local hospice and a
25 ratepayer and a taxpayer. I also live on the river.

1 Save the Mousam is a group of local folks who want to
2 keep the dams and want to keep hydro generation going.
3 We have no paid staff or consultants. We have no
4 federal or state organizations with money. We're just
5 your neighbors and concerned citizens and we reach from
6 the beaches to the borders of this lovely town of ours.

7 Tonight we're going to try to quickly run through our
8 perspective; what we know, what we don't know, what we
9 want to achieve, and what we need to remember.

10 So, what we know: Our community is an historic
11 community. It grew up around the Mousam River and the
12 first dam built in 1670. The Mousam and its mills were
13 really the lifeline of this community. Many of us
14 believe that these dams should be preserved for their
15 historic value and even in an official way. We also are
16 a green energy town. We believe in sustainability. We
17 have many green initiatives going. No more plastic
18 bags. We have -- recycling has increased and we feel
19 that hydropower -- we know that hydropower is a clean
20 renewable energy, and we would like to see it upgraded
21 and be able to even increase our sustainability instead
22 of destroy it. It's a unique aspect of our community.

23 I don't need to say too much about how lovely our
24 town is, about the tourism that comes to us. We are a
25 welcoming community and one thing that we have, along

1 with our main street, our beaches, is a hidden treasure
2 in the Mousam River. If you have not been on it, you
3 really should be. Particularly the trestles in West K
4 and now I just found out that the Eastern Trail is
5 actually going to go across those. So, we want people
6 to come in and we want to be able to recreate.
7 Particularly in the summer months when most of us are on
8 that river.

9 We also are a town that watches its costs. We try to
10 be fiscally responsible. I know after attending so many
11 of these meetings that that is not always an easy thing
12 to do, but we also know that we need to maintain our
13 assets and we believe our dams are an asset to this town
14 and could even be a greater asset.

15 Finally, one of the other things we know is that our
16 Free the Mousam folks tell us that the Mousam will be a
17 free flowing river. If you don't know it, there are
18 eight dams above our three and unless they all come out,
19 this will not be a free flowing river. David.

20 MR. WAYNE: Thank you. Of course, at the same time
21 as the things we know, there are a lot of things we
22 don't know and these are really what we're concerned
23 about. First. Is the ecosystem, the potential for
24 change. We have a variety of -- whether -- wood frogs,
25 spotted salamanders, thermogenic plants, a variety of

1 things that could disappear if the river actually
2 changes. We have the potential for invasive species,
3 which has happened in other places, and once they come
4 in, they're almost impossible to get out. And, of
5 course, we don't want to create mosquito breeding
6 ground, especially with what's happening with mosquitos
7 throughout the U.S.

8 Fish is a big issue. According to the Alden report,
9 there were nine fish below the Kesslen Dam, not enough
10 to warrant fish passage. We hoped that there would be
11 more coming up, but do we need bait fish? And that
12 really is what we've been talking about in large part.
13 Also, they will not be able to breed in 18 inches of
14 water, which is what the -- parts of the river would
15 apparently look like.

16 There are certain infrastructure issues and the
17 biggest one for me is pollution. We've had the
18 industries on the river and what's happened is that they
19 have dumped tremendous numbers of chemicals in. We have
20 a sediment layer of between seven and ten feet under
21 that. We don't know what's going to happen if and when
22 it goes away. So, we really need to study what in fact
23 is going to happen there.

24 At the same time, because we don't want to be a super
25 fund site, there's also dangers, according to some

1 engineers that we've talked to, to various structures
2 like bridges that cross the dam and the footings,
3 because as the water goes away in different places, that
4 whole thing can -- a lot of things can sink. And we
5 have been told by someone who is an expert in this area
6 for 40 years that it can cost about a hundred dollars a
7 foot to reclaim the banks that would need to be
8 reclaimed.

9 River appearance is something else is really
10 important to us with the river, according to the report
11 we've been given, we're told six feet wide, eighteen
12 inches deep in places, and so recreation, obviously,
13 goes away.

14 But the big one for us is cost. We've been given
15 figures that are hugely different, anywhere -- all the
16 way up to many millions of dollars to keep the dams.
17 We've had two people with accounting backgrounds really
18 go through details of that and found that's not the
19 case. In fact, we'll provide you with a very detailed
20 report, if you're interested in picking it up, that has
21 been done by a couple of people and that will show that,
22 in fact, if we keep the dams, over a 40 year period
23 we'll actually save money not be spending an exorbitant
24 amount. On the other hand, if we take the dams down,
25 with all the different infrastructure issues, it could

1 cost us significantly more.

2 What we want to achieve is really important. What we
3 want, very simply, is first, some expert cost analysis
4 for the different funding opportunities. There's the
5 Department of Agriculture, there's the Department of
6 Energy grants that are available, there's TIF money,
7 there are a variety of things that we need to look at to
8 see what would support -- what's going to happen.

9 We also need proper maintenance with the new
10 technology. The dams are obsolete right now. They're
11 not functioning the way they need to. There are micro
12 generators that are now available that can produce two
13 to three times as much we've -- we're told.

14 Comprehensive environmental testing. As I said, we
15 don't want the pollution to happen, so that's,
16 obviously, very important and we'd like to look at the
17 fact that we have at least two companies that seem to be
18 interested as making a profit in subleasing or leasing
19 these from KLPD and generating power for themselves.

20 MS. TEAGUE: Finally, then, what do we, as a
21 community, need to remember? We are the grass roots
22 majority. We're not outside special interests and we
23 are confident that our elected officials want the
24 majority of this town to have a say-so in this decision.
25 We also need to remember that we know what we have and

1 we know the benefits of what we have are worth investing
2 in. If the dams come down, we don't really know what we
3 get. There can be unforeseen and unintended
4 consequences to dam removal that might really up the
5 costs and really create huge issues for the Town and for
6 the individual property owners.

7 We also need to remember that really final costs
8 can't be known until a plan is in place and until we
9 know what FERC is going to say on things. Eventually, a
10 vote will come and we will vote but with real numbers.

11 We also know that we need clarity and collaboration.
12 We really invite both boards to talk to each other, to
13 get help from FERC. Let's get FERC up here. Let's talk
14 to these interested parties.

15 And finally, I've heard that, you know, we didn't
16 have numbers on the ballot questions and so how could
17 anybody know what they were doing? Well, my neighbor
18 said, what do you mean the numbers weren't out there?
19 They were in the paper every week, they were all over
20 the web, and even with those numbers, we voted to keep
21 these dams because we want them to stay.

22 Thank you, very much.

23 (Applause.)

24 MR. COTE: All right. Thank you, Donna and David.

25 Next up will be the Free the Mousam group for ten

1 minutes, John Burrows.

2 MR. BURROWS: Great. Just let me know when the timer
3 is ready. Can folks hear me okay?

4 UNIDENTIFIED FEMALE SPEAKER: Yes.

5 MR. BURROWS: Great. Thank you. Are we all set?

6 MS. TOURANGEAU: Yes.

7 MR. BURROWS: Great. Thank you. My name is John
8 Burrows. I live here in Kennebunk. I am a Kennebunk
9 native. My family routes go back here for many, many
10 generations and I'm very happy to be back in Maine
11 raising my family here. I think a lot of angst and errs
12 [sic] probably targeted me since I founded Mousam and
13 Kennebunk Rivers Alliance almost a decade ago with three
14 or four other local folks who were very concerned about
15 the state of our local river. Not just the dams. In
16 fact, the dams were a very small part of our concern.
17 There were a number of issues with water quality,
18 access, a whole bunch of stuff that we became aware of.
19 I was aware of this because professionally I work for
20 an international conservation organization. I travel
21 across New England and Canada. I work on restoring
22 native fish species and that involves dealing with dams,
23 removing dams, building fishways at dams, working with
24 hydropower companies, private dam owners, land owners
25 all across the region to come up with cooperative

1 approaches for dealing with these things. And so,
2 during my career, I've been through dozens of FERC
3 processes, standard re-licensing processes, settlement
4 agreements, and implementation of those; everything from
5 the Penobscot Project to small little dams in the down
6 east rivers.

7 So, given all of this and given that all of that work
8 that I've done was actually through a cooperative
9 nature, I barely can think of any of these processes
10 that were actually contentious. They were mostly maybe
11 started contentiously but often ended with mutual
12 agreements to do something good for the river and for
13 private business and industry. So, because of that, I
14 think I've got some pretty good insights into what's
15 facing our rivers.

16 Essentially, the position of the MKRA, the Mousam
17 Kennebunk Rivers Alliance, which, by the way, is almost
18 exclusively membered, volunteered by, and donated to by
19 people who live in Kennebunk, not outside interests from
20 away or anything else. We are Kennebunk residents,
21 people who live on the river, don't live on the river,
22 et cetera. We're very much like the Save the Dam group.

23 We see the opportunity before us as one -- as a once
24 in a lifetime opportunity to fix something that was
25 wrong with the river. We understand what we have, or at

1 least many of us do, and the Mousam River that we have
2 today is not healthy, it's not pristine, it's a broken,
3 fragmented river and I can go into some of those details
4 later. I think that's important that everyone
5 understands.

6 The ecosystem that's there now, the nature that is
7 there now is far from what it should be and if we do
8 restoration, whether it's removing one dam or multiple
9 dams, or doing something more creative on the river,
10 we're going to benefit fish, birds, wildlife, and
11 people, and it's not just sea-run fish running up the
12 river, it's virtually every single species that's
13 currently living in the river now or next to the river
14 now. Restoring a river ecosystem is not replacing the
15 system that's there because the deer, the turkey, the
16 otter, the beaver, the kingfisher, the eagles,
17 everything that people talked about losing is actually
18 going to benefit from dam removal.

19 And finally, removal -- restoration of the river is
20 far and away the cheapest option on the table, and
21 there's talk of lots of numbers that are out there,
22 having been involved with hydropower projects where
23 owners have said, let us remove the dam because we can't
24 produce power. We're generating -- we have a
25 one-and-a-half megawatt dam. If we need to do something

1 to come into modern standards like fishways, like
2 improving flows, meeting water quality standards, we
3 can't make a profit. That's one dam. We have three
4 dams collectively that generate -- have the capacity of
5 600 kilowatts that actually produce about 20 percent of
6 that.

7 And so, essentially, you know, our dams today are
8 obsolete, unprofitable today, they've been losing money
9 for years, and the cost of keeping them, particularly as
10 hydropower, is astronomical.

11 The first question is, do we keep them as hydropower
12 dams; yes or no? The second question is, is there great
13 value to the community at large of keeping some or all
14 of the dams? What are the costs involved in doing that
15 and the benefits versus the cost benefits of doing dam
16 removal?

17 And I would like to say that in terms of energy
18 development, we know right now that production of local
19 solar power is going to be far cheaper than putting a
20 dime into these dams. We have energy efficiency, energy
21 conservation, and other issues -- or other aspects which
22 can save or produce much more hydropower.

23 And so, as I have mentioned, today's Mousam River is
24 -- is not healthy and I think for folks to understand
25 when you dam a river, you produce a body of water that's

1 not a river and it's not a lake, and it doesn't have the
2 same characteristics of either of those. In fact, it's
3 this ecological limbo where it does not act like a lake.
4 It doesn't have the same food web, the same species, or
5 anything else, and so you really get this impaired
6 system that can't act or function like either of those
7 things. And so, everything from algae -- from algae
8 communities and insects, to temperature, chemical
9 aspects, physical processes like sediment movement, all
10 these different things, which are the ecosystem beyond
11 the birds and the fish, are impaired and don't work.
12 And so, that's what we have now and those impoundments
13 are less resilient, they're less dynamic, less
14 productive, and less species rich.

15 I think folks also need to understand that right now
16 we have some water quality issues in the Mousam River.
17 Some of these are directly related to the dams, others
18 are independent of the dams, but we have problems with
19 bacteria, high temperatures and low dissolved oxygen.
20 The temperature issues and the dissolved oxygen issues
21 in the fresh water are actually directly related to the
22 dams. Those are exasperated by impoundments and by
23 dams.

24 Issues in the estuary are a little bit different
25 where we have low dissolved oxygen and very high

1 bacteria. That's -- those are more of a legacy issue
2 from pollutants and other things.

3 Another issue, which actually falls under water
4 quality, is whether or not your impoundments support
5 aquatic life and just recently EPA has listed the Mousam
6 as an impaired river under the Clean Water Act for
7 failing to maintain aquatic life. The reason,
8 diadromous fish species cannot get to their habitat.
9 This is important because to maintain hydropower, to get
10 a FERC license, and to get a permit under the Clean
11 Water Act, you must deal with this. So, whether or not
12 there are nine fish in the river or 90,000, you need to
13 provide fish passage for those fish to get the permits
14 and licenses you would need to keep the dams as
15 hydropower and I think that's crucial for folks to
16 understand.

