

MAINE PUBLIC UTILITIES COMMISSION  
AUGUSTA, MAINE

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IN RE: )  
 ) Docket No. 2011-170  
NORTHEAST WIND HOLDINGS, LLC ) January 25, 2012  
 )

Request for Approval of Reorganization

IN CAMERA

APPEARANCES:

- CHARLES COHEN, Hearing Examiner
- MITCHELL TANNENBAUM, Maine Public Utilities Commission
- LESLIE RABER, Maine Public Utilities Commission
- ERIC BRYANT, Office of the Public Advocate
- WILLIAM HARWOOD, Verrill Dana, Northeast Wind Holdings, LLC
- NORA HEALY, Verrill Dana, Northeast Wind Holdings, LLC
- KAREN REDFORD, Northeast Wind Holdings, LLC
- HEIDI LESLIE, Emera Energy, Inc.
- CHARLES SOLTAN, Boralex, Inc.
- ALAN STONE, Skelton, Taintor & Abbott, Houlton Water Company
- JOHN CLARK, Houlton Water Company
- ANDREW LANDRY, Preti Flaherty, IECG
- ANTHONY BUXTON, Preti Flaherty, IECG
- ROBERT BOROWSKI, Preti Flaherty, IECG
- KEN BELCHER, Northern Maine ISA
- PATRICK SCULLY, Bernstein Shur, First Wind
- HALLIE GILMAN, First Wind
- JARED DES ROSIERS, Algonquin

CONFERENCE COMMENCED (January 25, 2012, 10:03 a.m.)<sup>2</sup>

1  
2 MR. COHEN: Good morning. This is a conference of  
3 counsel in docket number 2011-170. We do not have a reporter  
4 present this morning but it is being transcribed. So we'll go  
5 around the room and take voice identification, and it'd be  
6 helpful if the first time or two you speak, if you can just  
7 identify yourself so when it -- the transcriber can recognize  
8 the voice, match it. I'm Chuck Cohen, Hearing Examiner, and  
9 with me on the Bench --

10 MR. TANNENBAUM: Mitch Tannenbaum.

11 MS. RABER: Leslie Raber, PUC staff.

12 MR. BRYANT: Eric Bryant on behalf of the Public  
13 Advocate's Office.

14 MR. BUXTON: Tony Buxton, Drew Landry, and Robert  
15 Borowski of Preti Flaherty for the Industrial Energy Consumer  
16 Group.

17 MR. STONE: Alan Stone on behalf of Houlton Water  
18 Company.

19 MR. SOLTAN: Charlie Soltan on behalf of Boralex.

20 MR. SCULLY: Pat Scully and Hallie Gilman for First  
21 Wind.

22 MS. HEALY: Nora Healy for Petitioners.

23 MR. COHEN: And on the phone I know we have several  
24 parties participating by the telebridge. Bill Harwood, are you  
25 there?

1 MR. HARWOOD: Bill Harwood for the Petitioners.

2 MR. COHEN: Okay. And Ken Belcher -- excuse me?

3 MR. DES ROSIERS: This is Jared des Rosiers on behalf  
4 of Algonquin.

5 MR. BELCHER: Ken Belcher, Northern Maine ISA.

6 MS. LESLIE: Heidi Leslie with Emera Energy.

7 MR. CLARK: John Clark, Houlton Water.

8 MR. COHEN: Okay.

9 MS. REDFORD: Karen Redford, Petitioners.

10 MR. COHEN: That it? Okay, thanks. Well, there's  
11 been sort of a little flurry of activity, and I thought it  
12 would be helpful to have this meeting today to sort of help  
13 sort of streamline things, identify issues and maybe a path  
14 forward. So I think the first thing that the Bench and the  
15 Commissioners would like to get clarified that -- and we are in  
16 -- this will be considered confidential so we can go -- the  
17 record here will be designated confidential. As identified in  
18 the Petitioners' exceptions, there -- the deal has apparently  
19 changed, and I think we would like to get some clarification in  
20 terms of whether that is a definite fact, a contingency, or --  
21 and sort of get that sort of nailed down as we try to figure  
22 out how to go forward. So I'll put that question to the  
23 Petitioners first.

24 MR. BRYANT: Chuck, can I --

25 MR. COHEN: Sure.

1           MR. BRYANT: Isn't it a little late for new facts to  
2 come into this case even if it's -- even if the deal has  
3 changed? I mean, the case is teed up before the Commission --

4           MR. COHEN: Okay, Eric, I'm asking the question. I  
5 want the question answered. Thank you.

6           MR. HARWOOD: Thanks, Chuck, and thanks for the  
7 opportunity to address this. I'm not entirely surprised that  
8 this has caused a little confusion and uncertainty among the  
9 interveners and the staff. Let me see if I can clarify it. It  
10 is true that during most of the hearing and the testimony,  
11 there was discussion about Algonquin's role of owning 25  
12 percent of Northeast Wind. The transaction documents, although  
13 it wasn't focused on, wasn't contemplated closing without  
14 Algonquin and that was always a possibility, albeit not  
15 something that was discussed at any length by the witnesses.  
16 But it is reflected in the term sheet and the transaction  
17 documents. So it is a possible vehicle for closing that was  
18 before the Commission for consideration and approval.

19           Obviously, we've been doing a lot of soul searching  
20 and trying to address the concerns of the staff. We very much  
21 heard the staff's concerns. The denial recommendation caught  
22 us by surprise. We were disappointed and surprised, but we  
23 also immediately rolled up our sleeves and recognized that  
24 there were serious concerns. One of the ways of addressing  
25 that concern was to exercise the rights of the parties under

1 the transaction to have Algonquin step out of the transaction.  
2 I don't think it is a different transaction. I think it is  
3 consistent with the transaction, and I think it addresses some  
4 of the concerns raised by the staff. I think it is the kind of  
5 commentary that would be appropriate in exceptions because it  
6 addresses the Examiners' Report, it is based on the evidentiary  
7 record, and essentially by removing the connection between  
8 First Wind and JV Holdco on the one side and Algonquin on the  
9 other side, we have substantially reduced the kind of affiliate  
10 concerns and preferences that I think were at the heart of the  
11 staff's concerns. So I apologize that this development came  
12 out the way it did, but I think it is all very explainable,  
13 innocent, and appropriate in light of the Examiners' Report.  
14 And I would encourage Jared des Rosiers on behalf of Algonquin  
15 to give Algonquin's take on it if that's appropriate at this  
16 time.

17 MR. COHEN: Let me just ask a follow up, and I guess  
18 either you or Jared can answer the question. But sort of I'll  
19 ask it directly. Is Algonquin at this point now out of  
20 Northeast Wind? Is that sort of a fait accompli? Has that --  
21 is that done? Is that a done deal?

