

South Dakota Public Utilities Commission

EL18-026 - In the Matter of the Application by Prevailing Wind Park, LLC for a Permit of a Wind Energy Facility in Bon Homme County, Charles Mix County and Hutchinson County, South Dakota, for the Prevailing Wind Park Project - Evidentiary Hearing

Friday, October 12, 2018

Room 413, State Capitol, Pierre, SD

Please Print

Name

Representing

Marsha Rubry

Intervenor

Lickie L May

Intervenor

Scott Rueter

Jerome Powers

Self

Kevin Andersh

Self & Family

Sherman Fuerniss

Self

Dregg Nade

WU

Lori Fuerniss

Reece Almond

Kelli Jay

Self

Paul Schoenfelder

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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION EL18-026
BY PREVAILING WIND PARK, LLC FOR
A PERMIT OF A WIND ENERGY FACILITY
IN BON HOMME COUNTY, CHARLES MIX
COUNTY, AND HUTCHINSON COUNTY,
SOUTH DAKOTA, FOR THE PREVAILING
WIND PARK PROJECT

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Transcript of Hearing
October 12, 2018
8:30 a.m.

Volume IV, Pages 989-1183

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BEFORE THE PUBLIC UTILITIES COMMISSION,
KRISTIE FIEGEN, CHAIRWOMAN
GARY HANSON, VICE CHAIRMAN
CHRIS NELSON, COMMISSIONER

COMMISSION STAFF
Adam de Hueck
Karen Cremer
Greg Rislov

A P P E A R A N C E S

Mollie Smith and Lisa Agrimonti,
appearing on behalf of Prevailing Wind Park;

Reece Almond,
appearing on behalf of Intervenors Gregg Hubner,
Marsha Hubner, Paul Schoenfelder, and Lisa Schoenfelder;

Sherman Fuerniss,
appearing pro se;

Karen Jenkins,
appearing pro se;

Kelli Pazour,
appearing pro se;

Kristen Edwards and Amanda Reiss,
appearing on behalf of Staff.

Reported By Cheri McComsey Wittler, RPR, CRR
Precision Reporting, 213 S. Main, Onida, South Dakota

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1 The following transcript of proceedings was
2 held in the above-entitled matter at the South Dakota
3 State Capitol Building, 500 East Capitol Avenue, Pierre,
4 South Dakota, on the 12th day of October, 2018,
5 commencing at 8:30 a.m.

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1 MR. DE HUECK: Good morning, everyone. Again,
2 I'd Adam de Hueck, the Hearing Examiner for EL18-026. We
3 are on day four. We're in the midst of Mr. Almond's case
4 in chief. He'll be calling his witness this morning.

5 Before we begin, it sounds as if we're going to
6 take a shorter lunch break today, probably maybe
7 45 minutes or so. So if you -- during a recess this
8 morning if you want to order some food or take steps to
9 ensure you get something to eat over the lunch hour
10 today, that would be great.

11 So, moving on, Mr. Almond, feel free to call
12 your first witness today.

13 MR. ALMOND: Intervenors call Jerome Powers.

14 Jerome Powers,
15 called as a witness, being first duly sworn in the above
16 cause, testified under oath as follows:

17 DIRECT EXAMINATION

18 BY MR. ALMOND:

19 Q. Can you introduce yourself to the Commission,
20 please.

21 A. Good morning, Commission. My name is Jerome Powers.
22 I reside at 40427 294th Street, Wagner, South Dakota.

23 Q. And is that address located within the project
24 footprint of this project?

25 A. It is.

1 Q. Can you point to Exhibit I-29, the map behind you,
2 where your residence is located at?

3 A. My residence is located right there (indicating).

4 Q. And how long have you lived there?

5 A. I moved on that acreage, oh, in the year 2000. But
6 prior to that, I lived right next to it all my life.

7 Q. And do you have any family that lives in the project
8 area?

9 A. Yes.

10 Q. Who? Who are they?

11 A. My sister Jackie lives on the southern border of the
12 project.

13 Q. And do you have any family members that own land in
14 the project area?

15 A. Yes.

16 Q. Who owns land in the project area?

17 A. My son, Dennis Powers.

18 Q. And is your son, Dennis, a participating landowner
19 in this project?

20 A. Yes.

21 Q. Can you point to the Commission where Dennis's land
22 is located at?

23 A. Here all the way around and just north of me, and
24 then he has land to the east of me (indicating).

25 Q. And I understand the Beethoven Wind Project is

1 somewhere up north of where you live; is that correct?

2 A. That's correct. I have seven turbines due north of
3 me within a mile and a half to two miles.

4 Q. When did the Beethoven project become operational?

5 A. I believe it became operational in 2015.

6 Q. Since that project became operational have you
7 noticed any symptoms or experienced any symptoms that you
8 weren't experiencing before the project?

9 A. Yes.

10 Q. And what are those?

11 A. The main problem was disrupted sleep. The next
12 problem I noticed was an increase in migraine headaches,
13 a more sense of an agitated mood, infinite mood swings.

14 And after two years in operation it became aware
15 that I was becoming more argumentative with people around
16 me such as my neighbors, township board members, family.
17 And I just couldn't put a finger on it but --

18 Q. And let me stop you there.

19 A. Yes.

20 Q. Because I think I know where you're going, and we
21 don't want to go there.

22 A. Great.

23 Q. You said disruption of sleep. Are you able to hear
24 the wind turbines in your residence?

25 A. Yes, I am. When the windows are open and the wind

1 is out of the north, we can hear them, my wife and I.

2 Q. What about when the wind's out of the south? Can
3 you hear them?

4 A. Not in the house I cannot, but outside I can.

5 Q. And can you describe the sound?

6 A. Some days -- depending on the humidity and the
7 airflow, some days it sounds like distant truck traffic.
8 Some days you here whoof, whoof, whoof, whoof that
9 just -- it never goes away until the wind changes or the
10 air density changes.

11 Q. How frequently is your sleep disrupted?

12 A. Every night.

13 Q. Even when the wind's blowing out from the south?

14 A. Yes.

15 Q. And how do you believe that the symptoms you've been
16 experiencing has impacted your quality of life?

17 A. I feel my quality of life in the last two years has
18 decreased immensely. Obviously, if you have disrupted
19 sleep, you do not sleep well. Your cognitive thinking
20 just isn't the name. You're mentally fatigued. And to
21 concentrate on things that you really need to concentrate
22 on becomes really difficult at times. Not all times but
23 most times.

24 Q. Do you think you're beginning to get used to the
25 sound and are able to tolerate it more?

1 A. No.

2 Q. Has the disruption of your sleep gotten better over
3 time, worse over time, or stayed consistent?

4 A. It has stayed consistent.

5 Q. Are there certain weather conditions, aside from the
6 direction of the wind, that create situations where
7 you're able to hear the turbines louder than others?

8 A. Yes.

9 Q. And what are those?

10 A. When the air -- humidity in the air is heavier or
11 the density of the air. Such as, you know, right now
12 it's probably 95 percent humidity outside. That
13 increases the noise level. It has a lasting effect until
14 the weather changes.

15 Q. And what do you do for a living?

16 A. I guide -- I'm an outfitter. I guide hunters during
17 pheasant season, and in the off season I do construction
18 work. I pretty much am an overglorified handyman, per
19 se.

20 Q. And do you have concerns that if your project is
21 built that your hunting business might be affected by it?

22 A. Yes.

23 Q. Can you explain those concerns?

24 A. My hunters come from all over the country, all over
25 the world. I've had seven foreign countries represented

1 at my place. They come to my place, and they enjoy it
2 because of the peace and the serenity.

3 The majority of my clients come from an urban
4 setting, and they see bells and whistles, lights all the
5 time. They love my place for the fact that they can come
6 out, and they can look at the stars at night, that they
7 can just absorb the sense of freedom.

8 And they've expressed this to me numerous, numerous
9 times. And with this project -- the first Beethoven
10 project that came in, yes, it disrupted my hunting to a
11 certain extent, but it was small enough that I felt that
12 we could probably exist with it. But this one is going
13 to completely encompass my property. It is going to --
14 it has already taken away leasable acres, which has
15 already affected my hunting business. And with the
16 expansion of a wind turbine farm there I feel it will
17 totally decimate my business.

18 Q. And stepping away from your business, how has this
19 project already affected the local community, from your
20 perspective?

21 A. The local community as I perceive it right now is
22 walking on eggshells. You don't know how to address
23 someone. You don't know who is part of this. Because I
24 feel the people that are part of this at this stage are
25 attacking my well-being, my business, my way of life.

1 And to avoid confrontation you just -- conversations
2 stick to the basics. There's no more How are you doing?
3 What's happening in your life? How are the kids doing?
4 It's just nice to see you. Have a nice day. See you
5 later.

6 And the social aesthetics have completely -- it has
7 ripped my family right in two, right down the middle.

8 Q. Tell us about that.

9 A. This spring I was discussing with my son, Dennis,
10 and I told him my displeasure with him signing up our
11 land -- or his land. And talking a neighbor who was
12 adamantly against having turbines on his farm.

13 Q. And, Mr. Powers, I don't want to know --

14 A. Okay.

15 Q. -- about the conversations you've had with people.

16 A. Sure.

17 Q. But at some point you learned that your brother owns
18 land within the project --

19 A. My son.

20 Q. Excuse me. Your son owns land within the project
21 area. And did there come a time where your son learned
22 that you were opposed to the project?

23 A. Yes.

24 Q. And what happened when he learned that you were
25 opposed to the project?

1 A. On his property he had a trailer house that my
2 hunters had used that I had leased from him where they
3 could put their gear, they could stay.

4 And upon finding out of my disapproval, he then told
5 me I had 30 days to get my stuff off his property. He
6 then issued me a -- a do not trespass paper where I no
7 longer can step foot on any of his property.

8 Q. And are you currently speaking to your son?

9 A. No. We have not spoken since that time.

10 Q. How has that affected -- well, does your son have
11 any children?

12 A. Yes.

13 Q. How has that affected your relationship with your
14 grandkids?

15 A. My granddaughter graduated from eighth grade. I was
16 not invited to the graduation. That hurts. My oldest
17 grandson, he does have a relationship with me. He does
18 come out and visit. The youngest I haven't spoken to
19 since this started. And that's not by my choice.

20 MR. ALMOND: Thank you for coming and
21 testifying, Jerome. I don't have any other questions for
22 you.

23 MR. DE HUECK: Okay. Mr. Powers, that brings us
24 to cross-examination. I'll start over here with
25 Prevailing Winds.

CROSS-EXAMINATION

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BY MS. SMITH:

Q. Good morning, Mr. Powers.

A. Good morning.

Q. You spoke of several symptoms that you say you've been experiencing lately. Do you remember your testimony on that?

A. Yes.

Q. Did you provide any medical records in this particular proceeding?

A. I did.

Q. And can you point to us where those medical records are?

A. I may not have presented them here. I presented them -- I have them with me as in receipts from doctors. I can't remember if I did present them.

Q. And if I indicate to you that they were not presented, would you disagree with that?

A. No.

Q. You talked a bit about your guide business with hunting. Do you own -- you own the hunting rights on your property?

A. When I sold the land to my son --

Q. Let me step back. Just the property that you currently own. Do you own the hunting rights?

1 A. Yes.

2 Q. My question wasn't very clear.

3 A. Yes.

4 Q. Okay. Sorry about that.

5 And how many acres do you own?

6 A. 12.8.

7 Q. And do you own any other hunting rights in the area?

8 A. Do I own them? No.

9 Q. Do you currently lease any hunting rights in the

10 area?

11 A. Yes.

12 Q. And where do you lease hunting rights?

13 A. All this acreage here down through here

14 (indicating). It's checkerboarded from north of my place

15 to Highway 36 is the main hunting area to about 5 miles

16 west of my place to 3 miles east.

17 Q. Okay. Can you tell us who owns the properties that

18 you're referencing?

19 A. Yes. Scott Meyers.

20 Q. Okay.

21 A. Clearfield Colony.

22 Q. What was the second one? I'm sorry. Can you say

23 that? It was Meyers is one, and then was there a second

24 one? I missed it.

25 A. Yes. Clearfield Colony.

1 Q. Okay.

2 A. Daryl Becvar. Alfred Bartunek.

3 Q. And you currently hold leasing rights -- or
4 hunting -- you currently lease the hunting rights on
5 those properties?

6 A. Yes.

7 Q. And have you submitted any documentation of your
8 leases in this matter?

9 A. No.

10 Q. Do you understand that you will continue to be able
11 to hunt after the wind turbine project is constructed,
12 assuming it is constructed?

13 A. Yes.

14 Q. So you understand you don't have any restrictions
15 from hunting?

16 A. But I do.

17 Q. I'm confused by your testimony. You don't have any
18 legal restrictions from hunting; is that correct?

19 A. No legal restrictions, no.

20 Q. And you indicated that hunters did continue to come
21 hunt after the Beethoven project was erected; is that
22 true?

23 A. That is true.

24 MS. SMITH: Just one second.

25 (Pause.)

1 MS. SMITH: I have no further questions. Thank
2 you.

3 MR. DE HUECK: Mr. Fuerniss.

4 CROSS-EXAMINATION

5 BY MR. FUERNISS:

6 Q. Mr. Powers, how would you describe the view from the
7 lodge where your hunters stay?

8 A. To the south it's incredible. To the north the
9 aesthetics have been marred significantly by the wind
10 turbines that are out there present as --

11 They no longer can look north at night. All they
12 will see is the flashing red lights that will never ever
13 disappear in my lifetime. They're going to be there.

14 Q. I'm thinking a little closer. What kind of land do
15 you find directly across the road from your residence and
16 your hunting lodge?

17 A. Directly across the road from my hunting lodge there
18 was a shelter belt to the north-northwest, and directly
19 north of my place is a native prairie land.

20 Q. About how many acres, would you say, are native
21 prairie there?

22 A. I would say there is probably 120 acres of native
23 grass that has never seen a plow.

24 Q. Have you seen the Land Use Map that's in Appendix A
25 of the Application?

1 A. Yes, I have.

2 Q. What does that Land Use Map -- it's on page 10 of 11
3 in Appendix A. How does that indicate that land is used?
4 Would you recall?

5 MS. SMITH: I'm going to object. This is
6 outside the scope of his Direct Testimony.

7 MR. DE HUECK: Just allowing him to talk about
8 the land. I mean, I know we're referring to a map, but
9 you can continue to describe the land.

10 A. It's as pristine as you can find in the State of
11 South Dakota. Abundant wildlife. I see deer cross there
12 numerous times.

13 It doesn't get anymore pristine. There's a flowing
14 creek that goes right through the center of it that also
15 goes through my property.

16 Q. And your visiting hunters appreciate that kind of
17 aesthetic?

18 A. They do. They thoroughly love walking their dogs
19 out in there after Mr. Fuerniss has --

20 MS. SMITH: I'm going to object. He can't speak
21 for what his hunters believe or think.

22 MR. DE HUECK: Correct.

23 MR. FUERNISS: That's all. Thank you.

24 MR. DE HUECK: Ms. Jenkins.

25 MS. JENKINS: No questions.

1 MR. DE HUECK: Ms. Pazour.

2 CROSS-EXAMINATION

3 BY MS. PAZOUR:

4 Q. When -- like with your business when you go out have
5 you noticed a decrease of wildlife?

6 A. In certain areas, yes. In areas where the wind
7 turbines are, no. Or vice -- did I understand your
8 question correctly?

9 Did you say decrease or increase?

10 Q. Decrease.

11 A. Yes, I have. Invert what I've said. Where the
12 turbines are I've seen it decrease. And I can elaborate
13 a little bit on that.

14 As I had a contract -- I still have a contract with
15 Clearfield Colony, the hunting rights, and they have had
16 wind turbines built on their property. And I had had a
17 lease prior to them -- the Beethoven Wind Farms getting
18 their lease so they took a half-mile radius of my leased
19 hunting away from me during the construction of this
20 project which encompassed nine turbines, I believe, which
21 would be four and a half square miles of my leased
22 property.

23 And since these towers were built -- and by
24 Turbine 39 and 38 there were two pieces of CRP grass.
25 And prior to their construction you could go out there

1 and hunt, and there would be birds everywhere.

2 Now since they have been built you can hunt these
3 same properties, and you're hard pressed to find any
4 birds there. It has diminished considerably, and it is
5 highly noticeable to me and my hunters as we rarely go
6 there to hunt anymore.

7 Q. Do you think it's -- do you think that the wildlife
8 has moved out because of the noise or --

9 A. From my perception from these turbines, as a
10 pheasant you're at the bottom of the food chain.
11 Everything out there wants to eat you. And one of their
12 main predators is an airborne raptor. And these wind
13 turbines as they're turning I cannot help but think that
14 as these blades go around --

15 MS. SMITH: Objection. This is speculation.

16 MR. DE HUECK: I'll let him continue his
17 thoughts on what he thinks.

18 MS. SMITH: Okay.

19 A. As these blades go around I can't help but think
20 that this pheasant would perceive this as an airborne
21 raptor and as this movement takes place they're, you
22 know, alerted to something, danger in the sky. So if I
23 was a pheasant living there, I'm going to leave if
24 there's a constant irritation or --

25 And from my experience since these turbines have

1 come, if you go about a half-mile perimeter around these,
2 you'll start noticing the numbers increasing. And I
3 would have to relate that directly to the turbine and the
4 flicker movements. And that is one of the perceptions
5 that I have that I have seen since the development of
6 Beethoven Wind Farm.

7 MS. PAZOUR: Thank you.

8 MR. DE HUECK: Staff.

9 CROSS-EXAMINATION

10 BY MS. REISS:

11 Q. Good morning, Mr. Powers.

12 A. Good morning.

13 Q. How are you doing today?

14 A. I am doing just great. I had a great sleep last
15 night.

16 Q. Did you? Did you drive up this morning or last
17 night?

18 A. I drove up yesterday.

19 Q. Okay.

20 MS. REISS: No further questions.

21 MR. DE HUECK: Commission questions. We'll
22 start down on the end with Chair Fiegen.

23 CHAIRWOMAN FIEGEN: Thank you.

24 Thank you for being part of the process. Just a
25 quick question on your leases.

1 You stated today you had leases with different
2 landowners. How long are those leases?

3 THE WITNESS: My current lease with the
4 Clearfield Colony will expire in November, as they will
5 not renew my contract due to our conflict.

6 CHAIRWOMAN FIEGEN: So that one's due in
7 November. And then you have a couple more leases. When
8 do those expire?

9 THE WITNESS: They are year-to-year leases.

10 CHAIRWOMAN FIEGEN: Year to year. Okay.

11 All right. Thank you.

12 THE WITNESS: You're welcome.

13 COMMISSIONER HANSON: Good morning, Mr. Powers.

14 THE WITNESS: Good morning.

15 COMMISSIONER HANSON: Thanks for being with us.

16 I remember your testimony when we were down in
17 Avon, and the challenges that you're having with your
18 family are tragic. I hope that they are somehow mendable
19 over time.

20 THE WITNESS: Thank you.

21 COMMISSIONER HANSON: In regards to your hunting
22 endeavors, have the numbers of hunters diminished? Do
23 you still have the same clientele?

24 THE WITNESS: My clientele fluctuates so you
25 can't get 100 percent.

1 As of yet, it has not. But I have hunters that
2 have sent letters stating that if this expands, as you
3 have received letters also, they no longer wish to hunt.
4 They want the pristine environment, not -- they just
5 don't want to hunt in the middle of a wind farm.

6 COMMISSIONER HANSON: And you say you have
7 received letters?

8 THE WITNESS: Yes, we have. And I have been
9 receiving phone calls from some of my clients.

10 COMMISSIONER HANSON: All right. Thank you for
11 your testimony, Mr. Powers.

12 THE WITNESS: You're welcome.

13 COMMISSIONER NELSON: Good morning.

14 THE WITNESS: Good morning.

15 COMMISSIONER NELSON: You indicated this morning
16 that the Beethoven project has already disrupted your
17 hunting business. Can you be more specific in how it has
18 disrupted your hunting business?

19 THE WITNESS: Yes. As I stated, when they
20 were -- during construction they took away about four and
21 a half miles of already leased acres which disrupted it
22 that year because -- and the reason that I couldn't hunt
23 there was the contractor said I could not hunt within
24 a --

25 MS. SMITH: Objection. This is hearsay.

1 THE WITNESS: It's what happened.

2 COMMISSIONER NELSON: So let's move past the
3 construction phase. Has the operation phase of Beethoven
4 affected your hunting business?

5 THE WITNESS: Yes.

6 COMMISSIONER NELSON: And can you tell me how?

7 THE WITNESS: Yes. The bird population where
8 these turbines are located has diminished to the point
9 where acreages that I have leased no longer are
10 productive. So I now have to travel further away to
11 properties to find birds.

12 COMMISSIONER NELSON: So all of the birds that
13 you hunt are wild birds?

14 THE WITNESS: No.

15 COMMISSIONER NELSON: So you could have
16 rectified that situation if you had wanted to; correct?

17 THE WITNESS: You could. But the majority of my
18 hunters request wild bird hunting only.

19 COMMISSIONER NELSON: In relation to the project
20 we're currently talking about, you indicated that you've
21 already lost hunting leases. And Commissioner Fiegen
22 asked you about it, and you indicated the Clearfield
23 Colony, that you're going to lose that one.

24 THE WITNESS: Correct.

25 COMMISSIONER NELSON: Are there others that you

1 have or will lose?

2 THE WITNESS: At this moment I'm not aware of
3 anymore that I'm going to lose.

4 COMMISSIONER NELSON: When you were describing
5 your place you said that there "was a shelter belt" to
6 the northwest of your house. You used the latter tense.

7 Is that shelter belt gone?

8 THE WITNESS: It's been demolished. It's still
9 there, but it's in a pile. It's in a heap.

10 COMMISSIONER NELSON: And so because of that,
11 you now have a fuller view of the Beethoven turbines;
12 correct?

13 THE WITNESS: Correct.

14 COMMISSIONER NELSON: Who's the landowner on
15 that property?

16 THE WITNESS: My son, Dennis Powers.

17 COMMISSIONER NELSON: When you talked about the
18 Beethoven project decreasing the amount of birds within a
19 half-mile, did that happen immediately?

20 THE WITNESS: I would say within the first year,
21 yes. I wouldn't say -- you know, as construction took
22 place, there's a lot of activity. Obviously, they're not
23 going to be there. The numbers did not come back. So I
24 would have to say, yes, it was pretty much immediate.

25 COMMISSIONER NELSON: But you've not seen that

1 corresponding decrease elsewhere?

2 THE WITNESS: No.

3 COMMISSIONER NELSON: Thank you.

4 THE WITNESS: You're welcome.

5 MR. DE HUECK: Chair Fiegen.

6 CHAIRWOMAN FIEGEN: Thank you.

7 So did you have a lease agreement with Dennis
8 Powers?

9 THE WITNESS: We had a verbal agreement.

10 CHAIRWOMAN FIEGEN: And so did you own that land
11 prior to selling it?

12 THE WITNESS: Yes.

13 CHAIRWOMAN FIEGEN: And then you had a verbal
14 agreement with Dennis Powers that you could hunt on that
15 land?

16 THE WITNESS: Yes. Part of the conditions on
17 the sale was that I was to retain the hunting rights as
18 long as I was in business.

