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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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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

EL18-026

ORIGINAL

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Transcript of Hearing
November 20, 2018
1:30 p.m.

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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

Lisa Agrimonti (teleconference),
appearing on behalf of Prevailing Wind Park;

Reece Almond (teleconference),
appearing on behalf of Intervenor Gregg Hubner,
Marsha Hubner, Paul Schoenfelder, and Lisa Schoenfelder;

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

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 20th day of November, 2018,
5 commencing at 1:30 p.m.

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1 CHAIRWOMAN FIEGEN: The South Dakota Public
2 Utilities Commission meeting is called to order. It is
3 November 20, 2018. It is 1:30 p.m. Central Standard
4 Time. We are in Room 413 of the Capitol Building in
5 Pierre, South Dakota.

6 This is Commissioner Kristie Fiegen, and with me
7 is Commissioner Hanson and Commissioner Nelson.

8 Today the agenda for the Ad Hoc Commission
9 Meeting is Electric Docket EL18-026, In the Matter of the
10 Application by Prevailing Wind Park, LLC for a Permit of
11 a Wind Energy Facility in Bon Homme County, Charles Mix
12 County, and Hutchinson County, South Dakota for the
13 Prevailing Wind Park Project.

14 The question before the Commission is shall the
15 Commission grant, deny, or grant with conditions a permit
16 for the construction of a wind energy facility to
17 Prevailing Winds Park, LLC pursuant to South Dakota
18 Codified Law 49-41B-25? Or how shall the Commission
19 proceed?

20 The Order of the Ad Hoc Meeting was sent out and
21 signed by the three Commissioners that all parties in the
22 docket will get five minutes. Correct, administrative --

23 MR. DE HUECK: Yes. That's correct.

24 I did speak with Mr. Almond. I'm not sure of
25 his intentions. He may have the Hubners address the

1 Commission.

2 Yeah. It's looking like that. So yes. And
3 Schoenfelders. Schoenfelders address them too. So they
4 will each be given five minutes.

5 CHAIRWOMAN FIEGEN: Okay. Thank you.

6 The Applicant gets the choice of going first or
7 last. So I will ask the Applicant first if you'd like to
8 go first or last.

9 Prevailing Winds.

10 MS. AGRIMONTI: Thank you, Chair. Lisa
11 Agrimonti on behalf of the Applicant. We would like to
12 reserve until the end of other parties' comments.

13 CHAIRWOMAN FIEGEN: Okay. Thank you. So we
14 will start with the Intervenor. And I don't know how
15 many people are -- how many Intervenor are speaking
16 today.

17 Okay. So I don't care who goes first. Whoever
18 wants to go up first. If you could state your name for
19 the record slowly, realize you have five minutes.

20 Okay. Go ahead and state your name.

21 MS. SCHOENFELDER: My name is Lisa Schoenfelder.
22 I reside at 40226 296th Street in Wagner, South Dakota.

23 Good afternoon, Commissioners and Staff. Thank
24 you for the opportunity to speak to you. All the
25 Intervenor that you have met during the process have had

1 the courage to stand before you and their peers to
2 testify to protect their way of life, to protect their
3 families, and even their own health. We ask you to have
4 the courage and integrity to acknowledge that the
5 Applicant has failed to meet the burden of proof that
6 this wind farm siting amongst so many residents will not
7 have severe impacts to their health and welfare.

8 My husband, Paul, and I are asking that you deny
9 this project. With regards to this Application, the
10 burden of proof the project will not have a negative
11 impact on the people living in the area lives with the
12 Applicant.

13 Based on the information and testimony provided
14 through this process, we assert the burden has not been
15 met. A witness for the Applicant, Mr. Anderson,
16 explained the process of modeling shadow flicker, but he
17 also testified there hadn't been any postconstruction
18 testing to determine if those models are accurate. Where
19 is the proof?

20 And who says 30 hours is safe? We are not
21 convinced that Prevailing Winds Park will appropriately
22 monitor shadow flicker or dBA sound levels to keep us
23 safe. We fear that burden once again will be put on
24 residents to monitor and protect themselves.

25 Their property expert, Mr. MaRous, states that a

1 longitudinal study might show different results. Where
2 is the burden of proof? It lies with them.

3 Dr. Roberts admits that more research is needed
4 on epidemiological studies once done -- since none have
5 been done and they are difficult to perform. Where is
6 the proof they are safe?

7 Mr. Pawlowski, the project manager, shared his
8 opinion that their sound model was accurate and
9 conservative, yet he would be unwilling to have the
10 project held to those levels. When the project manager
11 is unwilling to stand before his own data, this should be
12 cause for concern. Where is the proof?

13 The construction manager for the project,
14 Mr. Creech, sorry, was asked if the ice detection system
15 that was planned has ever failed. He responds any system
16 can fail. He also added that people should not be in the
17 area during startup, and he couldn't say how quickly the
18 system could shut down if there was a problem.

19 When the issue is public safety this is not very
20 convincing and does not constitute proof where there
21 could not be a negative impact. We saw and heard
22 testimony from Scott Rueter that confirms these events do
23 happen and that debris can travel up to a quarter mile.
24 Safety of the inhabitants, where is the proof?

25 The staff's witness Mr. Hessler stated he

1 believed the Cooper Study to be very convincing and that
2 some people have a sensitivity. These were his words.
3 Doesn't this indicate there is a problem?

4 Mr. Hessler also stated that most people are not
5 that bothered. Most people are not all people. The
6 clear implication from his testimony and the Cooper Study
7 he referenced is that some percentage of people will be
8 bothered and when bothered equates to not being able to
9 sleep in their own homes then honesty, common sense,
10 preponderance of the evidence clearly shows that this
11 project could substantially impair the health and welfare
12 of the area's inhabitants.

13 You've heard several credible witnesses testify
14 under oath that their health and livelihoods are being
15 significantly impacted by the wind turbines near their
16 homes. What I think we all learned is that those
17 witnesses and the Intervenor are not scared of
18 technology or progress. They are highly educated
19 individuals who have done research outside of what the
20 Applicant provides. Those that testified are real people
21 who are not willing to be victims. They have no reason
22 to lie and nothing to gain by abandoning their homes.

23 They also do not have the responsibility of
24 proving they have been negatively impacted. The burden
25 of proof is with the Applicant, and they have not met

1 that burden.

2 Commissioners, have the courage to deny this
3 Application. Your hands are not tied. The authority has
4 been given to you to protect the well-being of the
5 citizens of South Dakota and all of us who are going to
6 be impacted in this area. We plead to you, consider
7 farther setbacks.

8 Hessler himself said he would advocate for two
9 miles. But he didn't want to feel that that would set a
10 precedent. You can set a precedence.

11 Thank you.

12 CHAIRWOMAN FIEGEN: Thank you.

13 (Discussion off the record.)

14 MS. PAZOUR: My name is Kelli Pazour. I reside
15 at 29668 402nd Avenue, Wagner, South Dakota.

16 Thank you, Commissioners, for the final
17 opportunity to plead our final source to protect our
18 South Dakota way of life and our health and the
19 well-being of our negative impact on the wind turbines.

20 I ask that you deny this Application. I keep
21 asking the question whether the wind turbines would
22 impact my daughter's -- Tessa, since she has a hearing
23 aid and now concern that my other children and others who
24 live near the wind turbine.

25 After listening to Vicki May's testimony on how

1 the wind turbines have changed her life and her health
2 and listening to my neighbors Sherman and Lori Fuerniss,
3 Jerome Powers, Kevin Andersch, Jim and Julie Kaufman that
4 have had lived close to the wind projects and have had a
5 negative affect on them, I feel greater concerns should
6 be met.

7 My questions have been answered. I do -- they
8 do impact people. I believe that Prevailing Wind has not
9 taken the burden of proof that their project will not
10 harm residents and the proposed area. The burden of
11 proof was not shown by the Applicant or any of their
12 expert witnesses.

13 I am deeply concerned at the fact that
14 Mr. Pawlowski would not stand behind the sound study
15 results that they state are the worst-case scenarios.
16 Mr. Pawlowski dismissed my concerns about setbacks,
17 shadow flicker, and requested that -- to use their models
18 as a base of concern sound levels.

19 He said that the Charles Mix County setback of
20 43 would be more than enough. I don't believe him. I
21 don't believe that Mr. Edward's [sic] testimony was
22 convincing enough to prove that the sound from wind
23 turbines don't impact the health of wind on us residents
24 that would be living near these turbines.

25 The statement that the children with autism are

1 not impacted by the sound comes from fact knowledge and,
2 while published, concerns me. The Applicant expert
3 witnesses are which we are supposed to believe his
4 statements.

5 The experts who study the extreme limit numbers
6 of individuals impacted by the wind turbines was more
7 concerning at diagnosing them with obese and drunk and
8 acknowledged that the turbines could not impact the
9 health of the individuals. This is testimony that
10 Applicants and you, Commissioners, will be using to
11 accept the Applicant to meet the burden of proof.

12 In addition, the fact that Mr. Howell stated
13 that they do not do post testing on various -- varieties
14 [sic] their results, if they are not willing to guarantee
15 that the doubt that the wind would never exceed over the
16 dBAs of the models, do I -- how do I trust that they will
17 do this?

18 And any of my concerns of future when the sound
19 levels go above 40 dBA, that might impact my family. I
20 don't want my family to be the next victim.

21 The developers and owners of Vicki May and
22 Scott Rueter's project did not help them. They did not
23 trust -- and I do not trust Prevailing Winds that they
24 will help us after these turbines are placed.

25 Because of my concerns and listening to Vicki

1 May's actions and learning more about the sound levels,
2 as well as Mr. Pawlowski's demonstration on how easy it
3 is to use the measuring of the dBA sound levels, I've
4 invested into software and have been testing the current
5 Beethoven Wind Farm. I want to confirm that -- confirm
6 if they could meet the state regulation of the dBA
7 numbers.

8 The results that I got were truly alarming.
9 Readings from anywhere from 45 to 63 dBA. And those
10 towers are only 450 feet tall, and the Applicant is
11 proposing a 590-foot tall turbine, generating more sound
12 and travels even farther.

13 I'm very concerned on how sPowers and the PWP
14 representatives will keep their promise and make the
15 state PUC and acknowledge any complaints that may have
16 been valid about the dBA shall --

17 CHAIRWOMAN FIEGEN: One minute.

18 MS. PAZOUR: -- and only setbacks that will be
19 willing to keep.

20 They have not proven enough evidence to prove
21 that the wind turbines don't cause health hazards for the
22 future residents. Because of all of this, I truly
23 believe our best defense is for the PUC to deny this
24 Application.

25 If you, the Commissioners, and the PUC do

1 approve it, I beg of a two-mile setback from
2 nonparticipating residents to be a condition of the
3 Application.

4 CHAIRWOMAN FIEGEN: Thank you.

5 (Discussion off the record.)

6 CHAIRWOMAN FIEGEN: If for some reason you do
7 not want me to interrupt you and tell you that you have
8 one minute remaining, just let me know. Because you
9 might have your own timer next to you.

10 Was it helpful? Okay.

11 All right. The next Intervenor that would like
12 to go forward.

13 MS. JENKINS: Commissioners, as you are the jury
14 in this case --

15 CHAIRWOMAN FIEGEN: And you can state your name
16 and your --

17 MS. JENKINS: Yes. I'm Karen Jenkins. I reside
18 at 2891 410th Avenue, Hutchinson County.

19 CHAIRWOMAN FIEGEN: Thank you.

20 MS. JENKINS: Commissioners, as you are the jury
21 on this case, I ask that you use all of your common sense
22 and your good judgment in filtering the testimony you
23 have been offered.

24 Consider, please, the Applicant and its
25 witnesses and what is the interest they have in the

1 outcome of this case. I would offer you, it is money.
2 Carefully consider the credibility of the Applicant's
3 witnesses and the Applicant, please.

4 As Intervenors, we are simply, and yet more
5 desperately, asking you to protect us, our families, and
6 our way of life.

7 Consider carefully, please, the witnesses that
8 appeared on behalf of the Intervenors. Also consider the
9 Intervenors that testified before you. Consider the
10 credibility you observed through the Intervenors and
11 their witnesses.

12 Would you agree the interest of the
13 Intervenors -- they have in the outcome of this case is
14 protection for ourselves, as well as for those in the
15 footprint of the proposed project.

16 The weight of the evidence and the credibility
17 of the Intervenors and their witnesses is clearly in
18 favor of the Intervenors. Evidence of health and
19 economic hardship does not require a person who holds a
20 degree in a related field. Common sense and good
21 judgment is enough for a jury with your experience to
22 filter through the case.

23 The Intervenors' right to protection is a
24 constitutional right. General welfare is the concern of
25 the government, for the health, peace, morality, and

1 safety of its citizens. Providing the welfare of the
2 general public is a basic goal of government.

3 The preamble to the Constitution cites promotion
4 of the general welfare as a primary reason of the
5 creation of the Constitution. To approve this
6 Application would be a direct violation of the
7 Intervenors' rights, as well as the general public's
8 rights.