17 This brings us to -- to the red herring issue. This
18 is the red herring. It's a non-native species to Maine.
19 Unfortunately, it's an evasive species, which seems to
20 creep into every public argument and every public
21 debate. Our river herring in Maine are silver and
22 purple. These are fish from -- from the fishway on the
23 Androscoggin at the Brunswick dam. To see what alewives
24 look like -- these are alewives by the way -- one of the
25 species of river herring. This is what they look like

1 below the Kesslen Dam in the springtime and my eyesight
2 is not great, but there's more than nine fish there.
3 This was in the spring of 2013.

4 In the spring of 2016, the scientists at the Wells
5 Reserve took this video below the Kesslen Dam, and I'll
6 let that run as I speak. You cannot go out anytime
7 between mid May to late June and spend time on the
8 Mousam River and not see alewives, blue back herring,
9 striped bass, American shad, brook trout, American eel,
10 and other species. In fact, just this last year for the
11 first time in over 150 years rainbow smelt were
12 documented in the river, and we also know that sturgeon
13 are using the lower river. Almost every species of
14 sea-run fish is utilizing the river at some point in
15 time and half of those fish need to get above that dam,
16 because all of their historic spawning and rearing
17 habitat is upriver of there.

18 The other big red herring is -- well, removing one
19 dam or two dams on the lower river does not create a
20 free flowing Mousam. We have seen tremendous success on
21 the Kennebec River, the Penobscot River, down east
22 rivers by selectively removing dams, maintaining others
23 in place, and we have fundamentally turned around entire
24 ecosystems and seen huge gains. We don't need to remove
25 150 dams on the Penobscot River to make that free

1 flowing. We've removed two and bypassed one and gone
2 from zero river herring six years ago to three million
3 in recent years same on the Kennebec. And so, on the
4 Mousam to deal with our dams, we're actually gaining 40
5 percent of the main stem of the river. That's a huge
6 chunk of river. That's over nine -- ten miles of river.
7 Connected to the estuary it's thirteen free flowing
8 miles, and so I think that's very important for folks to
9 recognize.

10 And just -- just the last thing, if I have 40 more
11 seconds or so, the river aesthetics is clearly important
12 and there are a number of things that were brought up by
13 the Save the Dam folks earlier about needing to study
14 additional things, looking at sediments, looking at
15 contaminants, and the regulatory and licensing,
16 permitting process for dam removal is intense. All of
17 those issues can get dealt with during that process.

18 But, I did want to show these photos of exiting
19 images of free flowing sections of the river, and then
20 last year -- or two years ago now, during the complete
21 impoundment drawdown in November, I paddled the river,
22 the entire stretch, zero impoundment, and these are just
23 a few of the images that I took and there are places in
24 the river that were too deep to wade in, places that
25 were 12 or 14 inches deep. The river was gorgeous.

1 This is Oak Bluff. This is below Oak Bluff, a sandy
2 bottom, beautiful, and this is a dominant substrate of
3 the river. A different view of Oak Bluff, a lot of
4 water.

5 And just two more slides: This is a still from the
6 aerial drone footage. This is the ledge at Sayward
7 Street, the top of the natural falls on the river. The
8 little star that's in there shows where I took the next
9 picture standing on those ledges. This is right above
10 downtown Kennebunk. The water was three feet deep in
11 places, paddled the entire stretch of river,
12 three-and-a-half miles, didn't have to get out of my
13 kayak once during those flows.

14 And with that, I'll be done. Thank you.

15 (Applause.)

16 MR. COTE: Thank you, John. Okay. Thank you for
17 those great presentations. Joanna and I do not have as
18 many pictures. We certainly don't have overhead drones,
19 but what we tried to do for our facilitator comments was
20 that the main goal for this meeting it's televised,
21 obviously you know that, and we're talking primarily to
22 you, but our audience in many ways is our -- our
23 clients, who are the two boards, and the goal here is to
24 get the two boards together to get them on the same page
25 regarding the options for the dam. We're not

1 necessarily trying to steer you in one direction or
2 another, but to get you one the same page for what
3 options are out there in the universe. KLPD has been
4 working on this for many years. The Town has been
5 involved, and certainly I know all of you have heard
6 about it quite a bit, but now the question becomes
7 whether there are workable alternatives for the two
8 boards so that you can look to and try to establish a
9 consensus to move forward.

10 So, what we have -- this is -- okay. We're going to
11 go through the discussion of the various options that
12 are out there and while we do this, we're going to try
13 and update you on where things are with the process,
14 understanding, as I started out by saying, KLPD has been
15 working on this for awhile, so we're going to go through
16 various options with the goal in mind to help folks
17 understand generally first a quick background of each of
18 the dams, just a real quick one slide per dam telling
19 you about what they are, some fast facts on each. We're
20 going to go through the alternatives as they were
21 brought out in the Wright-Pierce study, the GZA peer
22 review, where they essentially looked at what
23 Wright-Pierce did and said, okay, we agree or disagree,
24 and then sort of responded to that.

25 Also, the other big document that we got information

1 from was Harvey Consulting and what they essentially did
2 was they went through the history of the Mousam. They
3 went through the history of dams. So, they did, sort
4 of, a history lesson for everybody and Wright-Pierce and
5 GZA did a what are you going to do, what are your
6 options study.

7 So, what Joanna and I did was we essentially tried to
8 break down -- those down into some slides, which wasn't
9 easy. We've got about 30 slides. Some we're going to
10 go through quick. Some we won't. But keep in mind, we
11 are trying to synthesize Wright-Pierce was, what, 270
12 page document. GZA was also a long one. You get my
13 drift.

14 So, we're going to try to really give you the tight,
15 short, and skinny really addressing what does each
16 alternative mean, what does it mean when you're going to
17 try to say you're seeking a new license? What are the
18 two to three facts that I need to know? What's the
19 general proces for each, and what's the estimated
20 timeline and the cost for each? Going through, again
21 according to the studies.

22 So, the purpose of that, again, is to try to get
23 everybody onboard. I would strongly encourage all of
24 you to read those studies yourself. I think there can
25 certainly be questions that can be gleaned out of these,

1 facilitated out of these. That's not the purpose of
2 this. This is a process that we're trying to start to
3 educate the boards. We won't be referring to Page 233
4 during this. We're going to go through and try to get
5 you the -- the big version.

6 So, KLPD owns three dams; Kessler, Twine Mill, Dane
7 Perkins. Kessler, it's the one closest to us. It's
8 right down the street. It's the most downstream of the
9 dams. It's been around since the 1800s when they had
10 the Kessler Shoe Factory here. It -- the impoundment
11 from the dam makes up around 20 - 25 acres. It's 150
12 kilowatt nameplate capacity, but it's currently
13 operating below that. We'll go through this more, but
14 all three of the dams are basically operating at 20
15 percent of their capacity to generate electricity at
16 this time.

17 Twine Mill, it's the one just upstream, two linear,
18 as the crow flies, miles. The impoundment there is
19 about 12 acres. It was essentially constructed in 1960
20 and then -- then again went through some reconstruction
21 in 1980 and 1981. It sustained some damage during some
22 of the floods we had in 2006 and 2007 and subsequently
23 has been repaired.

24 Dane Perkins, that's the one just up from Twine Mill,
25 about point 5 linear miles upstream. That was largely

1 built in 1977 and, again, really upgraded in 1980, '81.
2 The equipment has been operational for over 75 years,
3 but it -- it's essentially inefficient. The impoundment
4 area on that one, again, about 25 acres.

5 So, why are we are? Why the big issue, right? Well,
6 FERC issues you a license to operate these dams. FERC
7 is the Federal Energy Regulatory Commission, the federal
8 government. They have jurisdiction over dams on
9 navigable waterways for -- for hydroelectric facilities
10 that were built after 1935. So, they issued a license
11 in 1982 and it's up again in 2022. However, when your
12 license is up, five years before your license is up,
13 because it tends to be a long process, they want to know
14 what your intention is. So, in March of this year, KLPD
15 -- March 21st, KLPD has to let FERC know what are you
16 going to do, what they intend to do. In June of 2016,
17 KLPD voted to surrender the licenses and cease
18 generation on all three facilities essentially due to
19 the cost of power relative to other choices, and we're
20 going to go through that.

21 So, who has an interest in this? Obviously,
22 everybody that's here, citizens of Kennebunk,
23 landowners, several government agencies, the boards,
24 state government, federal government, Inland Fisheries
25 and Wildlife, Maine DEP, FERC. Lots of players, right?

1 Lot's of players involved. So, this is a public process
2 when you're dealing with FERC, which kind of explains
3 why they're asking for your intentions five years in
4 advance. This is a process that once they file, all
5 sorts of groups can get involved and provide their
6 comments on what they think ought to happen.

7 So, this slide we wanted to put up front. It's sort
8 of -- I told you I have a military background. We
9 always say what's the bluff, what's the bottom line
10 upfront, okay? So, I told you, KLPD voted to cease
11 generation last year, and I don't know that there was
12 one slide that did it, but I think essentially when you
13 facilitate down to cost, they essentially -- and they
14 can speak and answer some comments, but I think it
15 essentially came down to cost.

16 So, when you look at the two studies, when you look
17 at Wright-Pierce and when you look at JZH (ph) what
18 their estimates to do the different options were, and
19 they essentially, for three of the options, the costs
20 equals purchasing power it would equal a cost of
21 production power of about nineteen cents a kilowatt
22 hour, when they can purchase it on the open market for
23 almost a third of that. Even if they got solar power,
24 it's about ten cents on there. So, that was essentially
25 what they based this on.

1 Okay. So, now, I'm going to backtrack a bit and go
2 through those alternatives, and I will say that it's
3 important, when we go through these alternatives, I'm
4 going to lay it down. Now, I recognize that most of the
5 people here today, and the speakers that were here
6 earlier, you were essentially addressing do we keep the
7 dams or do we not keep the dams? That is not
8 necessarily the same question as do you continue
9 generating hydroelectric power. It's important that you
10 understand that and we're going to get into that,
11 because I know the tendency is, is he saying something
12 that's, you know, leaning towards we're going to get rid
13 of the dams, we're not going to get rid of them? I'm
14 not saying that when we're talking about the price of
15 electricity that's being generated on the dams.

16 So, with that having been said, I'm going to go
17 through the first couple of alternatives. Joanna is
18 going to go through the others and essentially walk you
19 through that process. Like I said, what does it mean?
20 What does the process look like? What are the estimated
21 costs? And the first one I'm going to do is whether
22 they seek a new license. The second is whether they can
23 seek an exemption for that license; I'll tell you what
24 that means. Joanna is going to go in to see if one of
25 the arguments could be that FERC doesn't have

1 jurisdiction at least with respect to the Kesslen Dam,
2 which was the first one we mentioned. And then, there
3 are some alternatives that Joanna is going to talk about
4 that -- sort of variations of some of those things, of
5 seeking generation, not seeking generation, surrendering
6 the license, doing things like that, and then we're
7 going to get in and answer some of those questions.

8 So, with respect to Alternative 1 -- Alternative 1,
9 seeking a new license to continue operations.
10 Essentially, March 21st, they would send the filing to
11 FERC. They would say, we're going to try to re-license
12 this. That opens up a file. It opens up a docket for
13 public comment, for comment from interested parties so
14 that they can come in, all these different groups, you
15 could file your comments, say what you want to -- you
16 think ought to happen, and it becomes a very fact
17 intensive process, including historians coming in to
18 testify over things, environmental folks. It's a full
19 blown process. If approved, however, the new licenses,
20 you would essentially have them for another 40 years.
21 They say under statute 30 to 50 years, but generally
22 it's a 40-year license.

23 The term would be based on capital costs associated
24 with compliance of the new license. Now, it's pretty
25 clear from the studies that one of the big issues would

1 be fish passage and the costs associated with fish
2 passage through the study it was determined, you know,
3 given past precedent, given the fact that this has
4 become a big issue, and given the fact that what FERC
5 has tended to rule in other cases, they have generally
6 set things up so, you know, if you're going to keep
7 operating it, you set up for fish passage. So, that
8 would result in continued and more costly operating
9 costs to do that, to upgrade the dams to make that
10 happen.

11 The process for this would actually, probably, go on
12 beyond 2022, because of a lot of the involvement to
13 upgrade the dams, to set up the fish passage if that
14 was, in fact, was made a requirement, and any decisions
15 made by FERC or the Maine DEP on this alternative could
16 be appealed. So, the appeal process, et cetera, could
17 drag this on.