19 CHAIRWOMAN FIEGEN: Okay. And that was verbal.

20 THE WITNESS: Yes. It took place in Judge
21 Anderson's office in Charles Mix County. He's a judge
22 now. He was an attorney at the time.

23 CHAIRWOMAN FIEGEN: Thank you.

24 COMMISSIONER NELSON: I've got just another
25 question.

1 I'm looking at the land ownership map behind
2 you, which I think is the same as that map. Are you
3 listed as the own of that property?

4 THE WITNESS: Of this property here or here
5 (indicating)?

6 COMMISSIONER NELSON: Well, wherever you live.

7 THE WITNESS: Yes, I am.

8 COMMISSIONER NELSON: That's all the questions
9 I've got.

10 MR. DE HUECK: Any redirect, Mr. Almond?

11 MR. ALMOND: No.

12 MR. DE HUECK: Any questions based on Commission
13 questions?

14 MS. SMITH: I do, Mr. de Hueck.

15 MR. DE HUECK: The Applicant.

16 MS. SMITH: Thank you.

17 RE CROSS-EXAMINATION

18 BY MS. SMITH:

19 Q. I'm just trying to get this straight. So you
20 mentioned having a lease with the colony that's going to
21 expire in November; correct?

22 A. Correct.

23 Q. The colony is not leasing their property for this
24 wind project; correct?

25 A. They are. They have nine towers now, and they're

1 receiving another 10.

2 Q. Can you point to me what you're referencing on the
3 map as that particular area?

4 A. Here, here, here, here, here, here, here, here,
5 here, here, here (indicating). There's more properties
6 up here that aren't on the map.

7 Q. Just to clarify. Regarding the lease, the lease is
8 expiring in November, you indicated?

9 A. Correct.

10 Q. And that lease is -- that lease is not being
11 terminated because of the project, is it?

12 A. Yes.

13 Q. And you mentioned a shelter belt.

14 A. Correct.

15 Q. And that's on your son's property?

16 A. It is.

17 Q. And given that this project has not been
18 constructed, that shelter belt wasn't removed because of
19 this project; correct?

20 A. I do not know that.

21 Q. Okay.

22 MS. SMITH: Thank you. I have no further
23 questions.

24 MR. DE HUECK: Mr. Fuerniss.

25 MR. FUERNISS: No questions.

1 MR. DE HUECK: Ms. Jenkins.

2 MS. JENKINS: No questions.

3 MS. PAZOUR: No questions.

4 MR. DE HUECK: Staff.

5 MS. REISS: No questions.

6 MR. DE HUECK: And I'm going to hold you there.

7 Commissioner Nelson would like --

8 COMMISSIONER NELSON: Okay. I'm having trouble
9 rectifying that map with that one. So could I go up to
10 that map and have him point?

11 MR. DE HUECK: Absolutely.

12 (Commissioner Nelson approaches the map.)

13 COMMISSIONER NELSON: And just so folks know,
14 the map that I am looking at is one that the Applicant
15 submitted as a confidential submission in June and it
16 does not list you as a property owner on that and that
17 was my confusion.

18 So thank you.

19 THE WITNESS: You're welcome.

20 MR. DE HUECK: With that, Mr. Powers, thank you
21 for your testimony. You may step down.

22 (The witness is excused.)

23 MR. DE HUECK: Mr. Almond, you may call your
24 next witness.

25 MR. ALMOND: Kevin Andersh.

1 Kevin Andersh,
2 called as a witness, being first duly sworn in the above
3 cause, testified under oath as follows:

4 DIRECT EXAMINATION

5 BY MR. ALMOND:

6 Q. Will introduce yourself to the Commission, Kevin.

7 A. My name is Kevin Andersh. I reside at 40128 294th
8 Street, Wagner, South Dakota. And my property is in
9 Section 15.

10 Q. Maybe you should spell your last name for the court
11 reporter.

12 A. A-N-D-E-R-S-H.

13 Q. And you said your property is in Section 15. Do you
14 live within the project area of this project?

15 A. I do as far as I know. I haven't studied all them
16 boundary lines. I just know I have 80 that is in the
17 south -- it's in Section 12 and the rest of the section
18 is owned by Clearfield Colony and they have turbines in
19 that property.

20 Q. Looking at the map over your right shoulder, are you
21 able to locate where your property is?

22 A. Might take a minute.

23 Not enough reference on these things.

24 I guess they're showing me up right here in the
25 corner. This should be Section 12. 12,96,62. And I own

1 the 80 that sits down here in the corner (indicating).

2 Q. Thank you, Kevin.

3 A. Alls they have is my name on there. They don't have
4 it drawn out.

5 Q. And how long have you lived there?

6 A. This particular piece of property is not where I
7 reside.

8 Q. Okay.

9 A. I farm it. I own most of that 80. There's a few
10 acres that's owned by Larry Sherman out of Yankton. I
11 used to see them quite often when I went over there, but
12 they no longer go out there.

13 Q. And what kind of farming do you do on the land?

14 A. On that piece I have some CRP, and on the balance I
15 do corn and soybeans.

16 Q. And is your residence -- I'm confused in terms of
17 where your residence is at.

18 A. About two and a quarter. I'm down in Section 15.
19 They kind of --

20 Again, they got me showing off the grid over here, I
21 would believe (indicating).

22 Q. Okay. So you're outside the project area?

23 A. On this one. No wait. I see my name on here. I'm
24 right here (indicating). My son and I. Just a little
25 red dot.

1 And let's see. If I go a mile -- when I look at
2 this map, this stuff don't look right.

3 Q. That's fine. We don't need an exact location.

4 From where you reside, approximately how close is
5 the Beethoven Wind Farm?

6 A. I'd say possibly two and a half, kitty-corner.

7 Q. And at your residence are you able to hear the wind
8 farm?

9 A. The part I hear -- and it's like Jerome elaborated.
10 A lot depends on wind direction, that type of thing. But
11 what I notice is at times when I'm outside I can hear and
12 feel like a vibrating noise. And, yes, it's all in my
13 head because that's where you feel it.

14 I notice it more when I'm in the house. The house
15 is I call it an echo chamber because when you get in
16 there I hear it constantly. I either have to have a fan
17 or some type of white noise going. I don't sleep good at
18 nights. You know, I can fall right asleep, but I -- I
19 wake up in the night.

20 And we have an old farmhouse that was built before
21 indoor plumbing. So it's squared off. You go through
22 the bedroom, through the kitchen, and out into an
23 enclosed porch, and then the bathroom is back in the
24 corner.

25 Well, when you get to the porch there you can just

1 hear it and feel it. I can. There's times where I like
2 to sleep on my stomach, and there have been times when I
3 lay my head on the mattress it sounds like the mattress
4 is vibrating. I know it sounds weird.

5 But, you know, I came out last night. I slept up
6 here. I had a very refreshing sleep. It just -- it
7 don't happen at home.

8 Q. And what about when you go to your acres that are
9 closer to the Beethoven --

10 A. When I go over to the north place -- again wind
11 direction makes a difference. I would say from my line
12 to the nearest one is probably a quarter mile. And
13 there's two of them just in a line there.

14 A lot of times what you hear is that whoosh, whoosh
15 (indicating), and you can even hear the blades change as
16 they come down. Normally when I'm over there I wear
17 hearing protection when I'm away from the equipment
18 because I can't stand it.

19 I love to bow hunt, but I no longer go over there
20 just for that same reason. Because, like a hunter, I
21 want it to be nice and quiet. That's what I enjoy. I
22 don't want to hear that whooshing. Because after a
23 little while -- it would be like someone just sitting
24 there tapping (indicating), and how long of that can you
25 stand and then it just --

1 Q. How do you think that noise has affected your
2 quality of life?

3 A. It's not good when you're tired all the time. You
4 wake up. You're still tired. I drive school bus and I
5 usually get home about 1 o'clock in the afternoon and I
6 like to nap. You know, they said used to be when you
7 were a kid it was punishment. Now at our age it's
8 welcomed.

9 But same thing. I have to turn the fan on because
10 there's enough of a hmm-hmm (indicating) that I can't
11 sleep.

12 When I farm on my other property I don't farm there
13 at night simply because of the red lights. When you're
14 in the combine it's flashing off the interior of the
15 glass. So the only time I'll do anything when the lights
16 come on is if I need just a little corn to fill the
17 trucks so I can go home. Otherwise, I shut down and
18 quit.

19 Q. And have you noticed any of your symptoms or your
20 experiences getting better as time goes on?

21 A. No.

22 Q. Have you observed how this proposed project has
23 impacted the community at all?

24 A. Yeah. There's -- I know some of the business
25 owners, they have people on both sides of the fence so

1 they have to kind of tiptoe. They can't say they're for
2 or against it so they just kind of let things slide.

3 I know there's one individual in Wagner I talked to,
4 and that particular individual said they were --

5 Q. Well, we can't talk about what other people said.

6 A. Oh. Sorry. Yeah. But yeah. There are people
7 against it.

8 Q. Have you had any personal experiences with any
9 friends or family, relationships that have been
10 negatively affected by the proposed project?

11 A. Not so much. Earlier -- my daughter lives up at
12 Miller. There's a project up there. And she thought
13 they're not so bad. Well, she's since changed her mind.

14 MR. ALMOND: I don't have any other questions
15 for you, Kevin. Thanks for coming up.

16 THE WITNESS: You're welcome.

17 MR. DE HUECK: Cross, Prevailing Winds.

18 CROSS-EXAMINATION

19 BY MS. AGRIMONTI:

20 Q. Thank you. Good morning.

21 A. Good morning.

22 Q. Do you know what the sound level is at your home
23 from the wind turbines at the Beethoven Wind Farm?

24 A. No. I don't have none of that equipment.

25 Q. Have you seen a doctor about the medical symptoms

1 you've described here today?

2 A. No. Because I figured -- what can you do? I don't
3 like drugs so I don't want to have to take drugs just to
4 sleep.

5 Q. All right. So you have no third-party review of
6 your symptoms and any assessment about whether they're
7 related to the wind turbines?

8 A. The only thing I know is a year ago, year or two
9 ago, we went elk hunting out in Utah.

10 Q. Mr. Andersh, I'm just asking if you had had a third
11 party evaluate your condition?

12 A. No.

13 Q. No.

14 MS. AGRIMONTI: Thank you. That's all I have.

15 MR. DE HUECK: Mr. Fuerniss.

16 CROSS-EXAMINATION

17 BY MR. FUERNISS:

18 Q. Yeah. Kevin, just so we can help the Commission
19 understand since there was a little confusion locating
20 where you live versus where the land is and the existing
21 wind farm.

22 A. Uh-huh.

23 Q. Where you live, can you describe the difference in
24 elevation between where you live and where the Beethoven
25 Wind Farm is and your land that is there?

1 A. The difference between my residence and where the
2 turbines are located is there's some gently rolling hills
3 and I do have a big shelter belt and I'm thankful it's
4 there because it does block out the red lights. The
5 trees are tall enough where they do block them out. I do
6 have a gap in the trees where you can see one light. So
7 you just move to the side, and it disappears.

8 Theoretically, yeah. I probably shouldn't hear
9 nothing. My son, there's been times where he's heard the
10 actual vanes.

11 Right now my understanding, the proposed project --
12 and they've been out marking stuff -- is when we look to
13 the south there's no trees or anything there, and they're
14 going to put them right there. They'll be right out my
15 son's window.

16 Q. Okay. But I think what I'm trying to get at is is
17 the current wind farm located higher in elevation --

18 A. Yes.

19 Q. -- than where you live?

20 A. Yes.

21 Q. And you know that directly across from the road or
22 the right of way where you live there's a creek.

23 A. Correct.

24 Q. Think a little bit about the make-up of that creek.
25 Where does the water come from that flows through that

1 creek?

2 A. That would come from the north, if that's what
3 you're asking me.

4 Q. Yes.

5 A. It flows -- yeah. It flows down through.

6 Q. From the north or northeast?

7 A. I guess, westerly. Comes westerly. But it -- you
8 know, it gets back up in your area, and it flows down
9 around, you know.

10 That creek there runs through pastureland so it's
11 all hills. It all runs in. But the creek does go to the
12 west, and then it should come through Terry's and go back
13 to the north.

14 Q. Okay. But you're basically downstream --

15 A. Yes.

16 Q. -- from where the wind farm is?

17 A. Yes.

18 MR. FUERNISS: Thank you.

19 MR. DE HUECK: Ms. Jenkins, any questions?

20 MS. JENKINS: No. Thank you.

21 MR. DE HUECK: Ms. Pazour.

22 MS. PAZOUR: No. Thank you.

23 MR. DE HUECK: Staff.

24 MS. REISS: Thank you.

25

CROSS-EXAMINATION

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BY MS. REISS:

Q. Just briefly. Did I hear you correctly? Did you mention you slept with a fan on?

A. Yes.

Q. Have you always slept with a fan on?

A. No.

Q. When did you start turning the fan on?

A. When I had trouble sleeping, and I complained to the wife hearing this vibrating noise. She also doesn't sleep very well. She can't hear the noise but -- we used to sleep --

When we first moved out there, which was a long time ago -- and I was born and raised on that farm. The only time I left was to go to college. And there was a couple years in there where we lived in a different -- out in Rapid.

But we used to have the windows open, listen to the crickets all the time too, and you can't do that anymore. Because our bedroom would face to the west and -- or the east, excuse me. To the east.

And I told Sherman wrong. It runs to the east. The creek runs to the east.

Q. Sure. How has the quality of your sleep changed since you've started sleeping with the fan on?

1 A. I can go right to sleep, but I don't stay asleep.
2 And, as I stated, I guess age has its deal where you've
3 got to get up in the middle of the night and, like I
4 said, you wander through the bathroom or out to the porch
5 there and I can just hear it and feel it, that hmm, and
6 you just can't get back to sleep.

7 Q. Okay.

8 MS. REISS: Thank you. No further questions.

9 THE WITNESS: You're welcome.

10 MR. DE HUECK: Brings us to Commissioner
11 questions.

12 Commissioner Hanson.

13 COMMISSIONER HANSON: Good morning, Mr. Andersh.

14 THE WITNESS: Good morning.

15 COMMISSIONER HANSON: Is that correct? Andersh?

16 THE WITNESS: Yes.

17 COMMISSIONER HANSON: I missed it if it was
18 stated. How far away is the closest wind turbine to you
19 presently via a straight distance as opposed to trying to
20 drive it?

21 THE WITNESS: As a kitty-corner, I think about
22 two and a half, somewheres in there. Two. It's just
23 over two because, you know, I'm in a ways and --

24 COMMISSIONER HANSON: And the second one?

25 THE WITNESS: It's -- the property that I'm

1 residing at or the property that I farm?

2 COMMISSIONER HANSON: Where you would be
3 sleeping and --

4 THE WITNESS: Okay. That one's in that -- let's
5 just say it's inside of three, and we've got it covered.

6 COMMISSIONER HANSON: All right.

7 THE WITNESS: It's less than three but --

8 COMMISSIONER HANSON: And where you farm or you
9 see the red lights flashing that bother you, how far are
10 you --

11 THE WITNESS: The 80 I got, it sits -- it would
12 be the south half -- southwest. You know how it goes.

13 I got the long 80 and there's another 80 that
14 the colony owns, Clearfield Colony, and then they own the
15 rest of it and the turbines are right to the east.

16 COMMISSIONER HANSON: Okay. It depends upon how
17 the 80 is laid, though, whether it's a rectangle or a
18 square. Excuse me.

19 THE WITNESS: That's fine.

20 COMMISSIONER HANSON: Trying to figure out how
21 far --

22 THE WITNESS: That's all right. I can't hear
23 very good either.

24 COMMISSIONER HANSON: Is it a half-mile then?

25 THE WITNESS: The other two turbines are within

1 a half-mile. Yes.

2 COMMISSIONER HANSON: Thank you.

3 THE WITNESS: You're welcome.

4 COMMISSIONER NELSON: Thanks for being here. No
5 questions.

6 THE WITNESS: You're welcome.

7 MR. DE HUECK: Commissioner Fiegen.

8 CHAIRWOMAN FIEGEN: No questions. And thank you
9 for being here.

10 THE WITNESS: Welcome.

11 MR. DE HUECK: Any redirect, Mr. Almond?

12 Any cross-examination based on Commission
13 questions?

14 Thank you for your testimony today. You may
15 step down.

16 THE WITNESS: You're welcome.

17 (The witness is excused.)

18 MR. DE HUECK: Mr. Almond, you may call your
19 next witness.

20 MR. ALMOND: Scott Rueter.

21 Scott Rueter,

22 called as a witness, being first duly sworn in the above
23 cause, testified under oath as follows:

24 (A short recess is taken.)

25 MR. DE HUECK: We're back in session now.

1 Mr. Almond, when everyone settles in, you'll
2 begin your direct examination.

3 DIRECT EXAMINATION

4 BY MR. ALMOND:

5 Q. Scott, can you introduce yourself to the Commission.

6 A. Yeah. My name is Scott Rueter, and I'm from
7 Lake Park, Iowa. I live at 905 Lakeside Avenue.

8 Q. And Lake Park, Iowa, where is that at in relation to
9 Sioux Falls?

10 A. About 70 miles east.

11 Q. And how long have you been residing at your current
12 residence?

13 A. Nine years.

14 Q. And before you lived at your current residence where
15 did you live?

16 A. I lived at 1341 U Avenue. That was in -- not in
17 town but a rural address. It's Harris, Iowa.

18 MR. DE HUECK: Before we go any farther, I think
19 the witness needs to be sworn in.

20 THE WITNESS: We did that already.

21 MR. DE HUECK: Did we? Apologies.

22 Q. Do you have Exhibit I-8 open in front of you?

23 A. Yeah.

24 Q. And is that a Google Maps view of your former
25 residence of 1341 U Avenue?

1 A. Yes, it is.

2 Q. And are there wind turbines located around your
3 former residence?

4 A. To the south there's six of them in about a
5 mile-and-a-half stretch.

6 Q. When were those turbines built?

7 A. 2008, I believe.

8 Q. And that 1341 U Avenue property, how long did you
9 live there?

10 A. How long have I lived there?

11 Q. How long did you live there?

12 A. About 45 years except for a couple years where I was
13 gone to college and -- yeah. About 45 years
14 approximately.

15 Q. How long has that property been in your family?

16 A. Oh. Before I was alive. I'm not sure. I
17 suppose -- my dad farmed it forever. I'm going to say at
18 least 60 years.

19 Q. And do you still own the property?

20 A. I do now, yes.

21 Q. And does anyone reside at that house located on the
22 property?

23 A. No. Not currently.

24 Q. Approximately how far is the closest turbine to that
25 residence of the 1341 U Avenue?

1 A. 987 feet.

2 MS. AGRIMONTI: Mr. de Hueck, I'm going to
3 interpose an objection to the continued testimony of this
4 witness.

5 He's established that he is talking about a wind
6 farm in Iowa and property in Iowa, which is not relevant
7 to the proceeding. Therefore, I would move to not allow
8 any additional testimony.

9 MR. DE HUECK: I will overrule your objection
10 and allow Mr. Almond to continue.

11 Q. How tall are the turbines that are close to your
12 property?

13 A. Approximately 462 feet to the tallest part of the
14 blade, I believe.

15 Q. And do you own property that has turbines on it?

16 A. Yes, I do.

17 Q. And what wind project is that?

18 A. Osceola Wind Power it's called right now. It's
19 owned by NextEra. When it was originally built it was
20 built by Clipper and then they went bankrupt and now it's
21 owned by NextEra is the name of it.

22 Q. And how many turbines are on property that you own?

23 A. Two.

24 Q. And when were those put on your property?

25 A. 2008.

1 Q. Is that the same wind development that's associated
2 with the towers here south of your former residence?

3 A. Yes.

4 Q. Why did you move from your former residence?

5 A. Why?

6 Q. Yeah.

7 A. Well, after they put the turbine up I couldn't sleep
8 anymore, and I didn't have any choice. I slept for
9 probably an hour and a half a night for almost a year,
10 and my body was shutting down. I could feel it. I lost
11 35 pounds. Life's too short to live by a wind turbine
12 that close.

13 Q. So how long did you live at this residence that you
14 lived at for 46 years with a wind turbine before you
15 decided to move?

16 A. I would have moved the next day, but it takes a
17 while for all of that to happen. I lived there for about
18 a year and three months before I actually got a house
19 bought.

20 Q. In that year and a few months did you notice any of
21 your sleep disruption or symptoms decline at any point in
22 time?

23 A. Did it decline?

24 Q. Yeah.

25 A. My sleeping?

1 Q. No. Did your sleep disruption decline? Were you
2 able to sleep better as the time progressed?

3 A. The only time I slept good is if the wind turbines
4 didn't turn at night. I mean, if there's no wind.

5 Q. And under what conditions were the turbines the
6 loudest?

7 A. Always in the wintertime is a lot worse. I'd
8 describe it as a lake effect. If there's ice on a lake
9 and somebody's talking or you're out fishing and
10 someone's talking, it travels.

11 In the wintertime it has the same effect. If
12 there's ice on the ground or there's snow on the ground,
13 there's nothing to stop that noise. It's a lot worse.
14 That and high humidity days.

15 Q. And have you gotten used -- first, what kind of
16 sound do these turbines make?

17 A. Oh, you hear a whooshing noise all the time. At the
18 worst part of it, it sounds like a jet airplane ready to
19 take off and it never leaves. That's probably at the
20 worst. It doesn't always sound the same.

21 It's constant. That's the problem. It never goes
22 away. It's 24/7 if that turbine is going. Some days it
23 can be better. Some days it can be worse. I would say
24 the -- the worst is actually when it's about a 10- to a
25 15-mile-an-hour wind. You wouldn't think so. You'd

1 think at a 40-mile-an-hour wind it would be worse. But
2 you hear all the other noises at that time, trees,
3 everything else.

4 I'd say probably maybe two-thirds of the year is the
5 10- to 15-mile-an-hour winds.

6 Q. And did you live with anyone else in the house
7 during that little over a year period?

8 A. My wife and two kids.

9 Q. And did they have any difficulties sleeping?

10 A. My wife did. Not to the extent that I did.

11 Q. Was she --

12 How did the disruption of sleep affect your quality
13 of life?

14 A. Well, if you don't have your health, you don't have
15 anything. And my health was declining so fast within a
16 year. I went to a doctor and I went there and he says --

17 Q. Well, you can't talk about what your doctor said.

18 A. Okay. Well, I mean, I went there. It's hard to
19 describe. You don't have your health, you have nothing.
20 And if you can't sleep -- I can say it's kind of like
21 going to a prom without the dancing and stuff. You're up
22 all night and you can handle that for a night or two but
23 after that it really wears on you.

24 And I slept for about an hour and a half for almost
25 a year unless that turbine was shut off or I was gone. I

1 went camping a lot that year just to get away from it.