9 Please deny it. Thank you.

10 CHAIRWOMAN FIEGEN: Thank you.

11 Next.

12 MS. HUBNER: Please don't say one minute left.
13 That spooks me, I'm sure.

14 CHAIRWOMAN FIEGEN: Okay. I won't.

15 MS. HUBNER: Thank you.

16 Good afternoon. I'm Marsha Hubner.

17 We have spent nearly four years learning about
18 industrial wind projects and how to properly site them.
19 It's been a good education but a very expensive one.

20 The question the Commission needs to decide is
21 whether the Applicant met its burden of proving its
22 proposed project will not substantially impair the
23 health, safety, or welfare of those living in the
24 project.

25 You are, no doubt, aware that studies are

1 primarily paid for by people who want a certain outcome.
2 That is why there are often conflicting results.

3 You say your decision must be based on evidence.
4 The Staff stated that if there were problems with
5 infrasound, more people would complain, even though Staff
6 is aware of the gag clause in easements, the good
7 neighbor agreements, and buying out homes, all to shut
8 people up who do have complaints.

9 I would think the very best evidence is from
10 people who it actually affects. We gave you evidence
11 during the hearing from people sitting in this chair:
12 Sherm Fuerniss, Jerome Powers, Kevin Andersch, Scott
13 Rueter, and Vicki May. No Harvard degrees. No
14 \$500-an-hour witness fees.

15 Where are the studies that prove that this --
16 that prove what is a safe distance to live from a
17 590-foot turbine and not have adverse health effects?
18 There is not one study. None cited because there aren't
19 any. Only real life experiences.

20 These people had the most powerful evidence
21 because they have lived next to wind turbines. Scott and
22 Vicki have absolutely nothing to gain or lose from this
23 project, but they were still willing to travel hundreds
24 of miles to come here and tell you what happened to them
25 when turbines were placed too close to their homes.

1 They came and testified before the Commission so
2 that the mistakes that were made in Iowa and Nebraska,
3 mistakes that cost people their homes and their quality
4 of life, are not repeated here in South Dakota.

5 The Applicant, on the other hand, paid thousands
6 of dollars to Drs. Roberts and Ellenbogen who have zero
7 experience living near a wind farm. In fact, not one of
8 the Applicant's witnesses discussed their own experience
9 trying to sleep in a wind farm. If you go to buy a new
10 car, would you get your best information about that car
11 from five people that owned one or from the salesman
12 trying to sell it to you?

13 Has Vicki May's health and welfare been
14 substantially impaired going eight or nine nights in a
15 row without sleep? Moving from room to room to find
16 peace or even having to close her business and now making
17 plans to move away from the turbines as soon as her
18 husband retires?

19 Has Scott Rueter's health and welfare been
20 substantially impaired? Sleeping an hour and a half a
21 night, losing 35 pounds, and eventually being forced to
22 move from the family farm. If the proposed project is
23 approved, we now know what we have to look forward to.

24 And what recourse will we have? According to
25 staff, we'll have the ability to sue them. So we'll get

1 to spend tens, if not hundreds of thousands of dollars,
2 and years of our lives litigating. That would impair our
3 health and welfare.

4 In the end, the Applicant may have to pay us
5 some money to make us go away. Then it would continue,
6 business as usual. But money won't give us back the
7 peace and enjoyment we get from our home. No amount of
8 money would ever give us back that time if we lose it.
9 And money is what it really boils down to.

10 The Applicant doesn't want longer setbacks or
11 stricter noise limits because it would cost more money to
12 develop its project. It didn't even try to plan its
13 project with longer setbacks or lesser noise limits. And
14 why would they? They don't have to live by it.

15 All we want is a safe and reasonable setback and
16 safe and reasonable noise limits. Although the
17 Commission seems uncomfortable straying from county
18 ordinances, you should have realized from the testimony
19 of Mike Soukup and Keith Mushitz that our county folks
20 just aren't equipped to establish ordinances addressing
21 those issues.

22 Are we going to wait another 20 or 40 years like
23 the tobacco industry until enough studies have been done?
24 How many Vicki Mays and Scott Reuters will be sacrificed
25 during that time? Are we the guinea pigs? Will we be

1 forced to move from our home so that sPower can make more
2 money?

3 As you drive by White Lake next time and see
4 that big wind turbine that is much too close to the
5 Interstate, I hope you will think about Lori and Sherm,
6 Theresa Kaaz, Jerome Powers, Kevin Andersch, Kelli Pazour
7 and her daughter. I hope you remember Vicki May.

8 You get to drive by. They don't. Will your
9 decision force others to have to live, work, and sleep
10 too close to these things the rest of their lives? I
11 pray not.

12 Thank you.

13 MR. FUERNISS: You will need to cue me. I
14 already warned Cheri I'm going to go fast. But,
15 Commissioners, good afternoon.

16 It seems to me -- oh, I'm sorry.

17 Sherman Fuerniss 40263 293rd Street, Delmont,
18 South Dakota.

19 It seems to me that we the ordinary people most
20 affected by this project have been on the defensive
21 throughout the process, having to produce evidence and
22 witnesses in fields unfamiliar to us in a very short
23 time. We came here not knowing the game, much less the
24 rules.

25 But I have learned much in the past weeks and

1 months. I have learned what a terrible, horrible, awful
2 person I am. I've been accused of having an agenda that
3 is not in the community's best interest. If preserving
4 our livelihood and way of life and protecting the
5 well-being of my families and neighbors is an agenda, so
6 be it.

7 I have been called uneducated, obese, and a
8 liar. I've been confronted with the attitude of who do
9 you think you are? After months of that green map with
10 the red rectangles depicting opposition to the project
11 hanging in a storefront window on Main Street, our
12 family's decades-long patronage of some Avon businesses
13 is no longer desirable and has come to an end.

14 To avoid confrontation with lifelong neighbors,
15 we attend church some 25 miles from home. You cannot
16 pretend to share the peace of God with someone on Sunday
17 and be in conflict the rest of the week. This will
18 remain a lifelong rift in the community.

19 Although our neighbors may not trespass on our
20 property by driving on it or dumping stones or posts or
21 used wire across the fence line or unloading manure on
22 it, they can apparently trespass on it by dumping noise
23 and shadows on it even if we are present at the boundary
24 of our property at the time.

25 I have learned that the information addressing

1 our concerns provided by representatives of the project
2 comes down to we would never remove a turbine from a
3 participating landowner in order to appease a
4 nonparticipant. Indeed, there has been no serious,
5 credible attempt by the Applicant to revise the project
6 in any way to address the concerns of nonparticipants.

7 The latest ploy of proposing possibly using a
8 few smaller turbines in some locations, thereby supposed
9 by demonstrating concessions to nonparticipants, will
10 make no difference at all unless those turbines are
11 smaller than 1.8 megawatts and further than one and a
12 quarter miles away from our residence. They will have
13 the same effect as the existing turbines.

14 Seemingly ignored in all of this is the
15 testimony of both Mr. Hessler and James concerning low
16 frequency sound below 20 hertz, which is not even
17 measured using the A-weighted scale. Both testified that
18 contrary to what is presented in the Application, the
19 most problematic portion of the noise generated by the
20 turbines comes from the blade passing the tower,
21 compressing the air there and creating the pulsating
22 sound unique to wind turbines.

23 The blade passing frequencies below 1 hertz, the
24 frequency known to cause motion sickness and nausea.
25 Mr. James testified that these inaudible sounds are

1 measurable using proper equipment and techniques and that
2 setbacks at one and a quarter miles from property lines
3 would drastically reduce complaints by residents.

4 Despite semantic games and mental gymnastics
5 performed by experts about direct versus indirect effects
6 and what is a health effect and what is not and what is
7 adverse and what is not, it is common knowledge that
8 annoying noise disrupts sleep. Sleep disruption leads to
9 sleep deprivation, which is known to have all manner of
10 physiological effects on the human body. Perhaps CIA,
11 FBI, or military interrogators should have been called to
12 testify on the effects of sleep deprivation.

13 Industry standards have been referenced
14 throughout these proceedings. These standards include
15 outdated sound models that are not validated for the
16 height of these turbines nor the distances involved,
17 requiring extrapolation of calculations to make
18 projections that may need adjustment by up to 10
19 decibels. Industry standards for sound levels, shadow
20 flicker, and setbacks seemingly have no basis other than
21 precedent.

22 The Applicant seems more concerned with
23 maintaining precedent than actually considering what may
24 actually be best for the impacted residents in the light
25 of most recent and ongoing research.

1 CHAIRWOMAN FIEGEN: One minute left.

2 MR. FUERNISS: They say, after we get the permit
3 we will finish our studies. After we get the permit we
4 will provide information just before we begin
5 construction. And they use terms like "to the extent
6 practicable" and "substantially" and "limited impact."

7 I would ask you to exercise the authority of the
8 government which you possess with justice and compassion.
9 If this project is permitted anything remotely as
10 proposed without significant and substantial, honest
11 revision, it may not be a death sentence, but to someone
12 my age it will certainly be a life sentence.

13 Thank you.

14 CHAIRWOMAN FIEGEN: Thank you.

15 Are there other Intervenors that will be
16 speaking today?

17 Okay. We will go to Staff next.

18 MS. EDWARDS: Thank you.

19 This is Kristen Edwards for Staff. And I
20 shouldn't need the one-minute reminder. And I certainly
21 hate to follow that.

22 I would, first of all, like to commend my fellow
23 parties on the quality of the briefs submitted in this
24 docket. These were some of the most thought out and
25 thought provoking briefs I have seen, making it nearly

1 impossible to respond to them in five minutes.

2 This is a unique project in that as you can see
3 in Exhibit I-29 it is a very checker-boarded project
4 area. Staff spent an incredible amount of time trying to
5 figure out how to protect the welfare of all of these
6 folks that are surrounded on this map. I cannot tell you
7 how many times I thought I had found the answer, only to
8 realize I could not support it based solely upon what was
9 in the record.

10 I desperately wanted to find a way, as all of
11 staff -- did we desperately wanted to find a way to get
12 Mr. Powers's hunting lodge not to be surrounded on all
13 sides by turbines, not to have 12 turbines within 2 miles
14 of his residence and hunting lodge. I know there are a
15 lot of people very upset with the position we took, but
16 we truly tried based upon what was in the record. We
17 cannot go outside of the record for our recommendations.

18 So what does the record support? For starters,
19 it demonstrates that without the appropriate conditions,
20 this project should not be permitted. The appropriate
21 conditions are essential in this and every project that
22 comes before the PUC.

23 The record supports a condition of 40 dBA max
24 Leq at nonparticipating residences. For as simple as
25 this should be to accomplish and as easy of a gesture it

1 would, be Applicant vehemently resists.

2 As Ms. Schoenfelder pointed out what's more,
3 their witnesses testified they are not willing to commit
4 to the studies. So without the condition we cannot be
5 sure that the noise levels at nonparticipating residences
6 will be as shown in their sound studies.

7 Applicant is also absolutely incorrect in their
8 assertion that Staff's sound expert changed his opinion.
9 Mr. Hessler has consistently advocated for a 40 dBA
10 design goal. He simply came to the conclusion after
11 listening to the testimony and reading testimonies that
12 this project should meet that design goal.

13 Applicant's criticism is simply inaccurate when
14 they claim that Mr. Hessler's entire opinion was based
15 upon reading of the comments and how long it took him to
16 do so. Was that a factor? Yes. But that was certainly
17 not the only factor.

18 Applicant sites to recent dockets but fails to
19 acknowledge that the three-quarter-mile setback in
20 Crocker rendered the 45 dBA essentially meaningless but
21 for settlement purposes. 40 dBA is reasonable, supported
22 by the record, and abundantly attainable and necessary
23 for this project.

24 Intervenors offered up a number of conditions
25 which I greatly appreciate. In the interest of time I

1 won't go through all of them but wanted to touch on a
2 couple.

3 Mr. Almond recommended a 35 dBA nighttime limit
4 measured at L10. I would note that 35 dBA nighttime
5 essentially is a 24-hour dBA, as a nighttime limit is
6 not -- in this type of project is applicable to the
7 entire 24 hours.

8 We don't disagree with the first part of that,
9 but the L10 we would disagree with. We advocate for the
10 sound metric to be Leq, which measures a two-year average
11 with times when the turbines are not running discounted.

12 I'm sorry. Thanks to my analyst. A two-week
13 average. I misspoke.

14 Mr. Almond also recommended a 1,500-foot setback
15 from nonparticipating property lines. Staff does not
16 take a position on whether ice throw is a concern, but if
17 it is, this condition seems reasonable to address such a
18 concern.

19 And, with that, I was going to get into how the
20 different sound metrics are accomplished but --

21 CHAIRWOMAN FIEGEN: You still have a minute and
22 15 seconds.

23 MS. EDWARDS: Oh, perfect.

24 In closing, we are bound by what's in the record
25 and what's in the record is limited to what we could get

1 into the record in four months and that is how we
2 formulated our position and our conditions. And we stand
3 by for questions.

4 CHAIRWOMAN FIEGEN: Thank you.

5 And now we will go to Prevailing Winds.

6 MS. AGRIMONTI: Thank you, Commissioners.

7 Again, Lisa Agrimonti on behalf of the Applicant,
8 Prevailing Wind Park, LLC.

9 I agree with Ms. Edwards's comments regarding
10 the quality of the record that you have before you. The
11 parties were certainly robust in their positions, and I
12 think you have a very full record upon which to make your
13 decision today.