22 MR. HARWOOD: Yes. I believe the answer is yes. Of  
23 course, they were never actually in Northeast Wind. That was a  
24 proposal that would have occurred at closing, and the parties  
25 have now made a decision that if they are allowed to close the

1 transaction, Algonquin will not take an ownership interest in  
2 Northeast Wind.

3 MR. BUXTON: Mr. Examiner?

4 MR. COHEN: Yeah?

5 MR. BUXTON: Could we ask for identification of the  
6 place in the record where this possibility was discussed and we  
7 had the opportunity to understand its consequences?

8 MR. COHEN: I was going to address that. Let me go  
9 forward, and I'll sort of lay out sort of -- given the  
10 development, which I think caught us by surprise, there is --  
11 you know, we identified, I think three paths that were sort of  
12 possible to go at this point. And the first path would be sort  
13 of to essentially ignore the filings that have been made and to  
14 just rule on the -- what we saw as the proposed transaction  
15 that was presented to the Commission, which at least, you know,  
16 when we were reflecting on this yesterday, did not seem sort of  
17 to be a very realistic approach given that that is not the deal  
18 that is present. So if the Commission approved the deal that  
19 was before it previously, that wouldn't be the deal that was  
20 going to be implemented. And, in addition, if it is -- denied  
21 it, it would be denying it on the basis that may not be, in  
22 fact, the deal that goes forward or that parties wanted to go  
23 forward.

24 The other part would be to accept what they had said  
25 in terms of that sort of new development, have that considered

1 by the Commission. I did not believe that would be fair to the  
2 other parties. And I guess sort of in follow up to what Tony  
3 said, certainly the staff, in analyzing the transaction, had  
4 always assumed and based it on Algonquin being part of  
5 Northeast Wind. That was sort of the basis of I think the  
6 analysis that was done both in the Examiners' Report and was  
7 the basis of the discovery and the hearings. So if path two  
8 would be followed, that would preclude the parties from their  
9 right to explore the ramifications of that proposed change.

10           And path three would be to basically, at this point,  
11 treat the request as a request to re-open the record and then  
12 have some type of supplemental process which would allow the  
13 parties to have discovery. And it seemed -- and maybe this is  
14 not the case, but it seemed like there would also need to be  
15 some amendments to the petition and also to the documents.  
16 Maybe the documents were -- had this contingency built in, but  
17 we were not aware of that. And that's, you know, option three.  
18 That would obviously delay decision. The case would not be  
19 decided next week, but it would -- the decision would then be  
20 based on what the actual deal is at this point.

21           So those are the three options we've identified, and  
22 I think what I would do at this point is turn it over to the  
23 parties and get comments on those options. And I guess if the  
24 parties have identified any additional options that they feel  
25 are appropriate to consider, we'd also entertain those. So

1 thanks, and I'll turn it over to Eric. And I apologize for  
2 interrupting you before, Eric, but I wanted to get that  
3 question answered.

4 MR. BRYANT: I interrupted you so I apologize. Thank  
5 you, Chuck. Well, of the three options that the staff  
6 discussed, the one that I suggest you take is the first. We  
7 were very surprised at the filings that came in on Monday,  
8 particularly the filing by First Wind and Algonquin, but also  
9 the exceptions filed by Petitioners. Exceptions (inaudible)  
10 parties have the opportunity to comment on the Examiners'  
11 Report is not the time to amend the filing. It's not the time  
12 to submit new evidence. Not a time for non-parties interested  
13 in the outcome to file anything. It's also not a time for new  
14 arguments.

15 You found correctly yesterday that First Wind and  
16 Algonquin violated Rule 760-A and you struck their filings. We  
17 appreciate that. Thank you. However, Petitioners, who all  
18 along have resisted suggestions that they or anyone from Emera  
19 would violate FERC standards of conduct, the Petitioners want  
20 this Commission to believe their behavior can be governed, who  
21 have said that customers don't need to worry about abuses of  
22 the rules of conduct, who have said trust us, have violated  
23 Rule 760-A(d). Sub D reads, "No party in a proceeding shall  
24 request, encourage, suggest, or provide any assistance to any  
25 other person to make a communication that would violate

1 subsection A." Subsection A is the section that First Wind and  
2 Algonquin violated pursuant to your ruling yesterday.

3           It's clear from reviewing Petitioners' tainted  
4 exceptions that -- and the rejected filings of APUC and First  
5 Wind that these three entities acted in concert with a willful,  
6 intentional, and orchestrated attempt to get information,  
7 evidence, and argument to the Commission that is not allowed by  
8 the rules. If you look at page six of the Petitioners'  
9 exceptions and compare it with page three of First Wind's  
10 rejected filing, it reveals word for word quotations. It shows  
11 that First Wind and Petitioners acted together. Much of the  
12 information on page five of six -- five and six of Petitioners'  
13 exceptions is not record evidence, at least not that I  
14 remember. A review of page 13 of Petitioners' exceptions shows  
15 that Petitioners and APUC did the same thing.

16           Petitioners have also violated Rule 773 of the  
17 Commission's rules which says that only record evidence can be  
18 considered by the Commission, and Petitioners violated the  
19 Examiners' January 19th scheduling order which is the one that  
20 was issued after Petitioners sought a one-day extension for  
21 filing their exceptions and parties objected because the basis  
22 for that request for an extension appeared to be time to  
23 develop new conditions or negotiate modifications. The  
24 scheduling order issued by the Examiners clearly says, in fact,  
25 quote, "Exceptions must be based on record evidence in the

1 case." By citing non-record facts contained in the rejected  
2 filings of both First Wind and APUC, Petitioners have violated  
3 that order.

4           So there's a lot of violations here. Not just by the  
5 non-parties but by the Petitioners themselves. This case is  
6 not governed by the rule of the deal or the rule of corporate  
7 profit or the viability of unregulated enterprise. It's  
8 governed by the rule of law. The rules broken by Petitioners  
9 and their counterparties to the pending transactions are not  
10 about missing a deadline or failing to three-hole punch data  
11 responses. They're rules of substance, integrity, and ethics.  
12 It's the ex parte rule which rule should not be treated lightly  
13 by the Commission or the Examiners. The rule was adopted, in  
14 fact, in 1996 following a case in which NYNEX had others  
15 interested in the outcome who were not parties attempt to  
16 contact Commissioners after the Examiners' Report came out.  
17 Rule 760-A was a reaction to that and, in fact, in the rule  
18 adopting that new amendment, the Commission said, "Our primary  
19 objective in addressing this issue is to prevent similar  
20 behavior by parties to our proceedings in the future. The  
21 purpose of the rule amendments is to make our ex parte  
22 prohibition abundantly clear so there's no question about the  
23 extent of its reach. And we seek only to ensure that  
24 participation occurs at a time and in a manner that is fair to  
25 all parties."