18 What are the costs? Based upon the likelihood,
19 again, when Wright-Pierce put out and then separately
20 backed up from JZH (ph), was that it would be very
21 expensive. They estimated that this option would be
22 between 8.8 and 11.7 million in 2016 dollars. Which
23 establish a net present worth for these assets of
24 negative 3.5 to 6.3 million dollars. So, it's -- it's
25 very similar. Both of these firms came back with

1 similar numbers. Out of all these options that we have,
2 this one is the most expensive.

3 So, Alternative 2, seeking an exemption, what does
4 that mean? Well, basically, if you meet certain
5 requirements by FERC, you could be exempted from the
6 license requirements, which basically means that the
7 real big benefit of getting an exemption is, you don't
8 have to come back in 40 years. If you get a license,
9 you own it. But, there's always a but, it's subject to
10 terms and conditions of that license, which essentially,
11 based upon, again, past practice, would most likely have
12 a lot of the same conditions with upgrades to the mill
13 requirements, fish passage. Doing a lot of those things
14 would essentially -- the most likely scenario is they
15 would have a similar ruling.

16 So, essentially, the bottom line upfront on
17 Alternative 1 and Alternative 2, they're not really that
18 different. The two requirements that you've got to meet
19 to hit the exemption is you've got to increase your
20 capacity, it's one of the things you've got to say that
21 you're doing, and then also demonstrate that you hold
22 land rights. They will be needed to operate and
23 maintain the facilities, and the rights could take the
24 form of ownership in fee or in easements. So they would
25 -- KLPD would essentially have to make sure that they

1 had land rights for everything and that they were
2 upgrading it.

3 Now, they could address those. They could. They
4 could add -- it was around \$400,000 I think to add the
5 upgrade for meeting that requirement, getting the land
6 rights, chasing those down. They could most likely do
7 that based upon the studies and the reports that I've
8 read. The real issue is -- it kind of leads you to the
9 same spot, going through that hoop or the other hoop,
10 and they could always deny the exemption if the power
11 production benefits did not outweigh the costs and
12 environmental impacts.

13 So, the cost of that one is pretty similar. Again,
14 according to both studies, you're looking at 9.2 million
15 dollars, according to Wright-Pierce. That would put the
16 assets currently worth negative 3.3 million in today's
17 dollars. GZA peer reviewed these at a very similar
18 negative 4 million dollars of current assets. This
19 alternative also includes FERC and DEP decisions that
20 could be appealed administratively then in court, but
21 they would be final at the federal level with no future
22 proceedings. It has a timeline that is similar. It
23 would be a long process. So, the bottom line on this
24 alternative, again, the most likely scenario is,
25 expensive, long process.

1 Joanna has better news. I'm sort of the guy that has
2 to deliver the worst option news, but Joanna will
3 brighten things up a little bit.

4 MS. TOURANGEAU: Adam was kind enough to take the
5 dogs and I get the ponies. So, to put a really fine
6 point on where we are right now: Yes, hydropower is
7 renewable. Yes, it's great for the environment. This
8 particular hydropower at these particular hydro assets,
9 is highly inefficient and incredibly expensive even
10 compared to local solar, which knocks in at about half
11 the price. The two options that we have talked
12 about so far, Option 1, re-licensing, has a very high
13 price tag, a very long timeframe, and would essentially
14 require that KLPD continue generating and selling to
15 ratepayers really expensive, inefficient renewable
16 energy, and I question whether that would be appropriate
17 under our PUC. Likewise, Alternative 2, legal counsel
18 for KLPD has concluded that the likelihood of that
19 option prevailing is very low.

20 So, what's the good news? There are an assortment of
21 other options starting with option -- Alternative 3 --
22 oops -- which was in the Wright-Pierce report, which I
23 believe that the KLPD has also already looked at and
24 concluded is not entirely feasible. However, it's
25 important to remember with this option that this option

1 would consist -- has a price tag that is similar to the
2 -- to Alternative 4 option that we'll be getting into,
3 i.e. a negative value of roughly 2.2 million, which is
4 significantly better than the other options that we've
5 been talking about so far. It's a -- and really, the
6 question here is how many negative million dollars are
7 we talking about? Are we talking a negative 11 million
8 dollars or are we talking about the best case scenario
9 of negative one or two million dollars? That's what
10 we're talking about with these dams regardless of what
11 option we're talking about.

12 Alternative 3 is the seeking of non-jurisdiction for
13 the Kessler Dam, which means looking for a finding that
14 the Mousam River at the -- at the location of Kessler is
15 not and was not navigable, and that the Kessler Dam was
16 built before the jurisdictional threshold of, I think
17 it's 1935, for FERC. It -- legal counsel for KLPD, not
18 us, has indicated that this has a reasonable likelihood
19 of success, in terms of an argument before FERC, based
20 on the history. However, this option would also
21 include, and it is not a freestanding option, in that it
22 would include other alternatives for the other two dams,
23 so it is unlikely that the other two dams would be
24 considered non-jurisdictional, due to the construction
25 that has occurred on them since that threshold date of

1 1935. So, then, it leaves open the question and what
2 the Wright-Pierce version of Alternative 3 looked at was
3 straight up removal of those two dams and installation
4 of fish passage at Kesslen and that came in at the
5 negative 2.2 million, and those figures were included in
6 those costs.

7 And I know that I'm going a little bit out of order
8 and not reading my slides correctly. I should also say,
9 that I did not bring in hardcopies of this presentation
10 for everyone to have one tonight, but they will - this
11 presentation will be available on both board's websites,
12 so you can feel free to print your own copy and review
13 it at your leisure.

14 What is the process for Alternative 3? You could --
15 KLPD, as the FERC licensee, would submit an application
16 for a declaratory order. That process is relatively a
17 short timeframe, in the four to six month range, so it's
18 something that could be done concurrently with other
19 options, as well, in order to get a sense for whether
20 FERC was going to issue that declaratory order or not.
21 So, in many respects Alternative 3, while it was
22 presented in the Wright-Pierce report as a free standing
23 option, it is not truly a freestanding option, because
24 no one has stated that non-jurisdiction is an option for
25 all three dams.

1 And then, we get into the really fun part, which is
2 the different options under Alternative 4(a). The first
3 4 option that I present is the Option 4 that was
4 presented in the Wright-Pierce report, which is what the
5 Board voted to do in June, which is to file a Notice of
6 Intent to surrender the -- all four dams -- the license
7 for all three dams and to remove those dams. That
8 notice has not -- I'm sorry?

9 PRESIDENT KILBOURN: We didn't vote to remove --

10 MS. TOURANGEAU: You didn't? You just voted to
11 surrender.

12 PRESIDENT KILBOURN: Right.

13 MS. TOURANGEAU: The option for the alternative that
14 was presented in the Wright-Pierce report includes
15 surrendering the license and removal of all three dams.
16 That price point, again, came in at 2.2 to 2.3 million
17 dollars negative, in terms of valuation of the dams in
18 2016 dollars after you include the removal.

19 The GZA, when they reviewed those numbers, they
20 recommended that you do a high range and a low range.
21 Their low range was in that 2.2 range and their high
22 range was -- I think it was 3.3 million dollars. What
23 that process would look like is very similar. The
24 process for applying to surrender the FERC license and
25 then to remove the dams would be very similar to

1 re-licensing proceeding, in terms of the documents that
2 you would file with FERC, the process. The Army Corps
3 of Engineers would be involved for dam removal and the
4 Maine Department of Environmental Protection would also
5 be involved. There would be a consultative process
6 about different options, including a no action option,
7 an environmental assessment at the federal and the state
8 level to figure out what was the best course of action
9 to address surrender and removal of those dams.

10 What we have also looked at are some other options,
11 understanding that surrender of the license and -- means
12 termination of hydroelectric generation at the dams. It
13 does not necessarily mean removal of the dams.
14 Although, that is what -- the only option that was
15 considered in Option 4 by Wright-Pierce. There are
16 other options. You could, for example, seek to get
17 non-jurisdiction for Kesslen under the Alternative 3,
18 and then propose a consensus agreement that was arrived
19 at either within that FERC process or separately as a
20 town process in order to change ownership, for example,
21 of the dam, if any of the dams were going to remain in
22 place, to the town, and that would also change the
23 impacts of those licensing processes at the state and
24 local level if the town is involved. And if there is a
25 consensus proposal going forward, for how to handle

1 those dams, there can be different end results for each
2 of the three dams that is, then, incorporated into a
3 FERC order.

4 That is, primarily, what the FERC process itself
5 does. It is -- it would essentially be us coming up
6 with a settlement agreement as a community in advance of
7 going to FERC for a final order and the options there
8 are truly quite unlimited except for that the numbers,
9 in terms of the cost of hydroelectric generation, are
10 what they are.

11 I think that it is also very, very important, and I
12 keep emphasizing it, to remember that just because we
13 cease hydroelectric generation, does not mean that there
14 will be an application to remove the dams, that those
15 two things can be separate, and that it is also true
16 that if Kessler is not a jurisdictional dam, for FERC,
17 generation can continue there under that Alternative 3,
18 even outside of FERC jurisdiction. That's kind of the
19 predicate question.

20 So, there are kind of an infinite array of
21 Alternative 4, applying to surrender the license,
22 options that can come up. There is some additional
23 flexibility associated with an Alternative 3 type
24 approach, in terms of, seeing non-jurisdiction for
25 Kessler first, in that it would be good to know upfront

1 whether that is subject to FERC jurisdiction or not,
2 because the flexibility at the state and local level,
3 bringing that piece back to the state and local level,
4 gives you the ability to do different things with
5 Kesslen than FERC might require in their federal
6 process.

7 Did I hit all of these points as I zip through here?
8 The costs for the different options under Alternative 4
9 that I'm talking about are, in many ways, unknown. They
10 were not things that Wright-Pierce was asked to look at
11 and from our perspective these are, in many ways, new
12 alternatives that haven't been talked about in an
13 extensive amount of detail previously and, I think, one
14 of the things that we were looking for direction from
15 the two boards on is whether it makes sense to invest
16 some time from both boards to move forward and
17 investigate those kinds of options and get the kind of
18 detail that we have on the options that we know now are
19 not particularly viable, get that same level of detail
20 for these options that might have some additional
21 flexibility and some additional viability.

22 So, that is where I wanted to turn to; opening it up
23 to board questions. We are going to see if we can
24 exhaust questions from both of the boards and then,
25 looking at our timeline thereafter, we may open it up to

1 questions from the public, but if we're getting really
2 late, we may not, as well.

3 MR. COTE: Dick, actually, wanted to say a word. Go
4 ahead.

5 CHAIRMAN MORIN: I want to thank, once again,
6 Governor LePage for joining us this evening and I've
7 asked if he would take a few minutes to offer some
8 comments from the State's perspective with regard to our
9 situation here.

10 GOVERNOR LePAGE: Good evening. First of all, I
11 would like to say that you're not alone in this problem.
12 Last year I testified at Congress relative to hydro
13 facilities. Today, I sent a letter to the President,
14 and the Vice-President, and many people in Congress,
15 committees of jurisdiction and others, relative to the
16 overreach of FERC, major overreach, and the fact that
17 they have -- they have one size fits all.

18 The problem that we have here in Maine is that the
19 dams are our history, they are our state. I have, just
20 in recent years, watched the Edwards Dam go down and the
21 damage that was done to the Kennebec River, and I heard
22 tonight oh, it's great. We've really helped it out.
23 Well, there's times of the year that you can't get a
24 kayak from Waterville to Augusta.

25 Then, Fort Halifax in Winslow. We have many people

1 in Maine that built homes along -- along the dam and the
2 dam was taken out and now they have lost tremendous
3 value.

4 We're dealing with an issue right now in Washington
5 County that could literally destroy a whole industry.
6 So, I just say, let's be cautious here. Let's explore
7 whether or not the federal government is doing the right
8 thing.

9 Hydroelectricity, its power is clean, it's renewable,
10 it's important to Maine, not only as a rule of state but
11 the history of the State of Maine. I believe some of
12 these dams have more historical value than a lot of
13 things that we put under historical value in our -- in
14 our state.

15 Are they protecting the environment is ultimately
16 important. I happen to believe that we should do no
17 harm. We should -- our energy portfolio should do no
18 harm and we should lower the cost. Maine has the
19 twelfth highest cost of energy in the country. Maine
20 legislature has made some terrible, terrible mistakes
21 because they pick winners and losers. Frankly, the
22 legislature should be agnostic to technology. They
23 should only say lower the cost without harm to the
24 environment.

25 Those are the two critical issues that public policy

1 should involve. It should not involve what the
2 technology is. If you did that, frankly, there's only
3 two technologies that would show up; hydroelectricity
4 and nuclear. It's just a fact of life. If you're
5 agnostic to technology, you go to the safest and the
6 least damaging.