14 There are four factors that are applicable, as
15 you all know, in terms of deciding whether to grant the
16 facility permit. There is no dispute that the Applicant
17 in the project will comply with applicable laws and
18 rules. And there's also no challenge to factor number 4,
19 that the facility would not unduly interfere with orderly
20 development. Therefore, I'll limit my comments to
21 factors 2 and 3.

22 First, with respect to the second factor, the
23 Applicant must show that there is no threat of serious
24 injury to the environment or social and economic
25 condition of inhabitants or future inhabitants. This

1 factor has been met.

2 While there was testimony about disagreement in
3 the community related to the project, as staff noted,
4 there is no material evidence that that disagreement is
5 going to persist into the future. Moreover, you heard
6 from both sides of the argument, Dustin Brandt and
7 Mr. Paul Schoenfelder, that in the end they're going to
8 be neighbors.

9 More importantly, in analyzing this factor the
10 Commission has in past dockets evaluated taxes, jobs,
11 impacts on industry, and similar issues, and that's what
12 Prevailing Wind Park laid out in its brief.

13 I'll direct you to Finding of Fact 51, The
14 project will not pose a serious injury to the social and
15 economic condition based on those factors.

16 Second, Prevailing Wind Park has fully
17 demonstrated the facility will not substantially impair
18 the health, safety, or welfare of inhabitants. The only
19 health impacts expert testimony you have come from
20 Dr. Mark Roberts and Dr. Jeff Ellenbogen.

21 The two medical doctors both testified that
22 there is no evidence that wind turbine infrasound or
23 shadow flicker or audible sound can cause adverse health
24 effects. Therefore, there's no basis in this record to
25 impose any conditions relating to infrasound or shadow

1 flicker or to limit sound to nonparticipants' homes below
2 45 dBA and 35 dBA that Prevailing Wind Park has agreed
3 to.

4 Mr. Hessler's testimony regarding a 40 dBA limit
5 is not, as staff asserts, the best evidence in the record
6 to mitigate the chance of impact to human health. There
7 are no shown human health impacts in this record.

8 I heard Intervenors this morning talk about
9 testimony from various witnesses who asserted that they
10 had health effects. There was no proof of those health
11 effects. And there was definitely no proof that they
12 were caused by wind turbines. Mr. Hessler has no
13 qualifications to even opine on human health issues.

14 Moreover, the testimony of Dr. Ellenbogen and
15 Dr. Roberts refutes this claim. Dr. Ellenbogen, a
16 neurologist and sleep specialist, specifically addressed
17 the claims of sleep disturbance and testified to the most
18 authoritative evidence in this record in documentary
19 form, which is the 2016 Health Canada Study.

20 That study looked at more than 1,200 men and
21 women, and that study included, and I quote, that "levels
22 up 46 dBA had no statistically significant effect on any
23 measure of sleep quality."

24 Staff's recommended sound condition cannot be
25 supported on this record, and our brief fully details why

1 imposing such a condition would be arbitrary. No matter
2 how close the sound limits are, based on the measurements
3 and predictions we've provided in the record, that's not
4 a basis to impose that condition.

5 South Dakota strives on having consistent,
6 reasonable, predictable regulation. Prevailing Wind Park
7 and other developers have designed their projects to meet
8 the standards as they've been set by this Commission, and
9 they've done so in two dockets. And while there may have
10 been a greater setback in the Crocker docket, that was
11 not so in Dakota Range, and in both dockets Mr. Hessler
12 recommended a 45 dBA limit for participating landowners.

13 Also Mr. Hessler himself agrees that 45 is an
14 appropriate and reasonably fair regulatory noise limit
15 for nonparticipating residents. Mr. Hessler's personal
16 ideal design goal, and he says it's to avoid complaints,
17 is not a basis for a regulatory standard, and it's also
18 unachievable. Mr. Hessler himself admits that there is
19 no limit at which you can set sound where you can be
20 assured that there won't be complaints.

21 I'd like to take a couple minutes just to
22 address some of the additional comments that were made
23 this morning.

24 CHAIRWOMAN FIEGEN: You have about 30 seconds.

25 MS. AGRIMONTI: Then I will do it very fast.

1 It's not that we're not standing by our
2 predicted sound measurements; it's that Mr. Pawlowski was
3 not willing to say that that would be the limit of the
4 project. There's still final design to do. And while we
5 believe that the layout as proposed and the sound
6 predictions we've provided are accurate and, indeed,
7 overstate the sound, that doesn't mean that we should be
8 limited to what those modeled measurements are.

9 We believe very strongly that the standards that
10 have been used by this Commission, that are used by
11 Bon Homme we've committed to and the ones that should be
12 imposed.

13 And, lastly, to the extent you rely on Vicki May
14 and Mr. Rueter, they're talking about different projects
15 with different turbines, with different sound. And,
16 again, they came here, and they gave you their opinion.
17 And I do not dispute that that is what they believe, but
18 they did not provide you any proof of health impacts.

19 Thank you. We ask that you approve the permit.

20 CHAIRWOMAN FIEGEN: Thank you.

21 I believe everyone has been able to speak. So
22 I'm going to allow Commission questions before we close
23 the question portion to discussion.

24 MS. AGRIMONTI: Chair, I apologize for
25 interrupting.

1 My client has just advised I misspoke. I meant
2 to say that the Applicant committed to 45 dBA and 43 dBA
3 in Charles Mix County.

4 Thank you.

5 CHAIRWOMAN FIEGEN: Thank you.

6 I just have a quick question of Staff on ice
7 throw.

8 So are we 650 feet or 649 feet away from roads
9 and property lines of nonparticipating? Or are we still
10 at that 500 feet?

11 I just can't remember. I know we've talked
12 about it. I've kind of tried to look through. I just
13 want to make sure I understand roads. Nonparticipating
14 property lines from a wind turbine.

15 MS. EDWARDS: I'll speak slowly to give
16 Mr. Kearney plenty of time to poke me as I talk. But
17 state law would be 1.5 times -- see. 1.1 times from
18 property lines and roads. Yes.

19 CHAIRWOMAN FIEGEN: So that's that 649 feet or
20 whatever.

21 MS. EDWARDS: Yes.

22 CHAIRWOMAN FIEGEN: And residence. Is it all
23 1,000 feet away from residents or currently only
24 nonparticipating residents? What would all residents be
25 if you're participating or nonparticipating? Is it that

1 1?

2 MS. EDWARDS: We're looking. I really don't
3 want to get this wrong. I know there's an exhibit out
4 there.

5 CHAIRWOMAN FIEGEN: There's hundreds of exhibits
6 out there.

7 MS. EDWARDS: That's true.

8 CHAIRWOMAN FIEGEN: I just wanted to make sure
9 before we went to closed Commission discussion. If staff
10 you would like to ask any other parties in the docket,
11 you are more than welcome to.

12 MS. AGRIMONTI: Chair, I believe is your
13 question about what is the current setback based on the
14 layout?

15 CHAIRWOMAN FIEGEN: Yes. And also according to
16 the conditions that are placed.

17 MS. AGRIMONTI: Okay. With respect to the facts
18 of the layout, and you can look at A42, the closest home
19 is 1,558 feet and that is a participant. And the closest
20 nonparticipant is 1,822.

21 The setback differs by county. It's a
22 minimum -- now I'm going to go look. It's 2,000 or three
23 times -- three times turbine height in Charles Mix?

24 MR. PAWLOWSKI: Charles Mix is 2,000 feet.

25 MS. AGRIMONTI: Or --

1 MR. PAWLOWSKI: Sorry. Three times or 2,000
2 feet.

3 MS. AGRIMONTI: Whichever is greater.

4 Then there is also a setback in Bon Homme that
5 was applied to others, and I can look at that in just a
6 moment. I don't have that at my fingertips.

7 CHAIRWOMAN FIEGEN: That's good. You've
8 answered my questions. Thank you.

9 Other Commission questions before we go to
10 closed Commission discussion?

11 Okay. Commissioner Hanson.

12 COMMISSIONER HANSON: This is for Staff.

13 I'm just curious. As you were talking you
14 intimated that you might not have had enough time. It
15 sounded like you did have enough time, but was there
16 something else that you wanted to say during that period
17 of time?

18 You expressed your concern about sound and
19 distance, and I'm wondering if there was anything else
20 that you were working on. I know shadow flicker was in
21 there but --

22 MS. EDWARDS: I hadn't written it down because
23 when I was going through my closing I could not get it
24 under six minutes so -- of course.

25 COMMISSIONER HANSON: Well, this is your

1 opportunity.

2 MS. EDWARDS: Thank you.

3 The Intervenors had proposed to use the L10
4 metric. And our witness had testified that he was okay
5 with L90, but we were advocating for the Leq and the --
6 his testimony reflected that the problem with the L10 was
7 that it couldn't discount for other noise in the
8 atmosphere.

9 Thank you.

10 COMMISSIONER HANSON: Thank you, Madam Chair.

11 CHAIRWOMAN FIEGEN: Other Commission questions.

12 Okay. This is the time that the Commission
13 actually gets to speak with each other about this docket.

14 So go ahead, Commissioner Nelson.

15 COMMISSIONER NELSON: I move in EL18-026 that
16 the Commission grant the permit with the proposed
17 conditions found in Attachment A to the Applicant's brief
18 as amended by the November 19 update to Condition 29.

19 CHAIRWOMAN FIEGEN: Okay. You may speak on that
20 motion.

21 COMMISSIONER NELSON: Thank you.

22 As I have said a number of times before in other
23 proceedings, our decision whether to grant a permit or
24 deny a permit has absolutely nothing to do with whether
25 we like wind turbines or we dislike wind turbines. It is

1 entirely based upon the criteria that is provided to us
2 in State Law 49-41B-22 and the record that has been
3 established in this particular proceeding.

4 And as I've evaluated that record and those
5 statutes, I've determined that the Applicant has met the
6 burden of proof, assuming that we attach appropriate
7 conditions to the permit.

8 In my motion I mention permit conditions that
9 were found in Attachment A and as were updated yesterday.
10 I do not believe that those conditions are all inclusive
11 of what is necessary to protect the welfare of folks
12 living in that area.

13 Therefore -- and particularly 49-41B-22 Sub 3
14 that talks about the fact that we have a duty to ensure
15 the welfare. And Ms. Jenkins talked about welfare a
16 number of times today, and I take that seriously.

17 By the same token, as we are working to make
18 sure that the welfare of the citizens are protected, we
19 also have a duty to make sure that others have the right
20 to use their property for economic gain as they see fit.
21 And that's the balance that we are working through here
22 today.

23 Based on that, Madam Chair, I have four
24 additional amendments to my motion. Because they are all
25 covering very different topics, I'd like to try them one

1 at a time so that we all have an opportunity to determine
2 whether or not they are appropriate.

3 CHAIRWOMAN FIEGEN: Okay. So I will let you go
4 to your first amendment to the motion.

5 Good thing. Otherwise, I would have had
6 amendments to the motion.

7 Go ahead.

8 COMMISSIONER NELSON: Well, you may anyway once
9 we get done. We'll see.

10 I move to amend the main motion by changing
11 Condition 28 and 29C by striking "30 hours" and inserting
12 "15 hours."

13 CHAIRWOMAN FIEGEN: Just wait one second.

14 COMMISSIONER NELSON: 28 and 29C.

15 CHAIRWOMAN FIEGEN: All right. Thank you.

16 COMMISSIONER NELSON: Delete "30 hours" and
17 insert "15 hours."

18 CHAIRWOMAN FIEGEN: Go ahead and speak on your
19 amendment.

20 COMMISSIONER NELSON: Thank you.

21 Obviously, there was a lot of reference to the
22 shadow flicker issue and the number of hours that shadow
23 flicker could be cast upon residences. Repeatedly I
24 asked the Applicant, what is your justification for 30
25 hours? Give me something. And all I got back was it's

1 the industry standard. Well, that doesn't cut it for me.

2 By the same token, nonparticipants were asking
3 for zero. And I understand -- I understand where zero's
4 coming from. But in the interest of trying to be fair to
5 both sides, I've split it in the middle, and I've come up
6 with 15.

7 In looking at the attachment that -- or the
8 study that shows where the shadow flicker will fall, I
9 believe that changing from 30 to 15 will only impact four
10 of the receptors. And one of those has an agreement -- a
11 setback agreement already. And so it may only be three
12 that are actually impacted.

13 And that impact would probably be resolved
14 through a changing of the operation of the turbines near
15 those three receptors or some type of an agreement
16 between the Applicant and those residences.

17 Obviously -- and Mr. Fuerniss is sitting back
18 there saying, well, what about my property line? And I
19 wrestled with that, and I'm not willing to go that far
20 today. And I'm not saying that he doesn't have a very
21 valid concern about that, but I'm not willing to go that
22 far today with this particular amendment.

23 CHAIRWOMAN FIEGEN: Other discussion on the
24 first amendment.

25 Commissioner Hanson.

1 COMMISSIONER HANSON: Thank you, Madam Chair.

2 I have a question of the sponsor. On 28 there
3 are two spots for the 30 hours changing to 15. And then
4 on 29C there's 30 hours. There's one spot. However,
5 those also refer to and/or 30 minutes.