2 Q. And once you moved to your current residence did
3 your sleep get better?

4 A. Yes.

5 Q. And how do you sleep now?

6 A. Like a baby.

7 Q. Has your health improved?

8 A. Yes.

9 Q. Significantly?

10 A. What's that?

11 Q. Significantly?

12 A. Oh, yeah. Yeah.

13 Q. Do you -- I mean, you testified earlier that you
14 still own that property. Do you still go back there?

15 A. Yeah. That's where I farm. I'm a farmer, and
16 that's where my machine shed is so I have to.

17 Q. And when you go back there do you notice any
18 physical symptoms that come up?

19 A. Oh, yeah. You get -- I get a headache if you're
20 there long enough for the day. Actually from my house
21 where I live now I can see the turbines, which is about
22 six miles away as the crow flies, and I can tell if
23 they're turning or not.

24 I watch the weather to see if they're turning. And
25 I get all my equipment ready pretty much in August for

1 the next year because that's usually when the winds are
2 the lowest in the summertime.

3 I get everything ready a lot faster now than I used
4 to because once they turn on -- I can't be there all day
5 when they're on. It's too close. It's too loud.
6 There's too many of them.

7 Q. So you take precautionary steps so you don't have to
8 be at your farmhouse as long as you otherwise would be?

9 A. Oh, yeah. Absolutely.

10 Q. And you say you signed up for this project?

11 A. Yes, I did.

12 Q. And how many turbines did you say you have on your
13 land?

14 A. Two.

15 Q. Are they both functioning?

16 A. No. Last June -- June of 2017 one of them caught on
17 fire and burned down to the ground.

18 Q. And I'm going to show you --

19 A. Or not to the ground. The tower is still standing
20 there, but the blades burned down.

21 Q. I'm going to show you what has been marked as
22 Exhibit I-10.

23 MS. AGRIMONTI: And I will object to the
24 introduction of I-10 in advance. It's an instance of an
25 event in another state with a turbine that's different

1 than what's being proposed here.

2 MR. DE HUECK: And I will overrule your
3 objection again and just point out that I believe the
4 probative value of this evidence outweighs any
5 prejudicial effect that it may have.

6 (The video is played.)

7 Q. And is this the turbine that's on your property?

8 A. Yes, it is.

9 Q. And when was this occurring?

10 A. June 4 or 5 of 2017. I can't remember what day.

11 (The video is concluded.)

12 Q. So that happened last summer. Has that turbine been
13 fixed yet?

14 A. No.

15 Q. And if you turn to Exhibit I-12 in front of you, is
16 Exhibit I-12 a photo of what the turbine on your property
17 currently looks like?

18 A. Yes.

19 MR. ALMOND: No further questions. Thank you,
20 Scott.

21 THE WITNESS: Yes.

22 MR. DE HUECK: Cross-examination.
23 Prevailing Winds.

24 MS. AGRIMONTI: Yes. Thank you.

25

CROSS-EXAMINATION

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BY MS. AGRIMONTI:

Q. Good morning.

A. Morning.

Q. What model turbines were placed on your land on your property in Iowa that you were just showing in the video that was put out?

A. They were made by Clipper, I believe.

Q. Do you know the size of those turbines?

A. 2.5 megawatts.

Q. And who is the developer who was operating those turbines most recently?

A. NextEra.

Q. How far away from your home is the nearest turbine?

A. Where I used to live?

Q. Where these two turbines are located and the residence -- let me just make sure I understand.

There are two turbines on property where you used to live; is that correct?

A. No. I never lived there.

Q. Okay. You never lived on the property with the two turbines?

A. No.

Q. All right. The house that you moved from, how close was the nearest turbine?

1 A. 983 feet. Or 85. Whatever. I'm not sure.

2 Q. And is that part of the same project operated by
3 Clipper at that time?

4 A. Yes. But that's -- they're not on my ground.

5 Q. They're not on your ground; they're near your
6 ground?

7 A. Correct.

8 Q. Do you know what the decibel level was at your house
9 the night the project first went into operation?

10 A. About 18. Before the turbines?

11 Q. Yeah. I've asked a bad question. Let me try again.

12 You mentioned that you would have left your home the
13 first night if you were able to. Do you remember that?

14 A. Yes.

15 Q. What was the sound level if you had measured -- did
16 you measure the sound level that first night from the
17 operating wind farm?

18 A. No. I didn't measure it that night.

19 Q. And you haven't provided any medical records in this
20 proceeding regarding the ailments that you talked about;
21 is that right?

22 A. No.

23 Q. You commenced a lawsuit against the owner of the
24 wind farm in 2010 claiming a nuisance; is that right?

25 A. Correct.

1 Q. Did you also assert that the wind farm had caused
2 the medical issues that you've identified here today?

3 A. What was the question?

4 Q. In that lawsuit did you make claims about adverse
5 health effects due to the wind farm?

6 A. Yes.

7 Q. I'm going to hand you a document that's been
8 identified as A41.

9 Mr. Rueter, did you bring that lawsuit along with
10 your wife, Tricia Rueter?

11 A. Yes.

12 Q. And is this a document you have seen before?

13 A. I didn't read through it all.

14 Q. Please take your time.

15 Yeah. Is this the Order from the Court of Appeals
16 of Iowa affirming the dismissal of your case?

17 A. Yes.

18 MS. AGRIMONTI: I have no further questions. I
19 would move admission of A41.

20 MR. ALMOND: No objection.

21 MR. DE HUECK: It will be admitted. Thank you.

22 And I'm sorry. Did you say no further
23 questions?

24 With that, Mr. Fuerniss, questions.

25 MR. FUERNISS: No questions.

1 MR. DE HUECK: Ms. Jenkins.

2 MS. JENKINS: No questions.

3 MR. DE HUECK: Ms. Pazour.

4 MS. PAZOUR: No questions.

5 MR. DE HUECK: Staff.

6 MS. REISS: Yes. Thank you.

7 CROSS-EXAMINATION

8 BY MS. REISS:

9 Q. I'd like to bring your attention back to the video
10 we watched with the malfunction of the turbine. Do you
11 recall that video?

12 A. Yes.

13 Q. Were you present when that incident occurred?

14 A. No, I wasn't.

15 Q. Do you know how far the turbine fell -- or the
16 turbine blade fell from the base of the turbine in that
17 incident?

18 A. How far it fell from where?

19 Q. From the base of the turbine.

20 A. Well, it fell from the top of the tower to the
21 bottom. It hit at the bottom. I don't know how far, no.

22 Q. You don't know the distance that it rested after it
23 fell?

24 A. No. I mean, it fell towards the bottom of the
25 turbine, but it scattered stuff all over my field.

1 Q. Okay. Did the blade fall into your field?

2 A. Yes.

3 Q. Did it damage any crops?

4 A. Yes.

5 Q. Do you have any knowledge of whether the local fire
6 department responded to this incident?

7 A. They were called, but they were told that they could
8 not come out there because it was too dangerous.

9 MS. AGRIMONTI: Objection. The witness is
10 testifying to what the fire department may have been
11 told. So, you know, probably the better way to do this
12 is to strike and I'll maybe do that next time but the
13 witnesses aren't trained to know that they shouldn't be
14 talking about what other people say so I object.

15 MS. REISS: Can I just interject that this is
16 extremely relevant as a safety concern?

17 MR. DE HUECK: Yeah. But I think you can couch
18 it in terms of questions that don't ask him to -- just
19 more or less his present sense impression as to did the
20 fire department show up? Yes. How long did they
21 respond? What did they do when they got there type of
22 thing.

23 MS. AGRIMONTI: Mr. de Hueck, I believe the
24 witness said he wasn't there, and he didn't take this
25 video.

1 MR. DE HUECK: Right. So his question should
2 answer in the negative.

3 MS. AGRIMONTI: Thank you.

4 Q. Can I just ask again, are you aware of whether the
5 fire department, the local fire department, responded to
6 this incident?

7 A. I did not see them there. I got a call in the
8 morning from one of -- Clipper Wind Power people told me
9 that my turbine was on fire. I did not actually see the
10 fire department there.

11 Q. Okay.

12 A. If that's what you want to know.

13 Q. Okay. And I believe you may have answered this
14 already, but how close is the nearest turbine to your
15 current residence?

16 A. To where I live now?

17 Q. Yes.

18 A. Probably 4 miles as the crow flies.

19 Q. Okay. And are you still experiencing symptoms at
20 your current residence?

21 A. As far as sleep?

22 Q. Yes.

23 A. No.

24 MS. REISS: No further questions.

25 MR. DE HUECK: That brings us to Commission

1 questions.

2 Commissioner Nelson.

3 COMMISSIONER NELSON: Thank you. You've talked
4 about at your former residence -- and I'm looking at
5 Exhibit I-8.

6 I see the six turbines that you referenced.
7 You've indicated the distance to the nearest one. Can
8 you tell us the distances to the other five turbines?

9 THE WITNESS: It's not on there, is it?

10 COMMISSIONER NELSON: No.

11 THE WITNESS: The closest one is like 980 some
12 feet. I think the next one is between 12 and 1,400.
13 There's another one around 1,700. They're all within
14 probably three-fourths of a mile of my house. I don't
15 know the exact distance. I mean, I could get that. I
16 don't have it with me today.

17 COMMISSIONER NELSON: And the two turbines that
18 are on your property are not shown on I-8; is that
19 correct?

20 THE WITNESS: That's correct.

21 COMMISSIONER NELSON: The turbine that was
22 disabled by the fire that we just saw, are you still
23 receiving easement payments for that?

24 THE WITNESS: No. I haven't got anything.

25 COMMISSIONER NELSON: And per your easement

1 contract should you still be receiving payments?

2 THE WITNESS: They say you get a minimum of
3 \$1,000 until they take the whole thing down. But they
4 don't -- they don't put anything on the thing so you
5 can't really tell if you're getting that or not.

6 I have not got the revenue. I've gotten half
7 the revenue of what I used to, put it that way, so I'm
8 assuming I'm not getting anything.

9 COMMISSIONER NELSON: Okay. I'm confused by
10 your response. So let me ask it again.

11 THE WITNESS: Okay.

12 COMMISSIONER NELSON: The easement agreement
13 that you have with what is now NextEra.

14 THE WITNESS: Right.

15 COMMISSIONER NELSON: I'm assuming that requires
16 them to make annual payments; is that correct?

17 THE WITNESS: Quarterly.

18 COMMISSIONER NELSON: Quarterly payments.

19 THE WITNESS: Yes.

20 COMMISSIONER NELSON: Are you still receiving
21 quarterly payments for the turbine that burned?

22 THE WITNESS: No. There's no revenue. It's not
23 turning so there's no revenue.

24 COMMISSIONER NELSON: So the easement agreement
25 you signed was based entirely upon revenue; is that

1 correct?

2 THE WITNESS: Yes. Except for the \$1,000
3 minimum per turbine. If the turbine was put up and never
4 turned for a whole year, I get \$1,000. But, otherwise,
5 when it does not turn, I do not get the revenue.

6 COMMISSIONER NELSON: Does your -- does the
7 easement agreement that you signed have provisions for
8 removal of turbines?

9 THE WITNESS: It does not say that in the thing
10 but -- in the easement. They say they're going to take
11 care of it, but nothing's happened.

12 COMMISSIONER NELSON: When you say the easement
13 agreement says that they will take care of it, what do
14 you mean by that?

15 THE WITNESS: The easement doesn't say that.
16 The wind company says -- when they originally came in,
17 said if something happens we'll take the turbines down.
18 Nothing was ever done. The county let it slide, and I've
19 heard that it could take up to \$250,000 per turbine to
20 remove them.

21 COMMISSIONER NELSON: So the easement agreement
22 that you signed does not have any provision for removal
23 of the turbines.

24 THE WITNESS: Correct.

25 COMMISSIONER NELSON: No further questions.

1 MR. DE HUECK: Chairman Fiegen.

2 CHAIRWOMAN FIEGEN: No questions.

3 MR. DE HUECK: Commissioner Hanson.

4 COMMISSIONER HANSON: Good morning --

5 THE WITNESS: Good morning.

6 COMMISSIONER HANSON: -- Mr. Rueter. Thank you
7 for making the voyage up to Pierre.

8 THE WITNESS: Yeah.

9 COMMISSIONER HANSON: A little bit of rain here.
10 Can you tell us -- you spoke of sleep
11 deprivation, considerable. What other symptoms did you
12 experience, or were there other?

13 I should ask, were there other symptoms that you
14 experienced, and, if so, what are they? Or were they?

15 THE WITNESS: You feel anxiety. There's
16 conflict between you and -- I wouldn't say me and my
17 kids. Me and my wife. My wife did not want to move at
18 all. She cried the whole day we moved. I almost got
19 divorced over it.

20 Physical symptoms, I would say it's mostly sleep
21 for me. The little lights on top don't bother me at all.
22 Some people it does. Everybody -- it bothers people
23 differently.

24 I would say beings these turbines are so close
25 it's the shadows is what really bothers you during the

1 day. Because there's a line of them to the south of me,
2 and certain times of the year where the sun is, them
3 shadows will go for almost a mile, depending on where the
4 sun's at.

5 And you see them, and they just -- you see them
6 in your house. It's like you're turning the light switch
7 off and on continuously for probably about 15, 20 minutes
8 in the morning, 15, 20 minutes in the afternoon.

9 And then if you're outside, it goes on forever.
10 When you're driving a combine you see those shadows and
11 it -- people that do tiling are in the ground. I've seen
12 a guy jump out of a hole because he thought the hole was
13 going to cave in because that shadow goes by so quick and
14 he thought -- you know, he was scared for his life.

15 You don't ever get used to that. You don't ever
16 get used to the noise.

17 I was fortunate enough I had enough money that I
18 could build another house -- or I didn't build it. I
19 bought it. But, you know, like I said, I went -- I had
20 the symptoms, and you don't have nothing unless you have
21 your health. And it's not --

22 You asked me what symptoms I had. It's not
23 really -- it's noise and it's the shadows but it's a low
24 frequency noise. It's a -- I don't know how to explain
25 it. It kind of gets into your body. I think the only

1 way you could get away from that is if you lived
2 underground, if you had your house -- like you lived --
3 in fact, if I go down in my basement, sometimes you could
4 not hear it as much.

5 But at the farm I didn't have a finished
6 basement so I didn't want to sleep down there. But
7 that's really the only way I think you could get away
8 from this infra raised -- or I don't know what they call
9 it. Low frequency noise. That's the part that really
10 pulls your body down.

11 COMMISSIONER HANSON: Thank you for sharing
12 that.

13 Do you know how many hours the flicker -- how
14 many -- would you hazard a guess as to how many, excuse
15 me, hours during the year that you actually experienced
16 the shadow flicker on your property?

17 THE WITNESS: In the house or where?

18 COMMISSIONER HANSON: Yes. Affecting the
19 residence, yes.

20 THE WITNESS: Affecting the residence. In the
21 house I would say is probably 20 minutes in the morning
22 every day, 20 minutes every night when the sun's out. I
23 mean, it's cloudy you don't get it as much.

24 COMMISSIONER HANSON: Sure.

25 THE WITNESS: Outside on my residence walking

1 around the farm I'd say up to an hour and a half every
2 day.

3 COMMISSIONER HANSON: Okay. Thank you.

4 Ms. Reiss was asking you some questions
5 pertaining to the distance the blade fell. Via the
6 video, we saw that the blade hit the ground and then it
7 fell away from the tower itself.

8 And we understand that this was not the same
9 operator as the Applicant is and it's in a different
10 state and there's some different laws pertaining to it
11 and different agreements and things of that nature.

12 But from my own curiosity and future reference
13 in dealing with wind farms and different applicants,
14 could you tell me -- I'll guess that you possibly know
15 the length of the blades on that turbine. If not, just
16 say so.

17 THE WITNESS: I could get it. I don't know it
18 offhand.

19 COMMISSIONER HANSON: Okay. And when it fell it
20 fell away from the base so that it extended almost the
21 length of the blade. The blade was damaged so it fell
22 away from the tower a certain distance.

23 And since you don't know the length of the
24 blade, are you aware of how far away from the base the
25 end of the blade was?

1 THE WITNESS: No, I don't. But I know there was
2 stuff that was in my field, remnants from it over a
3 quarter of a mile away.

4 COMMISSIONER HANSON: Okay. That was going to
5 be my last question as to the debris that fell from that
6 blade and possibly debris that came from the fire itself
7 and lofted.

8 THE WITNESS: Right.

9 COMMISSIONER HANSON: Fiberglass or whatever
10 to -- and your testimony is that debris was a
11 quarter-mile away?

12 THE WITNESS: Yeah. There was some a
13 quarter-mile away.

14 COMMISSIONER HANSON: Okay. And from the blade
15 itself, what had shattered, and how far was that debris
16 away?

17 THE WITNESS: That's what I was talking about.

18 COMMISSIONER HANSON: That's the quarter-mile?

19 THE WITNESS: What were you talking about?

20 COMMISSIONER HANSON: Well, I'm assuming and I
21 may be wrong --

22 THE WITNESS: The tower never fell. Yeah.
23 Okay.

24 COMMISSIONER HANSON: But as a kid I burned
25 plastic, and there were pieces of plastic that would --

1 you know, you're working with your models and such and
2 some of that plastic floats around and then your mother
3 gets on your case for it.

4 So I'm wondering from a larger fire, Fiberglass,
5 if that's carried for a distance. But you're not aware
6 of that.

7 THE WITNESS: I don't know. All I know is if it
8 would have been a 30-mile-an-hour wind day out of the
9 south or the north or the east or the west, it would have
10 burned thousands of acres.

11 COMMISSIONER HANSON: Okay. That's interesting.
12 And perhaps not for this particular case directly, but I
13 appreciate the information.

14 Thank you very much, sir.

15 THE WITNESS: Yes.

16 COMMISSIONER NELSON: I want to -- just so that
17 I understand your testimony about the shadow -- shadows
18 on your former home, 15 to 20 minutes a day, morning and
19 evening year-round?

20 THE WITNESS: It depends on if the sun's out. I
21 mean, it's --

22 COMMISSIONER NELSON: All right. If the sun was
23 out 15 in the morning, 15 in the evening, year-round; is
24 that correct?

25 THE WITNESS: It all depends on -- I can't

1 remember. It's more in the winter, I think. It depends
2 on where the sun's at according to where they place these
3 wind turbines on your ground.

4 If these wind turbines were on the north side of
5 my house, I probably would never get them in my house.
6 But they're all to the south and there's six of them
7 there so as the sun comes up, and it has to get up quite
8 a ways before it quits, and then it comes down again at
9 night.

10 So I would say, no, it's not every day, but when
11 it's there it's very noticeable.

12 COMMISSIONER NELSON: Thank you.

13 MR. DE HUECK: Any redirect, Mr. Almond?

14 MR. ALMOND: No.

15 MR. DE HUECK: Cross based on Commission
16 questions?

17 MS. AGRIMONTI: No, thank you, Mr. de Hueck.

18 MR. FUERNISS: No.

19 MS. JENKINS: No.

20 MR. DE HUECK: Ms. Pazour.

21 RE-CROSS-EXAMINATION

22 BY MS. PAZOUR:

23 Q. You have farm ground; right?

24 A. Yes.

25 Q. You combined it, or is it like hay ground?

1 A. I combine it.

2 Q. I guess my question is when you're combining it
3 could some of the debris go along with the feed?

4 A. Yes. It has. I farm about 1,100 acres, and I pick
5 up more stuff around those two turbines than I do on the
6 rest of my 1,100 acres.

7 Q. So it could get into like livestock, be consumed.

8 A. Yeah. It would have to go into the grain tank and
9 not get thrown out the back of the combine. But it's
10 possible, yes.

11 MS. PAZOUR: Thank you.

12 MR. DE HUECK: Staff.

13 MS. REISS: No questions.

14 MR. DE HUECK: Thank you for your testimony
15 today. You may step down.

16 (The witness is excused.)

17 MR. DE HUECK: Mr. Almond, you may call your
18 next witness.

19 MR. ALMOND: Vicki May.

20 Vicki May,

21 called as a witness, being first duly sworn in the above
22 cause, testified under oath as follows:

23 DIRECT EXAMINATION

24 BY MR. ALMOND:

25 Q. Vicki, can you introduce yourself to the Commission.

1 A. Yes. My name is Vicki May. I live at 88737 500th
2 Avenue, Lynch, Nebraska, which is approximately 50 miles
3 south of Wagner.

4 Q. And do you live near a wind farm?

5 A. Yes. I've lived next to the Grand Prairie Wind
6 Farm, which is a 200-turbine, 400-megawatt wind farm.

7 Q. And how tall are the turbines in that wind farm?

8 A. When the blade is at the 12 o'clock position they're
9 443 foot tall.

10 Q. And how close do you live to the nearest turbine?

11 A. The nearest turbine from our home is one and
12 three-eighths miles.

13 Q. And if you could flip to Exhibit I-4 for me. Is
14 that a Google Maps view of your residence?

15 A. Yes.

16 Q. Is your residence where the red pin is at at the top
17 of that map?

18 A. Yes.

19 Q. And where are the turbines at in relation to that
20 red dot?

21 A. They're located to the south, the southeast, and the
22 southwest of our home.

23 Q. And can you count the number of turbines there on
24 that map?

25 A. Oh, gosh. I believe I can see 12 on this particular

1 picture.

2 Q. And are you able to see the turbines from your
3 residence?

4 A. Yes. Out my south great room windows.

5 Q. And did you --

6 A. From my porch.

7 Q. Did you and your husband prepare some videos to show
8 what that looks like?

9 A. Yes.

10 Q. I'm going to show you what has been marked as
11 Exhibit I-6.

12 MS. AGRIMONTI: Mr. de Hueck, I believe there
13 are several exhibits. Mr. Almond may be able to help me
14 here on the numbers. It's I -- can read behind me. I-6a
15 through E and No. 7.

16 MR. ALMOND: I-6a through E is what I intend to
17 show.

18 MS. AGRIMONTI: Not 7. Okay.

19 So to extent those are video clips about
20 property in another state, we would object as being not
21 relevant.

22 MR. DE HUECK: Again, I'll stick to my same
23 ruling on the prior video, but your objection is noted.

24 Q. As I open up the video, can you just explain to the
25 Commission what it is we're looking at?

1 (The video is played.)

2 A. This is the view from the corner of our screen
3 porch, which sits on the east side of our residence. So
4 this is my view to the south and the southeast.

5 Q. And that was Exhibit I-6a. I'm going to open up
6 Exhibit I-6b. Can you explain to the Commission what
7 this video is?

8 (The video is played.)

9 A. This is up at the barn, which is north of our house
10 but gives you an idea of what we see.

11 Q. And now Exhibit I-6c.

12 A. This is up on our alfalfa field which sits north of
13 our place. Our place is down in those trees that you see
14 there. But it gives a broader range from that particular
15 field. If you pan from west to east, we have a view of
16 65 of the 200 turbines.

17 Q. And you said your house is located within a band of
18 trees. When that comes up can you kind of identify where
19 in the video it is that your house is located at?

20 A. Sure.

21 It would be in that group of trees there that you
22 just panned by.

23 Q. And Exhibit I-6d.

24 (The video is played.)