1           The violations that I've discussed are egregious and,  
2 in my practice, unprecedented by a utility subject to  
3 regulation. Violations such as this must be dealt with firmly  
4 and swiftly. The public demands that PUC process be one of  
5 integrity. The public must be able to trust that their  
6 interests are being handled by this Commission and that it  
7 keeps its house in order.

8           Therefore, we ask the Examiners to take two actions.  
9 We ask the Examiners recommend to the Commission that this case  
10 be dismissed with prejudice, and we ask that the Examiners  
11 exclude the Petitioners' tainted exceptions in their entirety  
12 just as they have correctly excluded the filings made by First  
13 Wind and APUC. The Commission should not read, consider, or  
14 act upon any of the facts or arguments contained in those  
15 exceptions. Thank you.

16           MR. HARWOOD: Would you like me to respond, chuck?

17           MR. STONE: (Inaudible).

18           MR. COHEN: Alan, I'm still the Examiner, okay? Bill

19 --

20           MR. STONE: (Inaudible).

21           MR. COHEN: Bill, why don't --

22           MR. TANNENBAUM: Everybody has to make sure they  
23 speak very closely to the speakers so the recording can be  
24 transcribed.

25           MR. COHEN: Bill, I'll have you respond to all their

1 arguments afterwards and --

2 MR. HARWOOD: Fine.

3 MR. COHEN: Is that -- I think that'll be more  
4 efficient.

5 MR. HARWOOD: Okay.

6 MR. COHEN: So we're going to -- Tony next.

7 MR. BUXTON: May I go after Charlie? We had agreed  
8 on an order if that's okay with you.

9 MR. COHEN: Sure. Yeah, that's fine. Go ahead.

10 MR. BUXTON: Are you ready to go or do you want me to  
11 go?

12 MR. SOLTAN: I don't care. We would agree -- Charlie  
13 Soltan for Boralex. Thank you. We agree completely with the  
14 comments made by the Public Advocate in this matter. The level  
15 of consternation in the last couple of days has been incredibly  
16 high. And so we would agree that the three paths that you  
17 identified that -- number one would be the most appropriate.

18 Let me -- one of the concerns I have is if you were  
19 to go to either two or three, we've neither seen or -- any  
20 evidence that these -- in fact, this deal has been closed about  
21 excluding Algonquin. We've seen no documents. The dates can't  
22 -- how they'd be verified of when they were dated to prove  
23 whether or not, in fact, this is a ploy made after the  
24 Examiners' Report came out or an attempt over the weekend to  
25 try and keep this case going when we think otherwise the

1 record's been closed. We just don't see any -- given the  
2 violations that Mr. Bryant has talked about, how this case  
3 should be re-opened. We would be very prejudiced by having it  
4 re-opened when we have laid everything out on the table and  
5 then the Petitioners get to completely re-write the deal and  
6 we're left with very little to deal with. I guess I'll leave  
7 it at that at this point.

8 MR. COHEN: Thanks.

9 MR. BUXTON: This is Tony Buxton on behalf of the  
10 Industrial Energy Consumer Group. Thank you, Mr. Examiner.  
11 The Industrial Energy Consumer Group strongly endorses the  
12 motion of the Public Advocate and the Public Advocate's  
13 argument. Forty hours ago we, the IECG and I think many  
14 others, thought this case was ready for decision. And in that  
15 intervening time, there have -- there has occurred what is  
16 either a remarkable set of coincidences or a deliberate,  
17 intentional, fully-orchestrated effort to lobby this Commission  
18 improperly in violation of the rules, in violation of the cases  
19 that Mr. Bryant cited, and in violation of the civil rules. It  
20 is with a lot of sadness that I say that because we all have  
21 long relationships, but we deal here with the law and with  
22 parties, and this is an extraordinary moment for the  
23 Commission.

24 In adopting the NYNEX -- the response to the NYNEX  
25 activities, the Commission said, quote, "It is clear that NYNEX

1 attempted to conduct a substantial lobbying campaign designed  
2 to convince the Commission to adopt results other than those  
3 recommended by the Examiners' Reports. A heavy-handed lobbying  
4 campaign involving people whom the party apparently believes to  
5 have more influence than the party itself or than the merits of  
6 its position is unreasonable and inappropriate and will not be  
7 tolerated." And the question, therefore, here is whether what  
8 the Petitioners and others have done in this apparently  
9 coordinated effort will be tolerated.

10           What we have before us is not only what was filed  
11 with the Commission, but also the fact that First Wind went to  
12 the media with a press release and caused a story to be written  
13 in the *Bangor Daily News* which we became aware of mid-afternoon  
14 yesterday when our computer systems picked it up. And I called  
15 the *Bangor Daily News* and asked where the story came from, and  
16 that's where they told me the story came from. Now, this is  
17 not a coincidence. This did not happen with one hand not  
18 knowing what the other hand was doing and it's not unlawful.  
19 It's a Constitutional right to speak to the media. But taken  
20 in its context, I have an obligation as an officer of the court  
21 to tell you about it, and this Commission needs to take that  
22 kind of information into account.

23           I'd also point out that the IECG and others sought to  
24 have this case fixed a long time ago. When we moved to  
25 dismiss, which the Commission may have properly denied, part of

1 our argument was that the case put forward by the Petitioners  
2 was inadequate, that it did not deal with the issues that were  
3 at the heart, for example, of a 1996 report by the Commission  
4 to the legislature, their filing didn't deal with horizontal  
5 and vertical market power adequately, and we asked to have the  
6 case corrected. We were fought very hard by the Petitioners  
7 and by others, and we lost. And so we went on with the case.  
8 And then we tried to bring in other witnesses by subpoena, and  
9 we all know what happened there and the one who came in was  
10 very helpful.

11           We've made an effort as a party with an open mind to  
12 make this case work, and to have this kind of action taken by a  
13 party at the end because they were losing is simply  
14 intolerable. It makes a -- I'm not even going to use the word.  
15 It makes this kind of proceeding into something other than a  
16 legal proceeding. And that's wrong. We realize there's a lot  
17 at stake for some people here, but we have a process for that  
18 to come forward and people are bound by what they say and what  
19 they do. And we are not only disappointed, we are shocked that  
20 this kind of thing could happen at this Commission. And we  
21 think the only remedy because of the taint in the Petitioners'  
22 filing of incorporating comments that the Petitioner knew were  
23 not proper and those having gone to the Commission already, the  
24 only remedy is to require those to be rejected and to dismiss  
25 this case. If the parties want to go out and put together

1 another deal and come back with another deal, that's their  
2 privilege. But to reward them by changing this proceeding to  
3 somehow accommodate what they have done here is exactly the  
4 wrong thing to do. Thank you.