6 And I appreciate your motion. I, frankly, would
7 not want to have a turbine close to me and having the
8 shadow flicker, sound noise, and things of that nature.
9 And when I look at this and have an empathy with the
10 citizens that are faced with that situation or especially
11 those who are not participating, I like your motion.

12 I would like it much better if there was
13 something on the 30 minutes per day as well. And just
14 your thoughts on that.

15 COMMISSIONER NELSON: Yeah. My thoughts on that
16 were trying to give the Applicant, the operator, kind of
17 the maximum flexibility to meet the 15 hours. I was more
18 concerned with what's the total amount of shadow flicker
19 over a year as opposed to how much might be on in a
20 particular day.

21 I'm open to an amendment, but I was looking to
22 give them some flexibility to actually meet the 15.

23 COMMISSIONER HANSON: Thank you.

24 And then I would have a question of one of our
25 counselors at law. Can you tell me, when we look at

1 and/or 30 minutes, to me or 30 minutes means you can
2 either do it 15 hours for the year or your maximum is
3 30 minutes per day. It seems like there's two different
4 levels there, and one of them -- two different maximums
5 so they can meet the 30 minutes a day, which is
6 significantly more than 15 hours a year.

7 So I'm curious what your thoughts are. Does
8 that "and/or" give us two different maximums?

9 MR. DE HUECK: My interpretation of that is
10 we're going to have one maximum. We couldn't have --
11 have you done the math on that? How much more that would
12 be?

13 COMMISSIONER HANSON: No, I didn't. But 365 --

14 MR. DE HUECK: I'm looking at Greg. You're
15 good.

16 MR. RISLOV: It's going to be about -- it's
17 going to be over -- if I understand what Gary's saying
18 correctly, he would -- I'll try to interpret the way he
19 worded it. He would have worded it 30 hours per year and
20 30 minutes per day, not to exceed a total of 30 hours per
21 year.

22 The way he's suggesting, it would be over 4,300
23 hours a year because it would be a half-hour -- I
24 shouldn't say that. That's all wrong.

25 It should be 182.5 hours a year the way Gary was

1 suggesting.

2 COMMISSIONER HANSON: Yeah. Correct.

3 MR. RISLOV: But if the phrase was added "no
4 more than 30 minutes per day, not to exceed 30 hours per
5 year," I think that's what you're getting at.

6 MR. DE HUECK: Correct.

7 COMMISSIONER HANSON: Right. And that's my
8 concern is that when we say or 30 minutes per day, well,
9 that's 365 divided by two, and that's the number of hours
10 that could be for an entire year. So you've got to
11 either this or you could do this.

12 And I like the way that -- just about called you
13 Commissioner. That Mr. Rislov just articulated. Is that
14 something that the sponsor could --

15 COMMISSIONER NELSON: My intention, and I think
16 we're on the same page here, is that there be no more
17 than 15 hours per year and that no single day could be
18 more than 30 minutes.

19 COMMISSIONER HANSON: Okay. Saying it the same
20 way, yes.

21 COMMISSIONER NELSON: Yes. And so if we need to
22 adjust the language to mean that, I'm absolutely fine
23 with that.

24 COMMISSIONER HANSON: Okay. So that with that
25 understanding, I don't know that I need to make a motion

1 to change that, but I --

2 COMMISSIONER NELSON: If that's the
3 understanding, I think we'll work that language out when
4 they write the final condition.

5 COMMISSIONER HANSON: Okay. Is that under the
6 with our --

7 MR. DE HUECK: Yeah.

8 COMMISSIONER HANSON: Okay. Great. Thank you.

9 CHAIRWOMAN FIEGEN: The other item I would like
10 to discuss is participating landowners. And, if
11 possible, can this not be part of participating
12 landowners unless a signed waiver is obtained from the
13 owner of the resident?

14 Because then you're protecting all South
15 Dakotans. But the participants can have a waiver and
16 sign that off.

17 Go ahead.

18 COMMISSIONER NELSON: Yeah. I wrestled with
19 that for all of about two seconds. And the way I
20 resolved that was if you have chosen to be a participant,
21 if you have chosen to be part of this project, if you
22 have chosen to receive easement payments in exchange for
23 allowing these turbines on your land, are there going to
24 be some things you're going to have to put up with?

25 Absolutely. And, therefore, I view that as an

1 issue between the landowner and the Applicant and not
2 something that I'm willing to further restrict.

3 CHAIRWOMAN FIEGEN: Thank you. And I would
4 agree with you to a point.

5 I do believe sometimes when participants sign up
6 information may be very vague, information may be
7 misleading, and as a Commissioner it's hard because, yes,
8 they chose to sign up, but they may have signed up with
9 misinformation.

10 And so that's why it would be nice to allow them
11 at least to sign off on that. And if they're okay with
12 that, that's fine.

13 Other discussion on the amendment. I will not
14 make an amendment to the amendment but may make another
15 amendment after this one is voted on.

16 Other discussion.

17 COMMISSIONER HANSON: Madam Chair, I would be
18 interested in -- it's interesting, the three of us not
19 being able to chat on these things until we get to this
20 juncture. It's interesting hearing the flow of concerns.

21 I have marked several items that I have concerns
22 with and Commissioner Nelson has touched on one just now
23 and you just touched on one. And so I would be
24 interested in that discussion later on.

25 Thank you.

1 CHAIRWOMAN FIEGEN: Thank you.

2 At this time is there anymore discussion on this
3 amendment?

4 All in favor say aye; opposed, nay.

5 Commissioner Nelson.

6 COMMISSIONER NELSON: Aye.

7 CHAIRWOMAN FIEGEN: Commissioner Hanson.

8 COMMISSIONER HANSON: Aye.

9 CHAIRWOMAN FIEGEN: Commissioner Fiegen votes
10 aye.

11 Motion carries.

12 COMMISSIONER NELSON: Madam Chair.

13 CHAIRWOMAN FIEGEN: Go ahead.

14 COMMISSIONER NELSON: I move to amend the main
15 motion by changing Proposed Condition 40A by striking
16 "10" and inserting "30."

17 CHAIRWOMAN FIEGEN: Go ahead with your --

18 COMMISSIONER NELSON: Thank you.

19 This is the turbine decommissioning escrow
20 account. The proposed condition that staff and the
21 Applicant had agreed upon was that the annual payments
22 into that decommissioning escrow account be made for a
23 total of 10 years.

24 In Crocker we required those payments to be made
25 for 30 years. I believe that the 10 years here probably

1 originates from some of the testimony that it may only
2 take \$50,000 to decommission a particular turbine. I
3 will tell you I have serious doubts about whether
4 30 years down the road 50,000 is going to be enough to
5 decommission a turbine. I would much prefer to make sure
6 that there is sufficient cash in that escrow account to
7 make sure that the decommissioning can, in fact, take
8 place.

9 Understanding that per the other conditions at
10 year 10 and every five years after that we will evaluate
11 is there too much or not enough cash in the account and
12 if we find that, in fact, we are overcollecting, as we
13 frequently do in other dockets, we will change the amount
14 that is being withheld or put into that account.

15 Additionally, if there's additional cash left at
16 the end, that goes back to the Applicant, and so the
17 Applicant is out nothing. But I want to make sure that
18 at the end of the day there's enough cash in that account
19 to pay for what needs to be done.

20 CHAIRWOMAN FIEGEN: Other discussion on this
21 amendment.

22 All in favor say aye; opposed, nay.

23 Commissioner Nelson.

24 COMMISSIONER NELSON: Aye.

25 CHAIRWOMAN FIEGEN: Commissioner Hanson.

1 COMMISSIONER HANSON: Aye.

2 CHAIRWOMAN FIEGEN: Commissioner Fiegen votes
3 aye.

4 Motion carries.

5 COMMISSIONER NELSON: Madam Chair.

6 CHAIRWOMAN FIEGEN: Go ahead.

7 COMMISSIONER NELSON: I move to amend the main
8 motion by adding staff's second Proposed Condition -- and
9 just for reference, that's their sound condition -- but
10 deleting "equivalent continuous sound level, Leq" and
11 replacing it with "L10."

12 CHAIRWOMAN FIEGEN: Discussion on your motion.

13 COMMISSIONER NELSON: I think everybody
14 understands, Applicant included, that there needs to be a
15 sound limitation on this particular project. And I've
16 wrestled with this provision probably as much as any of
17 those that we've looked at, and I believe that, again,
18 looking at the welfare of the individuals in that area,
19 that 40 dBA is, in fact, the right number.

20 It is adequately supported by staff. It is
21 adequately supported from several different perspectives
22 in the Intervenor's brief.

23 The Applicant's posthearing brief did criticize
24 Mr. Hessler for where he -- you know, for arriving at 40.
25 I understood part of that, but at the end of the day I

1 still believe that it is adequately supported for the
2 welfare of the inhabitants.

3 And understand this project will change the
4 complexion of that area forever. At least for 30 years,
5 if not forever. And we have to do what we can,
6 understanding the change of that complexion, to maintain
7 the welfare, and one of those things that we can do is
8 set a reasonable noise limitation.

9 As Ms. Schoenfelder pointed out today,
10 Mr. Pawlowski testified that the sound level model was
11 conservative, the sound level model only showed that
12 there were two nonparticipants that exceeded 40, and so
13 for those two there will need to be some adjustment to
14 their operation in order to meet this 40.

15 Let me speak about kind of a subpart to my
16 motion to amend, and that is changing Leq to L10. This
17 is an interesting subject.

18 And in one of Mr. James's exhibits,
19 Exhibit I1-B, on page 2 he had a chart, a graph, that
20 visually explained really the difference between L90,
21 Leq, L10, and Lmax. I found it very, very revealing and
22 instructive to me.

23 In addition, Mr. James in his testimony
24 explained why L10 was a better measure for this than Leq.
25 And I think the best way that I can explain it to my

1 fellow Commissioners as to why I've chosen to go L10
2 instead of Leq, Leq is an average. And so if we set an
3 average of 40 and we understand that the ambient is 28,
4 that means that there's a whole lot of time that this
5 project is going to be emitting a lot more than 40.

6 And that's the time that it's going to be
7 oppressive or bothersome or endangering the welfare and
8 the well-being of the folks that are in that area.

9 L10 really is -- it's not a max, but it's close
10 to a max with an allowance for 10 percent spikes. Okay.
11 And, obviously, 10 percent spikes -- because there's
12 going to be other things that are going to create noise
13 that might create those spikes, the wind itself being
14 one.

15 And so based on that thought process and really
16 wanting to set a maximum that means something, I think
17 L10 is appropriate. And understanding that in the sound
18 model that was created assuming full operation of the
19 turbines, and so L10 should not be an impediment to the
20 operation based on the way the sound models were done,
21 assuming the sound models were accurate.

22 I believe that is the sum of my comments.

23 CHAIRWOMAN FIEGEN: Okay. I do have a different
24 amendment for this one. I will ask for a short recess,
25 that I can visit with my advisor quick.

1 But, Commissioner Hanson, do you have any
2 discussion before I ask for a short recess?

3 COMMISSIONER HANSON: Before voting on this, I
4 would very much like to hear your -- I have my own
5 thoughts on this and, like I was saying earlier, I wanted
6 to change something too so I would like to hear what
7 yours is prior to voting on it.

8 Thank you.

9 CHAIRWOMAN FIEGEN: Okay. I'm going to ask for
10 a short recess. We'll be back probably within a few
11 minutes.

12 (A short recess is taken.)

13 CHAIRWOMAN FIEGEN: Okay. We're going to come
14 back into session. And I think I'll be supporting your
15 motion. I will certainly have an amendment at the end to
16 visit about participating landowners, but I will support
17 your motion on nonparticipating -- or your amendment.
18 I'm sorry.

19 Is there other discussion on the motion?

20 Go ahead.

21 COMMISSIONER HANSON: I'll just say that -- I
22 guess you'll know that I'm supporting it when I vote that
23 I'm supporting it.

24 But I feel it's moving the right direction, and
25 that's why I will be supporting it. I can't make that

1 comment during the vote so I'll make it now.

2 Thank you.

3 CHAIRWOMAN FIEGEN: Other discussion on the
4 amendment.

5 All in favor say aye; opposed, nay.

6 Commissioner Nelson.

7 COMMISSIONER NELSON: Aye.

8 CHAIRWOMAN FIEGEN: Commissioner Hanson.

9 COMMISSIONER HANSON: Aye.

10 CHAIRWOMAN FIEGEN: Commissioner Fiegen votes
11 aye.

12 Motion carries.

13 Commissioner Nelson.

14 COMMISSIONER NELSON: I further move to amend
15 the main motion by adding a new condition requiring
16 verification of compliance with the sound level
17 requirement at the residences of the Intervenors within
18 60 days of commencement of full operation.

19 CHAIRWOMAN FIEGEN: Discussion on your motion.

20 COMMISSIONER NELSON: Obviously for anybody that
21 was paying attention when the sound modeling was being
22 talked about, I was certainly surprised, and I think were
23 others, that there was not a verification of the accuracy
24 of that modeling after construction.

25 And today, you know, Ms. Pazour asked repeatedly

1 about, you know, why that isn't done. And I agree with
2 that, that there needs to be some verification that the
3 sound level is what we have required.