25 A. Okay. This is just another view. This is from the

1 backside. We have a 10-acre pond on our property, and,
2 there again, those trees that you see there are where our
3 home is located, in those trees.

4 Q. We don't --

5 A. This is -- I didn't realize I took that many videos.

6 Q. When did the project that we just looked at get
7 built and become operational?

8 A. It became -- it started in the late fall of 2014
9 where they put in a few of the bases. The main project
10 was built throughout 2015 and became fully operational in
11 the third week of October in 2016.

12 Q. And prior to it getting built, were you opposed to
13 the project?

14 A. No. We were not. In fact, my husband is on the
15 planning and zoning for our local county. We had no
16 animus against the project. We knew our view shed would
17 possibly be changed forever, our night sky would be
18 changed, but what we had no idea was the sound.

19 Q. You said your husband was on the Planning
20 Commission. Did that Commission consider the project?

21 A. Yes, they did. And it passed unanimous and was then
22 presented to our Board of Supervisors, which moved the
23 project forward.

24 Q. So your husband voted in favor of the project?

25 A. He had some concerns. He knew the project was going

1 to come in close to our place. We weren't -- let me just
2 say the information that was provided when they needed to
3 issue -- when they came before them for the CUP was not
4 final. There were no final site layouts so --

5 Q. Let me stop you there.

6 A. Okay.

7 Q. Let's not get into the Application process of that.

8 A. All right.

9 Q. But your husband did vote in favor of this project?

10 A. Yes, he did. After asking quite a few questions
11 because he knew it would impact us.

12 Q. And at one and a third mile are you able to hear the
13 turbines at your residence?

14 A. When the wind is out of the south or the southeast,
15 yes.

16 Q. What about when it's out of the north?

17 A. No. You can hear them slightly, maybe a slight
18 whoosh, whoosh, but nothing like when it's out of the
19 south or the southeast.

20 I'm sorry.

21 Q. That's fine. Take a moment.

22 A. I'm fine.

23 Q. And when the wind's blowing out of the south or
24 southeast are you able to hear the turbines inside your
25 home?

1 A. Yes.

2 Q. When did you first notice that sound?

3 A. I can tell you the exact time and date. It was
4 October 29. It was a Sunday night at 7:36 in the
5 evening. We were watching Madam President on TV, and we
6 looked at each other and said What is that sound? We had
7 never heard that sound before.

8 I looked at my husband, and I said, It's not those
9 turbines, is it? And we went out on our front porch, and
10 it was the turbines.

11 Q. And does that same sound persist every time there's
12 a south or southeast wind?

13 A. Yes. Depending on the wind speed.

14 Q. And describe -- describe the sound for the
15 Commission.

16 A. At our home the sound -- the most often sound we
17 hear is like a jet plane revving up to take off, but that
18 plane never leaves. And if it roars long enough, then we
19 get what I'll call a pulsating sound.

20 To me if you've ever washed any of your kids' tennis
21 shoes and then had to dry them in the dryer so they can
22 get to a sporting event, you get that thump, thump noise
23 after a certain wind speed.

24 Q. And has the noise from the wind turbines affected
25 your ability to sleep in your home?

1 A. Yes.

2 Q. Tell us about that.

3 A. If you can get to sleep, it's very limited sleep.
4 Our bedroom is on the south end of our house, along with
5 our great room so those are the rooms we spend our most
6 time.

7 It's not uncommon in the summer especially when we
8 have the most south and southeast wind that I will go
9 eight, nine nights in a row without sleep.

10 I've had to find different places in my house now
11 that I can sleep. But, there again, it's not a full
12 night's sleep. It's not a restful sleep.

13 Q. And then when the wind does change directions are
14 you able to get better sleep?

15 A. Much better. And I thank God for those days.

16 Q. How has your inability to sleep affected you?

17 A. I've learned that if I have an appointment or
18 somewhere I need to be after a stretch of when I don't
19 sleep, I reschedule those appointments because it's
20 become dangerous for me.

21 Twice I have fallen asleep while driving after a
22 stretch of not sleeping, and I fear for my life and for
23 somebody else's. So it's drastically changed my life.

24 I take alternate routes because we have some
25 turbines that are very close to the road, 183 foot, and

1 that shadow flicker, when it's going across there, it's
2 like the road is waving like this (indicating). So
3 changed that.

4 I own a -- it used to be a very successful
5 home-based business. My home-based business has suffered
6 because of the turbines.

7 Q. You say "because of the turbines." You mean because
8 of the lack of sleep or --

9 A. Correct. But I don't need to be a doctor to know
10 that the reason I'm not sleeping is because of the
11 turbines.

12 Q. And how has that affected you physically? Have you
13 experienced any symptoms just aside from not sleeping?

14 A. That's a loaded question to answer. When you don't
15 sleep for eight or nine nights in a row it messes with
16 you in ways that, you know --

17 Have I been to the doctor to explain, you know, why
18 I'm feeling that? No. I'm not going to spend more of my
19 good, hard-earned money to know why I'm not sleeping.
20 And I don't mean to be rude or coy about it, but I know
21 why I'm not sleeping.

22 We don't plan on staying there long enough for there
23 to be permanent health effects, I feel.

24 Q. Are you -- do you leave your property at times and
25 go elsewhere and sleep?

1 A. There's many nights we've considered going to a
2 motel. We have not done that. We have children that
3 don't live close to us or don't live close to a wind
4 turbine. When I visit them I get good sleep. When I go
5 stay with my mom I get good sleep.

6 When the wind's not out of the south or the
7 southeast I'm able to sleep in my room. So it's not an
8 everyday thing. If it was an everyday thing, we would
9 have been gone by now.

10 Q. And how has that affected your relationship with
11 your family?

12 A. Well, I'll probably get yelled at here. I told --
13 you know, I can't say that, but my children say I'm not
14 as happy as I used to be.

15 Q. Do you feel like it's put a strain on your
16 relationship with your children?

17 A. No. Not necessarily. They don't live there so do
18 they understand to the fullest potential what their dad
19 and I go through? No.

20 Q. What about your leisurely time? Has the activities
21 you enjoyed changed since this project was built?

22 A. Yes. We have a screened porch on the front of our
23 house and during the weather when it's capable our
24 favorite thing was to have morning coffee there, our
25 morning devotions, and talk about our day before we went

1 about our business. Now we have to plan that around
2 which direction the wind's blowing if we get to enjoy
3 that or not.

4 I don't -- I love to fish. I don't go down to the
5 pond and fish as often as I used to because during the
6 time of year when you can do that is when we have the
7 south and southeast wind, and for some reason down by
8 that water the sound is amplified and even worse. I
9 don't go out and help my husband on the property as much
10 as I used to.

11 Q. Have you gotten used to the noise at all?

12 A. No.

13 Q. Aside from just a wind out of the south or
14 southeast, what are the conditions that cause the noise
15 to be the worst?

16 A. Atmospheric conditions. When we have high humidity,
17 which in Nebraska we have a lot of high humidity. Cloudy
18 days. When we have a south or southeast wind in the
19 winter is really, really the worst when there's no other
20 ambient sounds.

21 I'm in a very rural area. I have no close
22 neighbors. My closest neighbor is a mile and a half away
23 in one direction, four miles to the south in another
24 direction. So there's not a lot of traffic. There's no
25 tractors in the field during that time of year. There's

1 no crickets. There's no birds. There's no leaves on the
2 trees to mute it. So winter is absolutely the worst.

3 Q. And before the project was built did you have any
4 issues sleeping?

5 A. Not at all.

6 Q. And before the project was built was there a sound
7 study performed that provided modeled noise levels at
8 your residence?

9 A. Yes.

10 Q. And what were the modeled or predicted levels at
11 your residence?

12 MS. AGRIMONTI: Objection. Hearsay.

13 MR. DE HUECK: I will allow her to tell us what
14 the predicted sound levels were.

15 A. With five closer turbines that were not built, for
16 whatever reason -- and I thank God for that -- it was
17 33 to 35 dBA.

18 Q. And the ambient noise level at your house prior to
19 the project being built --

20 A. Was --

21 MS. AGRIMONTI: Objection. Lack of foundation.

22 MR. DE HUECK: You want to lay some foundation,
23 Reece.

24 Q. Did you have an opportunity to review the sound
25 study that was performed?

1 Well, let me ask you this: Did you have an
2 opportunity to see what the ambient sound levels of your
3 property were?

4 A. Yes.

5 Q. And what were those?

6 MS. AGRIMONTI: Same objection as to hearsay.
7 We're talking about a report that's not before us today,
8 and we have no ability to cross-examine the preparer.

9 MR. ALMOND: I'll lay more foundation.

10 MR. DE HUECK: Even so, if you're going to try
11 to tell us what that report says, you should have maybe
12 got your hands on it and brought it in.

13 Q. How did you learn of the ambient measurement of your
14 house?

15 A. Beings my husband was on the planning --

16 Q. Well, let me stop you there. Have you taken ambient
17 measurements of your property when the wind turbines are
18 not operational?

19 A. Yes.

20 Q. And what is the measurements that you've taken and
21 the ambient levels?

22 MS. AGRIMONTI: Objection. Foundation. She's
23 not an acoustician. She's not trying to take --

24 MR. ALMOND: May I respond?

25 MR. DE HUECK: Let's see if she had an iPhone

1 with an app that measures, as we've heard in this
2 hearing.

3 Get her to explain what went down.

4 Q. How did you measure the ambient noise?

5 A. I'm scared to answer here.

6 My husband and I invested in a decibel meter. I did
7 not -- we downloaded the app on our iPhones. We didn't
8 feel that it was accurate. We thought those readings had
9 to surely be too high because there was no filter on your
10 iPhone or anything.

11 So we spent several hundred dollars and invested in
12 a Sper Scientific, is the brand name, decibel reader that
13 reads on an A and C level because our readings were so
14 much higher than what our predicted noise level was
15 supposed to be. And we needed to see for ourself and
16 that -- what we were experiencing or what we were hearing
17 was not just some abnormal reaction to the wind turbines
18 being there, but we needed --

19 I like to research. I want to see. I want to see
20 what it is. And so we took the steps to invest in a
21 decibel reader.

22 Q. And did you measure the ambient noise level using
23 that decibel reader?

24 A. Yes.

25 Q. And what's the ambient noise level or the noise

1 level when the turbines are not operating at your
2 property?

3 A. 20 to 25.

4 Q. What are your plans for the future in terms of how
5 to deal with this problem?

6 A. My husband becomes eligible for full retirement in
7 four years, and at that time we will sell the property
8 that we've lived on and improved for 20 years and we had
9 at the request of our children and grandchildren put in a
10 trust and we can't say that we'll stay there.

11 MR. ALMOND: Thank you, Vicki. No further
12 questions.

13 MS. AGRIMONTI: If the witness needs a few
14 moments to compose, maybe this is a good time for a short
15 break.

16 THE WITNESS: I'm fine.

17 (Discussion off the record.)

18 MR. DE HUECK: I'm going to tender you for
19 cross-examination. Prevailing Winds will ask you some
20 questions if they have any.

21 CROSS-EXAMINATION

22 BY MS. AGRIMONTI:

23 Q. Thank you, Ms. May. I'm Lisa Agrimonti. I
24 represent the Applicant in this proceeding.

25 You were discussing the ambient sound at your home.

1 Can you tell me over the course of what time you took
2 those measurements?

3 A. At first they were every day when the wind turbines
4 were not running to try and get -- but to give you a time
5 period, I would say over the first month probably.

6 Q. Okay. Were it multiple times during the day?

7 A. Yes.

8 Q. And the bandwidth you recorded was only between 20
9 and 22 dBA that entire time?

10 A. Occasionally it went up to 25 dBA.

11 Q. That's the highest you recorded?

12 A. Yes. And when the turbines were not running. And
13 this -- remember that the project came online in late
14 October so this would have probably been during November
15 when the leaves had already shed from the trees.

16 There was little traffic, no tractors anymore, no
17 pivots running, no, you know, anything like that.

18 Q. Okay. And what were the sound levels when the
19 turbines were operating?

20 A. I didn't bring them with me, but what we were
21 experiencing when -- let me rephrase that. When it
22 became noticeable to us we were usually at the 33 dBA,
23 and those would run anywhere from 33 up to 55 dBA.

24 Q. And you've identified a number of health impacts,
25 including sleep deprivation; is that right?

1 A. Yes.

2 Q. And is it true that for medical records in this
3 proceeding you provided two receipts from a
4 chiropractor?

5 A. No.

6 Q. Did you not provide any documentation to Mr. Almond
7 about any medical records?

8 A. No, I did not.

9 Q. Okay. Have you sought any medical help for your
10 sleep deprivation?

11 A. My son is a chiropractor so, yes, I go to the
12 chiropractor when I see him. He's out of state. He's in
13 Minnesota.

14 Q. Okay. Is that the only treatment you've received
15 for your sleep deprivation?

16 A. Yes. I'm not going to take drugs to sleep at night.
17 I've never had to do that before. I don't want to start
18 that habit now.

19 Q. And you believe the only treatment available to you
20 is to have medications?

21 A. No. I try and meditate. I watch the foods I eat.
22 I exercise. I try and do a lot of things.

23 Q. All right. And that's all based on your own
24 experience and belief on what would make your sleep be
25 better; is that right?

1 A. Yes. Plus I seek out other spots in my house to
2 sleep when I cannot sleep in my bedroom.

3 MS. AGRIMONTI: Thank you, Ms. May. Those are
4 all the questions I have.

5 MR. DE HUECK: Mr. Fuerniss.

6 MR. FUERNISS: No questions.

7 MR. DE HUECK: Ms. Jenkins.

8 MS. JENKINS: No questions.

9 MR. DE HUECK: Ms. Pazour.

10 MS. PAZOUR: No questions.

11 MR. DE HUECK: Staff.

12 MS. REISS: Thank you.

13 CROSS-EXAMINATION

14 BY MS. REISS:

15 Q. I do have just a couple questions for you.

16 You mentioned as you were talking with Mr. Almond
17 that you've changed your driving routes because of shadow
18 flicker on the roads. Did I hear that correctly?

19 A. Yes.

20 Q. Can you explain to me what happens when the shadow
21 flicker goes across the road?

22 A. It makes the road look like it's rolling, like it's
23 a wave, like it's moving up and down.

24 Q. Would you -- well, can you explain why you decided
25 to change your routes?

1 A. That's very disturbing when you're driving through
2 200 turbines to have the road moving like that. And
3 especially if I haven't slept. I don't need any other
4 distractions.

5 Q. Would you consider -- or would you describe it as
6 an -- well, do you believe that driving through those
7 areas would be problematic to you?

8 A. To me, yes.

9 Q. Would it impair your driving abilities?

10 A. If I haven't slept for several nights before that,
11 absolutely.

12 Q. Okay. And then just briefly, in regards to the
13 decibel meter you purchased, did you mention what brand
14 it was?

15 A. A Sper Scientific.

16 Q. Sper. Okay. And then you mentioned that you had
17 downloaded an app on your iPhone. Did you use that app?

18 A. We did originally before we invested in the regular
19 decibel meter.

20 Q. Okay. Did you get any readings on that app?

21 A. Yes, we did. And they were -- I would say 10
22 probably decibels higher than what the Sper Scientific
23 decibel reader would read them at.

24 Q. Okay.

25 MS. REISS: No further questions.

1 MR. DE HUECK: That will bring us over here to
2 Commission questions. I think I'm on Commissioner
3 Hanson.

4 COMMISSIONER HANSON: Excuse me just one moment.
5 I'm finishing notes from Mrs. Reiss's questions.

6 Good morning.

7 THE WITNESS: Good morning.

8 COMMISSIONER HANSON: Thank you very much for
9 being here.

10 THE WITNESS: Thank you for hearing me.

11 COMMISSIONER HANSON: Were you subpoenaed to
12 come here?

13 THE WITNESS: No.

14 COMMISSIONER HANSON: How did -- did you
15 contact -- how did you get in contact with the attorney
16 and end up here today? I'm just curious because --

17 THE WITNESS: Sure.

18 COMMISSIONER HANSON: -- you're in Nebraska.
19 Obvious --

20 Did you send some letters to someone, and they
21 said, hey, this is someone we'd really like to speak
22 with?

23 THE WITNESS: A year ago I attended Dakotafest
24 with some neighbors of mine where after the events of
25 that day there was a small meeting of some South Dakota

1 residents. There was a Senator from Nebraska there.
2 There were several Nebraskans, and it was to discuss wind
3 energy. And I attended that. That's where I first met
4 Gregg and Marsha Hubner.

5 Didn't really introduce myself to them at that
6 night or anything. Later on Gregg -- I had testified
7 down in Lincoln before our Natural Resources Committee on
8 several occasions, and so my name was out there. My
9 testimony was out there. Gregg called me and asked me if
10 I would be willing to come and speak at these
11 proceedings.

12 My initial answer was no. After much prayer, I
13 decided this is my only recourse. Nebraska does not have
14 a Public Utilities Commission. I have nowhere where I
15 can go. So the only way I can get these things out there
16 is to tell my story.

17 So I pray real hard every day that God takes
18 this away from me. This is not what I enjoy doing. And
19 every day someone calls me, Can you write a letter?
20 You've spoken before. Can you come speak? So I think
21 this has been put before me.

22 So I called Gregg, and I said, I'll give it a
23 try. That's how I'm here today. Reece contacted me then
24 and sent me a questionnaire and asked me some basic
25 questions, and that's why I'm here.

1 And I'm not being paid to be here. You know
2 that's going to be somebody's question. I don't take any
3 money for this. Like I said, this is the only thing I
4 can do is to tell my story.

5 COMMISSIONER HANSON: Well, you're a very brave
6 woman.

7 THE WITNESS: I think I'm stupid sometimes.
8 Because it doesn't take bravery.

9 COMMISSIONER HANSON: Well, it's as tough
10 listening to you as it is for you to give the --

11 THE WITNESS: It's tough to live there some
12 days.

13 COMMISSIONER HANSON: You're very articulate.
14 What is your background, your educational background?

15 THE WITNESS: I don't have a bunch of degrees
16 behind me. I'm a high school graduate. I have one year
17 of college. I've worked for the Federal Government.
18 I've endured a FBI background check and a fingerprinting,
19 which was much more enjoyable than this. That's my
20 background.

21 I worked for the Farmers Home Administration
22 through the '80s when we were going through the Farm
23 Crisis, and that was a tough, tough time where we had to
24 deal with if somebody comes in with a loaded gun and
25 those types of things, what procedure will be. And mine

1 was always I'm hiding under the desk. Somebody else go
2 for help.

3 But my husband and I have run a lumberyard.
4 I've been a bookkeeper for over 25 years. He was in the
5 lumber business way back in high school. We sold that
6 business five years ago. I now have a home-based
7 business.

8 COMMISSIONER HANSON: Well, your education and
9 your reading and your experiences have served you well.

10 THE WITNESS: Thank you.

11 COMMISSIONER HANSON: Very much appreciate your
12 testimony.

13 THE WITNESS: And you're the whooping crane guy,
14 aren't you?

15 I say that only because I have the distinct
16 pleasure of seeing a pair in the wild three miles from my
17 home. And once you see it, it's a sight you never
18 forget.

19 COMMISSIONER HANSON: It is. They're beautiful
20 prehistoric animals. I appreciate you bringing that up.
21 God bless you.

22 MR. DE HUECK: Commissioner Nelson, any
23 questions?

24 COMMISSIONER NELSON: Unfortunately, I don't
25 have the positive reputation of Commissioner Hanson.

1 THE WITNESS: I'm sorry.

2 COMMISSIONER NELSON: But I do have a couple of
3 questions.

4 And when you related the fact you didn't trust
5 the iPhone and you went out and you bought a meter, I
6 mean, I identified with that because I would have done
7 the same thing because numbers matter.

8 And because numbers matter, I want to drill down
9 just a little bit into those levels that you took. When
10 you talked about the ambient level between 20 and 25 was
11 that measured inside your home or outside?

12 THE WITNESS: Both. The lower numbers were from
13 inside the home. The higher readings were from out on
14 the porch. I didn't go, you know, on all parts of the
15 property.

16 COMMISSIONER NELSON: And when you gave us the
17 levels for when the turbines were running, 33 to 55
18 that's a wide range. Were those measured inside the
19 house or outside the house?

20 THE WITNESS: I have measurements both inside
21 the house and believe it or not there are times with the
22 windows closed that the measurements inside the home are
23 louder than outside the home.

24 COMMISSIONER NELSON: Okay. You're obviously a
25 numbers person. You've done a lot of measuring. Can you

1 help me understand why we've got such a range? Were
2 you --

3 Did you actually measure 55 in the home?

4 THE WITNESS: That measurement would, yes, be in
5 the home. What we have experienced is our home becomes
6 like a vibrating box. That sound for some reason
7 reverberates inside the home, and that's why I have sleep
8 problems.

9 Because my bedroom, I can't pick it up and move
10 it. It is on that end of the house closest to the
11 turbines. You can -- in the summer if you open a window
12 that is away from that southerly direction, it will help.
13 It doesn't mute the sound. The sound is still there.
14 But it makes it not quite as loud. And I don't know. I
15 don't --

16 I'm not an acoustician. However, I have studied
17 this in depth, and when you talk about Leq 90s and Leqs,
18 I understand all of that because it's boring, but I have
19 made myself. That's one thing I -- when something's
20 happening to me that I don't understand, I research until
21 I understand it.

22 COMMISSIONER NELSON: I understand.

23 So can you help me understand why you think you
24 were seeing the difference between 33 and 55?

25 THE WITNESS: That's the range in an A level

1 what we see. It's not all the time.

2 What we've experienced is when the wind gets up
3 to about 7 to 8 miles an hour is when we really start
4 becoming agitated. When the wind gets above 15 miles per
5 hour then for whatever reason the sound gets mixed up
6 into the atmosphere or whatever and it is not as
7 debilitating at that point. You can still hear them.
8 But it doesn't drive you, you know, to where you can't
9 sleep or, you know, to that nature.

10 Our decibel reader, like I said, also takes a
11 C rating, which is a little broader range than just the
12 A-weighted, and it includes some of the lower tones,
13 which I am more susceptible to.

14 My husband not as -- he hears them. And there
15 are nights he can't sleep in our room. And when those
16 nights occur you know it's really, really bad because
17 he's worked around machinery his whole life so his lower
18 tones are not as good as what I experience.

19 COMMISSIONER NELSON: I think this is the last
20 question, and I know we've gone through a lot of
21 witnesses so I might have heard this from somebody else.
22 But did you say on the south side of your house that you
23 had a large picture window?

24 THE WITNESS: It's not a large picture window,
25 but we have two windows to the south and a triple window

1 to the -- what I would say the southeast but you have
2 that southeast view so there are, you know, windows
3 there.

4 However, in our bedroom, which is just off that
5 room, there is no window to that direction, but you still
6 hear it.

7 COMMISSIONER NELSON: Thank you.

8 MR. DE HUECK: Chairman Fiegen.

9 CHAIRWOMAN FIEGEN: Thank you. And thank you
10 for giving me a new name for Commissioner Hanson.

11 THE WITNESS: I'm sorry.

12 COMMISSIONER HANSON: We need that in our
13 office. And, yes, Commissioner Nelson is the numbers
14 guy. And just know that my husband and I watch one show
15 together because I normally don't sit down and watch TV
16 and it's Madam Secretary. Is that what you said?