7 We -- we had a study prepared at the state level by
8 my administration, by Kleinschmidt, back in February of
9 2015. It shows that Maine could add between 56 and 193
10 megawatts of generation on existing -- on this current
11 existing infrastructure. Now, think about that. The
12 technology is here that we could take the backbone of
13 our hydro dams, go in and bring new generation, and,
14 yes, there's some fish passages, and I've -- I've
15 listened to people talk about million to multi million,
16 to common sense approaches which costs little money.

17 So, I am not so ready to say that all the
18 alternatives have been -- have been explored. I don't
19 -- we've -- the State has offered to work with the
20 community, with the generation folks, to see if there
21 are alternatives. I know that I am going to Washington
22 this week and I'm going again next month, and it's very,
23 very important, because one of the things that this
24 administration is doing, is trying to find ways to
25 reduce the amount of regulatory overreach by federal

1 agencies. The EPA is one of them. FERC is another one.

2 I was told last year the people from the welfare --
3 DHHS came in and said, you cannot put pictures on EBT
4 cards. We -- the federal government will not allow you
5 to do it, and I said, fine. I got up and I went into my
6 office. I left the meeting. They said, where are you
7 going? Let's discuss this. No. I understand no.
8 Believe me, I learned it a long time ago. I know what
9 no means. They're saying you can't do what you want to
10 do. And I said, so, as I would left, I just simply
11 said, I have 500 people that work in welfare. Every
12 time we have a drug bust, we pick up EBT cards. Where
13 do you want me to send all the paperwork so you can take
14 it over?

15 Now, since October of 2015, there has not been one
16 EBT card in a drug bust with a picture on it.

17 UNIDENTIFIED FEMALE SPEAKER: What does this have to
18 do with --

19 UNIDENTIFIED MALE SPEAKER: We're here talking about
20 the dams.

21 GOVERNOR LePAGE: Now -- - now, let me try to follow
22 through, so I can explain to you what we're trying to
23 do. The federal government agencies will overreach and
24 I'm simply saying that you have the opportunity to sit
25 down and discuss alternatives.

1 Now, we could take out all of our hydro dams out of
2 the state and I don't totally agree, because I have to
3 deal with above market contracts for solar, above market
4 contracts for wind. We do have contracts for heat
5 pumps, which are working very, very good. So, I'm just
6 saying that there are alternatives that -- that have not
7 been put up here that can be discussed.

8 I think you can have a partnership with the State.
9 You can have partnerships with the private sector.
10 There's a lot of alternatives that have not been
11 explored. I'm just suggesting, don't be so quick to
12 give it up, because we've given it up and I've seen so
13 much damage over the years.

14 If you take a look -- if you go back to the 1970s and
15 1980s, and you look at some of the mistakes we made --
16 let's take a look at Quebec. The Province of Quebec
17 decided, back in the '70s, when we were talking about
18 Dickey-Lincoln and the Big A, we walked away from
19 hydroelectricity. They didn't. Today, they have 41,000
20 megawatts of electricity to sell, and I think this
21 gentleman here earlier said, you could be buying it at a
22 less -- at a very affordable price. That is absolutely
23 true.

24 So, hydroelectricity is renewable. It's clean. It's
25 baseline. And when I say baseline, it's very, very

1 important, it's 24/7. Solar isn't. Wind isn't. Now,
2 I'm not suggesting they're not good. I'm suggesting
3 that if you have solar and wind, you've got to have
4 another alternative. That's all I'm suggesting, which,
5 when you put that calculation into the mix, it's a very
6 expensive alternative.

7 Now, are they perfect? No. They have some
8 environmental issues, as well. Every -- they all have a
9 variety of different issues. I am suggesting simply
10 that we work through the federal government, work
11 through the process. There may be some overreach here,
12 and I do agree with your alternative, there's one
13 alternative that you can work with FERC to reduce -- and
14 you may -- may not generate electricity -- and I'm not
15 suggesting that's the answer. I'm just suggesting that
16 you may be able to keep your dams, because your dams do
17 have economic value to the community. They certainly
18 have a lot of historical value to the communities.

19 And people can say yay or nay and that's not the
20 issue. The issue is, just don't -- don't run and jump
21 at an alternative that in the future you'll be sad that
22 you did, because it hurt -- like we did -- if we had
23 paid attention back in the '70s, we would be totally
24 independent, energy independent. We wouldn't need to be
25 chasing natural gas. We wouldn't need to be fighting to

1 take 80 percent of the homes in Maine off oil and in the
2 last six years we've only gotten down to 60 percent and
3 we're still polluting the air.

4 So, I'm just suggesting that you have a decision to
5 make certainly, but there's also people at Maine DEP,
6 there's people in the Energy Office that are here
7 tonight also collecting -- listening and seeing if there
8 are alternatives, but hydroelectricity in a state like
9 Maine is very, very valuable and it's got a great
10 historical perspective.

11 Right now, there's -- there's a situation with FERC
12 that's going to take an impoundment, it's not even
13 hydroelectricity, it's FERC saying that they have
14 control over impoundment, which clearly they don't and
15 they -- well before 1935, and they're pushing their
16 overreach and we are -- we are facing -- we could face
17 losing an entire industry because of it. So, I'm just
18 suggesting we take caution.

19 Thank you, very much.

20 (Applause.)

21 MS. TOURANGEAU: Governor, thank you for your support
22 for looking at alternatives. I think that that's very
23 helpful to this discussion and certainly the State's
24 assistance in moving us forward with the Department and
25 the other state level agencies that will be involved in

1 this process, as part of their mandate, would be very
2 helpful, as well, and we very much appreciate any
3 support that you can provide to moving this forward,
4 this consensus process forward, looking at all of those
5 alternatives. Thank you.

6 Do the -- do the Boards have questions? Yes, sir.

7 UNIDENTIFIED MALE SPEAKER: (INAUDIBLE)

8 MS. TOURANGEAU: Yes.

9 SELECTMAN KARYTKO: Okay. My first question is,
10 who's going to be answering the questions?

11 MS. TOURANGEAU: It depends on who you ask.

12 SELECTMAN KARYTKO: Okay. Yeah, let me just -- just
13 jump right ahead. Let's just say hypothetically, okay.
14 Hypothetically -- well, let me back up just a half a
15 step. I think it's quite apparent that Kennebunk Light
16 & Power doesn't want the dams. They've already said
17 that we're not going to be generating electricity.
18 There is no need for you to have them if you're not
19 going to generate electricity.

20 So, let's take the next step. Let's just say that
21 the Town of Kennebunk, the Selectmen, decide that
22 they're going to keep the dams, and let's say
23 hypothetically that there's a company out there that
24 wants to operate the dams, and they can produce
25 electricity for at least what you're paying now for

1 electricity or less. Would you buy electricity from the
2 company that's producing it from the dams? That's a
3 question to Kennebunk Light & Power.

4 GENERAL MANAGER SHEA: I would answer that question,
5 Selectmen Karytko --

6 MS. TOURANGEAU: Grab a mic.

7 SELECTMAN KARYTKO: Yup.

8 MS. TOURANGEAU: Todd, can you grab a mic?

9 GENERAL MANAGER SHEA: Several years ago Kennebunk
10 Light & Power put out an RFP for the sale or transfer of
11 our assets, and our hydroelectric facilities, and our
12 license to generate energy. KLPD sent that RFP to, I
13 believe, a dozen or so -- this is prior to my time --
14 but a dozen or so firms who were solicited in asking if
15 they were interested in our hydropower assets. There
16 were four respondents that were requested additional
17 information. Of those four respondents, none went to
18 the next level.

19 Currently, KLPD's license is up for -- for transfer.
20 We've had conversation with local interests, we've --
21 I've had conversations with national firms who were not
22 interested in going any further. As part of that
23 process, something that had to be very clear, and the
24 Board made this very clear, is that there couldn't be an
25 excessive premium to the energy purchase to make a

1 project work. KLPD can't afford to pay 30 cents a
2 kilowatt hour for energy to make the hydro facilities
3 run.

4 So, as of right now, Selectmen Karytko, that license
5 is up for offer, and anybody could enter into that
6 conversation with us and, yet, today, that has not
7 happened.

8 SELECTMAN KARYTKO: Right. But that doesn't answer
9 my question. My question is, if somebody, let's say,
10 took the license over --

11 GENERAL MANAGER SHEA: Um-hmm.

12 SELECTMAN KARYTKO: You transferred it, and were able
13 to sell you power for, at the very max, what you're
14 paying now, would you buy the power from them?

15 GENERAL MANAGER SHEA: I -- I most certainly believe
16 that the Board would entertain that option. I think
17 they'd be crazy not to. We would have to see how it
18 could happen.

19 SELECTMAN KARYTKO: Thank you.

20 MS. TOURANGEAU: I think we should also remind here,
21 too, that there can be a separation between the FERC
22 licensee for the generation of hydroelectric power and
23 the underlying property ownership of the dam itself.
24 So, those two things do not have to be tied together.

25 SELECTMAN KARYTKO: Yes. In other words, the Town

1 could own the dam --

2 MS. TOURANGEAU: Correct.

3 SELECTMAN KARYTKO: -- and the Town, if a -- if a
4 separate entity came in and said, yes, we want to run
5 these dams and we want to produce power from them, you
6 know, we think we could make a profit from them, and we
7 think we can do it and be able to sell it back to
8 Kennebunk Power at what they're paying now or less, just
9 all hypothetical now --

10 MS. TOURANGEAU: And that would be -- that would have
11 to go to the PUC, too, but, yes. There's any host of
12 alternatives that could be looked at, yes.

13 SELECTMAN KARYTKO: Thank you.

14 GENERAL MANAGER SHEA: Joanna, could you just
15 clarify, please, that the conversations that we've had
16 of transferring the non-generation assets, could you
17 touch briefly on what that would do to the process?
18 Because the conversations leading up to this and all the
19 research you folks did were in regard to transfer of
20 non-generating assets to a separate entity. To transfer
21 generating assets, adds several additional layers of
22 responsibility to those potential transferred owners.

23 MS. TOURANGEAU: Yes. And, you know, those are all
24 kind of under that Category 4 of different options that
25 haven't been looked at in a high level of detail that

1 the options that were discussed in the Wright-Pierce
2 report and that were then peer reviewed by GZA. So, the
3 things that I'm saying now are really kind of open
4 questions that we have flagged as we've started looking
5 at other options.

6 So, by no means should you consider what I'm about to
7 say now on par with what we've discussed for the options
8 from Wright-Pierce and GZA. But, you know, there are --
9 it is possible to separate out the generation assets and
10 the dams themselves, the physical structures, and have
11 different entities taking on different rights with
12 regard to both of those pieces and different licensing
13 obligations.

14 And, in particular, if a municipality takes on one of
15 those roles, it's kind of the responsibilities under
16 state law with the Department of Environmental
17 Protection, and its responsibilities at the FERC level
18 can be different than an individual, private entity,
19 that is regulated by FERC and the PUC. So, there is
20 more flexibility for a municipality, in terms of
21 enacting local ordinances, that may or may not displace
22 state level regulation, and so, bringing it back to the
23 municipality changes the underlying discussion in that
24 it really has a much higher level of local control.

25 Yes, sir.

1 SELECTMAN SCHULTE: So, you had asked earlier that
2 one of the things you were looking for from tonight was
3 for direction on where -- what additional questions need
4 to be asked and where we would go from here. One of the
5 things I would like to see -- one of the questions, the
6 referendum questions addressed, would you like the Town
7 of Kennebunk to retain the dams and -- regardless of
8 what the power generation is, is employed. And so, I
9 would be really interested to see what is the projected
10 cost, right, of -- of -- if power generation doesn't
11 occur, if the non -- non-generating assets are
12 transferred to the Town in some fashion, what, then,
13 becomes -- is the Town's outlay that we would be
14 required to -- what is the cost of keeping Kesslen and
15 the other two dams? What -- what would it look like in
16 terms of, you know, fish -- fish passage, if that's
17 required? What are the costs -- all the costs
18 associated with -- with just having dams that are not
19 generating power --

20 MS. TOURANGEAU: Um-hmm.

21 SELECTMAN SCHULTE: -- and then, to Todd's point, if
22 there is a generating asset that's transferred, if one
23 of those dams or more are still generating power, I
24 would like to see those numbers and what the range of
25 possibilities is there.