4 Now having said that, I think requiring
5 verification at every single one of the receptors is
6 probably more than is necessary in order to ensure that
7 the sound levels are being met, and so, hence, this
8 condition would simply require that that initial
9 measuring at the residences of the Intervenor and
10 understanding that there is a provision in the last
11 amendment that we passed that would allow others to
12 request that testing if necessary. And so it's certainly
13 not foreclosed on others to have that testing done.

14 CHAIRWOMAN FIEGEN: Could you read your
15 amendment to the main motion one more time?

16 COMMISSIONER NELSON: Certainly.

17 Adding a new condition requiring verification of
18 compliance with the sound level requirement at the
19 residences of the Intervenor within 60 days of
20 commencement of full operation.

21 CHAIRWOMAN FIEGEN: Thank you.

22 COMMISSIONER NELSON: And I will say there's
23 probably no magic in this language. You know, I put
24 60 days in there so there's some deadline to get it done.
25 Obviously, we want it after things are fully operating.

1 We don't want it done when there's turbines that aren't
2 operating. But I'm open to any suggestions for
3 improvement.

4 CHAIRWOMAN FIEGEN: Commissioner Hanson.

5 COMMISSIONER HANSON: Thank you, Madam Chair.

6 A question for the sponsor. Did you -- I
7 thought you just indicated, and I didn't hear it in the
8 motion, that you would not preclude others from the
9 opportunity.

10 Is that somewhere else in the document?

11 COMMISSIONER NELSON: I believe that is in
12 Staff's second Proposed Condition that we just approved.

13 COMMISSIONER HANSON: Okay.

14 COMMISSIONER NELSON: Let me verify that.

15 Yeah. There's a provision in there that says,
16 "Applicant shall, upon Commission formal request, conduct
17 field surveys or provide postconstruction monitoring data
18 verifying compliance with specific noise level limits
19 using applicable ANSI methods. Sound monitoring will not
20 be repeated in a representative area during any five-year
21 period unless operational or maintenance changes result
22 in a reasonable assumption of higher turbine levels."

23 And so the way I would anticipate that working
24 is if one of the other nonparticipants down there had a
25 complaint, they would come to us. We would determine

1 whether or not there needed to be that testing, and then
2 per this condition, we could order it.

3 COMMISSIONER HANSON: So your new motion is
4 perhaps slightly redundant, but at the same time it
5 specifies what shall take place.

6 COMMISSIONER NELSON: Exactly. Yes.

7 COMMISSIONER HANSON: Okay. Thank you.

8 CHAIRWOMAN FIEGEN: Other discussion on the
9 motion.

10 Seeing none, all in favor say aye; opposed, nay.
11 Commissioner Nelson.

12 COMMISSIONER NELSON: Aye.

13 CHAIRWOMAN FIEGEN: Commissioner Hanson.

14 COMMISSIONER HANSON: Aye.

15 CHAIRWOMAN FIEGEN: Commissioner Fiegen votes
16 aye.

17 Motion carries.

18 Commissioner Nelson, I just want to make sure.
19 Let's see. Applicant and Staff were advised --
20 Condition 29 and then the revised new, that's all in
21 there correcting your main motion? That final --

22 COMMISSIONER NELSON: Yes. 29 is what was
23 submitted yesterday that I understood Staff and Applicant
24 had agreed upon.

25 CHAIRWOMAN FIEGEN: Okay. That's what I heard

1 in your main motion.

2 Okay. Other amendments to the main -- and also
3 the new item on the bottom; correct?

4 COMMISSIONER NELSON: No. No. I understand
5 that yesterday there was another new condition proposed,
6 and I have not moved that.

7 CHAIRWOMAN FIEGEN: Oh, okay. So you did not
8 move this condition of -- at the bottom or all of 29?

9 COMMISSIONER NELSON: At the bottom.

10 CHAIRWOMAN FIEGEN: Okay.

11 COMMISSIONER NELSON: I think it says -- it says
12 "new."

13 CHAIRWOMAN FIEGEN: Okay. And that's the one
14 you did not propose.

15 COMMISSIONER NELSON: I did not propose that.

16 CHAIRWOMAN FIEGEN: Okay. All right.

17 We are ready for more amendments.

18 And I'm going to move in Condition 27 -- where
19 Commissioner Nelson dealt with the sound, I'm going to
20 move that the 45 L10 for participating landowners unless
21 a signed waiver is obtained from the owner of their
22 residence.

23 Discussion on the motion.

24 I just believe that as a Public Utilities
25 Commission although there's waivers and contracts and

1 easements, this just gives a little bit of protection to
2 participating landowners that don't necessarily have a
3 turbine. And that they can certainly sign the waiver and
4 this won't be an issue but just to ensure that
5 participating landowners may also have some type of
6 protection on sound.

7 I did move it up to 45 L10. Other discussion on
8 the motion -- or amendment.

9 COMMISSIONER NELSON: Madam Chair, I would just
10 reiterate what I stated before.

11 You know, we certainly have an obligation to
12 ensure the welfare of folks that have not chosen to be
13 part of this deal, but when somebody chooses to be part
14 of it, chooses to take advantage of the economic
15 opportunity when they are part of it, that with that may
16 come some negatives that they have chosen to sign off on
17 and I'm really not willing to get into the middle of that
18 deal.

19 CHAIRWOMAN FIEGEN: Other discussion on the
20 amendment to the main motion.

21 COMMISSIONER HANSON: Madam Chair.

22 CHAIRWOMAN FIEGEN: Go ahead.

23 COMMISSIONER HANSON: Madam Chair, I had the
24 same thoughts as Commissioner Nelson as I went through
25 this process. At the same time I thought of the

1 chronologic -- chronological order -- chronologically --
2 I can't get -- you understand what I mean.

3 COMMISSIONER NELSON: And Cheri has to spell it
4 six different ways.

5 CHAIRWOMAN FIEGEN: Chronological.

6 COMMISSIONER HANSON: From the standpoint of the
7 challenge if I were a property owner and signing an
8 agreement and everything and the promises are made, I
9 still don't know some of these things that are going to
10 take place in the future.

11 And I think this protects that party, that
12 citizen, from a situation where they've signed on to a
13 deal and then there are future things that take place
14 that may not be of their liking. And I know they're
15 getting compensated for things of that nature. I just
16 from that standpoint feel that it would be a good idea to
17 allow them to do that.

18 Thank you, Madam Chair.

19 CHAIRWOMAN FIEGEN: Thank you.

20 And, you know, compensation -- we certainly
21 didn't necessarily get to see the agreements on
22 compensation when you don't necessarily have a turbine.
23 And so a lot of times when participating landowners sign
24 up a lot of times they sign up in the hopes that there
25 will be a turbine, and that's not always the case.

1 And I understand there's lots of legal issues
2 when you sign up, but this does provide protection.
3 Signed waivers can be obtained from the owner of the
4 resident.

5 Commissioner Nelson.

6 COMMISSIONER NELSON: Just scanning through the
7 sound level modeling, it doesn't look like there are any
8 model levels that are over 45, and so maybe it's more
9 kind of a moot discussion.

10 I'm going to vote against it just on principal,
11 but it looks to me like nobody's really going to be
12 affected one way or the other.

13 CHAIRWOMAN FIEGEN: Thank you.

14 And just a reminder, that's L10 just like yours.

15 Okay. Other discussion on the motion.

16 All in favor say aye; all opposed say no.

17 Commissioner Nelson.

18 COMMISSIONER NELSON: Nay.

19 CHAIRWOMAN FIEGEN: Commissioner Hanson.

20 COMMISSIONER HANSON: Aye.

21 CHAIRWOMAN FIEGEN: Commissioner Fiegen votes
22 aye.

23 Motion carries.

24 That brings me to my next amendment to the main
25 motion, which will be shadow flicker. I believe the

1 discussion is very similar to the discussion we just had.
2 And so I'm going to add the same condition as was
3 previously amended on shadow flicker with participants
4 unless a signed waiver is obtained from the owner of the
5 resident.

6 That's my amendment to now the main motion. And
7 the same -- mine's the same argument. I'm sure
8 Commissioner Nelson's is the same argument also.

9 Other discussion on that motion.

10 COMMISSIONER NELSON: You're right. Same
11 argument. Just very quickly scanning through it looks
12 like there's at least eight participants that would be
13 affected by this.

14 Thank you.

15 CHAIRWOMAN FIEGEN: Other discussion on the
16 motion.

17 All in favor say aye; opposed, nay.

18 Commissioner Nelson.

19 COMMISSIONER NELSON: Nay.

20 CHAIRWOMAN FIEGEN: Commissioner Hanson.

21 COMMISSIONER HANSON: Aye.

22 CHAIRWOMAN FIEGEN: Commissioner Fiegen votes
23 aye.

24 Motion carries.

25 Are there other amendments to the main motion?

1 COMMISSIONER HANSON: I have a question if I
2 may.

3 CHAIRWOMAN FIEGEN: Go ahead.

4 COMMISSIONER HANSON: Does the main motion
5 include the -- the request by Applicant -- I believe it
6 was by the Applicant on item 29E to change to "the
7 Applicant decide at a later point to use a lower" -- a
8 different lower megawatt turbine and also include "the
9 Applicant shall also demonstrate that in," et cetera,
10 et cetera.

11 COMMISSIONER NELSON: The answer is yes. That
12 is the Proposed Joint Condition from both Applicant and
13 Staff that came in yesterday. That was part of my
14 initial motion.

15 COMMISSIONER HANSON: Okay. And I would have a
16 further question then on that same issue.

17 Why not have that with larger megawatt turbines?
18 Why do we need to specify just for -- why is this
19 particular requirement condition just for lower megawatt
20 and not for larger megawatt turbines?

21 Would it make sense to just strike lower
22 megawatt?

23 COMMISSIONER NELSON: I'm not sure that I can
24 answer that. As I said, this was proposed by Applicant
25 and Staff. I didn't find it objectionable, but if you'd

1 like to know the ins and outs of that, you might want to
2 ask Staff and Applicant.

3 COMMISSIONER HANSON: All right. Thank you.

4 And that question I'd put to Staff and
5 Applicant.

6 MS. EDWARDS: I'd just start by saying we had
7 come to this agreement about turbine flexibility using
8 roughly the same language we had used in the previous two
9 dockets. And it was an oversight on my part, and I feel
10 bad about it.

11 In the brief I had advocating -- advocating for
12 using the smaller turbines at places where they would
13 minimize impacts. However, I failed to acknowledge that
14 I had already agreed to a different condition and failed
15 to contact the Applicant to warn them I was doing that.
16 And I try to never do that to people.

17 So I'm terribly sorry for that oversight. They
18 reached out to me to let me know that I had done that,
19 and that's kind of how we came to this condition.

20 COMMISSIONER HANSON: Okay. Having said that,
21 and I appreciate and understand it, why not apply this to
22 all turbines as opposed to just lower megawatt turbines?

23 Do you wish the Applicant to give it a shot? It
24 looks like they're anxious. I'll let Applicant go ahead,
25 and then you can feed off that answer.

1 MS. AGRIMONTI: Thank you, Commissioner.

2 The testimony at hearing was that Prevailing
3 Wind Park was looking for flexibility to use a smaller GE
4 turbine to qualify for the production tax credit so that
5 was the only flexibility that was requested.

6 So on the record, the only alternative turbine
7 is the smaller turbine. So it's just an adjective not
8 necessarily meant to be restrictive but to be reflective
9 of the record.

10 COMMISSIONER HANSON: So I assume you'd be
11 amenable to just stating at a later point to use a
12 different turbine model?

13 MS. AGRIMONTI: No objection, sir.

14 COMMISSIONER HANSON: All right. Thank you.

15 Madam Chair, I'd make a motion that on item 29
16 on the -- make a motion to amend the main motion on
17 page -- well, in this case we have different page
18 numbers.

19 On item 29E, to read, "Should Applicant decide
20 at a later point to use a different megawatt turbine
21 model, it shall provide," et cetera. So the change being
22 that "lower" would be removed.

23 And I believe any discussion on that is -- by
24 myself has taken place at this time.

25 Thank you, Madam Chair.

1 CHAIRWOMAN FIEGEN: Commissioner Nelson.

2 COMMISSIONER NELSON: I don't think there's
3 anything on the record that would indicate things might
4 go this direction, but that leaves it open for a higher
5 megawatt turbine model to be substituted.

6 I mean, I don't think that's being proposed. I
7 don't think that will happen, but by taking "lower" out,
8 that perhaps gives that opportunity.

9 COMMISSIONER HANSON: Madam Chair.

10 CHAIRWOMAN FIEGEN: Go ahead.

11 COMMISSIONER HANSON: I don't read it as saying
12 that. It simply provides that if for some reason they do
13 decide at a different megawatt, that -- and it is
14 subsequently approved, that they have to demonstrate in
15 selecting locations, et cetera.

16 And I see my motion also needs to include the
17 word "small" because that was added as part of the
18 Applicant's request.

19 So I would supplant the word "small" with the
20 word "other." It's restrictive, regardless. And it
21 provides a restriction in this case only -- the way it's
22 presently written only to smaller turbines or lower
23 megawatt turbines by removing those two words.