17 THE WITNESS: Yes. That was the night.

18 CHAIRWOMAN FIEGEN: Yeah. It's the only show
19 that we watch together.

20 Commissioner Hanson asked you a little bit about
21 occupation.

22 THE WITNESS: Yes.

23 CHAIRWOMAN FIEGEN: And you talked about a home
24 business, and you talked about helping your husband
25 outside. Do you guys actually farm too? You own this

1 lumberyard five --

2 THE WITNESS: The lumberyard is sold but we've
3 owned 200 acres for 20 years and that's where we've
4 lived. So we farmed along with the lumberyard.

5 CHAIRWOMAN FIEGEN: So is he currently -- is
6 your husband currently farming that 200 acres?

7 THE WITNESS: Yes.

8 CHAIRWOMAN FIEGEN: And then you talked about
9 your husband retiring in four years.

10 THE WITNESS: He also -- we're real busy people.
11 He also is ag -- they've changed his title so many times.
12 He works -- he's an ag specialist for Farm Bureau
13 Insurance. He's an ag adjuster.

14 CHAIRWOMAN FIEGEN: Trust me. I get that 1980
15 Farm Crisis because I had an offer to be an ag lender,
16 and I took the position in April and changed my mind in
17 May after --

18 THE WITNESS: It was a scary, scary time.

19 CHAIRWOMAN FIEGEN: Yeah. I had to change my
20 mind. And so now I'm here instead of being an ag lender
21 somewhere because of the crisis.

22 So you talk about a home business.

23 THE WITNESS: Yes.

24 CHAIRWOMAN FIEGEN: Can you help me understand
25 what that home business is, and do you still have it?

1 THE WITNESS: I do.

2 CHAIRWOMAN FIEGEN: And when you started it
3 before -- I want to know when it started, when the wind
4 turbines came, and then what you're doing now.

5 THE WITNESS: We built a studio onto our home --
6 it's 24 by 26 -- in 1996. Or no. Actually the fall of
7 1995. I opened my business in June of 1996. So I also
8 did that along with keeping books at the lumberyard. I
9 have a quilting business. I have a long arm machine.
10 I'm a professional longarm quilter.

11 CHAIRWOMAN FIEGEN: So the studio is for the
12 quilting?

13 THE WITNESS: Yes.

14 CHAIRWOMAN FIEGEN: Okay.

15 THE WITNESS: It's attached to the home.

16 CHAIRWOMAN FIEGEN: And so you've done that
17 since --

18 THE WITNESS: 1996.

19 CHAIRWOMAN FIEGEN: And when has that become
20 limiting? And tell me --

21 THE WITNESS: With the sleep deprivation. I did
22 a lot of custom work, which, you know, not to, you know,
23 bore you to death and stuff but it was not unusual to
24 spend 60, 80, 100 hours on one project. I did show
25 quilting for people.

1 I have had to let that part of my business go
2 because I am no longer able to get the project done in
3 the time. Because I don't know when the wind's going to
4 be from what direction if I'm going to be able to work
5 the next day.

6 And let me tell you if you've ever had to rip
7 out stitches that go in at a thousand stitches a minute,
8 you don't want to have to spend 18, 20 hours taking out
9 what you've put in. And so last October I shut down that
10 part of my business, and I only do what they call an
11 allover design now, which is the same design from top to
12 bottom. It's a much quicker process.

13 I'm still able to do that part of the business,
14 but, obviously, the custom has had to go by the wayside.

15 CHAIRWOMAN FIEGEN: Okay. Thank you.

16 MR. DE HUECK: Commissioner Nelson, did you have
17 another question?

18 COMMISSIONER NELSON: I did.

19 MR. DE HUECK: Do you still have another
20 question?

21 COMMISSIONER NELSON: No.

22 MR. DE HUECK: Any redirect, Mr. Almond?
23 Any recross, Applicant?

24 MS. AGRIMONTI: No.

25 MR. DE HUECK: Mr. Fuerniss. Mrs. Jenkins.

1 Ms. Pazour. And Staff.

2 MS. REISS: No, thank you.

3 MR. DE HUECK: Thank you for your testimony
4 today.

5 THE WITNESS: Thank you for hearing me.

6 (The witness is excused.)

7 MR. DE HUECK: Mr. Almond, go ahead and call
8 your next witness.

9 MR. ALMOND: The Intervenors rest.

10 MR. DE HUECK: With that, I think we're going to
11 take a short break. Say, 10 minutes. I'd like to say
12 the plan for lunch is we'll cut at noon for lunch.

13 (A short recess is taken.)

14 MR. DE HUECK: We're going to go back into
15 session here. Intervenor, through their attorney,
16 Mr. Reece, has concluded their direct case, which means
17 we're moving on to Staff's direct case.

18 MS. EDWARDS: Staff calls Darren Kearney.

19 Darren Kearney,
20 called as a witness, being first duly sworn in the above
21 cause, testified under oath as follows:

22 DIRECT EXAMINATION

23 BY MS. EDWARDS:

24 Q. Good morning, Mr. Kearney. Will you please state
25 your full name for the record.

1 A. My name is Darren Kearney.

2 Q. And how are you employed?

3 A. I'm a utility analyst with the South Dakota Public
4 Utilities Commission.

5 Q. Did you file prefiled testimony in this docket?

6 A. I did.

7 Q. And for which exhibits are you responsible?

8 A. It would be Staff Exhibit 1, which is my testimony
9 and attachments, I believe Staff Exhibit 4, which are
10 additional data requests, and then Staff Exhibit 5, which
11 are additional additional data requests.

12 Q. Do you have any additions or corrections to make to
13 your prefiled testimony at this time?

14 A. I guess the one addition I have is regarding my
15 concern for Receptor 076 and shadow flicker, which I
16 believe is Mr. Powers's residence. And if the Applicant
17 uses the shadow flicker mitigation system, that would
18 address that concern where they were exceeding the
19 30 hours they committed to shadow flicker per year.

20 Q. So with that correction if I were to ask you the
21 same questions today, would your answers be the same?

22 A. Yes.

23 Q. Have you been present in the hearing room thus far
24 for the entirety of the hearing?

25 A. I have been for the majority of the hearing. I'd

1 say 99 percent.

2 Q. Do you recall testimony regarding a draft wind
3 ordinance from the PUC?

4 A. I do.

5 Q. Are you familiar with that document?

6 A. I have seen it in the past.

7 Q. As a PUC staff analyst, are you aware, is that
8 document something you presently endorse?

9 A. No. We do not use that or refer to that document.

10 Q. To your knowledge, does the PUC staff presently have
11 any draft ordinance it recommends or endorses?

12 A. No.

13 Q. Were you present in the room for the testimony of
14 Ms. Karen Jenkins?

15 A. I was.

16 Q. Do you recall the testimony she gave regarding
17 splitting this project into 13 projects?

18 A. I do.

19 Q. Are you familiar with the circumstances behind her
20 concerns?

21 A. Yes, I am. We have had a number of people reach out
22 to us with that similar concern when that discussion was
23 ongoing.

24 Q. Can you elaborate on your view of --

25 A. Well, essentially what happened was there was

1 Prevailing Winds' previous owner of the project discussed
2 ways they could possibly sell the energy. One of them
3 was to create these PURPA entities and become qualifying
4 facilities in order to enter into avoided cost sales for
5 their energy into the cooperative.

6 That's under federal law, PURPA, Public Utilities
7 Regulatory Policy Act. And FERC usually has a one-mile
8 criteria between projects in order to be essentially its
9 own stand-alone project under PURPA.

10 People question whether or not they still need a
11 permit from the Commission at that time. Based on
12 staff's analysis and our understanding of how the
13 electrical configuration of the project was going to be,
14 where the turbines were going to be located, how the
15 electricity was going to be commingled together prior to
16 the point of interconnection, it was staff's
17 interpretation of our siting statutes, which is state
18 law, that it would be one project from the siting
19 perspective.

20 So there's two different criteria at play there.
21 One is federal law as far as selling energy. The second
22 one is for siting criteria under state law and state
23 definition of what a wind energy facility is. And so we
24 communicated to folks that it's staff's position based on
25 the definition of wind energy facility in state law that

1 it would be one project still, as our understanding of
2 how the electrical configuration of the system was going
3 to be.

4 Q. So based upon those statements, it wasn't -- state
5 law was not to be circumvented.

6 A. Correct.

7 Q. Okay. I just wanted to clear that up.

8 To your knowledge, for the purposes of PURPA or
9 anything else is this project still 13 separate projects?

10 A. I believe in the Application they identified they
11 have entered into a PPA with Basin Electric, and I am not
12 aware if it's under a PURPA obligation. I'm thinking it
13 isn't, but it's -- I believe it's one contract for the
14 whole project with Basin.

15 MS. EDWARDS: I will tender this witness for
16 cross. I have no further questions.

17 MR. DE HUECK: Thank you.

18 Applicant, do you have cross?

19 MS. AGRIMONTI: I do not. Thank you.

20 MR. DE HUECK: Mr. Almond, do you?

21 CROSS-EXAMINATION

22 BY MR. ALMOND:

23 Q. In your work on this project have you gained a sense
24 or any impression of what Basin Electric's view of this
25 project is?

1 A. I have not.

2 Q. Okay. And you've reviewed the Application; right?

3 A. Yes.

4 Q. And the Applicant's responses to data requests?

5 A. Right.

6 Q. And the prefiled testimony?

7 A. Yep.

8 Q. And you've been listening to the testimony here
9 throughout this hearing.

10 Did you hear and read PUC staff's sound expert
11 David Hessler's testimony?

12 A. Yes.

13 Q. And did you read the portion of Mr. Hessler's
14 testimony where he criticized the noise study performed
15 by Mr. Howell?

16 A. Yes. I read that.

17 Q. And, specifically, David Hessler criticized the
18 noise study for failing to analyze the predicted
19 community response to the project.

20 Do you recall that?

21 A. Yep. I do.

22 Q. And did you hear and read Mr. Howell respond to that
23 criticism saying that the study was performed to show
24 compliance with county regulations?

25 A. Yep.

1 Q. And Mr. Howell did not think that predicting the
2 community's response to the project was necessary as it
3 related to noise?

4 A. I heard him say that.

5 Q. And, therefore, he didn't analyze the anticipated
6 community response related to noise. Did you hear him
7 say that?

8 A. Yep.

9 Q. So because the Applicant has not analyzed the
10 community response to noise or the anticipated community
11 response to noise, would you agree that the Applicant's
12 not attempting to minimize any negative community
13 response to the project regarding noise?

14 A. Could you restate the question. It was kind of
15 long.

16 Q. Yep. And so given the Applicant has not analyzed
17 how the community's going to respond to the noise, would
18 you agree the Applicant has not attempted to minimize any
19 negative community response to noise created by the
20 project?

21 A. I don't agree with that statement.

22 I think that what the Applicant did was identify
23 what the sound levels are going to be at certain
24 receptors in the area and the information that is
25 available for the Commission to analyze to identify the

1 impacts to those receptors. And I think that they could
2 interpret the results of that sound level study.

3 Q. What changes did they make to the project after
4 doing the sound study?

5 A. What changes do they make?

6 Q. What changes are you aware of that they made after
7 doing their sound analysis?

8 A. I'm not aware of any changes that have been made
9 after the updated sound analysis.

10 Q. After any sound analysis? Are you aware of any of
11 changes?

12 A. Could you define "changes"?

13 Q. Well, to the turbine layout. Yeah. To the turbine
14 layout were there any changes made following the sound
15 analysis study?

16 MS. AGRIMONTI: Objection to the extent the
17 witness would have to speculate.

18 MR. DE HUECK: Darren, go ahead and --

19 A. I'm not aware of any changes after the updated sound
20 study that was provided. They potentially could make
21 changes based on some permit conditions that have been
22 attached to previous wind dockets.

23 Q. Maybe I'll just ask, what attempts has the Applicant
24 made to minimize negative community response to noise?

25 MS. AGRIMONTI: Objection. Outside the

1 witness's knowledge.

2 MR. ALMOND: The witness has testified he
3 reviewed the Application. He's reviewed all the
4 responses.

5 MR. DE HUECK: He has offered his opinion on the
6 Commission could interpret as -- excuse me.

7 Yes. Minimizing or have dealt with community
8 response in one way or the other. But, more importantly,
9 he's stated he's unaware of any changes.

10 MR. ALMOND: He's unaware of any -- that
11 question was a little different and this is an important
12 question so I'd like to get the question out and then the
13 objection and get a clear record. Okay?

14 MR. DE HUECK: Ask your question.

15 MR. ALMOND: Okay.

16 Q. Following your review of everything we've discussed
17 that you've reviewed, what attempts has the Applicant
18 made to minimize any negative community response to noise
19 that the project will create?

20 MS. AGRIMONTI: Objection. He's asking a
21 question about what the Applicant has done to minimize
22 community response. If it's rephrased in terms of his
23 opinion, I do not have an objection.

24 MR. DE HUECK: Darren, can you give us your
25 opinion as to --

1 A. Well, I believe the Applicant has attempted to limit
2 the amount of noise at receptors through their layout,
3 which was provided to Mr. Howell to analyze to see what
4 the impact would be on certain residences and to see if
5 that is typically within the acceptable range within the
6 industry or what has been approved by this Commission in
7 the past for a decibel rating.

8 Q. And what's your basis for that belief?

9 A. My basis for that belief?

10 Q. Yep.

11 A. Is the testimony I heard from Mr. Howell and the
12 sound study that I reviewed for the Application and
13 Mr. Hessler's review of the material.

14 Q. Anything else?

15 A. Not that I -- and previous dockets that we've worked
16 on.

17 Q. Anything else, though?

18 A. Not that I can think of off the top of my head.

19 MR. ALMOND: Thank you, Darren. No other
20 questions.

21 MR. DE HUECK: Mr. Fuerniss, any questions for
22 Mr. Kearney?

23 MR. FUERNISS: I don't know if this will be a
24 legitimate question or not so somebody straighten me out,
25 I guess.

1 CROSS-EXAMINATION

2 BY MR. FUERNISS:

3 Q. Was it your impression from the testimony that
4 you've heard here this week and from some of the
5 responses to data requests -- I'm in particular thinking
6 of some of the things Mr. Hessler said that perhaps the
7 time has come to make some changes to what has been
8 possibly industry standards as far as sound levels?

9 A. I can't comment as to what changes need to be made
10 to industry standards. But specific to this docket I
11 think it's PUC staff's position that we would rely on the
12 testimony of Mr. Hessler and his recommendations he has
13 made.

14 We'll ultimately brief our position after this
15 hearing, but that's kind of where we're approaching it as
16 PUC staff.

17 MR. FUERNISS: Thank you.

18 MS. JENKINS: No questions.

19 MR. DE HUECK: Ms. Pazour, any questions for
20 Mr. Kearney?

21 CROSS-EXAMINATION

22 BY MS. PAZOUR:

23 Q. The shadow flickers, I guess my question is with the
24 Application is there -- everybody's under 30 minutes?

25 A. I think that the Applicant committed to 30 hours

1 and/or 30 minutes per day. 30 hours per year and/or
2 30 minutes per day.

3 There are a handful of folks that the Applicant has
4 identified would be above either 30 hours per year or
5 30 minutes per day, if I recall the minutes per day
6 correctly. Yeah. There's a handful that are above that,
7 without the mitigation system that the Applicant
8 committed to.

9 Q. So with that being there, so it would change -- they
10 could change the 30 minutes? Or if it's over 30 minutes,
11 they could drop it down to 30 minutes?

12 A. That's my understanding of the testimony the
13 Applicant has given.

14 Q. What if -- what if it doesn't?

15 A. Then we would hope that the impacted individual
16 would contact either the company and they would address
17 that or the Public Utilities Commission staff and we can
18 work with them to ensure that the Applicant is fulfilling
19 their commitment.

20 Q. How do you -- I guess my question is -- like my
21 place -- if I watched it for like 31, 32 minutes, how do
22 I -- okay. This is what I seen. How do I present that?

23 A. I think the first step if you're not comfortable
24 with working with the Applicant is to contact PUC staff
25 at the Commission, and we would start working with you

1 informally to understand what your concerns are.

2 Q. Okay.

3 A. What you're experiencing, what you're observing, how
4 you're quantifying the shadow flicker on your residence.

5 And then from there we would reach out to the
6 company and see, you know, what their position is on the
7 issue and if they can address your concern, and we would
8 help work with you to solve that problem, hopefully in a
9 way that resolves your concern.

10 And if they are for some reason outside of their
11 commitment as set forth in a permit condition if this
12 project gets issued, then we would want them to bring
13 that back down to their commitment.

14 MS. PAZOUR: Okay.

15 MR. DE HUECK: With that, we'll go over to
16 Commission questions.

17 I have a quick question. The model ordinance
18 that Staff was asking you about, did you ever consider
19 that to be a state standard?

20 THE WITNESS: No.

21 MR. DE HUECK: And the only state standard is
22 what would be found in our codified laws, specifically
23 our permitting statute, 49-41B-22.

24 THE WITNESS: Correct. And then the setback
25 standard also in a different codified law.

1 MR. DE HUECK: Correct. And so what the heck
2 was the PUC model ordinance? Can you give us a little
3 background?

4 THE WITNESS: I didn't work on it directly so I
5 don't know if -- I can -- from what I know of it, I can
6 talk to it about that, but since I wasn't involved with
7 how it was developed, I can't speak to the specific.

8 But, essentially, it's my understanding that
9 when wind energy was near to South Dakota there were some
10 counties looking for some help on putting together some
11 ordinances and so the PUC helped coordinate a group of
12 individuals, industry representatives, other state
13 agencies, to come up with a guidance document that the
14 counties could use as a starting point to establish
15 zoning ordinances.

16 MR. DE HUECK: And the PUC then published it to
17 its website because we publish everything to our website.

18 THE WITNESS: Correct. We posted it on a wind
19 energy page on the website, I believe.

20 MR. DE HUECK: Thank you. I have no further
21 questions.

22 Commissioner Nelson.

23 COMMISSIONER NELSON: Mr. Kearney, you can be a
24 hero right here right now. I've asked a question that
25 nobody else has been able to answer. What is the magic

1 of 30 hours of shadow flicker? Why is 30 okay and 31 is
2 not?

3 THE WITNESS: I have not seen any studies to
4 indicate it's not okay. I have not seen any studies to
5 indicate it is okay.

6 All that I know is that it's a commitment that
7 the Applicant has made to minimize possible nuisance on
8 somebody's residence. And I cannot sit here and say
9 that's the right number, absent some study that shows it
10 isn't the right number.

11 COMMISSIONER NELSON: Is it an arbitrary number?

12 THE WITNESS: It's kind of what has been
13 incorporated in a number of zoning ordinances around the
14 country. I do not know the history of how it started
15 showing up in zoning ordinances. It's kind of an
16 industry standard, as was communicated, I think, earlier
17 on in this hearing.

18 COMMISSIONER NELSON: Thank you.

19 MR. DE HUECK: Not the hero.

20 CHAIRWOMAN FIEGEN: Mr. Kearney, just to follow
21 up with Commissioner Nelson in general, you know, he's
22 certainly asked a lot of questions about shadow flicker
23 and how that came about and sound and land values and all
24 of this.

25 Do you think there's enough research out there

1 to really state a perfect level on all of those type of
2 issues? Sound, shadow flicker, land value? In your
3 opinion.

4 Has there been enough money put in, independent
5 money, to put in to really look at your research?
6 Because you're a numbers guy. You are very analytical,
7 very much like Commissioner Nelson.

8 THE WITNESS: I believe there's a lot of
9 information available that's out there. I believe that
10 there are a lot of studies that have addressed certain
11 issues regarding noise, property values. We have had a
12 witness in the past testify on specific potential impacts
13 or not observing those impacts in South Dakota on
14 specific counties.

15 Additional research would always be beneficial
16 in that area, and I think that there's always the need
17 for additional research.

18 I will note that in my observations of reviewing
19 a lot of the literature submitted by both sides you're
20 going to see one study that's used to support their
21 position, but if you read further in the study, it kind
22 of goes to the other position too. So it's kind of this
23 massive literature that kind of shows that there's these
24 potential impacts, but they're fully not understood or
25 proven out in the science yet. I guess that's what --

1 CHAIRWOMAN FIEGEN: So what I heard you say is
2 there's a lot of literature, a lot of information, but
3 it's not totally proven out in the science yet?

4 THE WITNESS: Based on my understanding of the
5 stuff I have reviewed.

6 CHAIRWOMAN FIEGEN: You brought up -- and I
7 wasn't going to ask this, but you brought it up so thank
8 you.

9 You brought up that you had a witness here that
10 is not here now that talked about property values. To my
11 recollection, and I could be wrong, Mr. Kearney, the
12 witness talked about a level of research that needed to
13 be done to a much more extensive level to really know.
14 More money, more time on land values, and I thought
15 that's what your witness -- that's my recollection.

16 THE WITNESS: Yeah. That's kind of what I
17 stated earlier.

18 CHAIRWOMAN FIEGEN: Okay.

19 THE WITNESS: Is that from a -- from a property
20 value standpoint, impact standpoint, he would have liked
21 to have seen a study that was full statewide, all
22 counties, and being able to then form conclusions. Each
23 area is unique and has its own specific economic drivers
24 and, I guess, uniqueness to it.

25 And what we found is we did not offer that

1 testimony because he really didn't find a conflicting
2 position with what the Applicant had provided through his
3 testimony beyond that he caveated his research with the
4 fact that additional research would be needed to form
5 more general conclusions across the state.

6 CHAIRWOMAN FIEGEN: You've worked on wind
7 siting, Mr. Kearney, for how many years?

8 THE WITNESS: I would say Willow Creek Project
9 was the first one I worked on. So three years now. That
10 was 2015. And then for transmission lines and pipelines
11 it's been five, six years.

12 CHAIRWOMAN FIEGEN: Has the environment of the
13 siting process for wind been more controversial since
14 2015 as a PUC staff person? Have you noticed that?

15 THE WITNESS: Yeah. It definitely has been,
16 although the project areas were different a little bit.
17 The Willow Creek Project out in -- north of Newell, I
18 believe, impacted far less individuals.

19 So it's kind of the number of folks in an area
20 that are potentially impacted by a project that kind of
21 helps drive some of the controversy in the communities.
22 And I think that we've seen as we're getting to the
23 eastern side of the state again that there's more and
24 more folks that are within the project area, based on the
25 projects I've worked on and that has led to more interest

1 in the community as to what's going on with the PUC's
2 process and with the projects themselves. And that
3 interest results in controversy, depending upon what side
4 of the project you fall in on.

5 CHAIRWOMAN FIEGEN: So before you came were
6 there wind projects in South Dakota sited by the PUC?

7 THE WITNESS: Yes.

8 CHAIRWOMAN FIEGEN: Okay. Did you look at those
9 evidentiary hearings so you were prepared?

10 THE WITNESS: I've read through a couple of
11 those dockets to reference throughout the course of my
12 work at the Commission. Those were not as controversial
13 as these projects have been.