5 MR. COHEN: Thank you. Alan, (inaudible)?

6 MR. STONE: Yeah. I -- yeah, I've been practicing  
7 law before this Public Utilities Commission for 37 years, and  
8 it's one of the most favorite things I've ever done in my life  
9 until this week. I have never seen an abuse of process like  
10 has occurred in this case in my history of practice before this  
11 Commission, perhaps with the exception of a person who was  
12 convicted of a crime.

13 Administrative agencies, according to the United  
14 States Supreme Court, are based on concepts of fair play. We  
15 come to this agency with a trust that this Commission and the  
16 staff are going to require the parties to play by the rules and  
17 play on a level playing field and not proceed in a case in a  
18 manner that all they seek to do is win at all costs regardless  
19 of what they do. It is so clear what has happened here, as  
20 aptly summarized by Eric, by Charlie, and by Tony. It  
21 literally makes me sick.

22 There is no way that we can proceed in this case.  
23 The record is tainted. We can't just simply re-open the record  
24 to allow them to change the deal when they want to change the  
25 deal because they're losing. I mean, to reward, as Tony said,

1 the Petitioners and First Wind and APUC would be terrible, in a  
2 word. It would undermine the confidence in this agency, and  
3 what this Commission is trying to prevent with regard to this  
4 deal is undermine the confidence in the market. You don't  
5 undermine the confidence in the agency.

6 This is only one group of people's fault. It was a  
7 deliberate action. If this were a court of law, this case  
8 would be dismissed in a moment. You can't get to a jury five  
9 minutes before and say, oops, I screwed up, I should have put  
10 more evidence in and then inflict some conduct that causes a  
11 mistrial and expect to start all over again. No court would  
12 allow that. They would dismiss it with prejudice, and that  
13 would be the end of it. And they would impose sanctions and  
14 serious ones.

15 So I'm kind of sorry we started out with what are the  
16 three options because that kind of really doesn't focus on the  
17 question at hand. The real option is to dismiss this case with  
18 prejudice and certainly to strike any of the exceptions of the  
19 Petitioners. They are so commingled with tainted materials  
20 that it would be so unfair to allow the Commission to read  
21 that. I mean -- and this was an action not only of the  
22 lawyers, but of the parties. So it's not unfair to inflict --  
23 impose, I should say, a sanction on the parties. And it's not  
24 just a sanction. It's ensuring that we as people who practice  
25 before this Commission regularly and clients who rely on the

1 integrity of this practice and people who might come in the  
2 future have a sense that this is a fair procedure and that  
3 people who violate the procedures as egregiously as happened  
4 here don't get rewarded.

5           You know, nobody's asked to re-open the record. I  
6 think it's a -- it would be totally inappropriate to do so at  
7 this time, contrary to the rules and fundamental fairness. We  
8 don't know even know what shenanigans they've been talking  
9 about in terms of changing the deal. You know, we looked at  
10 the Examiners' Report and we commented about it and told you  
11 where we felt that you did a phenomenal job and where we felt  
12 it could be improved. That's what an exception is supposed to  
13 do, it's to provide -- the Examiners' report is supposed the  
14 parties with notice, and we're supposed to provide the  
15 Commission with our thoughts about the record as it relates to  
16 the Examiners' Report. We did that. They didn't. And they  
17 didn't do it deliberately.

18           So, you know, there's all sorts of things that could  
19 happen here, that this Commission has broad powers in its  
20 statutes from contempt to fines to referring to the Attorney  
21 General to doing all sorts of things. I'm not going to get  
22 into that. That's for the Commission to police its own house.  
23 And I concur that that needs to be done in this case to  
24 preserve the integrity. But I'm involved in this case, and I  
25 don't feel that we can have a fair shot. You know, I have to

1 trust the Commission's ability to set aside things that are  
2 improperly before them because they're professional judges.  
3 But the integrity of the process has just been simply so  
4 tainted that it's intolerable, and this Commission should not  
5 tolerate, not should the Examiners.

6           So the way forward is to simply say no, this deal  
7 we've been looking at, this transaction, is only an economic  
8 deal to benefit First Wind and Emera. It's not a reliability  
9 issue. The question is harm. Well, we know how harmed we're  
10 going to be now. If you can't trust these people to comply  
11 with the fundamental rules of this Commission, how can you  
12 trust them to do anything in the ratepayers' interest? They've  
13 proven this point. Mr. Harwood can have all his responses to  
14 everything that we've said, but I think the truth will shine  
15 through clearly and does. So I join on behalf of Houlton Water  
16 Company with the motions that have been made to dismiss this  
17 proceeding with prejudice and, in addition, so the record is  
18 clear, to strike Petitioners' comments and exceptions in their  
19 entirety. If the -- when I say dismiss with prejudice, if  
20 there's some other deal that comes together later on that is  
21 significantly different from this deal and that is not just a  
22 re-packaging to get around a denial, then maybe this Commission  
23 might look at it, maybe they won't. But that's for a future  
24 date. Right now the remedy is to dismiss it with prejudice.  
25 Thank you.

1 MR. COHEN: Thanks. I'm going to let the Petitioners  
2 go.

3 MR. HARWOOD: My turn?

4 MR. COHEN: Yes, Bill.

5 MR. BELCHER: This is Ken (inaudible).

6 MAN: Yeah, let Ken talk, please.

7 MR. COHEN: Oh, I'm sorry. Ken wanted to say  
8 something so we'll let him go first. Sorry. Ken?

9 MR. BELCHER: Yeah. First of all, not being a lawyer  
10 but I do support the Public Advocate's motion, and I will add  
11 that I certainly hope that in the future, Maine Public Service,  
12 Algonquin, First Wind, who are all northern Maine market  
13 participants who we've had an excellent relationship with,  
14 continue to respect the northern Maine market rules and tariff.  
15 And I just wanted to add that from what I can see as a  
16 layperson on the rules of the Commission and being involved  
17 with them for 25 years that it certainly, well, opened my eyes  
18 somewhat. And, again, I support the Public Advocate's motion.  
19 Thank you.