24 And it would apply to any turbines. It doesn't
25 permit additional turbines. It just means that any

1 turbines that are provided.

2 CHAIRWOMAN FIEGEN: Other discussion on the
3 amendment.

4 COMMISSIONER NELSON: Madam Chair, since this
5 was a joint condition, may I ask Staff if they are okay
6 with those changes?

7 MS. EDWARDS: My main concern was just having
8 the Applicant at least consider if a turbine's going to
9 have lower impacts, to put it where lower impacts would
10 have the most benefit. And that would still do that.

11 And regardless of what turbine the Applicant
12 ends up using, whether it's in the off chance bigger or
13 smaller, there's a slough of other conditions they'd have
14 to abide by, setbacks or sound requirements. So I think
15 we're comfortable with that.

16 COMMISSIONER NELSON: Thank you.

17 CHAIRWOMAN FIEGEN: Other discussion on the
18 amendment to the main motion.

19 All in favor say aye; opposed, nay.

20 Commissioner Nelson.

21 COMMISSIONER NELSON: Aye.

22 CHAIRWOMAN FIEGEN: Commissioner Hanson.

23 COMMISSIONER HANSON: Aye.

24 CHAIRWOMAN FIEGEN: Commissioner Fiegen votes
25 aye.

1 Motion carries.

2 I do have a question of the Applicant, and I
3 don't know if this is in confidential session or not but
4 the new item that was brought to us that was not agreed
5 upon and is not currently in the main motion is, "Shall
6 any installed wind turbine not be operating for a
7 consecutive 12-month period, Applicant shall remove and
8 decommission the nonoperating turbine within the
9 subsequent 12-month period."

10 So are these landowners paid based on
11 generation? Are they -- so would a landowner still be
12 paid the same amount if it's not operational?

13 MS. AGRIMONTI: Chair, I consulted with
14 Mr. Pawlowski of Prevailing Wind Park, and to answer that
15 question he would ask that we go into confidential
16 session for the proprietary nature of the agreements.

17 COMMISSIONER NELSON: If I might interject,
18 Exhibit I-17, does that not -- which is a public
19 document. Does that not answer the question?

20 MS. AGRIMONTI: I can tell you, as we stated at
21 the hearing, that there's a representative lease in the
22 record and I believe, Commissioner Nelson, you've just
23 cited that.

24 COMMISSIONER NELSON: Yes.

25 MS. AGRIMONTI: But if there's a request for us

1 to state what our company policy is and what the rest of
2 the leases say, we would prefer to do that in
3 confidential session.

4 COMMISSIONER NELSON: Fair enough.

5 MS. AGRIMONTI: I've gotten further
6 clarification that I can say in that document it advises
7 that the payment is based on facility presence, not on
8 production.

9 COMMISSIONER NELSON: Well, could I ask a
10 question based off of that response?

11 CHAIRWOMAN FIEGEN: Yes. And then I'll be
12 asking staff a question after you're done.

13 COMMISSIONER NELSON: So the actual leases,
14 would the answer be different in any of those?

15 MS. AGRIMONTI: One moment, sir.

16 (Pause.)

17 MS. AGRIMONTI: No.

18 COMMISSIONER NELSON: Thank you.

19 CHAIRWOMAN FIEGEN: Now I have a question for
20 Staff on the proposed new condition that was filed,
21 although not agreed upon by both Applicant and Staff.

22 Do you still feel comfortable with this
23 condition, realizing that a landowner would lose their --

24 So if the tower is taken down, is it your
25 understanding the landowner would lose their payment?

1 And are you still comfortable with this condition that
2 you ran up the flagpole yesterday when you filed?

3 And I'll give you a little bit of time to
4 discuss that among the three of you, and then if you
5 could decide who's going to speak.

6 MS. EDWARDS: That stemmed from both the
7 testimony and the record from someone who did end up
8 having one sitting resting or burnt out on his property
9 and that concern and also our concern for the general
10 public not wanting those around in their community.

11 So Staff does still feel comfortable that's a
12 necessary question. Not having read each and every
13 lease, I suppose one could obtain a waiver from the
14 particular landowner to allow it to be left up, but that
15 still leaves the general public with a burnt out
16 potentially inoperable wind turbine.

17 CHAIRWOMAN FIEGEN: So did you hear the same
18 thing I understood anyway? And maybe I understood the
19 Applicant wrong, but it sounded like the Applicant
20 responded that although a turbine is not running on a
21 landowner's land and is not operating, they still get
22 payment and they still get, I believe, the same payment?

23 MS. EDWARDS: Right. That would alleviate that
24 portion of the concern.

25 So our only remaining concern would be a

1 community as a whole who are not and would not receive
2 payment for that anyway would be left with that
3 structure.

4 CHAIRWOMAN FIEGEN: And no sound or no shadow
5 flicker.

6 Go ahead.

7 MS. AGRIMONTI: Commissioner Fiegen, thank you.
8 I simply wanted to advise the Commission that as a
9 practice the company would remove a turbine in disrepair.
10 The company wouldn't want to leave one that wasn't
11 operational on the premises.

12 And the time frame that we proposed in the
13 Joint Condition was the time frame in which Mr. Pawlowski
14 testified that that would occur.

15 CHAIRWOMAN FIEGEN: Thank you.

16 I would love to make this amendment to the
17 motion, and that's all about setbacks. I believe our
18 setbacks are outdated. So I believe they're outdated on
19 a statewide level.

20 And what I have learned, especially through this
21 evidentiary hearing, that the technical expertise for
22 counties to decide on setbacks may be limited.

23 I would love to make the amendment of a
24 three-quarters-of-a-mile setback for nonparticipating
25 landowners. I wish the record would support that

1 amendment, and I wish the Applicant would have worked
2 with participating and nonparticipating landowners to
3 ensure the setbacks were more up to date.

4 But today I'm not going to make that amendment,
5 but I so wish the record would reflect that.

6 Other amendments to the main motion.

7 COMMISSIONER HANSON: Madam Chair, I have
8 some -- a few important and not so important amendments,
9 a number of them.

10 However, having just heard your statement, I
11 would -- one of the motions that I have I think I need to
12 meet with counsel, legal counsel, first before I --

13 CHAIRWOMAN FIEGEN: Who knows. You might change
14 my mind, and it might be on the record.

15 COMMISSIONER HANSON: Thank you.

16 CHAIRWOMAN FIEGEN: So we're going to go into
17 recess. Commissioner Hanson is meeting with advisors,
18 and we will be in recess.

19 (A short recess is taken.)

20 CHAIRWOMAN FIEGEN: We are going to come back
21 from recess.

22 And, Commissioner Hanson, you do have the floor.

23 COMMISSIONER HANSON: Thank you, Madam Chair.

24 One of the challenges with this particular
25 docket is the -- well, like all large dockets, there's so

1 much differing information, and it seems to change as we
2 go through it. I want to be certain of a couple of
3 things, and we were just talking out in the hall trying
4 to figure out some of the particulars.

5 And before I make a motion, either Staff or -- I
6 know we've gone over this before, but there's -- this
7 is -- I don't know. Like mercury sometimes, slipping
8 through the fingers trying to get ahold of it.

9 We have three different counties. We have one
10 county that does not have setback regulations. The other
11 two have different setback regulations. We have within
12 our -- the Application and within the permit process
13 conditions and testimony, some different distances. And
14 I know that Staff and the Applicant perfectly understand
15 exactly the distances for everything. I don't.

16 So I'm curious if someone would go over the
17 distances for the three counties and for the participants
18 and for the nonparticipants on requirements for setbacks
19 as they presently stand in the conditions.

20 CHAIRWOMAN FIEGEN: So I believe that's in the
21 Application or saw it in a brief. I saw it last night
22 and the night before.

23 COMMISSIONER HANSON: I saw it as well.

24 CHAIRWOMAN FIEGEN: But I can't remember where
25 it went, just like you. And so I'm going to allow a

1 little bit of time for people to find the county setback.

2 COMMISSIONER HANSON: I read it as recently as
3 four days ago, I think.

4 CHAIRWOMAN FIEGEN: I believe it's in the
5 Applicant's Application, but I can't remember if it was
6 in your Application or your brief. But it's something
7 the Applicant --

8 MS. AGRIMONTI: Thank you, Commissioners.

9 I can point you to Table 9-2 in the Application.
10 It includes the setbacks for the counties as they exist.
11 The Application does not reflect the commitments that
12 Prevailing Wind Park made to Charles Mix County.

13 And just to sort of summarize, I know there was
14 some testimony that was conflicting. Bon Homme has
15 specific wind energy system requirements, which the
16 project has met through an approval of the Wests in
17 Bon Homme.

18 Charles Mix is not zoned, and that's where
19 Mr. Pawlowski's Affidavit and commitments come in. And
20 Hutchinson has a special exception permit process, which
21 the project also went through and received approvals
22 for.

23 So the Prevailing Wind Park commitments in
24 Charles Mix would be in the Affidavit. And I've got to
25 grab the exhibit number for that momentarily.

1 COMMISSIONER HANSON: So in Charles Mix can you
2 tell me what the setbacks are, requirement?

3 MS. AGRIMONTI: That's what I'm going to look up
4 right now. Give me just a moment, please.

5 COMMISSIONER HANSON: And same question for
6 Bon Homme.

7 MS. AGRIMONTI: Bon Homme I can tell you, and
8 that's in Table 9-2 of the Application. So the distance
9 from occupied off-site residences is 1,000 feet. And
10 then the distance from the residence of a landowner on
11 whose property towers are erected is not less than
12 500 feet or 1.1 times the system height. Public roads is
13 500 feet or 1.1 times system height, whichever is
14 greater.

15 COMMISSIONER HANSON: Just a minute. I didn't
16 catch that.

17 The nonparticipant occupant is 1,000. The
18 landowner participant is not less than 500.

19 MS. AGRIMONTI: Or 1.1 system height.

20 COMMISSIONER HANSON: Okay.

21 MS. AGRIMONTI: Then the distance from the
22 public right-of-way roads is 500 feet or 1.1 times system
23 height.

24 And then the property line requirement in
25 Bon Homme is the same as the state requirement in

1 SDCL 43-13-24, and that's 500 feet or 1.1.

2 CHAIRWOMAN FIEGEN: And that's the tower height
3 and not necessarily the system.

4 MS. AGRIMONTI: It's the system height. It's
5 the tip height. So we talk about the tip height. It's
6 with the blade up.

7 COMMISSIONER HANSON: And the Hutchinson one.

8 MS. AGRIMONTI: Hutchinson has no requirements.

9 COMMISSIONER HANSON: Right.

10 MS. AGRIMONTI: The project applied the
11 Bon Homme requirements to Hutchinson, even though
12 Hutchinson did not have those requirements.

13 COMMISSIONER HANSON: Thank you.

14 MS. AGRIMONTI: And I'm sorry, Chair. You're
15 looking at me quizzically, and I want to make sure that
16 I'm still tracking.

17 CHAIRWOMAN FIEGEN: So state regulation is 1.1
18 of the tower height without the blade; is that correct?

19 MS. AGRIMONTI: Oh, I'm sorry.

20 It's tower. I thought you were asking about
21 Bon Homme. And you're right. That's the difference
22 between those two.

23 Thank you. I apologize. Bon Homme is greater
24 than the state requirement.

25 And if anybody knows Mr. Pawlowski's Affidavit

1 number -- exhibit number faster than I do.

2 MS. EDWARDS: Exhibit I-22. And you'll want to
3 look at setbacks on page 304.

4 MS. AGRIMONTI: All right. Thank you.

5 MS. EDWARDS: Forgive me. I can read it into
6 the record.

7 MS. AGRIMONTI: Go right ahead. That would be
8 fine.

9 MS. EDWARDS: For Charles Mix County it would be
10 the turbine distance from currently inhabited rural
11 residences of a nonparticipating landowner is not less
12 than 3.5 times the system height or 2,000 feet, whichever
13 the greater. From the residence of a participating
14 landowner, not less than 1,000 feet.

15 Rights of way and public roads is not less than
16 500 feet or 1.1 times the system height, whichever is
17 greater.

18 COMMISSIONER HANSON: Thank you, Applicant and
19 Staff. Appreciate that.

20 Madam Chair, I have some comments on that later.
21 Right now I have some -- I have a motion on No. 41.

22 CHAIRWOMAN FIEGEN: And let us just get to that.

23 COMMISSIONER HANSON: Yes.

24 CHAIRWOMAN FIEGEN: Okay. Everybody at 41,
25 Condition 41.

1 Go ahead.

2 COMMISSIONER HANSON: I move to insert the words
3 "and operation" after the word "construction" so that in
4 the first sentence it will read, "The terms and
5 conditions of the permit shall be made a uniform
6 condition of construction and operation subject only to
7 an affirmative written request for an exemption addressed
8 to the Commission."

9 It seems to be self-explanatory that this --
10 requirements would survive the construction of the
11 project and require -- to be required during the
12 remainder of the operation of the facility.