14 CHAIRWOMAN FIEGEN: Okay. Thank you.

15 COMMISSIONER HANSON: Good morning, Mr. Kearney.

16 THE WITNESS: Morning.

17 COMMISSIONER HANSON: You've been working for
18 the PUC for five years; right?

19 THE WITNESS: Yep. Over five now.

20 COMMISSIONER HANSON: And I was here when you
21 arrived.

22 THE WITNESS: Yes.

23 COMMISSIONER HANSON: And occasionally I need to
24 turn to you -- even though I was here for about 11 years
25 prior to you getting here, I occasionally turn to you to

1 educate me on some things?

2 THE WITNESS: Occasionally.

3 CHAIRWOMAN FIEGEN: No open dockets.

4 COMMISSIONER HANSON: And I appreciate that very
5 much. I rely upon you, and I have very strong faith in
6 your opinions and feel that you've been 100 percent
7 muy perfecto to this point, to this juncture.

8 So as far as a hero is concerned, we're going to
9 keep working on that.

10 In your Direct Testimony on page -- and you
11 probably don't have to turn to these things because I'm
12 going to jump through them back and forth.

13 On page 7 at the bottom you state that there are
14 a few reasons why staff did not request testimony from
15 the Game, Fish & Parks, and you gave three reasons. Two
16 of them not real strong reasons. One was that if we
17 needed them, you could ask them some questions so
18 probably wasn't necessary.

19 The other was they have not communicated to
20 staff any concerns specific to the Prevailing Wind
21 project. I'm assuming you asked them for opinions.

22 THE WITNESS: Yes.

23 COMMISSIONER HANSON: And I see later on -- and
24 I'm going to jump to that so just a yes works because I'm
25 going to jump to their answer here.

1 Did you experience any resistance or challenges
2 or difficulty in working with them the last time we
3 worked with them?

4 THE WITNESS: No.

5 COMMISSIONER HANSON: Okay. In reference to
6 the -- they didn't communicate any concerns, I see on a
7 question on page 9 they referenced the Massachusetts
8 Department of Public Health and the Minnesota Department
9 of Health studies and identified those -- that those
10 studies generally conclude that there is insufficient
11 evidence to establish significant risk.

12 Are you aware of the age of those studies?

13 THE WITNESS: Sorry. I'm confused. I thought
14 we were talking about the GF&P.

15 COMMISSIONER HANSON: Wasn't that the -- oh,
16 that's the Department of Health. Excuse me. I see
17 Crocker -- okay. So that's Department of Health.

18 So are you still confused as I was?

19 THE WITNESS: So we're talking about the
20 Department of Health; correct?

21 COMMISSIONER HANSON: Correct.

22 The Department of Health referenced the
23 Massachusetts and the Minnesota. Did you know the age of
24 those studies?

25 THE WITNESS: Do I know the age of those

1 studies?

2 COMMISSIONER HANSON: Yeah.

3 THE WITNESS: Yes. I know the age of those
4 studies.

5 COMMISSIONER HANSON: Would you share those with
6 us.

7 THE WITNESS: I think the Massachusetts study
8 was around 2012 to '13-ish.

9 COMMISSIONER HANSON: Okay. And is the other
10 one approximately the same age or --

11 THE WITNESS: I believe so. I think they were
12 around that time frame.

13 COMMISSIONER HANSON: Do you know of any more
14 recent studies than those?

15 THE WITNESS: I think that Mr. Roberts provided
16 a bunch of the recent studies in his testimony.

17 COMMISSIONER HANSON: Okay. Well, I will ask
18 then on the Game, Fish & Parks because I was thinking my
19 additional question would be regarding them as well.

20 In your contact with the Game, Fish & Parks you
21 specifically asked them if they were aware of any
22 problems, or how does that communication --

23 THE WITNESS: The GF&P, we talk to them -- with
24 the Game, Fish & Parks we've reached out to them and, you
25 know, just informed them we had this Application before

1 us for the Prevailing Wind Park Project. Asked them if
2 they had worked with the developer, and they said they
3 have.

4 Asked them if they would be participating in the
5 WAPA's NEPA process, and they said they would be. Asked
6 them if they had any concerns with this project that they
7 would want to participate here, and it sounded like that
8 they didn't have any concerns unique to this project and
9 would be communicating the general concerns they
10 communicate to every developer during the layout phase.

11 COMMISSIONER HANSON: Okay. So quite thorough
12 in your questioning, it sounds like, and your request for
13 information.

14 On page 11 you state that in the Hessler's
15 testimony he identified that 35 dBA noise limit would be
16 extremely difficult for a wind project to meet, and the
17 C-weighted sound measurements would still not capture the
18 infrasound noise levels that the Intervenors are
19 concerned about.

20 You've heard the testimony here today by a
21 number of folks. Well, throughout these hearings, as a
22 matter of fact. You've been here the entire time; is
23 that correct? You've been here the entire time?

24 THE WITNESS: Yep.

25 COMMISSIONER HANSON: Do you have anything to

1 add to that opinion, or has your opinion changed from --
2 or any concerns? I'm giving you a wide window there to
3 work with.

4 After hearing all of the testimony, do you have
5 any concerns other than what you've expressed here?

6 THE WITNESS: Those concerns that I expressed
7 were just summarizing Mr. Hessler's testimony.

8 COMMISSIONER HANSON: Okay.

9 THE WITNESS: And he would be our expert that
10 staff is relying on to help form an opinion on this
11 project. So I wouldn't change his testimony any.

12 COMMISSIONER HANSON: Okay. All right.

13 It further states that, as such, staff does not
14 support the proposed noise limit of dBA. However, in
15 Mr. Hessler's testimony on page 5 he states that, and I'm
16 just taking it out of the context of the sentence and
17 paragraph because it's fairly lengthy.

18 But a portion of the sentence it says, "leaving
19 a few people who do not only remain adamantly opposed but
20 who are legitimately disturbed." And then on page -- and
21 he's referring to the noise.

22 And then on page 6 he speaks of the pressure
23 pulsations, and he says that, "I believe, based on some
24 recent research," and then he refers to Steven Cooper,
25 Subjective Perception of Wind Turbine Noise, that "A very

1 small minority of people are susceptible to vertigo and
2 nausea symptoms that are apparently caused by inaudible
3 pressure pulsations at the blade passing frequency of
4 wind turbines, which is typically just below 1 hertz.
5 When this occurs it is severely problematic and has
6 forced people to move from or even abandon their homes."
7 And we've heard testimony pertaining to that.

8 So remembering that sentence and the testimony
9 that we've had here today, there is a proposed permit
10 conditions, jointly proposed by Applicant and Staff. Do
11 you completely agree with what is in this -- I'll call it
12 a document. It's Exhibit A 32. Which is contained
13 within this exhibit that -- well, I'll leave it at that.

14 Are you in complete agreement with what is
15 attempting to be memorialized in this exhibit in
16 reference to noise and pulsating and effects from
17 turbines?

18 THE WITNESS: If you noticed, the noise isn't
19 included in that exhibit. We didn't take a position on
20 that issue prior to the hearing. Wanted to hear the
21 testimony, the evidence from all sides.

22 We're going to be briefing our position on that
23 after we get done with this process and following up with
24 Mr. Hessler on what he thinks would be an appropriate
25 condition for this project.

1 So if you noticed, A32 I believe is the exhibit
2 that includes all of the conditions that the Applicant
3 and Staff have agreed to thus far. And there are a
4 number that haven't been included yet because we haven't
5 formed an agreement or discussed them at this time.

6 COMMISSIONER HANSON: And you're referring also
7 then to Exhibit A33, which is the Applicant's Proposed
8 Conditions for 27 and 29?

9 THE WITNESS: Correct.

10 COMMISSIONER HANSON: Okay. And we'll look
11 forward to that process.

12 And I wanted to bring that out, though. And I
13 appreciate you bringing it out. You did it in fewer
14 questions than I had to ask so I appreciate that very
15 much.

16 One of those I'm curious about, is staff in
17 agreement with -- I think with decommissioning costs at
18 this juncture?

19 THE WITNESS: Yeah. We -- staff actually
20 proposed that condition, and the Applicant agreed to it.
21 They changed some of the wording in there but agreed to
22 the dollar amount.

23 And, essentially, what staff did was went to the
24 record of Mr. Pardo and identified that the nonsalvage
25 value resale -- the nonresale value decommissioning cost

1 was about \$51,000 per turbine.

2 So we said we'll use the same amount that has
3 been approved in past Commission projects, the \$5,000 per
4 turbine. We'll recover that over 10 years. And then at
5 the end of 10 years you're at your about \$50,000 per
6 turbine needed to decommission them. And then the
7 Commission can review financials, updated decommissioning
8 cost estimates, and then at that time decide whether or
9 not additional funding is needed or not.

10 COMMISSIONER HANSON: Excellent. I worked out
11 the two formulas to see how it -- and both went down a
12 little bit different roads, but you arrived at the same
13 place. So I'm glad you guys could work that out.
14 Gal/guys could work that out.

15 Do you have a personal thought what -- might
16 have to put you in a bulletproof glass booth here.
17 There's so many questions.

18 Do you have a personal thought of what might be
19 acceptable for flicker in the morning and flicker in the
20 evening?

21 THE WITNESS: I do not have a personal thought
22 on that. I have not seen -- at the end of the day it's
23 an annoyance issue. It's a nuisance issue; right? And
24 what might be acceptable to me might not be acceptable to
25 somebody else.

1 And, you know, I don't think it's staff's
2 position to push for a policy on that issue. Ultimately
3 what I looked at was what the county was comfortable with
4 as being a nuisance issue and if they were comfortable
5 with 30 hours without some study saying that's right or
6 wrong, I was comfortable with that.

7 COMMISSIONER HANSON: Thank you.

8 And subject to doing the math, which is pretty
9 easy to do in your head but would you agree that if we
10 looked at the 30-hour perimeter -- 30-hour limit, that
11 20 minutes in the morning and 20 minutes in the evening
12 would be -- would mean 45 days of the year that a person
13 would experience it and that 15 minutes in the morning
14 and 15 minutes in the evening would -- would be 60 days
15 of the year?

16 THE WITNESS: I'm just racking my brain to look
17 at those -- recall those charts that were provided in
18 that flicker study where it calls out, you know, this
19 time of the day, this time of the day, and it kind of
20 highlights what turbines are causing flicker on a certain
21 receptor.

22 And I think that if you look at the ones that
23 were experiencing the most flicker, it would be about
24 that because you're in the spring and fall. You're
25 hitting the -- or whenever the sun was at the right

1 angle, there's about two or three weeks at a time when
2 they're hitting that. And then it would be down for a
3 while and then the sun would come back to the right angle
4 and then would hit it. So I think it would be about 30,
5 40 days.

6 COMMISSIONER HANSON: About 34 days of the year?

7 THE WITNESS: 30 to 40 days.

8 COMMISSIONER HANSON: Okay.

9 THE WITNESS: But you can't -- I'd have to go
10 back and reference the study to check that out.

11 COMMISSIONER HANSON: All right. Thank you.
12 That's a great answer. I appreciate it.

13 Very much thank you for your testimony.

14 MR. DE HUECK: Any redirect?

15 MS. EDWARDS: I do, but can I have three
16 minutes? You have my word I will be done before noon but
17 there were several questions there and I want to get my
18 thoughts together.

19 Thank you.

20 (A short recess is taken.)

21 MR. DE HUECK: We are back in session, and I
22 would just like to open up this -- beginning this session
23 with pointing out that the three Commissioners just met
24 with their advisors strictly to discuss procedural
25 scheduling in terms of when we're going to be able to get

1 back together to make a final decision. So if anyone was
2 inquiring as to what we were doing, it was merely
3 procedural.

4 REDIRECT EXAMINATION

5 BY MS. EDWARDS:

6 Q. Mr. Kearney, Ms. Pazour asked you some questions
7 about some -- dealing with postconstruction issues. Do
8 you recall that?

9 A. I do.

10 Q. And drawing your attention to Exhibit A32, and I put
11 it up on the monitor so folks in the room could see it,
12 do you recognize that exhibit?

13 A. I do. Staff reviewed this document and made edits
14 to it and worked with the Applicant on proposed permit
15 conditions, should the Commission issue a permit in this
16 case.

17 Q. Can you page down to Condition 36 for me, please.

18 If you need to take a minute to look at it and
19 familiarize yourself with that.

20 A. I'm familiar with that condition.

21 Q. Can you summarize that condition for us, please.

22 A. Condition 36 is the public liaison officer that the
23 Applicant has agreed to utilize during the construction
24 period of the project. Essentially that person will be
25 picked by the Applicant and will have to come before the

1 Commission for approval prior to going out into the --
2 into the field and working on the project.

3 That person would be the contact during the
4 construction period and reclamation period of the project
5 for any issues, that it's an individual there that can be
6 a mediator between the landowner, the impacted
7 individual, and the company and help to resolve those
8 issues and work alongside PUC staff in that process as
9 well.

10 Q. And you testified in response to a Commissioner
11 question that you've worked on siting dockets for five or
12 six years; correct?

13 A. Correct.

14 Q. So is this a condition you've seen play out in
15 practice?

16 A. Yes.

17 Q. And how in your experience has that worked?

18 A. It has worked very well for projects. The past
19 public liaisons have been very good at getting
20 information to the folks that need it in a timely manner
21 and really digging into the issues, should Commission
22 staff or a consumer affairs representative reach out to
23 them to follow up on an issue.

24 Q. Thank you.

25 You also spoke about your last three years or so

1 experience on wind siting dockets. Do you recall the
2 wind query docket you referenced?

3 A. That's the Willow Creek Project.

4 Q. Were you at that public input hearing?

5 A. I was not.

6 Q. Mr. Almond asked you some questions regarding
7 turbine location changes to address noise concerns. Do
8 you remember that conversation?

9 A. I do.

10 Q. Can you provide your understanding of the current
11 noise level impact based upon the turbine layout?

12 A. Well, through conversations with Mr. Hessler and his
13 testimony, as well as the Applicant's sound study, it's
14 my understanding that there are two nonparticipating
15 residences that are above the 40 dBA ideal design goal.

16 And I think that Mr. Hessler would like to see the
17 project make an effort in dropping that -- those limits
18 at that residence to his ideal design goal of 40 dB --
19 dBA. That's kind of where essentially I think that --
20 it's thought that the project could reach that level if
21 they worked to get it.

22 I'm going to qualify that with there's a lot of
23 other siting criteria out there that the Applicant needs
24 to work with, and we haven't specifically -- Commission
25 staff hasn't specifically asked the Applicant to try to

1 meet those limits proposed by Mr. Hessler of 40 dBA, but
2 it's -- from a sound perspective, he believes that those
3 limits could be reached if they tried to shift some
4 turbines around.

5 Q. And one final question. In response to some
6 Commissioner questions you talked about whether or not
7 there was a need for more studies.

8 Do you believe if we had more than six months to do
9 this, more studies could be completed, in your
10 experience?

11 A. That's a tough question because it depends on what
12 you're studying. Some studies might take years to do,
13 and some might take six months. But from the property
14 value study it would take time and money, and money's
15 also a factor in that.

16 But I think what extending the time line would do is
17 afford folks the time to research their positions and
18 form their positions and present them to the Commission.

19 MS. EDWARDS: I have no further questions.

20 Thank you, Mr. Kearney.

21 MR. DE HUECK: Recross.

22 MS. AGRIMONTI: No, thank you.

23 MR. DE HUECK: Recross, Reece.

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RE CROSS-EXAMINATION

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BY MR. ALMOND:

Q. Just one question. You've talked now with a couple Commissioners and with Ms. Edwards about your work on other siting dockets.

Of all the siting dockets you've worked on, which is the most densely populated?

A. Are we talking specifically wind farms?

Q. Yes. Sorry.

A. Okay. Just to qualify that.

I would say that this project so far -- this is just off my recollection on the ones I've worked on in the recent past, but I think that this project has the most residences in the project area at this time. There could be other projects in the future that might have a -- have, you know, a higher level of population density, but I think this project is probably the one with the most individuals.

MR. DE HUECK: Mr. Fuerniss.

RE CROSS-EXAMINATION

BY MR. FUERNISS:

Q. Just one question. Commissioner Fiegen brought up, you know, vast amounts of research has been done, research is going on, research will happen in the future.

Would you agree with the statement that action in

1 defense of the public health does not require
2 certainty?

3 A. I don't think I'm qualified to speak on that. I'm
4 not an elected official, nor am I an expert in the area
5 of epidemiological sciences. And I'm not a medical
6 doctor so I don't think I can opine on that.

7 MR. FUERNISS: Thank you.

8 RE CROSS-EXAMINATION

9 BY MS. JENKINS:

10 Q. Sir, you -- on the siting guidelines that was
11 discussed earlier, the 2008 version, when that was
12 removed from the PUC website was there a notice or a
13 statement put on there that they no longer considered
14 that relevant or --

15 A. Not that I recall.

16 Q. And I'm not sure if I can ask you this, but was
17 there an American Wind Energy Association link on your
18 website at that same time?

19 A. There were links to industry information on our
20 website. I don't know if there still is one or not.

21 Q. Okay. And then I'm not sure if this qualifies, but
22 you remember James Andersh's testimony. And I know
23 you -- you said that you checked to make sure that all
24 the laws had been followed and everything.

25 And I don't know where I read it, but I read where

1 after the Applicant files their Application they need to
2 post for the public notice or knowledge around wherever a
3 turbine is going to be sited.

4 Did the Applicant comply with that?

5 A. I would have to double-check our statutes because I
6 don't know if notice is required for a wind project. I
7 can't recall off the top -- posted notice, I should say,
8 at the project location.

9 That's typically for a combustion turbine or a coal
10 plant or some central station power. I can't remember if
11 the wind projects were somehow written out of that
12 requirement. I'd have to double-check the statute and
13 get back to you or consult with our attorney.

14 Q. You could check that, and then if it had not been
15 followed, that could be considered?

16 A. If that had not been followed --

17 MS. EDWARDS: I'm going to object. This is
18 outside the scope of Commissioner questions and redirect.

19 MR. DE HUECK: Ms. Jenkins, if you have
20 questions about the posting of notice, I guarantee Darren
21 will be happy to look into it for you and make sure that
22 it's being followed if it needs to be.

23 But I agree it is a little outside any
24 Commission questions. So --

25 MS. JENKINS: Yes. I understand. I should have

1 thought of it at the first -- when I declined to ask
2 questions.

3 MR. DE HUECK: Again, a simple e-mail to Darren
4 and he can answer that question --

5 MS. JENKINS: And would it change --

6 MR. DE HUECK: -- tomorrow.

7 MS. JENKINS: -- what he said now? Or would it
8 have any effect on the project?

9 MR. DE HUECK: Oh, I'm sorry. Maybe I misheard
10 your question.

11 MS. EDWARDS: She'd have to ask Darren.

12 MR. DE HUECK: Go ahead.

13 Q. Would that make any difference on the decision on
14 this process?

15 A. It would probably be brought to the attention of the
16 Commissioners through a public comment or something. And
17 I can't speak to whether or not that would impact the
18 outcome of this project.

19 If there's a notice issue, I would suspect it would
20 probably have a -- some type of --

21 MS. EDWARDS: I'm going to interject another
22 objection. We're getting dangerously close to legal
23 conclusions here.

24 MS. JENKINS: Okay.

25 MS. SMITH: Mr. de Hueck, I can just say that we

1 looked at the statute just now.

2 The definition of energy conversion facility
3 specifically excludes wind energy conversion facilities.
4 Energy conversion facilities, as Mr. Kearney was saying,
5 do have a posting requirement. Again, because that term
6 does not apply to wind energy conversion facilities, that
7 is not a requirement for this project.

8 MR. DE HUECK: Thank you.

9 MS. JENKINS: Is it possible for you to tell me
10 that -- where you found that?

11 MS. SMITH: Certainly. That's in the Statute
12 49-41B- -- so 5.1 is the posting requirement. And then
13 you have to look at the Definitions section, and that is
14 in 2.6.

15 MS. JENKINS: Thank you.

16 MS. SMITH: You're welcome.

17 MS. JENKINS: No further questions. Thank you.

18 MR. DE HUECK: Ms. Pazour, any questions?

19 MS. PAZOUR: No.

20 MR. DE HUECK: Thank you very much. Any
21 remaining Commissioner questions?

22 Mr. Kearney, you may step down.

23 (The witness is excused.)

24 MR. DE HUECK: Staff, do you have any other
25 witnesses you would like to call?

1 MS. EDWARDS: Staff rests.

2 (Ms. Jenkins exits.)

3 MR. DE HUECK: Prevailing Winds, it's your turn
4 to put on a rebuttal case.

5 MS. AGRIMONTI: Thank you. We would call
6 Mr. Peter Pawlowski.

7 Peter Pawlowski,
8 called as a witness, being first duly sworn in the above
9 cause, testified under oath as follows:

10 MS. AGRIMONTI: Before I begin with
11 Mr. Pawlowski, at some point I would like the opportunity
12 to review exhibits before we convene officially so that
13 we can clean up any exhibits we might need to clean up.

14 MR. DE HUECK: Okay.

15 MS. AGRIMONTI: Thank you.

16 DIRECT EXAMINATION

17 BY MS. AGRIMONTI:

18 Q. Mr. Pawlowski, you've been here throughout the
19 hearing this week; is that right?

20 A. Yes. There are small portions of it that I've
21 missed, but I've been here for at least 95 percent of it.

22 Q. And you also heard the Intervenors testify regarding
23 their contacts from project developers?

24 A. Yes, I did.

25 Q. All right. Without describing the content of any

1 conversations, can you please describe the contacts you
2 personally have had with the Intervenors prior to
3 hearing?

4 A. Sure. So for Ms. Schoenfelder I've been at a number
5 of Charles Mix meetings with her, spoken to her outside
6 the meetings, had conversations. I've also spoken to her
7 son Zachary. He was at the public hearing, attempted to
8 ask me a direct question, which I could not answer.

9 I then went and answered that question to him at the
10 break, provided him my business card, and mentioned that
11 I would be happy to talk to him at any point.

12 I know for Mr. Fuerniss I've certainly spoken to him
13 and answered his questions in Charles Mix County meetings
14 and offered to provide any additional information I
15 could. Certainly for Ms. Jenkins I've done the same. In
16 particular, in a public meeting in Charles Mix I've, in
17 the middle of the meeting, offered to get her address and
18 provide her any information.

19 And in addition to that, I've been in a number of
20 public meetings with Ms. Pazour. I have to say I did not
21 fully understand the information that she wanted, but
22 during this hearing at breaks I have said to her that we
23 would get her the information that she needs in order to
24 have an understanding and make sure that she has what she
25 needs.

1 So I just wanted to provide the Commission with
2 that.

3 I've also made it clear to all the counties which
4 I've been in that we're here to answer questions,
5 including recommending to Charles Mix County that they
6 become Intervenors in this process and reminding them at
7 the last meeting I attended just prior to the deadline to
8 become an Intervenor. So I just wanted to clarify that
9 for the Commission.