1 MS. TOURANGEAU: A lot of those numbers exist
2 already. Some of the variables that we don't have
3 numbers for are, you know, what happens if the Town
4 takes ownership of the dams, conducts a -- comes up with
5 some kind of a consensus agreement that -- and I'm just
6 throwing this out there -- that Kessler stays in place,
7 whether it's non-jurisdictional or not, and the other
8 two dams come out, fish passage is or isn't installed at
9 Kessler, and these are all very open questions, and
10 then, what does that deal structure look like with
11 hydroelectric generation continuing at Kessler and
12 terminating at the other two? You know, what are O&M
13 costs? Who of the parties are willing to bear those? I
14 mean, there are a huge number of variables, but I think
15 -- sorry. It sounded like I just lost the microphone.
16 I think that the Wright -- Wright-Pierce study contains
17 most of those numbers. They just haven't been applied
18 to the additional options that we want to talk about and
19 the legal kind of background -- doing the legal
20 background of these other new alternatives in the kind
21 of two-week timeframe that we had to get up to speed on
22 this --

23 SELECTMAN SCHULTE: Sure.

24 MS. TOURANGEAU: -- was in an impossible task and,
25 frankly, is not our role. It's really the role of the

1 two independent boards and their attorneys.

2 SELECTMAN SCHULTE: Well, right, and I appreciate
3 that. I appreciate the amount of work that you have
4 done in the short amount of time, but I do -- I mean, I
5 do think that's for -- for this board anyway, is -- is a
6 pretty significant question for us to be looking at,
7 because right now our -- I mean, our costs are
8 associated with -- with retaining your services and as
9 of right now the only cost in our outlay that are, that
10 we're looking at from the Town's perspective, and if we
11 start talking about taking on these assets, then
12 suddenly we're talking about spending, you know, that's
13 a voluntary -- that's a voluntary option, that we would
14 suddenly be outlaying potentially a very large amount of
15 money and we need to what that large amount or small
16 amount, whatever that amount of money is, we would need
17 to know if we're going to do that or in some fashion
18 what that -- what that looks like.

19 MS. TOURANGEAU: And I -- I think that in large
20 measure that will depend on what options are available
21 for the Town, because, frankly, the operation and
22 maintenance costs of those dams are probably peanuts in
23 comparison with the negative million dollars that we
24 were talking about. You know, it's the installation of
25 fish passage that has huge costs. It's the -- all of

1 the analyses that we were talking about in terms of the
2 re-licensing at the federal level that really bears
3 significant costs, and so if we can get a better handle
4 on where those costs lay and how those are impacted, if
5 not all of those costs have to be incurred and the
6 Town's role in reducing those costs, I think it's vital
7 in that you provide -- a municipality participating in
8 the process provides additional flexibility to what's
9 available at the federal and state levels.

10 MR. COTE: Essentially, your question actually
11 brought up exactly what Joanna and I were talking about
12 before, sort of where we were hoping this meeting would
13 go and it seems to us that you guys really have two
14 choices, you can choose one of the alternatives that
15 have already been deeply studied, vetted, or you could
16 always choose to do another study too, but if -- if you
17 decided to choose one of those options, then you do it
18 and you move on. If some of these options that Joanna
19 put out, and it was really a teaser, right? She was
20 saying, you know, you can move around a little bit of
21 Option 3, you adjust -- if you wanted to do sort of a
22 Lego set approach to this and put in little pieces to
23 put out different options, that's something that you
24 guys need to decide as a board. Ideally, both of you
25 decide the same way, because we're going to have a real

1 hard time looking forward if the boards aren't speaking
2 the same language.

3 And I would encourage all of you to, before your next
4 meeting, and I understand each of you have meetings
5 coming up in the next week or so, get into these
6 studies. We hope that this quick overview that we gave
7 for you will help be a good primer for you to try to
8 understand when you get into it, but most likely what
9 it's going to do is trigger more questions, ideally,
10 particularly with what Joanna had brought up, that we
11 aren't limited in options. You know, you're not backed
12 into a corner. There are some -- some viable options
13 that haven't been explored. So ideally, you guys would
14 establish that, you get a consensus on it, and give us
15 direction on what to do next.

16 Yes, sir.

17 SELECTMAN KARYTKO: Yeah. I appreciate Shiloh's
18 question about dollars and cents, because he knows how I
19 feel about taxpayer money, so that's -- we speak the
20 same language there. However, I think it's got to
21 really be pointed out, that all the information that
22 your presenting, okay, and the millions that it's going
23 to cost us is all coming from the Wright-Pierce report
24 and the other report --

25 MR. COTE: The GZA.

1 SELECTMAN KARYTKO: Okay.

2 MR. COTE: Yup, that's correct.

3 SELECTMAN KARYTKO: So -- so it is quite possible
4 that there are other options out there that might not be
5 in line with that particular report, because that's all
6 you're -- you're really presenting.

7 MR. COTE: Well, with respect -- correct, with
8 respect to the first couple of options. They weren't
9 all -- not everything in this presentation tonight came
10 straight from there. The first -- when you look at the
11 Wright-Pierce, the first several options, they are
12 pretty straight forward with FERC; you're going to go
13 for a license or you're not. That's really question
14 number one, and that's why were very careful to try to
15 -- because this is very emotional for the community, to
16 try to really par out for everybody that applying for a
17 license, not applying, you know, surrendering, the
18 different options that we outlined do not necessarily
19 mean dam removal.

20 SELECTMAN KARYTKO: Yeah.

21 MR. COTE: I think most of the interest in the folks
22 here today are concerned more about dam removal. You
23 know, it's just a sense that I got; are you going to do
24 it or are you not?

25 SELECTMAN KARYTKO: But even if you don't talk about

1 dam removal, even if you keep the dams, there's a cost
2 associated with that no matter how --

3 MR. COTE: Correct. Absolutely.

4 SELECTMAN KARYTKO: -- you look at it, whether it be
5 fish ladders and --

6 MR. COTE: Yup.

7 SELECTMAN KARYTKO: You know, that sort of thing.
8 However, if -- if one were really thinking outside of
9 the box, is it possible, again scenario, is it possible
10 to have somebody come in here and say, hey, we're going
11 to take over the dams and, going to produce electricity,
12 we're going to produce it for no more than KLPD is
13 paying for it right now, and it's not going to cost the
14 town anything because our profits are going to go toward
15 running the dams?

16 MR. COTE: Well, that --

17 SELECTMAN KARYTKO: It's a hypothetical situation,
18 but if that kind of situation were there --

19 MR. COTE: Thank you --

20 SELECTMAN KARYTKO: If that hypothetical situation
21 were there, that's also, obviously, another alternative.

22 MS. TOURANGEAU: And let's get them at the table. If
23 that's an alternative, let's flush it out. I would like
24 to say that the Wright-Pierce numbers were peer reviewed
25 by GZA. You know, those processes, FERC re-licensing,

1 it's not a new animal. You know, those numbers, yes,
2 you can have them reviewed by Kleinschmidt, who is also
3 an expert in those areas. The likelihood that those
4 numbers are off by a significant amount is very low in
5 my opinion. Those are very known licensing processes.
6 They've been done by those companies many, many times.
7 They're -- the numbers that I saw are consistent with my
8 practice and I think --

9 SELECTMAN KARYTKO: Yeah, but it's a question of who
10 is going to pay for it. If I, as a taxpayer, don't have
11 to pay for that, I don't really care how big that number
12 is.

13 MR. COTE: And maybe -- maybe --

14 MS. TOURANGEAU: Except for that the ratepayers are
15 taxpayers --

16 SELECTMAN KARYTKO: Right.

17 MS. TOURANGEAU: -- for your two boards.

18 MR. COTE: Yeah, taxpayers, ratepayers, a lot of
19 times it's the same people in this room, but the -- the
20 option -- I would -- I would encourage folks not to
21 think that there is going to be a white night, so to
22 speak, that's going to come in here and say, hey, I'm
23 going to produce power at a cheap price and I'm going to
24 fix all of this. I understand that Surge Hydro has been
25 here. I haven't seen -- Surge Hydro, for those who

1 don't know, is a fantastic Maine based company. Some
2 really bright folks from the University of Maine, some
3 engineers, who I understand might be here.

4 GENERAL MANAGER SHEA: Maine Maritime, right?

5 MR. COTE: Yeah. Just in time. So they -- they have
6 gone through, I haven't talked to these guys, but I
7 don't -- I don't know that they've put a presentation
8 out, but they are the type of company that goes through
9 in the 700, 900 dams in New England that are not
10 operating at capacity and they go in and sort of
11 retrofit them.

12 Without knowing his business, but having heard the
13 presentation of what they do, which is phenomenal work,
14 I am guessing he would agree with me when he says that
15 it's in -- on an individual basis. You've got to go --
16 you've really -- you can't look and say, well, I'm going
17 to do them all for this set price. I understand that
18 they've been in here, maybe they would come forward with
19 a proposal on it that would put you in that zone. I
20 don't know if they will.

21 Again, from what I've read from the study, and having
22 gone by the mills with Todd, I think there are some
23 unique challenges here that you're going to hear from
24 folks. For example, at Kessler, that generating
25 facility is in a really odd spot. When they had the

1 Kesslen Shoe Company, where the -- where the -- Todd,
2 you can jump in here.

3 GENERAL MANAGER SHEA: Yeah, I'll just, if I may --

4 MR. COTE: Sure.

5 GENERAL MANAGER SHEA: So, the Kesslen generator has
6 been in operation and in place, we believe, since 1928.
7 That generator is located directly below, and we'll
8 disclose this conflict of interest with Chris Cluff and
9 David Cluff, but it's located directly below Duffy's
10 Restaurant, and so, in the Kleinschmidt report that the
11 Governor referenced, that was done last year, a ballpark
12 estimate of 1.4 million dollars was given, and Kesslen
13 was placed as number six on that list of potential
14 generating improvements. That 1.4 million came
15 absolutely nowhere near the logistical nightmare that
16 exists in that facility.

17 All indications are that, if something would have to
18 come in or out, it would have to go in or out through
19 the wall or the business would have to be substantially
20 suffering to put it out of business to move that
21 generator up. We've gotten estimates to do any work at
22 that facility, and the costs associated with repair and
23 maintenance of that facility get exponentially higher
24 when you realize that the contractors we're dealing with
25 have to be set up rigging to be able to do that work

1 within the confines of that building.

2 MR. COTE: So -- so, the point on that, without
3 belaboring it so that we can move on to other issues, I
4 would encourage you to explore those, sir. I just think
5 if you're thinking that maybe the best bet, again, is
6 just waiting for somebody to come in, I would say it's
7 definitely worth pursuing. Based upon what we have seen
8 in the time since we've been brought in, it's probably a
9 low likelihood that somebody is going to be able to do
10 it, but it's certainly worth -- certainly worth asking.

11 Any other questions?

12 CHAIRMAN MORIN: I have a question for our legal
13 friends here, if this community cannot come together and
14 figure out a solution to this problem, I'm curious to
15 know what the administrative and judicial process might
16 look like, what the timing of that would be, and what
17 you might anticipate in term of -- in terms of expense
18 for that?

19 MS. TOURANGEAU: I'll start and Adam can jump in.
20 Ultimately, right now, KLPD is the FERC licensee, so
21 they are required, in March, to submit their Notice of
22 Intent regarding what they're going to do with regard to
23 their license. They will meet that deadline I am sure,
24 and if there is not a process in place that is to, kind
25 of, restructure how those decisions get made, then they

1 will make those decisions as a board, as they are
2 required to do as the FERC licensee, and then other
3 entities can engage in that FERC process as it is
4 established and noticed by KLPD.

5 PRESIDENT KILBOURN: Could I --

6 MS. TOURANGEAU: The time -- sorry.

7 PRESIDENT KILBOURN: Could I --

8 MS. TOURANGEAU: Yes. Yes.

9 PRESIDENT KILBOURN: Just -- I'd like to ask a
10 further question on that. You mentioned several times
11 in the swirl of options at the end that anything is
12 possible we can mix and match, build a Lego set in a
13 different way, but all of that seemed to be subject to a
14 process you called a consensus approach.

15 MS. TOURANGEAU: Um-hmm.

16 PRESIDENT KILBOURN: You didn't describe that very
17 much.

18 MS. TOURANGEAU: Um-hmm.

19 PRESIDENT KILBOURN: It's not something that we, as a
20 board, have talked about much and I'm sure, therefore,
21 probably, the Board of Selectmen have not talked about
22 it much. If you could outline just a little bit of what
23 that means, who the players are, how you get there? I
24 think that would be helpful, because I believe all
25 parties along the way in this discussion have hoped for

1 some kind of solution that can make everyone happy, and
2 fear that there isn't one, but if there is more
3 flexibility, I'm sure this board is willing to continue
4 --

5 MS. TOURANGEAU: Yeah, and I --

6 PRESIDENT KILBOURN: -- to talk about this.

7 MS. TOURANGEAU: Sorry. I didn't answer the entirety
8 of your question either in terms of timeline. As we
9 said in the discussion of Alternative 1, which is the
10 re-licensing, the timeline for surrender is essentially
11 the same. It would essentially run when you submit that
12 Notice of Intent, five years out from termination, up to
13 and possibly through the termination date in 2022.
14 Once you file with FERC, and Adam can speak to this
15 better than I can, it kind of kicks off FERC's process,
16 which can include -- will include, if you're applying
17 for surrender or for a new license, but not for a
18 non-jurisdiction, an environmental assessment under
19 NEPA, which will include a stakeholder process in front
20 of FERC where your -- everyone is doing what we're doing
21 here.