13 CHAIRWOMAN FIEGEN: Thank you.

14 Other comments on the motion.

15 All in favor say aye; opposed, nay.

16 Commissioner Nelson.

17 COMMISSIONER NELSON: Aye.

18 CHAIRWOMAN FIEGEN: Commissioner Hanson.

19 COMMISSIONER HANSON: Aye.

20 CHAIRWOMAN FIEGEN: Commissioner Fiegen votes
21 aye.

22 Motion carries.

23 COMMISSIONER HANSON: Madam Chair, I would have
24 an additional -- some cleanup on No. 40.

25 CHAIRWOMAN FIEGEN: On No. 40, page 8 of the

1 conditions.

2 Go ahead.

3 COMMISSIONER HANSON: I'll run through a number
4 of these. And if someone wants to take them
5 individually, that's fine. I don't know that they'll be
6 controversial in any fashion.

7 I appreciate the fact that these were sent I
8 think it was -- the last discussion we had in the setup
9 of the escrow account and how it would be facilitated.

10 Item 40B, the very last sentence towards the
11 end, the Commission may -- I would like to change the
12 verbiage so that it states in the last sentence, "Based
13 on the verification of the information in the filing, the
14 Commission may require additional funding to equal the
15 estimated amount needed for decommissioning."

16 And in the second line to add the word "to" so
17 that it states, "The turbine owner shall submit to the
18 Commission an estimated decommissioning date." I believe
19 "to" was just accidentally left out.

20 If everybody's following that, on item C I wish
21 to supplant the word "interest" with the word "revenues"
22 earned by the account, state that earned by the account
23 shall remain in the account.

24 The reason to change from interest to revenues
25 is that many escrow accounts receive funds from other

1 areas besides just interest; capital gains, for instance,
2 dividends, things of that nature. And I would think that
3 we would want to make certain that all of those are
4 included.

5 On item D, I would say -- wish to state, "An
6 account statement shall be provided annually and become a
7 public record" -- "to the Commission and become public
8 record."

9 And in item E the last sentence state, "A sale
10 of project assets shall include" instead of the words
11 "would be expected." State "shall include the associated
12 permit" and state "that requires Commission approval,"
13 instead of which would. Just to put them in the positive
14 fashion. And I believe that's all --

15 MR. DE HUECK: Could you read the last one
16 again, Gary. Sorry.

17 COMMISSIONER HANSON: The last one would be in
18 Section E. The last sentence state, "A sale of project
19 assets shall include the associated permit that requires
20 Commission approval per," et cetera.

21 CHAIRWOMAN FIEGEN: Discussion on your motion.

22 COMMISSIONER HANSON: I think they're
23 self-explanatory. It puts things in a stronger fashion.
24 And, like I said, I appreciate this being added in the
25 last meeting that we had.

1 I believe I was on the phone at the time trying
2 to shuffle papers as I was -- I was not driving, but I
3 was traveling at the time. And I think it's a well
4 pushed suggestion that was incorporated in the last and
5 hopefully in future dockets of this nature.

6 Thank you.

7 CHAIRWOMAN FIEGEN: Thank you.

8 Commissioner Hanson, I certainly do think you
9 have cleaned it up. You've made it more direct, and I
10 can certainly tell you are a former legislator using the
11 words "shall is shall" and shall is shall is shall.

12 Commissioner Nelson.

13 COMMISSIONER NELSON: I'm good with all of that
14 with the exception of maybe the change on C from
15 "interest" to "revenues."

16 When you mention capital gains and dividends
17 that would lend me to believe that some of this money
18 would go into equities which may also have capital
19 losses, and that is not my intention with an escrow
20 account. And the escrow agreement that we are reviewing
21 in the Crocker docket clearly specifies that this money
22 isn't going to go into things that may have capital gains
23 or capital losses but only in an interest-bearing type of
24 account. And so --

25 Well, yeah. Revenues would certainly cover it.

1 I feel more comfortable with "interest" so that nobody
2 thinks that we can go off on speculative ventures with
3 this money.

4 COMMISSIONER HANSON: As long as the document
5 itself states that it's not for that purpose, that it's
6 for interest, that's fine.

7 If that's ever changed, though, then you have
8 the challenge here that it only states for revenues.
9 Revenues, like you say, includes interest, and so it
10 doesn't affect that. It's only the document, the
11 directing document itself, that we have to make certain
12 directs that. And as long as it states that, there
13 shouldn't be any interpretation challenges.

14 But I think it's fairly standard to always say
15 that revenues that are earned, regardless of how they're
16 earned, remain in the account. I feel more comfortable
17 with revenues. That's why I suggested it.

18 COMMISSIONER NELSON: And I'm okay with that. I
19 guess, just when the Applicant brings the actual
20 agreement in, I anticipate that it will probably much
21 more informal than what we're seeing in Crocker.

22 COMMISSIONER HANSON: Thank you, Madam Chair.

23 CHAIRWOMAN FIEGEN: Other discussion on the
24 motion.

25 All in favor of amending 40 on page 8 of the

1 conditions say aye; opposed, nay.

2 Commissioner Nelson.

3 COMMISSIONER NELSON: Aye.

4 CHAIRWOMAN FIEGEN: Commissioner Hanson.

5 COMMISSIONER HANSON: Aye.

6 CHAIRWOMAN FIEGEN: Commissioner Fiegen votes
7 aye.

8 Motion carries.

9 Commissioner Hanson.

10 COMMISSIONER HANSON: Madam Chair, I'm still
11 debating on a setback item. However, I would -- I'm
12 going to pursue another one while I'm -- where my
13 subconscious continues to debate the other one.

14 I would turn to the other document that we have.
15 I don't know -- I'm searching for a title to it. Before
16 the Public Utilities Commission of the State of South
17 Dakota, In the Matter of the Application of Prevailing
18 Wind. Proposed Findings of Fact and Conclusions of Law.

19 Will there be a -- will there be a vote on that
20 at all?

21 MR. DE HUECK: No.

22 COMMISSIONER HANSON: Will that in any way be an
23 instructional document in the future?

24 MR. DE HUECK: No. Commissioner Hanson, you and
25 I will visit about that in a different forum.

1 COMMISSIONER HANSON: Okay. So it will not need
2 to come before us for approval.

3 MR. DE HUECK: Not at this time.

4 COMMISSIONER HANSON: Oh, in the future.

5 MR. DE HUECK: We will have our own Order.

6 COMMISSIONER HANSON: Thank you. My
7 subconscious is not working as fast as it should.

8 CHAIRWOMAN FIEGEN: We have plenty of time.
9 Take your time. I mean, this is an important docket.

10 COMMISSIONER HANSON: I'd like to explore item
11 34 for a moment. And I will -- I'll just say this will
12 parallel some of my concerns that I was going to bring up
13 in the amendment -- or the suggestions that I was going
14 to make for the Findings of Fact.

15 On item 34, Applicant agrees to undertake two
16 years of independently conducted postconstruction avian
17 mortality monitoring for the project and provide a copy
18 of the report to et cetera, et cetera.

19 Two years of independent postconstruction
20 monitoring of mortality. Will we be able to define -- I
21 know that's included in the other document I just
22 referred to. However, once we agree to two years in this
23 document, then we are, I would assume, constrained to two
24 years in the next document; correct? I mean, we're not
25 going to be able to have a different duration.

1 MR. DE HUECK: If you want a condition different
2 than this, then 34 would be the place to --

3 MS. CREMER: Yep.

4 COMMISSIONER HANSON: Thank you.

5 And I'd like a little discussion on it. For me
6 I look at it, and I think that it needs to be permanent.
7 I recognize what that means from the standpoint of having
8 an independently conducted postconstruction avian
9 mortality. I just don't see how it works otherwise and
10 how it's reported.

11 I know it has to be reported if an endangered
12 species is killed. But if I could have some discussion
13 on that to make me comfortable with two years because I'm
14 totally uncomfortable right now. I believe it needs to
15 be longer than that.

16 And I know that was part of the discussion that
17 we had, but when I look at -- I looked at the record
18 again today. I looked at the transcript. I've read the
19 answers that were given, and I -- frankly, I'm just not
20 comfortable with the two years at all. So I'd like the
21 Applicant to respond to my concern.

22 The evidence that was presented in the
23 transcript really doesn't provide much at all from the
24 standpoint -- it just seems really lacking from the
25 standpoint of giving me any feeling that -- you know,

1 it's ambiguous and it just doesn't give a lot of
2 specifics. So perhaps you could --

3 MR. PAWLOWSKI: Sure. And thank you for giving
4 me the opportunity to address the Commission.

5 We expect U.S. Fish & Wildlife requires two
6 years of postconstruction mortality surveys and then a
7 year every five years. So in practice every five years
8 we'll do a year of surveying. That five years from the
9 date of operation, right.

10 So two years of postconstruction monitoring.
11 Then three years later we do another year of study, and
12 then so on and so forth. So in reality -- and these are
13 conditions we expect from U.S. Fish & Wildlife Service.
14 So those are, I guess, customary in terms of monitoring.

15 COMMISSIONER HANSON: All right. As you're
16 speaking, I'm thinking of a different verbiage that would
17 make me feel comfortable. Thank you.

18 Go ahead if you have a question.

19 CHAIRWOMAN FIEGEN: No. I was just going to
20 have discussion with you. So go ahead with your motion,
21 and then we can discuss.

22 COMMISSIONER HANSON: I would like us to have
23 the opportunity in our Order to have some leeway, and I
24 think we're given that if we state -- if we make a change
25 to item 34 that states, "Applicant agrees to undertake a

1 minimum of two years of independently conducted
2 postconstruction." Then that gives me -- gives us the
3 opportunity to discuss it on the Order and see what --
4 some specifics. We need specifics here more than what
5 we've had and more than what has been discussed.

6 CHAIRWOMAN FIEGEN: Sorry. I wasn't listening
7 well enough.

8 Was that a motion, or is that a discussionary
9 item?

10 COMMISSIONER HANSON: Forgive me. I trespassed
11 and spoke to the motion prior to, during, and after --

12 CHAIRWOMAN FIEGEN: Okay. So we're not going to
13 have that as a motion right now.

14 And so I'm going to ask you a question about --
15 he stated that it sounds like the Federal Government
16 asked you to -- maybe the Commission should also receive
17 all Federal Government studies throughout the lifetime of
18 the operation because right now the Commission is only
19 given the first two years.

20 So along with your minimum of two years maybe we
21 should also ask for all reports. And then you let me
22 know when you're ready for your motion.

23 COMMISSIONER HANSON: I appreciate your
24 suggestion on the motion, and I believe it might already
25 state that. But I appreciate what you said there. I'll

1 make my motion.

2 I move that on item 34 to insert the words "a
3 minimum of" so that it's after the word "undertake" so
4 that it reads, "Applicant agrees to undertake a minimum
5 of two years of independently conducted postconstruction
6 avian mortality monitoring for the project." And to
7 provide a copy of the report to the U.S. FWS, GFP, and
8 the Commission.

9 CHAIRWOMAN FIEGEN: Comments on your motion.

10 COMMISSIONER HANSON: I believe I have probably
11 discussed it beyond what it needed to be.

12 CHAIRWOMAN FIEGEN: I have a question of the
13 sponsor of the amendment.

14 Do you believe that it requires that they are to
15 submit all reports that they do at year five, at year 10,
16 15, 20, 25?

17 COMMISSIONER HANSON: No. And I was thinking
18 that perhaps when you suggested that I didn't have the
19 verbiage in my mind quite of how I would phrase that. So
20 I thought I would do this one and then pursue what you
21 had suggested.

22 CHAIRWOMAN FIEGEN: Okay. Commissioner Nelson.

23 COMMISSIONER NELSON: If I could just ask, so a
24 minimum of two years and the company then, the Applicant,
25 would decide if they want to do more than that? Is that

1 where we're going?

2 COMMISSIONER HANSON: Madam Chair. Thank you
3 for the question.

4 No. I would look at it as at this juncture
5 item 34 would require them to do a minimum of two years
6 and that in the Order, when we put that together, we
7 could then specify exactly what our -- what the three of
8 us believe needs to be done.

9 COMMISSIONER NELSON: I'm going to have to
10 oppose that. Our Order's got to match what we're putting
11 in the conditions. And I guess I would say -- let me
12 back up.

13 In one of our previous dockets they were
14 proposing one year of monitoring and you had suggested
15 two and I went with that. And now we've got an
16 explanation that apparently the Feds require this
17 every-five-year deal so there is some monitoring in
18 perpetuity.

19 I don't know that I would support any more than
20 that. At least at this point I don't know that I could.
21 Without a -- if you can give me -- you know, give me a
22 reason, what this would accomplish, then -- help me out
23 with that.

24 COMMISSIONER HANSON: Madam Chair.

25 CHAIRWOMAN FIEGEN: Go ahead.

1 COMMISSIONER HANSON: Thank you.

2 We're dealing with an endangered species here.
3 We're dealing with several endangered species. And when
4 one considers that we here have the opportunity to
5 provide some safeguard for those extremely rare animals
6 that in 10, 20 years if they're killed because of the
7 proliferation of wind turbines or there's a significant
8 setback as a result of them, then it's too late.

9 And in your first concern that this has to
10 mirror the Order, there are items that are in the Order
11 already that are not by any means mirrored in this
12 document. So I would -- and I recognize that when I said
13 two years instead of one year. That particular, as I
14 recall, was in northeastern South Dakota. It was not
15 really close to the flyways. Significantly close to the
16 flyways. So I felt that the two year with the follow-up
17 from the federal agencies would suffice in that process.