10 Q. Mr. Pawlowski, did you also speak with the Hubners?

11 A. Oh, I'm sorry. Yes. I also spoke with Gregg Hubner
12 actually on a lunch break between -- in Charles Mix
13 County. We spoke briefly outside of Scoops where I
14 offered to answer any questions, but the conversation was
15 limited to just where I was born.

16 Q. During your testimony you stated you would come back
17 and provide the work hours for the construction of the
18 project. Can you provide that information?

19 A. Sure. So we estimate that for the construction will
20 be between 180,000 and 200,000 work hours.

21 Q. Mr. Pawlowski, there were also questions about
22 turbine location numbers. And I'll represent that we
23 have filed in the Docket Exhibit A38.

24 Have you reviewed that table?

25 A. Yes, I have.

1 Q. And does that show the numbers that are in the
2 shadow flicker and noise reports as compared to the
3 numbers that are on the exhibit we've been using at this
4 hearing, including I-29?

5 A. Yes, it does.

6 Q. And I-22. Excuse me. Just make sure I get the
7 right number.

8 I was right the first time. The blowup project area
9 is I-29. Just to clarify.

10 A. So yes. It reflects that.

11 MS. AGRIMONTI: All right. We would move
12 admission of Exhibit A38.

13 MR. ALMOND: No objection.

14 MR. DE HUECK: Staff.

15 MS. EDWARDS: No objection.

16 MR. DE HUECK: So admitted.

17 Q. Staff also had some questions about decommissioning
18 and at one point asked if you would be back up to
19 testify.

20 Are you available to answer questions on the topic?

21 A. Yes, I am.

22 Q. All right. Turning to Mr. Whooping Crane, Ms. Canty
23 testified that the project will implement a monitoring
24 and curtailment program during the migration periods.

25 Do you remember that testimony?

1 A. Yes, I do.

2 Q. Can you tell us more about the software that the
3 project plans to implement for that program?

4 A. Sure. So the software, there's two ways to stop the
5 operation of machines. One way is to put in a phone call
6 to the operations center and ask them to shut the
7 turbines down.

8 However, the other way that it can be done is
9 through a tablet or a laptop by the observer. They can
10 shut down turbine strings, individual turbines, or the
11 entire wind park, and that's something that we
12 implemented for eagles at our Latigo Wind Farm in
13 southern Utah, just south of Moab, just north of
14 Monticello.

15 Q. Has that program been successful at Latigo? Or has
16 that software been successful at Latigo?

17 A. Yes, it has. It's enabled the shutdown of the
18 turbines and been working with the U.S. Fish & Wildlife
19 Service on that program, and it's one that they're
20 familiar with out of the Denver office.

21 Q. There have also been some discussions about the
22 entities and ownership of the Prevailing Wind Park
23 project. Do you recall that?

24 A. I do.

25 Q. And you assisted in preparing a diagram that shows

1 the ownership of the Prevailing Wind Park, LLC?

2 A. I did.

3 Q. And is that Exhibit 37?

4 A. Yes, it is.

5 Q. Does that accurately show the ownership structure of
6 the project?

7 A. It does. Also I'd like to clarify one other item in
8 the record. I apparently actually work for FTP Power,
9 not Sustainable Power Group, which is a trade name that
10 we do business by.

11 MS. AGRIMONTI: Move Exhibit 37 for admission.

12 MS. EDWARDS: Do we have a copy of that? Was
13 that prefiled?

14 MS. AGRIMONTI: We filed them last night. Let
15 me check and see if they're up.

16 MS. EDWARDS: In which case, no objection.

17 MR. ALMOND: No objection.

18 MR. DE HUECK: It will be admitted.

19 MS. AGRIMONTI: All right. Thank you.

20 I have no further questions for Mr. Pawlowski at
21 this time.

22 MR. DE HUECK: Mr. Almond, do you have any
23 cross-examination?

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CROSS-EXAMINATION

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BY MR. ALMOND:

Q. In your rebuttal here with Ms. Agrimonti you mentioned the various meetings that you attended for this project. You've been here for 95 percent of the hearing.

You've heard discussion or testimony about that sPower brochure and that map in front of the brochure. Can you tell us what that map illustrates?

A. Sure. So I believe under my initial cross-examination by you when I was first on the stand that map was put in front of me, and that map showed an outline of the project area. The only indication within that map was some properties were highlighted in red. And, to the best of my recollection, those properties were highlighted in red because they had already stated they did not want to participate in the project.

When we do open houses and we show the area of the project we've -- I've found that it is best to note the properties that have already said they don't want to participate in the project. Otherwise, you run the risk of being accused of inferring that, in fact, they want to be a part of the project or are representing it in some way.

So as a normal practice I've always looked to -- when we can't affirmatively show all the property that is

1 in the project in early stages, to make sure we at least
2 note the properties that are not a part of the project as
3 to not misrepresent conversations we've had with
4 landowners.

5 MR. ALMOND: No other questions.

6 MR. DE HUECK: Mr. Fuerniss.

7 CROSS-EXAMINATION

8 BY MR. FUERNISS:

9 Q. Would you consider casual conversations at
10 Commissioner meetings during breaks or in between or
11 after meetings to be on the same level as direct contact
12 with individual landowners or residents -- consider that
13 to be on the same level as contacting them, say,
14 pre-application?

15 A. So certainly those meetings occurred during the --
16 after the Application had already been submitted to the
17 Commission, but making it clear in those casual
18 conversations that, in fact, I'm available to answer any
19 questions, happy to meet individually. That's the most I
20 can do. I don't want to force myself upon a landowner.

21 And, you know, I do believe I have been thanked by
22 individual landowners in this room, including yourself,
23 for answering questions at the -- at those meetings. I
24 mean, the best I can do is let people know that I'm
25 available, make sure the people have my contact

1 information, and I'm always willing to sit down.

2 You know, there was six to eight meetings that I was
3 in almost every week, and at the same time I don't want
4 to go and if I'm seeing somebody almost every week, I
5 would think it intrusive if I was also to call your house
6 and knock on your door when I know I'm going to be seeing
7 you and sitting in a room with you for an hour to eight
8 hours and have conversations and make it clear that I'm
9 available.

10 And so maybe that's my error in interpretation, but,
11 you know, I certainly felt like and thought I was
12 making it clear that I was available. And it was me,
13 Peter Pawlowski, not somebody who works for me in those
14 meetings so I can speak to my actual knowledge in being
15 there.

16 Q. That is true, and I would agree with that. However,
17 I would say that we never experienced the same sort of
18 contact as, say, neighbors that actually wound up signing
19 leases. Would you agree to that?

20 Because we were never contacted by your -- I don't
21 know. He probably has a title or whatever. But that
22 would go around and talk to people as far as signing up
23 the land.

24 A. So, I mean, that sounds accurate. And, you know,
25 all I can say is that I certainly wish that prior to July

1 and August I had had the opportunity to meet you and sit
2 with you. And even, you know, during this proceeding and
3 after this proceeding I am always happy to sit down with
4 you in person. I realize it may be a little too late,
5 but I'm available to and more than happy to.

6 Q. Fair enough.

7 MR. DE HUECK: Ms. Pazour.

8 MS. PAZOUR: Thank you.

9 CROSS-EXAMINATION

10 BY MS. PAZOUR:

11 Q. In the six to eight weeks at the meetings you never
12 even talked to me. You were always talking to staff, the
13 Commissioners while I watched. I guess it just -- you
14 always -- you were trying to put yourself out there,
15 but in that whole time you never even came and asked me
16 why I was even there.

17 A. And that's fair. You know, my -- my assumption in
18 meeting most -- everybody else did approach me or we had
19 conversations in the hallway, and it gave me an
20 opportunity. You were there oftentimes with your
21 daughter on the other side of the room and made it known
22 in the room.

23 And right or wrong, and it was clearly a wrong
24 assumption, is that you didn't have a desire to talk to
25 me. There's a delicate balance that I try to do to not

1 be intrusive.

2 But I do appreciate the opportunity that I had to
3 talk with you here and hope to work with you to get you
4 additional information so that you have the information
5 you need. And I do wish I had taken the opportunity to
6 talk to you a little more as opposed to just making it
7 known in the room that I was there.

8 Q. You stated with my daughter. How many times did you
9 see her with me?

10 A. So I remember your daughter being there once when
11 there were cookies in the room, and she, I believe, had
12 two cookies. One of the Commissioners gave it to her a
13 second time. That's my recollection.

14 Q. So out of the six to eight weeks you remember her
15 being there once, and yet you didn't come up to me any of
16 the other times when she wasn't there.

17 A. As I said, I make myself available in the meetings
18 and leave it to individuals if they want to approach me.
19 That, obviously, was the wrong assumption, and going
20 forward it will change the way that I look at things.

21 If I had -- I didn't realize that you wanted to talk
22 to me. There are certainly times that I'm in meetings
23 that people don't want to talk to me or interact with me,
24 and I try to be respectful of that. And so I am sorry
25 that I did not take the initiative to go over and

1 introduce myself as opposed to leaving it to you to come
2 to me when I -- you know, when I was at those meetings.

3 Q. My other question is was it yesterday you came up to
4 me? Introduced yourself. Did you offer -- what did you
5 all offer me?

6 A. So I offered to provide you with any information I
7 could and also the neurologist that was here, we offered
8 too if you wanted him to talk directly to your daughter's
9 doctors to see if there was an opportunity for him to
10 provide them with additional knowledge.

11 MS. PAZOUR: That's my clarity. Thank you.

12 MR. DE HUECK: Staff.

13 CROSS-EXAMINATION

14 BY MS. EDWARDS:

15 Q. Did you read the comments filed in this docket?

16 A. I've read a good number of the comments, yes.

17 Q. And you attended the public input hearings?

18 A. Yes. I gave the presentation at the public input
19 hearing and sat and listened to all the comments that
20 were provided verbally.

21 Q. Through the comment process or the public input
22 hearing did you become aware of Ms. Pazour's concerns?

23 A. I do remember her from the public hearing. On the
24 comments, I don't know that I made it through hers or --
25 there was a lot of them.

1 Q. And based upon becoming aware of the concerns, did
2 you take the initiative to look into whether or not there
3 was anything you or the project would need to do to
4 address those concerns?

5 A. So as we provided testimony in the hearing by our
6 experts, we did not see a need for anything in particular
7 for the project in terms of its design.

8 However, obviously, providing information is
9 something we're always willing to do. And, but again,
10 there's always a sensitivity as to people just don't want
11 to listen to us because -- so but yes. With our
12 experts -- and that's a big part of the reason that we
13 provided the expert testimony that we did.

14 Q. And you were in the room for Mr. Hessler's
15 testimony; correct?

16 A. Yes, I was.

17 Q. Would you be willing to accommodate Mr. Hessler's
18 ideal design goal of 40 dBA for nonparticipating
19 landowners?

20 A. So the short answer is no. This project was
21 designed to meet the 45 dBA, and then we worked very hard
22 to minimize those impacts to get them as low as possible.

23 And so in order for us to then agree to be held to a
24 lower noise standard, it penalizes us for trying to do
25 the best to get the noise as low as possible.

1 We're willing to work to get the noise lower and to
2 work towards those standards, but we don't want to be
3 held to them. So if there's a line in which we're
4 violating our permit conditions, we want that line to be
5 the 45 dBA in two of the counties and 43 dBA in Charles
6 Mix in terms of what we're held to.

7 But in terms of us looking and trying to get the
8 numbers to no more than 40 dBA at nonparticipating
9 landowners, we're willing to work towards it as long as
10 if we don't get there is not a violation of our permit,
11 if it's issued.

12 Q. Has the project taken any steps or made any changes
13 to address the concerns of nonparticipating landowners?

14 A. Any steps that were taken were done prior to the
15 submittal of the Application with the design layout, and
16 that would have come in the form of minimizing shadow
17 flicker, committing to the 30 hours a year, no more than
18 30 minutes a day, and minimizing the sound power levels
19 at the nonparticipating receptors.

20 Q. So you didn't consider taking any steps to address
21 any of the concerns you read in the comments?

22 A. Well, each of the comments were read and reviewed.
23 And given the study for the sound power levels, as well
24 as shadow flicker, I mean, agreeing to the 30 minutes a
25 day was something that we did, I guess, during the

1 process. So that would be something that we did to
2 accommodate them.

3 And I guess it's probably not accurate to say we
4 didn't do anything. But when we looked at the layout,
5 updating our studies to make sure that we had the
6 necessary sensitive receptors. But we did from the
7 beginning what we could to minimize the impact of the
8 project in the area.

9 Q. All right. Moving on to decommissioning.

10 Were you here when I asked Ms. Canty questions about
11 decommissioning?

12 A. Yes.

13 Q. And she testified that the entity, Prevailing Wind
14 Park -- I'll bring up the exhibit.

15 Prevailing Wind Park, LLC was -- when were they
16 established?

17 A. I believe it was the fall of 2017.

18 Q. What assets would Prevailing Wind Park, LLC have to
19 guarantee the financial viability and cover any
20 liabilities with this project?

21 A. Is this specific to decommissioning, or in general?

22 Q. Specific to decommissioning.

23 A. Sure.

24 So the wind farm itself will have the assets that
25 have been installed on the facility but will be at the

1 end of the operational life of the facility. So, as a
2 result, we've agreed with staff to fund an escrow account
3 such -- which will be reevaluated after 10 years, such
4 that there's assurance that there's sufficient funds to
5 decommission the facility.

6 Q. So other than this project, does Prevailing Wind
7 Park, LLC have any assets?

8 A. So Prevailing Wind Park, LLC when it's built will
9 have the assets of the project. And so when the
10 project's built they'll be almost about 280, \$300 million
11 worth of operational assets.

12 Q. Does sPower Development Company, LLC cover the
13 liabilities and obligations of Prevailing Wind Park, LLC?

14 A. Yes, it does. SPower does.

15 And in other jurisdictions as opposed to funding an
16 escrow account, we've put in place bonds, decommissioning
17 bonds.

18 Q. Okay. Did you hear the testimony this morning from
19 Mr. Scott Rueter?

20 A. I believe so. I did miss a small portion of the
21 testimony, but I believe so.

22 Q. And he testified about a turbine that was left --
23 that was left standing in his field.

24 If that were to happen with this project, if a
25 turbine was no longer operational, would it be

1 decommissioned?

2 A. Yes. It would. We look to decommission a turbine
3 within 12 months of it stopping operation. And normally
4 agree to those requirements as a part of our permits.

5 MS. EDWARDS: I have no further questions.

6 Thank you, Mr. Pawlowski.

7 MR. DE HUECK: Commission questions.

8 Commissioner Nelson.

9 COMMISSIONER NELSON: Is there anywhere in the
10 record, and I haven't found it so you can help me, where
11 the Applicant has provided the distance to each residence
12 from the nearest turbine?

13 And I know we've got it for the Intervenors, but
14 I'm interested in for all of the residences in the area.
15 Is that in the record?

16 THE WITNESS: I don't know if it's in the
17 record, but I know we have it because we've provided it
18 when asked for to at least Charles Mix County. So I know
19 we have it. I don't know if it's in the record.

20 MS. AGRIMONTI: Commissioner Nelson, I can
21 answer that question. It has not yet been submitted. We
22 would be happy to do so.

23 COMMISSIONER NELSON: And it would not be just
24 Charles Mix County but the entire project.

25 MS. AGRIMONTI: Yes, sir.

1 COMMISSIONER NELSON: I would appreciate that,
2 and I'm glad I didn't miss it.

3 THE WITNESS: I'm happy to provide it.

4 MS. AGRIMONTI: Can we give it an exhibit number
5 and pre-admit it?

6 MR. DE HUECK: Yes, we can.

7 MS. AGRIMONTI: I believe that would be 39.

8 MS. EDWARDS: No objection.

9 COMMISSIONER NELSON: And if I might ask, the
10 residences, are they listed by the receptor numbers that
11 you've been using, or how are they referenced?

12 MS. AGRIMONTI: We can do it by receptor number
13 that would match up with the shadow flicker in the noise
14 reports. And the turbine number, yes.

15 COMMISSIONER NELSON: I think that would be most
16 appropriate.

17 MS. AGRIMONTI: We can do that. I need to make
18 a friendly amendment to my motion to admit the exhibit.
19 Looking online, and it looks like our last number was
20 A40. And then I used one today, A41, so it would
21 actually be A42.

22 Does that sync with what other people have?

23 Thank you.

24 COMMISSIONER NELSON: And if I could add one
25 other question, that you indicate whether each receptor

1 is a participant or nonparticipant. We'd appreciate it.

2 MS. AGRIMONTI: Certainly.

3 COMMISSIONER NELSON: Is there a 45 dBA limit
4 for your project in Hutchinson County?

5 THE WITNESS: Either Bon Homme or Hutchinson
6 does not have a dBA limit associated with it, and so what
7 we did is applied the 45 dBA limit to whichever county
8 that was not -- I apologize that I can't remember off the
9 top of my head which one it was. But we would --

10 We've committed to 45 dBA, and we would have no
11 issue with that being a permit condition.

12 COMMISSIONER NELSON: So my question was, does
13 Hutchinson County -- earlier you testified that
14 Hutchinson County had a 45 dBA limit. Does it?

15 THE WITNESS: "Earlier today," you mean just a
16 few minutes ago?

17 COMMISSIONER NELSON: Yes.

18 THE WITNESS: So they may not. I think Bon
19 Homme is the one that has the 45 dBA limit. And we
20 applied the Bon Homme setback and limits across initially
21 all the counties, including Charles Mix, up until we
22 signed the Affidavit. And I apologize that my testimony
23 was in error.

24 COMMISSIONER NELSON: Thank you.

25 There were some questions about the assets of

1 Prevailing Winds Wind Park after construction. Will
2 those assets be fully encumbered?

3 THE WITNESS: They will be encumbered, yes, with
4 a loan, and that loan value will -- more than likely will
5 absolutely be less than the value of the assets. But,
6 yes, there will be a loan on it.

7 COMMISSIONER NELSON: Thank you.

8 MR. DE HUECK: Chairman Fiegen.

9 CHAIRWOMAN FIEGEN: Thank you.

10 And, you know, thank you for reaching out to
11 some of the Intervenors at the meetings. I certainly
12 appreciate that.

13 When you stated today that you said to them,
14 I'll get you any information or answer your questions
15 like what type of information would have you -- like I
16 don't really understand what you are offering to them.
17 That's kind of vague to me.

18 THE WITNESS: Sure.

19 So depending on who's asking for the
20 information, it can be information about setbacks, it can
21 be information about the turbines, it can be information
22 about how it operates.

23 It's really just a statement that if you have
24 questions, I'm here to answer them. And those questions
25 oftentimes allow me to understand more of what they might

1 be looking for and offer up suggestions.

2 I mean, I don't think it would be helpful to
3 provide them just with all the documentation of this
4 hearing, right, assuming I had that before the hearing
5 and before, you know -- assuming we had it a year ago or
6 in Charles Mix County when we were meeting. Handing them
7 a stack of paper wouldn't have been helpful.

8 But it is to answer the questions, try to
9 address concerns, if there's specific documents to
10 address it. But to be responsive. That's what I meant.

11 CHAIRWOMAN FIEGEN: So you just stated to
12 address concerns. So would have you sat down with them
13 and -- if they had concerns about sound or light or
14 shadow flicker, would have you sat down with them and
15 negotiated, or your goal was just to educate them on your
16 project and the items that -- and the research that you
17 did on your project?

18 THE WITNESS: So the intent would be to sit down
19 and show them, for instance, where we thought the sound
20 was going to be. If the sound modeling hadn't been done,
21 then, you know, we would say the requirement is 45 dBA.
22 We're trying to get it lower than that. This is an
23 example of some of the stuff that makes that noise. Go
24 through the flicker concerns, the shadow flicker.

25 Sometimes the concern can be traffic during

1 construction. So try to figure out how we can address
2 it. It's not always just giving them information. It's
3 not -- and I wouldn't necessarily call it negotiating,
4 right, because we're not asking for anything from them.
5 We're trying to figure out what we can do to make the
6 project work -- be less intrusive. So that's what we're
7 doing.

8 So I can't -- you know, in some projects, you
9 know, maybe that means moving a turbine 50 feet so they
10 don't see it out their window, the closest turbine and
11 others. Maybe there's a concern during construction for
12 when children are going to school. It just kind of
13 depends. And figuring out what we can do to address
14 their concern.

15 CHAIRWOMAN FIEGEN: So it appears that a lot of
16 the people that had concerns have read a lot of the
17 information and probably the Application and have been to
18 the zoning meetings and so -- and actually a lot of them
19 submitted public testimony or a public written letter,
20 e-mail to the Commission. So there were certainly some
21 documented concerns that you would have known what their
22 concerns were.

23 You just stated that you said that maybe we
24 could have lessened -- what was the word you used? Oh,
25 Peter, now I can't remember.

1 MR. DE HUECK: Intrusion?

2 CHAIRWOMAN FIEGEN: Yeah. Intrusion. You would
3 have worked on that intrusion.

4 So would have you -- so if you knew their
5 concerns by reading the public comments and being at our
6 meetings, did you go up to these people and say, hey, I
7 heard you had a concern about sound. Let's look if we
8 can move that turbine?

9 THE WITNESS: So to -- I mean, obviously there's
10 always a general concern -- there was addressed to us a
11 general concern about sound.

12 And so, as a result of that, the project worked
13 to reduce the sound as much as possible on all of the
14 receptors in the area, in particular the
15 nonparticipating.

16 I mean, I think if we look at the chart for
17 nonparticipating landowners and how low the sound levels
18 are in those areas, I mean, I think it demonstrates that
19 the project has worked very hard to design around the
20 lowest possible amount of sound that we could -- we could
21 have. And that was the -- in reading through a lot of
22 the comments, that was the main concern.

23 We knew that was the main concern before the
24 formal comments, you know, in terms of listening to the
25 community and what we had heard. And sound is always a

1 concerning item. So that was the main item.

2 And shadow flicker. And that's a big part of
3 the reason that we committed to the 30 hours per year and
4 30 minutes per day.

5 CHAIRWOMAN FIEGEN: Thank you.

6 I know you adopted a lot of people's testimony
7 so I can't remember who's working with -- I think you
8 oversee the project so you'll just have to accept my
9 question maybe unless your attorney says, no, you don't
10 have to answer it.

11 So you work with the landowners on crop damage;
12 right?

13 THE WITNESS: Yes.

14 CHAIRWOMAN FIEGEN: Is that you?

15 THE WITNESS: It's probably not going to be me
16 during construction.

17 CHAIRWOMAN FIEGEN: But you oversee it.

18 THE WITNESS: But I oversee it, sign off on it.
19 Yes. I am very familiar with it. I have dealt with it
20 on other projects. It's a common item that has to be
21 addressed.

22 CHAIRWOMAN FIEGEN: So how about crop -- a lot
23 of that crop damage is during construction or maybe a few
24 years after or whatever. So do you deal with crop damage
25 on spraying and the fans?

1 I mean, is that all part of the crop damage, and
2 is that crop damage just that landowner or the -- the
3 adjacent property owner that could have crop damage?