22 It is also the case, sometimes in front of FERC, that
23 everyone kind of stands back and says you guys need to
24 come up with a settlement agreement that kind of outlays
25 your terms, and so, that is also something you could do

1 independently of the FERC process here -- like we're
2 kicking of here. So, that's what I mean, that there are
3 kind of multiple options. But at the end of the day,
4 when you go in front of FERC, unless you're just doing
5 non-jurisdiction, when you're -- whether you're going
6 for surrender or re-licensing, you're going to be
7 initiating a federal process that has those kind of
8 stakeholder requirements. It's also true at the state
9 level. So, you're going to be looking at all the state
10 agencies getting involved at the federal level or doing
11 it here and, kind of, all of those stakeholders having a
12 piece of that timeline.

13 In terms of what the cost -- and, then, once there is
14 a decision at the state level, whether it's for a water
15 quality certification if you went for re-licensing from
16 the Maine DEP, or a Maine Waterways Conservation and
17 Development Act permit, if you went for removal, then
18 there is kind of appeal to state or federal,
19 administrative bodies first at FERC, or at the state
20 level, and then onto court, in federal court in D.C. or
21 here -- and here in D.C. -- here in --

22 GENERAL MANAGER SHEA: Maine.

23 MS. TOURANGEAU: Maine. Thank you. Where am I? And
24 any participant, who is an intervenor, who is a party to
25 those proceedings, can file an appeal and hire an

1 attorney or represent themselves and, kind of, go
2 through all of those costs which are extensive. It's
3 pricey, and it's multiple tiers and it's years and years
4 of time. You know, you've got five years from this
5 March to the termination of your license. It is not
6 unusual for the appellate period to go on for another
7 ten, fifteen, longer years beyond that.

8 SELECTMAN BALDWIN: And so, if -- If the process
9 results in aggrieved party, parties that avail
10 themselves of administrative and judicial remedies, then
11 we get into consultants who write reports and attorneys
12 who charge hourly rates; is that -- is that the way it
13 normally goes?

14 MS. TOURANGEAU: In the stakeholder process, that can
15 be -- you know, here I think that -- yeah, sorry. One
16 of the things that we're looking for tonight is
17 direction from the two boards about whether to have the
18 two boards work together to look at some of the other
19 options that we've talked about.

20 I think, yes, that might include -- certainly that
21 would include our costs that you're sharing. It would
22 also include time from your individual attorneys looking
23 at those options. It would likely also include going
24 back to Wright-Pierce, GZA, or another consultant and
25 saying, can you get granular and apply what information

1 you've already collected to these other alternatives, do
2 you have ideas about other alternatives that -- that we
3 should be looking at? There was some discussion of some
4 of these alternatives in the GZA, but it was -- peer
5 review, but it was very, kind of, attenuated, and then
6 if there are parties who are aggrieved after the
7 process, in terms of what those costs and appeal
8 processes look like, is really difficult to predict
9 without knowing what path we end up going down. You
10 know, if it's a contract deal, where we've decided not
11 to re-license and to get FERC non-jurisdiction and to
12 remove two of the dams, then it's really different than
13 if you are doing a surrender application and getting a
14 FERC decision on that.

15 SELECTMAN BALDWIN: Last -- last question on this
16 subject. In your experience, does the FERC process go
17 better if the community pulls together with a unified
18 approach or a unified plan?

19 MS. TOURANGEAU: So, here's where that gets
20 complicated. I am not aware of a situation where the
21 town has gotten involved upfront and the community has
22 gotten involved upfront with -- particularly with a
23 municipal aspect. It is -- and that is why I have to be
24 very vague about some of my answers here, and it really
25 requires some further investigation in my opinion,

1 because I'm not aware that that has happened in the
2 state of Maine, at least not on the dams that I have
3 worked on.

4 You know, I have worked on several stakeholder
5 processes for manufacturers that were previous owners
6 and operators of the dams -- mills, paper mills, but
7 they are -- and, yes, there I think it is always better,
8 I'm a Mainer, to do it here in a room like this rather
9 than to be doing it in front of FERC where you have to
10 do formal filings, and comments and responses, and hire
11 a lawyer to do it, and file, and -- but that's more of a
12 personal opinion.

13 Did I answer your question?

14 SELECTMAN BALDWIN: Yes.

15 MS. TOURANGEAU: Okay.

16 VICE-PRESIDENT BERRY: The Board has already voted --
17 the Board of Trustees has already voted to file with
18 FERC our decision to cease generation and that was it,
19 period. We didn't talk about the dams at all.

20 MS. TOURANGEAU: Got you.

21 VICE-PRESIDENT BERRY: In your experience -- and
22 we're required -- as I understand it, we're required to
23 file that in about 60 days.

24 MR. COTE: March 21st.

25 MS. TOURANGEAU: But will that -- what will their

1 NOI have to say, though? They won't say just simply oh,
2 we're not going to generate anymore.

3 MR. COTE: Right.

4 MS. TOURANGEAU: It will have to say we're going to
5 surrender, we're going to -- it will have to say that
6 you're doing a specific FERC action.

7 VICE-PRESIDENT BERRY: Yeah, we didn't say that. We
8 were hoping, by our vote, to get some reaction out of
9 FERC, and we got the reaction that they aren't going to
10 do anything until we file. So, my question, I guess,
11 from your experience --

12 MS. TOURANGEAU: You don't want to ask them what to
13 do.

14 VICE-PRESIDENT BERRY: Right. So, my question, I
15 guess, is, once we pull that trigger, as I believe we
16 are required to do, how hard is it to change the
17 direction of the projectile once -- once you do that?

18 PRESIDENT KILBOURN: Could I pile on that, too; is
19 that --

20 VICE-PRESIDENT BERRY: Yeah,

21 PRESIDENT KILBOURN: We --

22 VICE-PRESIDENT BERRY: I'm just trying to get some
23 clarification here, because I think we're under the gun
24 to file in about 60 days.

25 MS. TOURANGEAU: You are.

1 PRESIDENT KILBOURN: And we've -- and we've been told
2 that -- that -- we've been advised that there's another
3 filing three -- three years before the license expires
4 and I think we've been advised that we can file simply
5 an intent to not renew and leave it at that for now.

6 MS. TOURANGEAU: Um-hmm.

7 PRESIDENT KILBOURN: And that we don't, necessarily,
8 have to provide a plan at this time. Maybe that's not
9 correct, but I think that's what this board understands.

10 GENERAL MANAGER SHEA: May I?

11 MS. TOURANGEAU: Yes.

12 GENERAL MANAGER SHEA: The direction I received from
13 -- The direction I received from FERC in this specific
14 conversation is that failure to notify is an implied
15 surrender, which would be the least onerous part of the
16 process. I think what we need to bring -- we don't need
17 a decision here tonight, but a major elephant in the
18 room is whether or not the Town is even interested in
19 entering into this conversation.

20 The Board of Trustees has been ostracized on several
21 levels because of numbers that have been used and orders
22 of magnitude of differences, but for KLPD, who serves
23 6,750 meters in Lyman, Arundel, Kennebunk, and Wells,
24 incumbering the entirety of our bonding capacity for one
25 percent of the consumption is, I do believe the Board

1 has said, not responsible to our ratepayers. That will
2 preclude us from expending bonding funds that serve 100
3 percent of our customer base and that is the predicament
4 that the District is in, is that the District didn't say
5 anything about what we're going to do with those
6 physical dam structures, because that's a big question,
7 and there are people in the room, John Burrows, Bill
8 Grabin, I've come to know these people by name, Dr.
9 Wayne, Donna, there are people that are very polar
10 opposites in this situation, and so, I think the
11 intervening question that the Governor brought up, is
12 what is the historical value of those structures and
13 what, if any of a process, is there to move forward,
14 understanding the generation from what we have seen is
15 not economical at our facilities and not within our
16 capacity to continue doing; are there other ways?

17 MS. TOURANGEAU: FERC generation is --

18 GENERAL MANAGER SHEA: Correct.

19 MS. TOURANGEAU: -- is not a -- is not a viable
20 financial option --

21 GENERAL MANAGER SHEA: Yes.

22 MS. TOURANGEAU: -- for KLPD. I think it's fair to
23 say that Option 1 in the Wright-Pierce study is not a
24 financially feasible -- a feasible option. There are,
25 as we've talked about tonight, non-jurisdiction options

1 for KLPD, which would take it out of the FERC realm and
2 which would leave generation an option, not subject to
3 FERC oversight.

4 GENERAL MANAGER SHEA: For one dam.

5 MS. TOURANGEAU: For one dam. That's right. But
6 it's not nothing, and it is -- these are all very open
7 questions, I agree, but that piece is a piece that I
8 would want to know the answer to before I made a
9 decision that I was going to surrender -- or at least in
10 close proximity to making a decision that I was going to
11 surrender and remove all three dams.

12 MR. COTE: And seeking -- and seeking the answer to
13 that, it's if you remember, when Joanna was talking
14 about the declaratory order. It, in other words, it's a
15 quicker process. You're going upfront and you're going
16 to address two issues. You're going to say, I'm going
17 to, you know, argue that this is not navigable in this
18 area, and again, fact based, and also, it was there
19 before 1935. Now, there have been improvements to it
20 since then, but, as you know, those are the two
21 arguments. They'll come back and they'll say yes or no.
22 If they say no, then you're sort of back, but it's a
23 declaratory order and it's a much shorter process to
24 find the answer to that question.

25 MS. TOURANGEAU: And I think in relatively short

1 order, KLPD needs to know the answer to the question,
2 whether this is going to be a joint process going
3 forward and whether your Notice of Intent should
4 specify: This is what we're thinking about doing. We
5 need to know the answer to these questions, too. FERC,
6 can you consider these as part of -- if you decided to
7 go for declaratory judgement, do you consider that as
8 part -- as kind of a first question to answer as part of
9 our NOI? If you answer that in the affirmative, FERC,
10 then, here are some of our other options and we want to
11 undertake kind of our own process at the local level to
12 figure out what that end result is. I think that it is
13 possible in your NOI to state that there are different
14 options that you're looking at.

15 VICE-PRESIDENT BERRY: We've been told by Counsel,
16 that -- that it is difficult because the license was
17 granted for four dams, the fourth of which was never
18 built --

19 MS. TOURANGEAU: Yup.

20 VICE-PRESIDENT BERRY: -- so there are three
21 remaining on the license that are all under one license.
22 We've been told that it might be difficult to separate
23 the dams out from the one that might be
24 non-jurisdictional from the two that, obviously, have
25 been built or improved after 1935, okay.

1 MS. TOURANGEAU: He definitely flagged that as an
2 issue, yup.

3 VICE-PRESIDENT BERRY: Okay.

4 MR. COTE: And I'll tell you, whether we're saying
5 you should move forward or not move forward, let me just
6 -- when I said that this is a fact based -- on the
7 issues of was it built before or after 1935? Everybody
8 looking here probably thinks that makes complete sense.
9 It's pretty easy to understand.

10 Is it navigable? There are cases that get into
11 whether somebody in a canoe is navigable or not
12 navigable. Parts of a river can be considered
13 non-navigable. In fact, parts of the Mousam have. It
14 does not mean that that section would be considered
15 non-navigable.

16 Was it built in 1935 or before? Well, when you look
17 at the study by Harvey Consulting, there was something
18 here. There was the Kesslen Shoe, but did it look
19 exactly like it does now? No, it doesn't.

20 So, you're going to have to go through and show that
21 it's substantially the same and go through -- so none of
22 this is a slam-dunk. You don't just file an application
23 saying it was here before 1935 and the 20 people, you
24 know, that sign this affidavit say it's not navigable.
25 It doesn't work that way. This is fact intensive. You

1 get historians in; they look at the cases, they go
2 through the area. So, this isn't a slam-dunk.

3 Your lawyers flagged it and they were flagging
4 because they wanted to let you know, this is an option.
5 It's not a slam-dunk. We think you've got a pretty good
6 shot at it and we read that and it made sense to us, as
7 well. You can pursue it or not pursue it, but if you
8 did, the consensus says, you have a decent shot. It's
9 not a slam-dunk. You've got a decent shot.