20 MR. COHEN: Okay, Bill.

21 MR. HARWOOD: Well, obviously, we've heard a lot  
22 here. I've got a lot of thoughts, but let me see if I can  
23 organize them. First, let me state in the strongest possible  
24 language I do not believe there have been any violations of any  
25 procedural rules or any other rules by Petitioners or the

1 parties to this transaction. So I take strong exception with  
2 all of that. And more importantly, on a personal level, I take  
3 strong exception to the suggestions and the language that was  
4 used to describe the motives and behavior of Petitioners. We  
5 are trying to work within the bounds of this process to present  
6 the transaction in a way that's most favorable for it to be  
7 approved. The interveners since last summer have made it  
8 abundantly clear that they are doing everything in their power  
9 to stop this transaction from being approved, and I think what  
10 we have heard is consistent with that.

11           So rather than just stay at a lofty high level, I  
12 think it would be more helpful to get to the specifics. Let's  
13 start with the first specific of the media. This is a  
14 transaction that has taken up some interest in the media. We  
15 didn't start this. The *Bangor Daily News* ran a story last week  
16 on this. There have been discussions involving First Wind in  
17 the *Bangor Daily News* over the last several days. There is  
18 nothing wrong with responding to a media inquiry in a matter  
19 that the media has deemed to be newsworthy. The suggestion  
20 that we were trying to lobby the Commissioners through the  
21 *Bangor Daily News* is nonsense. It really is nonsense. It  
22 demeans the integrity of the Commission, the intelligence of  
23 the Commission that somehow they would respond to a newspaper  
24 story. We were simply responding -- First Wind was responding  
25 to a request for comment on a story that they thought to be

1 newsworthy.

2           With respect to the exceptions and lobbying the  
3 Commission, let's make it clear the NYNEX case and this case  
4 have nothing in common. In the NYNEX case the executives of  
5 NYNEX were getting legislators to (inaudible) other parties to  
6 communicate to the Commissioners for the purpose of influencing  
7 their decision. There were no and have been no ex parte  
8 communications here. Everything that has been filed by the  
9 Petitioners, by First Wind, and by Algonquin has been given to  
10 all of the other parties at the same time it has been filed.  
11 So this suggestion that somehow we are in some under-handed,  
12 back door way of lobbying in violation of ex parte rules is  
13 nonsense.

14           Let's go to the substance of the filing. This is a  
15 708 case. It's a little different than a rate case or a CPCN.  
16 The Commission has three choices: they can approve the  
17 transaction, they can deny the transaction, or they can approve  
18 the transaction with conditions. We are advocating that they  
19 approve it with conditions. We have recognized that this is a  
20 conditioned case right from day one. Our exceptions were  
21 trying to focus on the conditions that we saw in the Examiners'  
22 Report that we thought might be helpful in terms of the  
23 Commissioners deciding how to address the perceived harms and  
24 risks identified in the Examiners' Report, and those are what  
25 are in there. There are no new facts in there. They are --

1 there are new conditions. That is appropriate in the  
2 exceptions in a 708 case.

3 Now with respect to the Algonquin and the First Wind  
4 filing, they will be bound by those conditions. We thought it  
5 would be helpful to the Commissioners to get some guidance from  
6 them as to which conditions they thought would be helpful and,  
7 more importantly, which ones they would be bound by in terms of  
8 the issuance of conditions. In the end, if the PUC  
9 Commissioners want to approve this transaction, they will write  
10 the conditions that they think are reasonable. What they won't  
11 know is whether those conditions are so burdensome that the  
12 parties cannot now close the transaction. This was intended to  
13 give them some guidance as to the kind and type and scope of  
14 conditions that the parties would find reasonable. It is  
15 ultimately the Commission's right to choose the conditions.  
16 There is nothing wrong in exception with the parties  
17 identifying conditions that are appropriate and reasonable and  
18 fair. I understand that First Wind and Algonquin are not  
19 parties, but they have been actively involved in the case right  
20 from the beginning and they will be bound by those conditions.  
21 And I think it is fair and reasonable for the Commission to  
22 hear from them as to their view on those conditions.

23 At the end of the day what we have here is a  
24 transaction that by the staff's own findings in the Examiners'  
25 Report presents substantial benefits to the people of Maine.

1 We don't want this transaction to go into the wastebasket  
2 unless we have explored all of the options on the record for  
3 how to get this transaction approved so that those benefits to  
4 the people of Maine can be there. We're talking about hundreds  
5 of millions of dollars in investment in new wind. That is  
6 important. And, yes, we have pushed the procedural rules as  
7 far as we can reasonably do so to try and put this transaction  
8 in a position that it can be approved, not because we are bad  
9 people or evil people; it's because we believe just as  
10 fervently as the interveners that this transaction has  
11 (inaudible) substantial and important benefits to the people of  
12 Maine. And before we walk away from it, we want the  
13 Commissioners to have the best possible information to make the  
14 best possible decision. And I would invite, if it's  
15 appropriate, to have either Pat Scully and/or Jared des Rosiers  
16 say a few words on behalf of their clients if that's  
17 appropriate at this time.

18 MR. BUXTON: Mr. Examiner, to be clear, we would  
19 strongly object to those parties speaking. They're not parties  
20 to this proceeding. That's the whole point.

21 MR. SCULLY: We would make the request to be heard,  
22 in part because of the both personal and company attacks that  
23 have been made today. And I think in fairness, both First Wind  
24 and Algonquin should have an opportunity to respond to those  
25 attacks.

1           MR. DES ROSIERS: I would -- this is Jared des  
2 Rosiers. I would echo that certainly with respect to the  
3 request for sanctions that would be sanctions presumably  
4 against myself and my client.

5           MR. COHEN: With those limitations, I'll allow a  
6 presentation.

7           MR. SCULLY: I'll be as brief as I can be. I've been  
8 practicing here since 1989. I have tried my best over those  
9 years to follow this Commission's rules and to be honest and to  
10 do the right thing in advocating for clients. We were very  
11 surprised by the Hearing Examiners' Report. We felt that the  
12 Hearing Examiners' Report directly through the lengthy  
13 conditions discussed in the report dropped the gauntlet to  
14 First Wind, to Algonquin, and to the Petitioners to respond and  
15 to somehow address the suggestion that we would engage in  
16 preferential dealings with Bangor Hydro or Maine Public. Many  
17 of the conditions that are listed in the Examiners' Report go  
18 to restrictions that would directly apply to First Wind such as  
19 applying FERC standards of conduct to us that would not  
20 otherwise apply to First Wind Holdings and its affiliates; such  
21 as applying the Maine standards of conduct in Chapter 304 that  
22 don't, on their face, apply to our company; such as requiring  
23 that First Wind agree to be subject to the Commission's  
24 jurisdiction and any investigation of any issues of preference;  
25 such as that we be subject to the Commission's jurisdiction for

1 purposes of enforcement of any order that comes out of this  
2 proceeding; and it goes on and on.