4 I don't understand the crop damage part of your
5 scope that you deal with.

6 THE WITNESS: Sure.

7 CHAIRWOMAN FIEGEN: Because, of course, spraying
8 and -- yeah. Go ahead.

9 THE WITNESS: Sure.

10 So, and for the record, in terms of the document
11 that I would be referring to, I don't know the number,
12 but the Intervenors submitted a copy of our lease that
13 was initially handed out that contains provisions. So
14 I'm speaking to that specific item.

15 So the way that crop damage is dealt with -- and
16 that document is specific to the landowners who signed
17 it -- is we assess what their production has been over
18 the last three years, and then we pay them 1.5 times what
19 the rate is for the given crop for that damage.

20 And obviously with compaction and some other
21 stuff crop damage isn't a single-year payment; right?
22 It's measurable year to year until you deal with the
23 compaction issues.

24 Now for nonparticipating landowners we do not
25 have the right to impact their land or to cause crop

1 damage. And so but if that occurs, if there is an
2 incident that occurs, we are committed to resolving that
3 issue with them.

4 And that is the key part of us agreeing to
5 having the independent monitor that they can then raise
6 their concerns with and can stand there to help us
7 resolve the issue. But we have no right to impact their
8 land.

9 CHAIRWOMAN FIEGEN: Okay. So were you here
10 during the testimony -- I can't remember who testified.
11 But they talked about a lot of times the turbines are
12 running because the wind is at a higher level yet the
13 ground level is calm?

14 THE WITNESS: I did hear that testimony, yes.

15 CHAIRWOMAN FIEGEN: Okay. And you allow farmers
16 to farm around your turbines.

17 THE WITNESS: Yes. They can farm right up to
18 the access roads, around the base of the turbine.
19 There's basically a graveled road to be able to drive
20 around, and they farm right up to that.

21 CHAIRWOMAN FIEGEN: So my question, especially
22 since all the testimony came up and there's wind up here
23 and calmness here and farmers spray.

24 And so how does that blade not provide wind that
25 now provides damage because that spray has now drifted

1 not only to the landowner but now to the neighboring
2 landowner?

3 THE WITNESS: Sure.

4 So the turbine itself is not actually causing
5 any wind. The wind turns the turbine. If anything, the
6 turbine actually takes energy out -- a little bit of
7 energy out of the air. So that drifting would occur
8 regardless of whether or not that turbine is there
9 because the turbine is extracting energy. It's not
10 operating like a fan.

11 CHAIRWOMAN FIEGEN: Okay. Thank you.

12 COMMISSIONER HANSON: Mr. Pawlowski.

13 THE WITNESS: Yes, Commissioner.

14 COMMISSIONER HANSON: Thank you for providing
15 the information follow-up.

16 As you were going through and I was writing and
17 trying to listen I believe you said 150,000 to 200,000;
18 is that correct?

19 THE WITNESS: No. 180,000 to 200,000.

20 COMMISSIONER HANSON: Thank you. So that
21 would -- that would make approximately 90 to 100
22 employees for an entire year.

23 THE WITNESS: So that's for the construction.

24 COMMISSIONER HANSON: Right.

25 THE WITNESS: And I would just note, right,

1 there's a mixture of specialties associated with that,
2 and not everybody's going to work the entire time. Just
3 to be clear.

4 COMMISSIONER HANSON: Sure. Absolutely.
5 Understood.

6 Guess what? I'm going to ask a question about
7 whooping cranes. So how long does it take to go through
8 that process?

9 THE WITNESS: To build the project?

10 COMMISSIONER HANSON: With the laptop and
11 shutting them down and I spy and --

12 THE WITNESS: Oh. Sure.

13 So the laptop's always open and has the full
14 wind farm. So being able to find the string, the
15 individual turbine you want, or the entire farm,
16 depending on what the situation is, it takes -- I mean,
17 an average person can generally find and activate the
18 shutdown under a minute. And then there's three types of
19 shutdowns that are available to them.

20 One is an emergency stop, which is not ideal.
21 That will rapidly stop the machine on the order of under
22 30 seconds. And please keep in mind when I'm giving you
23 these numbers it assumes the machine is at 100 percent,
24 right. If the machine is not operating 100 percent, it
25 proportionally decreases the time.

1 And then there's an intermediate stop, which I
2 would say stops the machine in a little under a minute.
3 And then there's what we would consider the normal stop.
4 So that's where you're just feathering the blades.
5 There's no active brake applied. And that's about a
6 minute and a half or so.

7 COMMISSIONER HANSON: An emergency stop would
8 probably place a lot of stress on the structure, I
9 assume.

10 THE WITNESS: It does. The preference would be
11 to increase the distance in which you activate the stop
12 as opposed to using the emergency.

13 And so normally what we do is we look at what
14 the requirements are distance-wise for the stop, and then
15 we set a separate boundary that's a little bigger to give
16 us that flexibility to activate the normal stop of the
17 machine.

18 COMMISSIONER HANSON: In your earlier testimony
19 you stated that -- or someone did. I believe you did.
20 That there wouldn't be someone in the O&M facility all of
21 the time, 24/7.

22 Is this laptop shutdown availability ubiquitous
23 to other areas? Is it a situation where someone can see
24 it on the radio and call someone and they have the
25 ability immediately to go to it? Or are they going to

1 have to go to the O&M facility?

2 THE WITNESS: Oh. Oh, no.

3 So the searchers in the field would actually
4 have a laptop or a tablet to turn it off. So they have
5 the equipment. They have the -- equipment's not the
6 right word.

7 They have the computer with them to turn it off.
8 I think in some instances we used more a tablet. But,
9 no, it's the actual searcher that sees them that does it
10 right there in the field. They don't call back to the
11 O&M building. It's they just have the ability right
12 there to do it. And we train them to be able to operate
13 that system.

14 COMMISSIONER HANSON: Are they then authorized?
15 It sounds like they're authorized to make that decision.
16 Are they?

17 THE WITNESS: Yes. They are authorized to make
18 that decision. That's part of -- it's included in their
19 contract.

20 The best example would be Latigo. We have
21 searchers out there. They have the authority to shut the
22 machines down.

23 COMMISSIONER HANSON: When you say "searchers"
24 plural, how many approximately would you assign to this
25 facility?

1 THE WITNESS: So that would not be at my
2 discretion. That would be based on what U.S. Fish &
3 Wildlife Service said was necessary and the proper
4 practice. I'm not the right person to do that.

5 COMMISSIONER HANSON: Great. Thank you.

6 And would they be assigned -- I'm going to
7 assume they'd only be assigned during migration periods.

8 THE WITNESS: Yes. That's correct.

9 COMMISSIONER HANSON: Okay. And for eagles
10 then, the eagles are on their own, so to speak, or is it
11 still people who are working there see one -- it's not
12 during the migration period.

13 THE WITNESS: So eagles are different. We
14 follow what the recommendation is for U.S. Fish &
15 Wildlife Service for the project. And my understanding
16 is that shutting down and searching for eagles for this
17 project is not something recommended by U.S. Fish &
18 Wildlife Service.

19 And I would like to highlight that as one of our
20 conditions, which staff has not accepted yet, is the
21 commitment of following what comes out of NEPA through
22 the WAPA process, through the federal process, and
23 committing to that to this Commission. So that's --

24 You know, following all of these items is
25 something we've committed already to the Commission and

1 just waiting for staff's acceptance.

2 COMMISSIONER HANSON: Is there a special -- I
3 know with eagles there was a -- I don't know the correct
4 verbiage of it from the standpoint of a presidential
5 pardon basically that you can -- if an eagle gets killed,
6 you're not going to get fined and thrown in jail every
7 time one gets killed.

8 Is there something unique for -- in that respect
9 for a whooping crane? Or does that cover all endangered
10 species? Or are you not able to answer that?

11 THE WITNESS: No. I am. I am able to answer
12 that.

13 So for the eagles and the whooping crane we put
14 in place -- so for the eagles we put in place an Eagle
15 Conservation Plan, or ECP. For the whooping crane we put
16 in place a similar plan with the U.S. Fish & Wildlife
17 Service.

18 So we work with them to put the plan in place
19 that they again agree and think is appropriate given the
20 site, the design, all of those items, and we implement
21 it.

22 And as has been said before, there's never been
23 a take of a whooping crane by a wind farm in the
24 United States. But in the unlikely event that were to
25 happen, then it's a matter of looking at what needs to be

1 modified. And so if that were to happen, the Service has
2 the ability to put additional conditions on the project
3 in order for us to operate without -- within the
4 parameters that they set.

5 So it's up to them, and it's an iterative
6 process. So it's not like it's set the moment the
7 project starts operating and it's never addressed again.

8 It's periodically reviewed. There's data we
9 have to submit. We have postconstruction monitoring data
10 we have to submit and varying reports, and then it's
11 reviewed.

12 I know for eagles it's reviewed every five
13 years. I have to imagine it's about the same time frame.
14 Of course, if there's an incident, that triggers an
15 immediate review.

16 COMMISSIONER HANSON: Thank you. I do not
17 recall, did your redirect include --

18 CHAIRWOMAN FIEGEN: Oh, my goodness. That's
19 pizza.

20 COMMISSIONER HANSON: She buys pizza.

21 I don't believe your redirect included questions
22 pertaining to pulse or low frequency issues?

23 All right.

24 MS. AGRIMONTI: Commissioner Hanson, you're able
25 to ask the witness whatever it is you want to ask. I

1 don't believe this witness is the one for those
2 particular questions.

3 While I have the mic., I'll just note,
4 Mr. Pawlowski, if I've refreshed your memory, that we did
5 have proposed conditions that were put into the docket,
6 and Condition No. 3 talks about the WAPA requirements.

7 THE WITNESS: Yeah. That's right. Apologize.
8 That's what I was trying to reference earlier is that we
9 would meet the WAPA requirements that come out of that EA
10 process.

11 MS. AGRIMONTI: Yeah. And staff has agreed to
12 that particular provision.

13 THE WITNESS: Yeah. I didn't know they had
14 agreed to that.

15 MS. AGRIMONTI: Thank you. And I'm sorry,
16 Commissioner Hanson. Please ask whatever you want.

17 COMMISSIONER HANSON: Your counsel has just
18 instructed me that I may ask any question that I feel
19 like asking. That's a pretty big window.

20 Are you aware of any person who you would deem
21 to have had -- or has a legitimate physiological
22 challenge -- I'm trying to leave the window open -- from
23 wind turbines regarding whether it's sound or pulse?

24 THE WITNESS: So outside of what has been stated
25 in this room, I do not personally know somebody who has

1 something that has been presented or diagnosed and
2 presented to me that this is an issue.

3 COMMISSIONER HANSON: All right.

4 THE WITNESS: But I'm not a doctor too.

5 COMMISSIONER HANSON: Yeah. When you say
6 "diagnosed."

7 THE WITNESS: I meant --

8 COMMISSIONER HANSON: And that's fair to an
9 extent. You know, people tell you things, but -- I don't
10 know. I'll let you off the hook on that portion of it.

11 Let's remove the word "diagnosed." Do you know
12 someone that you believe has a legitimate challenge?

13 THE WITNESS: I do not.

14 COMMISSIONER HANSON: Okay. Thank you.
15 Appreciate your testimony.

16 MR. DE HUECK: With that, that is going -- do
17 you have anything else?

18 MS. AGRIMONTI: No, I do not.

19 (The witness is excused.)

20 MR. DE HUECK: Okay. Well, that's going to
21 conclude our hearing in EL18-026, other than the
22 housekeeping that you wanted to do. And I assume we want
23 that on the record.

24 MS. AGRIMONTI: I think what I would propose is
25 taking a break and then going back on the record to put

1 anything on if we need to and also ask if we should be
2 addressing the schedule that perhaps you might be
3 setting.

4 MR. DE HUECK: Sounds good. Okay. So
5 despite -- I knew we should have taken a lunch break.

6 COMMISSIONER HANSON: Let's take a lunch break.

7 MR. DE HUECK: So what do you want? Five
8 minutes? 10 minutes?

9 MS. AGRIMONTI: I think five minutes would be
10 sufficient, sir.

11 MR. DE HUECK: Okay. Let's get back at 1:10.

12 (A short recess is taken.)

13 MR. DE HUECK: Okay. We didn't really adjourn
14 last time so we're back in session to discuss posthearing
15 matters. Specifically, we're going to clean up our --
16 what has been admitted.

17 And, Ms. Agrimonti, Ms. Smith, I'm going to
18 start over with you to help guide this process.

19 MS. AGRIMONTI: Thank you. Certainly.

20 I'd like to address Applicant's exhibits. And
21 we had a side bar, Mr. Almond, and also didn't have a
22 chance to talk with Ms. Edwards so she may have some
23 comments here.

24 But, first of all, we believe that Exhibit A8
25 has been admitted, and we just want to confirm that.

1 Make sure there's nobody who has different records than
2 that.

3 Secondly, we overnight submitted an Amended
4 I-29, which identified a couple of additional turbine
5 numbers. We would like that to replace the existing
6 I-29.

7 Lastly A39 and A40, we would move for admission.
8 A39 is a Health Canada report -- a study that
9 Dr. Ellenbogen cited in his testimony. And then
10 Exhibit A40 is a hearing threshold table that was
11 provided in response to one of the Commissioner
12 questions. We would move admission of those two exhibits
13 as well.

14 MS. EDWARDS: No objection.

15 MR. DE HUECK: Waiting on you.

16 MR. ALMOND: Oh, I'm sorry. No objection. We
17 had the side bar, so I thought that was understood.

18 MR. DE HUECK: You're good.

19 Okay. Sounds good.

20 Those exhibits that you just listed will be
21 admitted.

22 MS. AGRIMONTI: Thank you. That's all I have.

23 MR. DE HUECK: Okay. Moving on to Mr. Almond,
24 did you have any updates that need to get on the record?

25 MR. ALMOND: No.

1 MR. DE HUECK: Okay.

2 MS. AGRIMONTI: Would you like me to go through
3 the list?

4 MR. DE HUECK: Yes.

5 MS. AGRIMONTI: Let me do that. I'm sorry.

6 For the Intervenors we have admitted I-1 with
7 subparts and I-2 with subparts. And for 1 it's A through
8 F. For 2 it's A and B. I'll note that those are subject
9 to Hearing Officer's order on striking health testimony.

10 The next exhibit that was admitted is I-4. I-5
11 was not admitted. I-6 was admitted. I-7 was not. I-8
12 is admitted. It's Google Maps of Mr. Rueter's former
13 residence. I-9 was not admitted. I-10 and 11 and 12 and
14 13 are admitted, as well as 14. 15 is admitted.

15 Let me see. 16 and 17 and 18 are admitted. 19,
16 20, and -- no. 19 and 20 were not.

17 I-21 is admitted. I-22 is admitted. I-23 was
18 admitted over objection. I-24 is not admitted. I-25
19 with parts A through F were not offered. I-26 through
20 I-38 were admitted.

21 MR. ALMOND: That is my understanding. And to
22 the extent I have not moved for the admission of any of
23 those, I would do so now.

24 MS. EDWARDS: The only understanding I have
25 differently is I think I had originally objected to I-23

1 but based upon the way that it was used did not object
2 when it was actually moved for admission. So I don't
3 believe it was over my objection.

4 MR. DE HUECK: Okay. So at this time those
5 exhibits will be admitted.

6 MS. AGRIMONTI: Staff's Exhibits are S1, S3, S4,
7 and S5.

8 MR. DE HUECK: Those sound good?

9 MS. EDWARDS: Correct.

10 MS. AGRIMONTI: All right. And I'm happy to
11 start with the Intervenors. We may have some discussions
12 on these.

13 So for Mr. Fuerniss, I have 1 through 4
14 admitted. And 12, 13, and 14. 15 was not admitted.

15 MS. EDWARDS: Can we give descriptions just to
16 make sure we're all on the same page?

17 I have Sherm 1 and 2 are doctors visits.
18 Sherm 3 is a map. Sherm 4 is a map. Sherm 12 is a Staff
19 Data Request Response?

20 MS. AGRIMONTI: Yes.

21 MS. EDWARDS: Sherm 13, Second Staff Data
22 Request Response.

23 MS. AGRIMONTI: Yes.

24 MS. EDWARDS: Sherm 14, Response To Applicant's
25 Data Request.

1 MS. AGRIMONTI: Yes.

2 MS. EDWARDS: And is that it?

3 MS. AGRIMONTI: I had 15 as response of
4 Sherman Fuerniss to Direct Testimonies, and that was not
5 admitted.

6 MS. EDWARDS: Thank you.

7 MR. DE HUECK: Mr. Almond, anything to say
8 regarding those?

9 MR. ALMOND: I don't have a recollection -- I
10 have no recollection of Exhibit 15 being admitted. I do
11 have a mark next to it, so I will just rely on the record
12 for that one. And I have no objection to it being
13 admitted but --

14 MS. AGRIMONTI: Applicant did object due to the
15 reliance on third-party citations and sources.

16 MR. DE HUECK: Mr. Fuerniss, sound good?

17 MR. FUERNISS: Yeah.

18 MR. DE HUECK: Okay.

19 MS. AGRIMONTI: Last one.

20 MR. DE HUECK: Last one.

21 MS. AGRIMONTI: Karen Jenkins. We have -- and
22 I'm going to pull up Ms. Jenkins's exhibits because we
23 were not given numbers on the website.

24 So the first three exhibit numbers 1, 2, and 3
25 were conference information reports, and those were not

1 admitted.

2 MR. DE HUECK: Correct.

3 MS. AGRIMONTI: Siting guidelines were, which I
4 have as No. 4. Response to Applicant's DR1 S5 was
5 admitted. Amended Response to DR1 is No. 6, and that was
6 also admitted.

7 MR. DE HUECK: Correct.

8 MS. AGRIMONTI: All right. Then I kind of run
9 out of numbers so if I could ask Kristen --

10 MS. EDWARDS: Could I take a second to grab the
11 exhibits?

12 MS. AGRIMONTI: Yeah. I may follow you.

13 MS. EDWARDS: All right. I have KJ-4, Siting
14 Guidelines from GF&P.

15 MR. DE HUECK: Yep.

16 MS. EDWARDS: KJ-5, Response to Applicant's
17 First Set of Data Requests to Karen Jenkins. KJ-6,
18 Amended Response to Staff's First Set of Data Requests to
19 Karen Jenkins. And KJ-15, Response to Staff's First Set
20 of Data Requests to Karen Jenkins.

21 And Ms. Agrimonti is indicating there should be
22 a KJ-14, Amended Response to Applicant's First Set of
23 Data Requests to Karen Jenkins.

24 MR. DE HUECK: All being admitted?

25 MS. AGRIMONTI: Yes.

1 MR. DE HUECK: Okay.

2 Anything else?

3 MS. AGRIMONTI: I would ask procedurally how to
4 handle the Hearing Officer's direction and order on
5 striking testimony of Mr. Punch and James.

6 We will need to look at the transcript as well
7 as the prefiled testimony, and so in establishing a
8 schedule if that could be part of the schedule with a
9 deadline, that would be helpful.

10 MR. DE HUECK: What would be really helpful is
11 if you did like a redline version that you want but then
12 get it over to Mr. Almond for approval and hopefully we
13 have no quarrels in between there.

14 MS. SMITH: That is our plan.

15 MR. DE HUECK: Okay. And then once Mr. Almond
16 has signed off on said document, get it to us. And I
17 don't think we'll need to have any type of hearing on the
18 matter. Unless, of course, we have one of these said
19 quarrels.

20 MS. SMITH: Yes. We will mark it up. I
21 understand from talking to Cheri that it may be two and a
22 half weeks or so before we get the official transcript.
23 Our plan is to mark up the rough for now, talk it through
24 with Mr. Almond and Ms. Edwards, and then once we get the
25 official, we'll submit the "official" official.

1 Hopefully we don't have any discrepancies. And if we do,
2 we will come back to you, Mr. de Hueck.

3 MR. DE HUECK: And on that note, and I don't
4 know how to say this correctly, but keep in mind that any
5 of that testimony -- keep in mind the notion that we're
6 trying to balance a prejudicial effect to your side of
7 the case versus the weight that the Commission is going
8 to give the testimony.

9 So work together to try to produce the best
10 document without engaging in a fight over what might not
11 need to be a necessary fight, if that makes sense.

12 MS. SMITH: We understand. Thank you.

13 MR. DE HUECK: Good luck. Just work together,
14 guys. Come on.

15 That takes us to this time line regarding
16 Cheri's transcript and when we need briefs and when we're
17 going to get a final decision and when we can all meet
18 for the final decision up here, the oral decision.

19 We know when the written decision needs to be
20 out, and that's going to be the end of November.
21 November 30.

22 That being said, what would you all think of
23 coming back on the 20th for a final decision?

24 MS. SMITH: That would be fine. Can I --

25 MR. DE HUECK: In the afternoon?

1 MS. SMITH: Yeah. The 20th.

2 MR. DE HUECK: November 20.

3 MS. SMITH: Can I ask, does anyone know when
4 Thanksgiving is?

5 MS. CREMER: After that.

6 MS. SMITH: Okay. Thank you.

7 MR. DE HUECK: I think it's the 22nd. Wedding
8 anniversary this year.

9 MS. SMITH: This is a Tuesday.

10 Did you have a briefing schedule in mind, or did
11 you want us to propose?

12 MR. DE HUECK: Well, I wanted to throw a date at
13 you guys.

14 Understanding we won't have the real transcript
15 until later but we'll certainly have some rough drafts,
16 could we do briefs and, you know, if you feel so inclined
17 you can certainly submit findings and conclusions,
18 proposals, or whatever, the 13th.

19 MS. SMITH: Oh, that's later than we had so
20 we'll take it.

21 MR. DE HUECK: How early were you thinking?

22 MS. SMITH: I am not going to tell you.

23 MR. DE HUECK: Okay. Well, that will work for
24 us. If we can have briefs by noon on the 13th. Yep.
25 They can voice --

1 MS. EDWARDS: We will make that work. Yep.

2 MR. DE HUECK: Okay. So we have successfully
3 now got all our ducks in a row, and we can adjourn this
4 hearing.

5 MR. ALMOND: Before we adjourn, I would just
6 like to again get on the record that the PUC staff has
7 done an incredible job on this docket, and I want to
8 acknowledge them.

9 MS. EDWARDS: Follow-up, Lisa?

10 MS. AGRIMONTI: Oh. What he said.

11 MR. FUERNISS: I would third that.

12 CHAIRWOMAN FIEGEN: So November 13. That's by
13 5 o'clock?

14 MR. DE HUECK: Noon.

15 CHAIRWOMAN FIEGEN: By noon on the 13th. Okay.

16 MR. DE HUECK: Docket EL18-026 is adjourned.

17 (The hearing is adjourned at 1:25 p.m.)
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STATE OF SOUTH DAKOTA)

COUNTY OF SULLY)

:SS CERTIFICATE

I, CHERI MCCOMSEY WITTLER, a Registered Professional Reporter, Certified Realtime Reporter and Notary Public in and for the State of South Dakota:

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 12th day of October, 2018, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Onida, South Dakota this 31st day of October, 2018.

/s/ Cheri McComsey Wittler
Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter
Certified Realtime Reporter

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