10 VICE-PRESIDENT BERRY: Go back to the timeframe.
11 Filing -- filing for non-jurisdictional

12 MR. COTE: Um-hmm.

13 VICE-PRESIDENT BERRY: For just the Kesslen dam
14 itself, overlaps the deadline that we have for filing
15 the Notice of Intent to FERC.

16 MS. TOURANGEAU: Yes.

17 MR. COTE: Yup.

18 VICE-PRESIDENT BERRY: Okay. I guess, when we've
19 talked about, when I listen to what some of the
20 Selectmen are asking, and say, well, we need to know how
21 much it's going to cost and we need -- obviously,
22 they're going to need time to study that and find
23 somebody to study it and put out an RFP, where does that
24 leave us as a board for our filing? And that goes back
25 to my original question is, once we file, how difficult

1 is it to change direction from our original filing?

2 MS. TOURANGEAU: That's not a question that we can
3 truly answer. That's really a question for your
4 counsel, because it doesn't -- it's a KLPD board issue.
5 That said, there is the estimate that Todd gave -- your
6 counsel -- your FERC counsel, gave for a timeline was
7 four to six months, I believe, and believe they
8 guesstimated -- GZA guesstimated that it may be \$70,000
9 for the declaratory judgement piece, If I'm remembering
10 right, and I'm doing this off of the top of my head
11 after having read hundreds of pages documents --

12 VICE-PRESIDENT BERRY: Well --

13 MS. TOURANGEAU: -- so I could be wrong. And, in
14 terms of whether you could pack that into your NOI,
15 that's an easy question for Todd to answer, and I think
16 the answer is yes, you could kind of say, here's the
17 process that we're undertaking, but the threshold
18 question is, is KLPD doing this on their own? Yes,
19 there are absolutely some decision points that you are
20 going to cross before this process can be moving
21 forward, but I think important to those decisions is a
22 commitment about whether we're moving forward with this
23 process or not, because that answers some of your
24 questions about how flexible that process needs to be.

25 MR. COTE: And I'd just add to that the -- Joanna was

1 -- her recollection was the exact same as mine, so we're
2 either both wrong or she's right.

3 (Laughter.)

4 MR. COTE: The only thing I would -- smart, right?
5 The only thing I would add to that, is the reason why,
6 when your attorney said it was around four to six
7 months, and people would say, why don't you know? Well,
8 FERC isn't required to issue answers within a certain
9 timeframe. What they said was, based on our experience
10 of similar cases, we're looking about four to six months
11 is, this type of case, they would get back. And we read
12 the memo. It made sense. It was, I think, well put
13 together. I didn't look up every single case that they
14 cited, but that's why they said four to six months, and
15 that's why that you don't know if that's exactly right,
16 because FERC isn't required to do it in that timeframe.
17 They usually do.

18 GENERAL MANAGER SHEA: I'm going to ask Wayne or Jay,
19 I know what my recollection of the conversation of the
20 \$70,000 in addition to the money that had already been
21 expended on the figuring of these things out. I'm not
22 going -- I didn't make the decision. The Board made a
23 decision and I would like either Wayne or Jay, if you're
24 able to recall, the conversation regarding non-
25 jurisdiction and why we haven't taken that path.

1 MR. COTE: Would you -- would one of you be willing
2 to do that?

3 VICE-PRESIDENT BERRY: I think the conversation --
4 the discussion that ensued --

5 SELECTMAN BALDWIN: Wayne, you've got to get closer
6 to the --

7 VICE-PRESIDENT BERRY: The discussion that ensued was
8 that we've already spent a lot of money, and not knowing
9 whether there was any -- any real chance of success of
10 going through with a non-jurisdictional filing, we just
11 said, okay, enough is enough and we're going to move
12 towards the more logical one while, at the time,
13 fabricating [sic] the generation from the dams, the
14 structure themselves, and said let's try that. You
15 know, we took our shot at that and what Todd got back
16 from information from FERC was, we're not -- we're not
17 interested in that. Isn't that what FERC said, we're
18 not really interested in what you're filing and when you
19 do file, then we'll be interested? So...

20 PRESIDENT KILBOURN: And I would just -- I would
21 agree with that, and I think, you know, if Duffy weren't
22 recuse, he was also on the Board at that time, but he
23 can't speak to this at this moment. I think we also --
24 we have worked really hard, maybe not entirely
25 successfully, to, you know, for the benefit of the Board

1 of Selectmen here, to try to identify, on behalf of our
2 ratepayers, what expenditures would really give us the
3 key critical path items that we needed to get into an
4 order of magnitude about a decision about this. And,
5 frankly, if we just look at this one question, Kessler
6 and non-jurisdiction, and you take aside all of the
7 questions that I mentioned in my opening remarks about
8 recreation and property values, and, you know, five or
9 six other important things to the community that aren't
10 really in our mission statement, nor our business
11 proposition, it's really hard to justify, we found it
12 so, I think and that's why we didn't vote for it, to
13 spend additional money on a speculative legal pursuit to
14 see if we could get non-jurisdiction for a dam that is
15 so antiquated and difficult to deal with and generates
16 so little for us, when there are many other
17 opportunities for us to spend our staff time and our
18 precious ratepayer money on that seemed to pay off
19 better and are less difficult to deal with.

20 It doesn't -- I'm not precluding anything, just
21 answering the question, that that's kind of the thought
22 process that we went through and we had -- we have spent
23 lots of money on lots of information.

24 MS. TOURANGEAU: Do you mind if I speak to that for a
25 moment?

1 PRESIDENT KILBOURN: No, I wish you would.

2 MS. TOURANGEAU: If you assume that we're correct,
3 that it was roughly \$70,000, and four to six months, and
4 the possibility that Kessler is then non-jurisdictional,
5 and I think Pretty [sic] gave it a reasonable chance,
6 which is, in lawyer's speak, pretty high praise when
7 you're talking FERC, and it -- the other issues that GZA
8 raised were that it addresses many landowner concerns,
9 it's possible that it is a solution that addresses many
10 of the issues that are here in the room. When you're
11 talking four to six months and \$70,000, and the things
12 that certainly are not part of your statement or
13 important to ratepayers independently, but that you will
14 have to address in a FERC surrender process that is 15
15 to 25 years and costs a whole lot more money and has
16 similar kind of valuation costs at the end of the day
17 for the dams, maybe that option starts to look a little
18 bit better in terms of the non-jurisdiction piece, the
19 timeline, the lower costs, getting a sense for whether
20 the flexibility associated with that option addresses
21 the concerns that you were going to have to address as
22 part of a stakeholder process in front of FERC and the
23 state agencies, as well.

24 VICE-PRESIDENT BERRY: In the experience you've had
25 with past FERC filings, you said this type of consensus,

1 where the town is a party to the filing, has never been
2 done, but there have been other FERC filings where there
3 have been settlements --

4 MS. TOURANGEAU: Um-hmm.

5 VICE-PRESIDENT BERRY: -- is that -- are those
6 consensus type settlements between municipal parties or
7 are they private parties?

8 MS. TOURANGEAU: Municipalities have been involved,
9 usually on the recreation and property valuation side,
10 those are usually the issues that hit towns the hardest.
11 The ones that I have been involved with have involved
12 all kinds of individual issues. You know, we had one on
13 the Penobscot where a former mill had a water intake
14 that was going to be dewatered by removal of the dam and
15 so, as part of the FERC proceeding, we initiated a
16 discussion of how the historic documents that separated
17 out ownership of the dams from the underlying mill
18 facilities required or didn't require that the entity
19 then removing the dams pay for replacement of the water
20 intake, and that was all negotiated and done, kind of,
21 in a multi-year process. And so, using that as an
22 example of, kind of -- there are all kinds of issues
23 that come up in these FERC proceedings, from contractual
24 based issues to fish issues, and they will all get
25 lumped in as one once you're in front of FERC.

1 VICE-PRESIDENT BERRY: Thank you.

2 MR. COTE: We're now at 8:36, and I had talked to --
3 when we first talked about having this meeting, they
4 said you should try to be done at 8:00, and I saw Mike
5 and he saw the crowd going up, he said, you should
6 really try -- try to be done at 8:30 if you're lucky,
7 but we did want to offer some time for some folks to be
8 able to get up and ask some questions. I know some
9 folks have been here.

10 I would ask, again, just as -- the point of this has
11 been for the boards to communicate with one another,
12 that the importance of this is to ask questions and have
13 them answered. So, to the extent you have a question
14 for Joanna and I, or for members of the Boards, if
15 somebody has one, please come on up. Yeah, right over
16 to the mic, please.

17 MS. TOURANGEAU: And I would like to say that, we are
18 gong to cut any commentator off at one minute or less,
19 because we really are not looking for comments. We're
20 really and truly just questions and I will, at this
21 point, step up and say we're done. We don't have a lot
22 of time left.

23 If you do get up to speak, please identify into the
24 mic your name and whether you're a Kennebunk resident or
25 property, that kind of thing, and then we'll have at

1 it.

2 MR. LANK: Tom Lank, 9 Joshua's Way in Kennebunk. A
3 question to KLPD: A couple of months ago I stumbled
4 across the FERC Order 800 and the Hydroelectric
5 Efficiency Act of 2013, and I presume these efficiencies
6 and de-burdening policies were part of your discussion
7 in terms of the cost for the possibility of hydropower.
8 Did you -- and that's with the current administration
9 these regulations were reduced. We have a new
10 administration coming in next week. Did you ever
11 discuss what, if there wasn't such a hoop that we would
12 have to jump through, that hydropower would be a
13 possibility?

14 VICE-PRESIDENT BERRY: Todd, do you want to take
15 that?

16 GENERAL MANAGER SHEA: All -- all else remaining
17 constant and if we could just continue generating the
18 way we are right now and have absolutely no regulations,
19 oversight, or any environmental measures imposed upon
20 us, we would still be generating electricity at a higher
21 price than we can purchase it at.

22 MR. LANK: Okay. Thank you.

23 MR. COTE: Next question, sir.

24 MR. KOLFF: My name is Albert Kolff. I will continue
25 to work with both the selectmen and the trustees to

1 share my spreadsheet. I want to say that I think I've
2 bugged the trustees enough with the alternative plan so
3 that GZA was hired. They did their study in two weeks
4 and when I had one question of GZA, I was told I wasn't
5 allowed to ask the question, so might I suggest that,
6 first of all, I'm delighted you made reference to Surge
7 Hydro, is there an immediate meeting scheduled to listen
8 to their presentation? I want to say that my
9 spreadsheets have produced a conceptual plan, but Surge
10 Hydro has a realistic plan. Thank you.

11 MR. COTE: I'll let Todd take that.

12 GENERAL MANAGER SHEA: I can't disclose the nature of
13 the conversations I have had with the individuals at
14 Surge Hydro, because I'm precluded from doing that, but
15 at this point in time, there has been no -- there has
16 been no proposal presented before the Board that can be
17 evaluated in regard to Surge Hydro and their securing
18 the assets of KLPD. Several conversations have
19 happened, but there has not been -- I can't disclose the
20 terms of the conversations we've had, because I have
21 signed documents in that regard, but I can say that
22 there has not been a recent proposal to the Board to be
23 evaluated, and the Board would evaluate that. That has
24 been on the table since November of last year.

25 MR. COTE: Thank you for your question.

1 MR. KOLFF: Do the Selectmen -- (INAUDIBLE).

2 MR. COTE: Selectmen, did you want to answer to that
3 question?

4 CHAIRMAN MORIN: Can I hear the question again?

5 MR. COTE: It was essentially -- I think you were
6 saying, Albert, have you seen or would you entertain if
7 Surge Hydro had a presentation; is that --

8 MR. KOLFF: Yes.

9 CHAIRMAN MORIN: -- essentially what you were saying?

10 MR. KOLFF: Yes. And whether or not the selectmen
11 would entertain a presentation from Surge Hydro.

12 MR. COTE: Yup.

13 CHAIRMAN MORIN: The Selectmen have not had direct
14 discussions. There have been, through a -- there have
15 been discussions with our development corporation here
16 in town and the selectmen are always willing to listen
17 to any presentation in any -- at any of our meetings
18 and/or schedule a separate meeting to do so.

19 MR. COTE: Thank you. Next question, sir.

20 MR. POLLETTA: My name is John Polletto. I'm at 70
21 Fletcher Street in Kennebunk. My backyard goes down to
22 the Mousam River. I have a culvert that goes through my
23 property that diverts storm water runoff from Fletcher
24 Street down to the river. My question is simply this:
25 If the width of the river, for whatever reason, is made

1 narrower and such that the water coming out of the
2 culvert pipe cannot reach the river but create a pond
3 where we could have mosquito infestation, will some
4 agency be monitoring these culverts to see, first of
5 all, that water runoff does reach the river and if it
6 doesn't, will someone take corrective action to make
7 sure it does? Thank you.