3           Those conditions all directly affect us. We've been  
4 in this case from the beginning. We've submitted testimony.  
5 We've been at almost every meeting or conference held in this  
6 case. We are not a party, we acknowledge that. We've  
7 responded to discovery. We've tried to be helpful to the staff  
8 and to the Commission and the parties in understanding a deal  
9 that is very important to us. When we saw this recommendation  
10 and these suggested conditions, we felt it was appropriate for  
11 us to be heard since they are aimed directly at us and at our  
12 transaction. This isn't about some third party throwing in  
13 comments from left field. This is our transaction.

14           We recognize the restriction in the rule in 760-A.  
15 We filed a motion that expressly acknowledges the rule. We  
16 specifically asked for permission to file our exceptions.  
17 You've ruled on that. My understanding is that's the right way  
18 to do things: you ask for permission, you either get it or you  
19 get it denied. And the Commission certainly is -- has the  
20 ability to ignore anything that we've filed that it determines  
21 shouldn't be properly before it. But I don't think there was  
22 anything wrong with one of the parties directly to this  
23 transaction who's been here for this whole process to say  
24 before you go down this road and suggest all these conditions  
25 or suggest a denial, hear from us in terms of what we think is

1 appropriate, what we think we can live with in terms of  
2 restrictions on behavior to make sure that there isn't an  
3 opportunity for preferential treatment to take place in the  
4 future.

5           With respect to the allegations about the press  
6 story, first of all, just to speak for myself and for Hallie,  
7 the first we knew about this story was when we saw your [ex]  
8 letter yesterday. Our exceptions are a public document, and  
9 they're available for anybody in the public to see. First Wind  
10 absolutely did not try to influence the Commission through its  
11 discussions with a reporter. I will say that that story was  
12 partly in response to a story that came from the so-called  
13 Maine Center for Public Interest Reporting, a story written by  
14 Naomi Schalit, in which parties to this proceeding are quoted.  
15 It's important to a company like ours to be able to respond  
16 when negative things are said about us in the press. And I  
17 know First Wind in good faith felt that it has a whole  
18 community of interested folks out there who care about our  
19 development efforts in Maine, who care about our company, who  
20 want to make sure that they're hearing from us as well as  
21 hearing from others who criticize us. And that's the reason  
22 that happened. But I can tell you, having discussed this with  
23 everyone involved, that this was absolutely not an intent to  
24 influence this Commission. Thank you.

25           MR. COHEN: Thank you, Pat.

1           MR. DES ROSIERS: This is Jared des Rosiers. I'm --  
2 I guess I'm sorry that I haven't participated in this case from  
3 the beginning and I am certainly the new kid on the block of  
4 this proceeding, but I will be very clear as to what  
5 Algonquin's intentions were in making the filing that we made  
6 on Monday on its behalf. Algonquin received the Examiners'  
7 Report. It, too, was surprised by some of the findings and the  
8 concerns raised. But to specifically address those concerns,  
9 it made a business decision to withdraw from the First Wind  
10 transaction consistent with the documents as Mr. Harwood has  
11 described. That is a significant change, but it is a fact that  
12 it has happened. And we believe it appropriate and necessary  
13 to disclose that circumstance to the Commission before the  
14 Commission were to deliberate on this matter and make a  
15 decision where there would be a different transaction without  
16 Algonquin participating.

17           And I'd also want to note and be very clear that the  
18 discussion here today has focused on a single transaction. In  
19 fact, there are multiple transactions before the Commission  
20 and, in particular (inaudible) Algonquin (inaudible) Algonquin  
21 not participating in the First Wind transaction. It's -- it  
22 still is in this proceeding because there are other  
23 transactions of investments by Emera purchasing shares of  
24 Algonquin to participate -- or to provide funding for Algonquin  
25 investments in New Hampshire and California. And that aspect

1 remains before the Commission and is separate and distinct from  
2 the First Wind transaction.

3           So we wrote to be very clear to the Commission the  
4 change in circumstance with respect to Algonquin's withdrawal  
5 from First Wind. We also then, as Mr. Harwood described,  
6 thought it appropriate where there have been issues raised  
7 throughout the case as to whether -- how could you impose a  
8 condition and would they be challenged by the third parties.  
9 And we wrote to be very clear the conditions that Algonquin is  
10 committed to and, in the event that the Algonquin -- the APUC  
11 transactions are approved, distinct from the First Wind  
12 transaction or in conjunction with the First Wind transaction,  
13 that Algonquin is committed to uphold, including its commitment  
14 to abide -- or to accede to the Commission's jurisdiction in a  
15 number of areas as outlined by the Examiner, as well as  
16 divesting certain generation in northern Maine and putting in  
17 place a screening mechanism so that no Emera employees are  
18 involved in any decision making of Algonquin with respect to  
19 its Maine businesses, including so far as recusing any Emera  
20 board member at Algonquin.

21           So we believed it would be appropriate for the  
22 Commission to understand the conditions that Algonquin was  
23 prepared to agree to and, in fact, was ready to agree to as  
24 part of the approval of the Algonquin transaction. And we  
25 believe that's appropriate, but certainly as Mr. Scully said,

1 if the Commission and the Hearing Examiner do not believe that  
2 that is appropriate under the rules, then that should not be  
3 provided to the Commission and so be it. But we do not believe  
4 in this circumstance that is in any way improper or in any way  
5 to inappropriately lobby the Commission here.

6 And as for press, I will report that we made our  
7 filing confidentiality and we have not made a disclosure in any  
8 way of APUC's position or its withdrawal from First Wind and,  
9 in fact, have treated that confidentiality, albeit we need to  
10 maintain the confidentiality because it -- otherwise it will  
11 raise, if it becomes public, the necessity to make a public  
12 statement under Canadian securities laws. Thank you.

13 MR. COHEN: Thank you. Eric, you had earlier -- I  
14 just want to cycle back to your initial presentation. You had  
15 earlier cited subsections of the Petitioners' exceptions which  
16 you found objectionable. Could you -- maybe if we could just  
17 go through those a little slower and explain your position on  
18 those?

19 MR. BRYANT: And as I qualified my comment, I haven't  
20 had time to go back through the entire record, but these  
21 comments on page five and six of Petitioners' exceptions struck  
22 me as not being in the record. It has to do with the viability  
23 of First Wind if this deal is not approved. My understanding  
24 was that First Wind was not dependent on this deal. It  
25 certainly wanted the deal, and I think the Examiners' Report

1 correctly pointed out that it would have the ability to finance  
2 projects sooner if the deal is approved, but my recollection of  
3 Mr. Alvarez's testimony was that this was not a do-or-die  
4 transaction for First Wind.

5           In the Examiner -- in the Petitioners' exceptions  
6 quoting First Wind's attempt at selections -- exceptions, we  
7 learn otherwise. If you look at the bottom of page five it  
8 says, "The Examiners appear to believe that First Wind will  
9 proceed with its development plans absent First Wind. As First  
10 Wind fully explains in these exceptions, that is simply not the  
11 case." I don't recall that being in evidence. Turn the page,  
12 "First Wind is not confident that it can pursue its future wind  
13 development in Maine as planned ..." -- maybe the as planned is  
14 the qualifier -- "... if the First Wind transaction is  
15 rejected." At first --

16           MR. COHEN: I got it. I understand what you're  
17 saying.

18           MR. BRYANT: That's all you need?

19           MR. COHEN: Yeah.

20           MR. BRYANT: Okay.

21           MR. COHEN: I just was -- wanted to get the reference  
22 of what you were referring to and --

23           MR. BRYANT: Can I add one other thing? If we are to  
24 go forward, which I strongly oppose, and we're going to  
25 entertain or not entertain the change to the deal that's now

1 become clear which Mr. Harwood says has been there all along  
2 but was not discussed raises several factual questions. If  
3 Algonquin is not going to be [on] Northeast Wind, then how will  
4 Northeast Wind work; how will the JV Holdco board be populated  
5 because there was -- there are five members of that board,  
6 Algonquin was going to have one of them; and how will the votes  
7 of that board take place. Those are important questions for  
8 the issues at least that I raised in my brief because of what I  
9 think could be improper influence, and what does all that mean.

10           And finally I would add in response to the comments  
11 of Mr. Scully and Mr. des Rosiers, First Wind and Algonquin  
12 could have been parties to this case all along. They could  
13 have made their arguments all along. They could have submitted  
14 briefs. They could have submitted proper exceptions. They  
15 made the choice not to. And to file -- an attempt to file  
16 exceptions at the last minute I think is certainly not allowed  
17 by the rules as you found yesterday, but it's just not fair.  
18 It's not a fair way to use the PUC process. Thank you.

19           MR. BUXTON: Mr. Examiner, may I comment briefly?

20           MR. COHEN: Okay.

21           MR. BUXTON: First of all, I want to say on a  
22 personal level that I strongly dislike, as we all do,  
23 discussing whether people have obeyed the rules or not, and I  
24 mean nothing personal by my comments. I'm concerned -- the  
25 IECG is concerned with the dignity and proper functioning of

1 the Commission and its rules.

2           In regard to the press story in question, I am sure  
3 Mr. Scully and others did not know about it. But someone at  
4 First Wind called the *Bangor Daily News*, gave them the press  
5 release, and the press release directly contradicts testimony  
6 in this proceeding as mentioned just a moment ago by Mr.  
7 Bryant. And that clearly had a purpose. It was a direct  
8 comment on the Examiners' Report. There had been no prior  
9 stories about the Examiners' Report, and it was precipitated by  
10 First Wind and that's a fact. Okay? And I would ask that that  
11 press story be made part of the -- this -- the record in this  
12 matter, and I'll be happy to get it and provide it.

13           In regard to some of Mr. Harwood's comments, these --  
14 the comments of the filings of the other two non-parties are  
15 indeed ex parte communications because the ex parte rule says  
16 no one may -- who's not a party may communicate with the  
17 Commission or the Examiners obviously if the other parties --  
18 if the actual parties don't have a chance to respond, to  
19 somehow deal with it under due process. It's not just the  
20 communication, it's whether there's some opportunity for the  
21 other -- for the people affected by the communication to  
22 somehow dispute it or test it. And obviously at that point in  
23 the case we had no opportunity. So it makes it ex parte.

24           I would also point out that this is essentially, in  
25 the filing of the Petitioners, a new case, and that's reflected

1 both in its substance, the vast majority of which we've never  
2 seen before, and presents new conditions. In fact, Mr.  
3 Harwood, I would quote, said, "These are what we can live with  
4 and these are the best possible information." The best  
5 possible information is the definition of new information. In  
6 addition, in the initial case of the parties -- of the  
7 Petitioners, they filed 52 pages of testimony and 32 pages I  
8 believe of exhibits. That is about equal in length to what  
9 they filed for exceptions, and the primary difference in the  
10 substance is in the initial filing, there were virtually no  
11 conditions proposed of any substance to deal with the concerns  
12 the Commission articulated as long ago as 1996 and chose to --  
13 they chose to address them only at that stage of the case.  
14 That is effectively doing what they should have done at the  
15 first filing, not in the exceptions stage, not in the rebuttal  
16 stage, but in the first filing so we could have had a case on  
17 the merits dealing with what the Commission and the statutes  
18 said were the concerns that expressed the public interest and  
19 which had to be protected.

20 I would also note that there's a recent case on  
21 point, in fact some people in this proceeding may well be in  
22 it, *Forest Ecology Network v. LURC*, which says the development  
23 of conditions without record evidence, and in fact after the  
24 record has been closed, is a violation of due process. And  
25 that case is on appeal to the Law Court. I believe it's been

1 argued. I don't believe it's been decided. It's the Plum  
2 Creek case, but that is a finding by Justice Humphrey.

3           And I would finally point out that allowing parties  
4 to revise their case at this stage is a violation of due  
5 process. This vessel has been shattered. It cannot be put  
6 back together other than by dismissal. If the parties want to  
7 -- if the Petitioners want to go renegotiate their deal, come  
8 back with a different deal, as apparently they do, that's their  
9 privilege, but they can't do this at the very end of a case and  
10 have us have a fair chance to deal with that. We have seen  
11 great pressure by the Petitioners in this case to get this case  
12 decided by the end of January. We've all sacrificed time and  
13 energy and convenience to be able to do that, and what it would  
14 take now is months and months and months of additional hearings  
15 on the substance presented. And the proper remedy is as the  
16 Public Advocate has proposed. Thank you.

17           MR. COHEN: Tony, let me ask a question and Eric  
18 could go back if he wants to also respond, but -- and it refers  
19 to sort of a point raised by Jared and also one that we were  
20 discussing yesterday. In regard to APUC with regard to their -  
21 - other aspects of their transaction with Emera, is there a  
22 reason why that could not go forward since that has not been  
23 affected by the new development?