8 MS. TOURANGEAU: Do you want me to take that one?

9 (No verbal response.)

10 MS. TOURANGEAU: So, the Maine Department of
11 Environmental Protection has pretty strict regulations
12 for storm water runoff. Assuming that that's a town
13 owned culvert, there would -- yes, then, there would be
14 DEP oversight over insuring that that culvert properly
15 discharged.

16 MR. POLLETTO: So then, if it's not properly
17 discharging, would someone be responsible, they will
18 take corrective action; is that what I'm hearing?

19 MS. TOURANGEAU: Yes.

20 MR. POLLETTO: Okay. Thank you.

21 MR. COTE: Let's make this the last question. I'm
22 not seeing a line build up, so I think we'll end it with
23 you, sir. Go ahead.

24 MR. FLYNN: Kevin Flynn, I'm a ratepayer. I'm a
25 resident and taxpayer of Kennebunk. I believe it was

1 Mr. Kolff who mentioned a spreadsheet that he had and I
2 think he's referred to a few times for an alternative
3 economic analysis of the dams and I wondering if the
4 Board -- I believe the Board of Kennebunk Hydro --
5 Kennebunk Light & Power -- Kennebunk Light & Power
6 reviewed that report and had one of their consultants
7 look at and what was the result of that review and were
8 there any flaws in that analysis that you found.

9 MS. TOURANGEAU: Oh, you're challenging me. So I
10 think you're talking about Mr. Knoff's (ph) spreadsheet?

11 GENERAL MANAGER SHEA: Kolff.

12 MR. FLYNN: Kolff.

13 MS. TOURANGEAU: Kolff. Say it again.

14 GENERAL MANAGER SHEA: Kolff.

15 MS. TOURANGEAU: Kolff.

16 GENERAL MANAGER SHEA: Yes.

17 MS. TOURANGEAU: Correct. And GZA did do a
18 multi-paragraph analysis of it. I don't think I've seen
19 this spreadsheet myself and I'm not sure if it was
20 attached to that GZA report as an appendix or not, and
21 their conclusions were -- it might take me a minute. I
22 had these in my original slideshow and I thought it was
23 going to be too much detail so I took them out.

24 On Page 2, it is two paragraphs: "Regarding the
25 issue raised by Albert Kolff related to the cost

1 estimates for cessation of operation and dam removal
2 alternative, Alternative 4, GZA notes that Wright-Pierce
3 addressed the issue in their memorandum. The GZA
4 understands the concern raised to be that cost analysis
5 model used by Wright-Pierce should reflect the cost
6 associated with purchasing energy under Alternative 4.
7 GZA's review of the Wright-Pierce financial analysis
8 spreadsheet indicates that Wright-Pierce treated energy
9 generation as an annual revenue for alternatives which
10 maintained power production capacity. This revenue is
11 accounted for in the annual cash flow analysis for each
12 alternative."

13 For Alternative 4, which is surrender and removal of
14 all three dams: "Wright-Pierce did not account for
15 revenue for energy generation after the year 2022 when
16 cessation of operations was assumed for that
17 alternative. For the alternatives that maintain the
18 dams and energy generation, Wright-Pierce accounted for
19 annual revenue from energy generation up to the year
20 2062 in its cash flow analysis. GZA believes that the
21 approach used by Wright-Pierce is an appropriate way of
22 normalizing the benefits of electrical generation from
23 the existing dams for the purpose of comparison of
24 alternatives."

25 I have no idea what that means, but there is some

1 fairly extensive discussion in here about that analysis,
2 and having not looked at Mr. Kolff's analysis myself, I
3 can't do anything other than read to you what they said
4 in the GZA report, which I believe is available on
5 KLPD's website. And, again, that discussion starts on
6 Page 2 -- of the GZA -- sorry. I'm away from the mic
7 again.

8 MR. COTE: So, thank you for those questions. Next
9 up on our agenda, we're now at twelve, Merton Brown is
10 going to come in. He's going to tell folks about the
11 process for citizen petition, if there were interest in
12 that, then Joanna and I are going to quickly discuss
13 next steps, and then we'll adjourn. Merton.

14 MR. BROWN: The annual town meeting for 2017 will be
15 on June 13th. At this meeting registered voters will
16 cast their ballots for candidates for local office such
17 as selectmen, school board, Sewer District, Kennebunk
18 Light & Power and they'll also cast ballots for any
19 referendum questions.

20 So, how does one get a question on that ballot? The
21 question has to first appear in a warrant. The warrant
22 belongs to the Board of Selectmen. The content of that
23 warrant is decided by them, approved by them, and signed
24 by them. The first step, I always advise people, is to
25 ask them if they will put a question on the ballot or

1 not and, if by majority vote at a regularly scheduled
2 meeting they vote to put the question to the ballot and
3 on the warrant, then that will occur. If they do not
4 wish to include the question, then the citizens have the
5 right to petition and ask that a question be placed.

6 This is all driven by our town charter, and our town
7 charter is very specific about the role of the town
8 clerk and the process of advising of petitions. I can
9 certainly talk about procedure, but I can't determine if
10 a -- if a question is one that is binding, non-binding,
11 or if it is one that passes legal muster, so usually the
12 petition folks would -- would be best advised to consult
13 -- a municipal attorney would help, you know, come up
14 with that question.

15 The petitioners then would have to go out and get 423
16 signatures from registered voters from Kennebunk, and
17 once those signatures have been verified, the petitions
18 are presented to the Board of Selectmen and then they
19 act accordingly.

20 This all comes with some deadlines and the first
21 public hearing on any referendum questions to appear in
22 June would be on April 11th. So, the submission of the
23 petitions for them to consider, should you have to go in
24 that direction, would be March 21st. So, really, the
25 first week in March is when the question would have to

1 be formulated and you would have to have the number of
2 signatures.

3 I am always pleased to help anyone with the forms and
4 the procedure and don't hesitate to contact me.

5 GENERAL MANAGER SHEA: Question.

6 MR. BROWN: Yes.

7 GENERAL MANAGER SHEA: May I? Is there any charter
8 language that differentiates between binding and
9 non-binding?

10 MR. BROWN: No.

11 PRESIDENT KILBOURN: Could you repeat the question,
12 please?

13 MR. BROWN: Oh, he's asking, is there charter
14 language that -- that talks about binding and
15 non-binding questions. No.

16 GENERAL MANAGER SHEA: Thank you.

17 MR. BALDWIN: And I believe you can speak to the
18 budgetary issues at the meeting, I believe there is some
19 restrictions on --

20 MR. BROWN: There are some restrictions on the -- the
21 questions, but they're -- they're pretty -- they're
22 fairly minor as to -- I mean, you can only bring up in
23 any one given fiscal year. The same question can be
24 brought up again --

25 MR. SCHULTE: I seem to remember there was something

1 about the restrictions related to budgetary matters from
2 a citizens petition, there's a restriction -- I just
3 advise people to, again, talk to Merton about that.

4 MR. BROWN: Right.

5 MR. SCHULTE: Because there are few restrictions on
6 that.

7 MR. BROWN: Yeah, our charter is -- our charter is,
8 you know, on the town website, but just give me a call.
9 I'm happy to work it out with you. Thank you.

10 MR. COTE: Okay. The next would be possible next
11 steps: Joanna and I were just talking about suggestions
12 on that and I know that one of the surprises of the
13 night, certainly for Joanna and I, was having the
14 Governor here. Just so you guys know, that was not
15 something that was in the agenda, it was on the agenda
16 because we had purposely left it out, we had no idea he
17 was going to be here. I don't know if anybody else did
18 either, but I think, you know, we worked through
19 everything, I think, really well tonight. I think that
20 people were very respectful. I really appreciate that.

21 Possible next steps: I would recommend, Joanna and I
22 would recommend each of the two boards have meetings
23 coming up, okay. In order to move up -- move forward
24 with the process of she and I sort of moving forward in
25 this together with both boards, you guys need to reach a

1 consensus, each board, so I would recommend that you
2 guys meet, you discuss about this. If you have followup
3 questions, if you have followup options you'd like
4 explored, if you have a followup meeting, you guys can
5 reach a consensus on that, and then move forward.

6 Do you have something else, Todd?

7 GENERAL MANAGER SHEA: It's not often that we have
8 both boards in the room, and Michael and I have
9 discussed this in the past: In order to have a
10 continuity between -- between the boards meeting, would
11 it be acceptable to board members if I were to attend
12 any and all -- or any executive sessions that may occur
13 in this conversation with the Board of Selectmen and, in
14 turn, Michael attend any executive sessions that we have
15 on this topic at the Board of Trustees?

16 VICE-PRESIDENT BERRY: Do you want a vote?

17 GENERAL MANAGER SHEA: I would like a Board decision
18 on that, please.

19 (Whereupon, off the record and separate discussions
20 occurred amongst the Kennebunk Light & Power District
21 Board of Trustees and the Kennebunk Board of Selectmen.)

22 CHAIRMAN MORIN: It's unfair to the public not to
23 hear the discussion and I think it continues to be
24 unfair. So, Todd, maybe what we will do is bring that
25 before our next meeting and have a discussion on air in

1 front of the lights and camera.

2 GENERAL MANAGER SHEA: Yes, sir.

3 CHAIRMAN MORIN: All right?

4 GENERAL MANAGER SHEA: Thank you.

5 CHAIRMAN MORIN: Thanks.

6 MR. COTE: Okay. So, with that, that -- that was our
7 largest recommendation for next steps. Essentially, to
8 move forward in this, both of the boards need to agree
9 on next steps in that process because this is a joint
10 way to approach it, so stay tuned for that. They have
11 scheduled meetings, each of them, coming up and we'll
12 address that topic and hopefully reach that as a result.

13 So, trying to stick somewhat with Robert's Rules of
14 Order, I would ask that a motion from one of the Board
15 chairs, seconded by the other for an adjournment, and
16 then we would adjourn the meeting.

17 PRESIDENT KILBOURN: Move to adjourn the meeting.

18 VICE-PRESIDENT BERRY: Second.

19 CHAIRMAN MORIN: Move to adjourn the meeting.

20 SELECTMAN KARYTKO: Second.

21 MR. COTE: Okay. Meeting is adjourned. Thank you
22 for your time.

23 (Whereupon, the meeting adjourned at 8:54 p.m.)

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C E R T I F I C A T E

I, KATHLEEN A. DE MARRE, do hereby certify that the foregoing is a true and accurate transcript of the joint meeting held between the Town of Kennebunk Board of Selectmen and of the Kennebunk Light & Power District Board of Trustees heard on Tuesday, January 17, 2017.

I DO FURTHER STATE that this transcript was prepared to the best of my ability and I am neither a relative, nor attorney, nor counsel of any of the parties to this action, and that I am not financially interested in the action.

Kathleen A. De Marre

Notary Public
My Commission Expires _____

Dated the 31st day of January, 2017

**Town of Kennebunk - Board of Selectmen
Kennebunk Light & Power District - Board of Trustees**

<p style="text-align: center;">\$</p> <p>\$400,000 [1] - 46:4 \$70,000 [4] - 90:8, 91:20, 94:3, 94:11</p> <hr/> <p style="text-align: center;">0</p> <p>04043 [2] - 1:10, 3:10 04101 [2] - 3:4, 3:7 0433 [1] - 3:18</p> <hr/> <p style="text-align: center;">1</p> <p>1 [6] - 43:8, 45:17, 47:12, 78:9, 85:23 1,493 [1] - 14:20 1.4 [2] - 75:12, 75:14 10 [1] - 21:6 100 [2] - 4:23, 85:2 103 [1] - 4:8 11 [1] - 48:7 11.7 [1] - 44:22 11th [1] - 104:22 12 [2] - 35:25, 39:19 13 [1] - 4:8 13th [1] - 103:15 14 [3] - 4:4, 4:7, 35:25 15 [2] - 15:14, 94:14 150 [3] - 34:11, 34:25, 39:11 16 [2] - 4:5, 8:18 1670 [1] - 22:12 17 [3] - 1:12, 6:10, 109:7 17th [1] - 6:13 18 [1] - 24:13 1800s [1] - 39:9 19 [1] - 4:11 1928 [1] - 75:6 193 [1] - 56:9 1935 [9] - 40:10, 48:17, 49:1, 60:15, 86:19, 87:25, 88:7, 88:16, 88:23 1960 [1] - 39:19 1970s [1] - 58:14 1977 [1] - 40:1 1980 [2] - 39:21, 40:1 1980s [1] - 58:15 1981 [1] - 39:21 1982 [1] - 40:11</p> <hr/> <p style="text-align: center;">2</p> <p>2 [5] - 45:3, 45:17,</p>	<p>47:17, 101:24, 103:6 2,048 [1] - 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