24           MR. BRYANT: So your question is whether in the  
25 opinion of the Public Advocate the portion of the proposed

1 transaction that only applies to APUC can be considered -- is  
2 not tainted, is that --

3 MR. COHEN: Could go forward, yeah.

4 MR. BRYANT: I'd have to think about that.

5 MR. COHEN: Tony, did you want to respond?

6 MR. BUXTON: I think the Commission has to rule on  
7 what was before it before these exceptions were filed. That's  
8 the case. And to start to respond to what's happened by  
9 dividing things out and saying that things have changed makes  
10 the entire case begin to unravel. We need time to think about  
11 what such a change would create, and Eric is properly asking  
12 that time.

13 MR. COHEN: Okay.

14 MR. SOLTAN: May I comment?

15 MR. COHEN: Yeah, sure.

16 MR. SOLTAN: Charlie Soltan, Boralex. The problem  
17 with that is that Petitioners have asked for approval of taking  
18 up to 25 percent of APUC, regardless of whether any of those  
19 transactions took place. So they contemplated that some of  
20 these may not go forward, but they asked for permission to go  
21 to 25 percent without your approval after you've given that 25  
22 percent level. So I -- you know, I think they could turn  
23 around after the decision and go back and re-do the deal  
24 because they could take another, what, seven, eight percent,  
25 whatever it was and get up to 25 and there's not a thing you

1 would have been able to do about that because you would have  
2 given them prior approval if you had approved the deal on the  
3 terms they've asked for. And so I have heartburn about that  
4 because you've got to really look through the weeds here as  
5 we've now discovered for what they really have agreed to or not  
6 agreed to or how they try to conditionally set themselves up  
7 for avoiding PUC oversight. And I think this is a very good  
8 example.

9           And I'd just like to raise a few other points if I  
10 could. The reason why we believe that the exceptions should be  
11 completely thrown out is you can go from page one of the  
12 Petitioners' exceptions in the footnote number one where they  
13 admit that there's probably an improper submission of these  
14 letters from Algonquin and First Wind. And so what they agreed  
15 to do was we're just going to tuck them into the back of ours  
16 and we're going to talk about this throughout our brief so they  
17 still get in regardless. So from page one, footnote one, they  
18 acknowledge that. And so how you get the Commissioners to  
19 avoid those of which you appropriately denied, I don't know,  
20 because we could list probably, you know, 15 other cites or  
21 more within the document of where they refer to those  
22 improperly-submitted documents. And that's why the entire  
23 exception is tainted and completely prejudicial to our case.

24           And then also within the exceptions they also ask for  
25 oral argument which is completely unnecessary and also for

1 bifurcated decision market on the two transactions which we  
2 agreed May 17 in your order that we were going to consolidate  
3 and make it all as one. They've never objected to it, it's  
4 been I don't know how many months, and now they're trying to  
5 again separate this and divide and conquer, if you will, to  
6 salvage whatever they can. And it's completely inappropriate.  
7 Thanks.

8 MR. COHEN: Okay, thanks. Alan, any supplemental?

9 MR. STONE: I'm tempted to, but I'm going to restrain  
10 myself --

11 MR. COHEN: Thank you.

12 MR. STONE: -- because I think we need to move  
13 forward.

14 MR. COHEN: Okay. Bill, if you want any further  
15 reply, I think I'll allow that.

16 MR. HARWOOD: No, I think, Chuck, we've beaten this  
17 around. I just will continue to say that I'm sorry that we've  
18 caused this controversy, but we are -- I really don't believe  
19 that we've done anything unethical or in violation of the rules  
20 that would justify any of the kind of harsh responses --  
21 suggestions of the interveners. I think we need to get to the  
22 merits of this, and we want to see if we can find a way to get  
23 quickly to the merits of this and hold the January 31st  
24 deliberations. Thank you.

25 MR. COHEN: Okay. Well, thank you. I appreciate you

1 coming today. We'll take the matters under advisement. To the  
2 extent there's any type dismissal, it cannot be done by -- at  
3 the Hearing Examiner level as you're well aware. So I  
4 appreciate counsel --

5 MR. SOLTAN: Can I ask one further clarification?

6 MR. COHEN: Yes, sir.

7 MR. SOLTAN: In your order yesterday you mentioned  
8 that the Petitioners' submission had been reviewed. Was that  
9 just by the staff and the Examiners or by the Commissioners?

10 MR. COHEN: I believe the Commissioners have seen  
11 that although they have not reviewed the attachment. The  
12 attachment was removed.

13 MR. SOLTAN: So they've had access to all the --

14 MR. COHEN: The Petitioners' exceptions --

15 MR. SOLTAN: -- comments and --

16 MR. COHEN: The Petitioners' exceptions were  
17 reviewed, not the attachment.

18 [MS. HEALY]: Which attachment?

19 MR. COHEN: The attachment of First Wind --

20 [MS. HEALY]: First Wind's?

21 MR. COHEN: -- exceptions.

22 MR. STONE: I didn't think, Chuck, that --

23 MR. SOLTAN: Oh, all right. I'm just saying that's a  
24 consideration for us about whether or not it's been prejudiced.

25 MR. STONE: While I understand that you would not

1 have the ability to rule on a motion to dismiss, I think you do  
2 have ability -- and I may be wrong -- to rule on excluding the  
3 Petitioners' exceptions from the record. By analogy, if they  
4 were filed three weeks lately, you would simply say sorry,  
5 we're not considering them. So we urge you to do that and to  
6 rule that -- essentially that because of what's transpired and  
7 the commingling of the information and the Examiners' Report  
8 attempts to add new conditions outside of the record, etc.,  
9 that Petitioners have forfeited the right to have exceptions  
10 considered by the Commission and that's a consequence of their  
11 deliberate act in doing what they did. And that is the only  
12 way that could be reasonably dealt with, and it would be for  
13 the Commission to dismiss the case with prejudice as I  
14 understand it.

15 MR. COHEN: Okay, thank you. I'll just note that  
16 both the advisory staff and the Commission are professional  
17 staff, and I think we're well aware of the record and have been  
18 able in the past and will be able in the future to distinguish  
19 between what's in the record and what's not in the record. So  
20 I'll leave it at that. Okay, thank you, and we'll adjourn, and  
21 we will try and address these matters as expeditiously as  
22 possible and will keep you advised.

23 MR. BRYANT: Thank you.

24 MR. COHEN: Thank you.

25 CONFERENCE ADJOURNED (January 25, 2012, 11:?? a.m.)

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I hereby certify that this is a true and accurate transcript of the proceedings which have been electronically recorded in this matter on the aforementioned hearing date.

D. Noelle Forrest  
D. Noelle Forrest, Transcriber