18 Thank you.

19 COMMISSIONER NELSON: I appreciate that
20 response. I just want to make very clear to everybody
21 out there, the Order has not been written. Okay. Yeah.
22 The Order has not been written.

23 You know, if the U.S. Fish & Wildlife Service --
24 and they're the ones whose job it is to protect the
25 things that -- the animals that you're talking about. If

1 they're good with every five years, I guess I am.

2 CHAIRWOMAN FIEGEN: So, Commissioner Hanson, I'm
3 going to ask you one more time. So I would support your
4 motion if you will have another amendment that states
5 that the reports will be submitted to the Commission at
6 year -- it looks like it's going to be year five. And
7 there are other reports. All reports. So let me know --

8 I mean, can you kind of discuss your other
9 motion so I know?

10 COMMISSIONER HANSON: Madam Chair, I would like
11 to make a substitute motion.

12 CHAIRWOMAN FIEGEN: I like substitute motions.

13 COMMISSIONER HANSON: I would -- on item -- I
14 move in item 34 that item 4 shall read, "Applicant agrees
15 to undertake a minimum of two years of independently
16 conducted postconstruction avian mortality monitoring for
17 the project and to provide a copy of this and all further
18 reports to the" -- et cetera, et cetera, and the
19 Commission.

20 CHAIRWOMAN FIEGEN: Comments on your motion.
21 Substitute motion.

22 COMMISSIONER HANSON: Well, trying not to be my
23 mother's fool, I understand fully that you will support
24 the motion with those in it, and I do wish to have that
25 as a part of the process that I include that in the

1 motion.

2 CHAIRWOMAN FIEGEN: And I will expect our
3 attorneys to wordsmith that if it needs to be
4 wordsmithed. Our intent, I believe, is --

5 COMMISSIONER HANSON: I would also like to --

6 CHAIRWOMAN FIEGEN: I'm just going to hold a
7 second because I think we're in a little bit of a recess
8 so just wait one second.

9 COMMISSIONER HANSON: And then I would like to
10 speak to comments Commissioner Nelson made pertaining to
11 the Findings of Fact.

12 CHAIRWOMAN FIEGEN: Okay. So my comment was if
13 your motion may need to be wordsmithed a little bit to
14 the intent. And I don't know. I'm not an attorney, so I
15 don't know how it has to be wordsmithed. And then I will
16 support your motion.

17 Go ahead, Commissioner Hanson.

18 COMMISSIONER HANSON: Thank you.

19 And I agree with Commissioner Nelson saying that
20 a Findings of Fact has not been concluded at this
21 juncture. That's why I've used the word Proposed
22 Findings of Fact.

23 However, there is a Proposed Findings of Fact
24 which is not confidential. And this was written by
25 Prevailing Wind Park, and their own Proposed Findings of

1 Fact include a number of items pertaining to -- in
2 item 39, page 12, and in item 40 they include items that
3 are in addition to and certainly do not mirror the
4 item 34 that I've presented here. So I would certainly
5 hope that you can find that you can support the motion.

6 Thank you.

7 CHAIRWOMAN FIEGEN: Commissioner Nelson.

8 COMMISSIONER NELSON: I was good right up until
9 the point, Madam Chair, that you talked about some
10 wordsmithing.

11 I am good with the wording that Commissioner
12 Hanson has proposed. I'm okay with that. I'm not okay
13 with any further wordsmithing without it being on the
14 table.

15 CHAIRWOMAN FIEGEN: Other discussion on the
16 motion.

17 COMMISSIONER HANSON: Madam Chair.

18 CHAIRWOMAN FIEGEN: Substitute motion.

19 COMMISSIONER HANSON: Madam Chair, I made the
20 motion and your concern was some wordsmithing so if
21 there's something of that arena that you feel needs to be
22 changed -- --

23 CHAIRWOMAN FIEGEN: All right. I'm going to
24 support your motion.

25 All in favor say aye; opposed, nay.

1 Commissioner Nelson.

2 COMMISSIONER NELSON: Aye.

3 CHAIRWOMAN FIEGEN: Commissioner Hanson.

4 COMMISSIONER HANSON: Aye.

5 CHAIRWOMAN FIEGEN: Commissioner Fiegen votes
6 aye.

7 Motion carries.

8 COMMISSIONER HANSON: Madam Chair, I strongly
9 want to make another motion pertaining to setbacks, and I
10 in discussions and research cannot find evidence that
11 would support making a -- making a motion for setbacks
12 farther than what are already part of the motion.

13 So I don't have any further motions at this
14 time.

15 CHAIRWOMAN FIEGEN: I'm going to just look at
16 everything one more time to see if I have any other
17 amendments. Anybody else have any other amendments to
18 now the motion that has been amended several times?

19 The question before the Commission -- we are now
20 to the main motion that has been amended. All in favor
21 say aye -- oops.

22 COMMISSIONER HANSON: Discussion on the final
23 motion.

24 CHAIRWOMAN FIEGEN: Okay. So we are to the --
25 we voted on the substitute motion. We're back to the

1 main motion, on the main motion that has been amended
2 several times.

3 Is there discussion on the main motion? That's
4 what I meant to say. If I didn't say that, go ahead,
5 Commissioner Hanson.

6 COMMISSIONER HANSON: Thank you, Madam Chair.

7 A lot of thoughts. First of all, I would thank
8 the Applicant for using the previous decisions by the
9 Commission. Using that as precedent and incorporating
10 that through the Application has actually made this a
11 smoother process. One may not who is observing one of
12 these for the first time realize that, but it was
13 smoother than could have been.

14 One thing that became clear through this process
15 is that there's a challenge with property rights. We all
16 three want to protect property rights and want to protect
17 citizens of South Dakota. So let my remarks not be
18 negative towards my fellow Commissioners in any way
19 because it's not intended to be.

20 I don't know exactly what I'm going to say
21 anyway so I'll just start by -- it depends a great deal
22 on which side of the fence you're standing from a very
23 literal standpoint on property rights. Property rights
24 of the participant landowner versus the nonparticipant
25 landowner.

1 The participant landowner wants to have the
2 right to develop their property in a fashion. The
3 nonparticipant owner does not want their property
4 adversely affected and has -- should have that right.
5 And that's where there's this huge challenge for us from
6 the standpoint of looking at only evidence and being able
7 only to make decisions based upon that evidence.

8 The nonparticipant landowners who have been both
9 party and not necessarily party to this process have
10 articulated excellent discussions and reasons why their
11 property is being adversely affected. And I've always
12 believed that if someone's property is being adversely
13 affected, that's as far as the other property rights --
14 landowner's rights should go. Once that person starts
15 affecting my right for quiet enjoyment to my property,
16 then they don't get to do that.

17 And so it's very conflicting from my standpoint
18 in looking at this, whether it's sound -- certainly that
19 seems to be easy to ascertain. Hopefully we have
20 resolved that through this process. Shadow flicker,
21 hopefully there's some decent resolution to that process.
22 Distant setbacks. I don't know how you get over the
23 challenge of aesthetics from the standpoint of seeing
24 those wind turbines so close to you.

25 And I believe it was -- well, Lisa

1 Schoenfelder -- well, all of them explained very well
2 from the standpoint of distance and concern from that
3 standpoint.

4 I enjoyed Marsha Hubner's presentation -- I
5 enjoyed all of their presentations. The statement that
6 struck me the strongest was the wind turbine much too
7 close to the Interstate by White Lake that Mrs. Hubner
8 touched upon. And that should give everyone pause from
9 the standpoint of recognizing how something of this
10 nature affects their property.

11 I had in discussion -- semi-purposely. I guess
12 I didn't intend to discuss that and say I wouldn't want a
13 wind turbine close to me. I wouldn't. I wouldn't want
14 to have it within 2 or 3,000 feet of my property. And so
15 that -- that makes it a challenge in looking at something
16 of this nature.

17 The big problem that we have is that we have
18 counties making decisions on setbacks. And we've always
19 said that the closer government is to the people, the
20 better that government will be. But for a county not to
21 have any regulations and then to have --

22 There's the challenge for us from the standpoint
23 of different counties having different setbacks. And,
24 frankly, I don't think that the setbacks by the counties
25 are sufficient. I think that they should be greater than

1 what they are. But that's not for me to decide. That's
2 for the county commissioners to decide. Perhaps some day
3 the legislature will make that decision.

4 We here have the responsibility to look at it
5 from the standpoint of does it meet the criteria that is
6 set forth in law.

7 And I know there's an argument to be made from
8 the standpoint when we look at the different -- the
9 Commission must find one, two, three, four, the proposed
10 facility will comply with all the applicable laws,
11 et cetera. And I wonder --

12 And I've been struggling with item 4. I was
13 prepared to make a motion on providing for a greater
14 setback because I felt that even though the setback laws
15 are through the counties, I felt that in item 4 when it
16 states that the facility will not unduly interfere with
17 the orderly development of the region with due
18 consideration having been given to the views of governing
19 bodies of affected local units of government, that does
20 not exclude the views of the citizens who are affected.

21 It specifically states that we must consider the
22 views of the governing bodies, but it does not say that
23 we cannot exclude the views of the citizens. And so when
24 I look at that and -- item 2 and 3 I guess I would
25 interpret the same way. I feel we could -- I would

1 certainly make the argument that we could provide for
2 greater setbacks.

3 But, again, I met with legal counsel, and I
4 reviewed what staff had provided us. I reviewed the
5 hearing evidence. And I don't have that ability from the
6 standpoint that would be -- that would hold up in
7 Circuit Court.

8 I could try and stretch the envelope a little
9 bit and add 100 feet here or there, but that wouldn't
10 help. That wouldn't change anything. And so from that
11 standpoint I feel, unfortunately, that I can't pursue
12 that.

13 I think the Commission has done an admirable
14 job. I don't mean to pat us on the back. I think this
15 was a very difficult, very challenging, very personal
16 type of situation, and I just think that we've done the
17 very, very best we can to protect the citizens and at the
18 same time to provide the Applicant the rights that the
19 Applicant has under the state law of South Dakota based
20 upon the evidence that's been presented to us.

21 Thank you, Madam Chair.

22 CHAIRWOMAN FIEGEN: Commissioner Nelson.

23 COMMISSIONER NELSON: Thank you. And,
24 Commissioner Hanson, I appreciate your comments.

25 This is clearly a classic circumstance where we

1 have competing property interests. We have those
2 property owners that wish to maximize the economic return
3 opportunity that has been given them for their property.
4 We have others, many of which are here today, that really
5 don't want to be impacted by that particular economic
6 development. And I understand both of those viewpoints.

7 As I began today saying however the criteria
8 that we have to use is laid out in state law to make this
9 judgment and the portion that talks about ensuring the
10 welfare of the folks in that area, I think we have done
11 what we can here today to balance those competing
12 interests.

13 I want to spend just a little bit of time
14 talking about the issue that I've not talked about today
15 but that we've heard much about throughout this entire
16 proceeding, and that is the issue of infrasound and
17 health impacts, potential possible health impacts.

18 We had -- on the infrasound, I learned about
19 this through this process. I came away understanding
20 that there are two different methodologies for even
21 measuring this, methodologies that give very different
22 answers as to how much of this is out there and how far
23 does it go.

24 I wish I could have pulled both of those experts
25 back in to have them further discuss why their particular

1 methodology was right as opposed to the other so that we
2 could have understood which, in fact, was the better
3 methodology. That's an open question at this point.

4 The health impacts or the alleged health
5 impacts. Let me be very clear. For any of those folks
6 who have claimed that they are -- their health has been
7 affected, I don't quibble or disagree that you may have
8 some health impacts. What was completely lacking,
9 however, in this proceeding was the nexus, the scientific
10 medical nexus between what folks are experiencing and
11 wind towers.

12 I was -- coming into this I was dearly hoping
13 that this particular question would be fully fleshed out
14 in this proceeding and that when we were done today I
15 would have a very firm understanding of where the science
16 is at on this.

17 Unfortunately, none of the Intervenorors produced
18 a doctor or a medical researcher on the stand who could
19 talk to us about that. And I'm disappointed in that
20 because that's who I wanted to hear from, somebody that
21 could make that scientific nexus. And so, without that,
22 we don't have on the record what we need to make any
23 other conclusion other than what we have today.

24 That's all I'm going to say on that. Just we're
25 not ending where I hoped to end on that with the

1 understanding that I hoped to have had, but we didn't
2 have enough evidence to draw any other conclusion.

3 With that, though, Madam Chair, I think the rest
4 of the work that we have done is where we need to be and
5 certainly will support the motion.

6 CHAIRWOMAN FIEGEN: Thank you, fellow
7 Commissioners. There's really not much to add.

8 I so wish I had more tools in the toolbox. I
9 believe our statute is outdated on setbacks. I believe
10 land values and land guarantees should have a
11 comprehensive study so we can really understand that. I
12 absolutely believe six months is too short a time frame
13 to weigh such strong conditions and bring the evidence
14 that my fellow Commissioners talked about that we need.

15 To strike a balance between affected landowners
16 and the industry is not easy to do. And today I have to
17 make my decision based on the tools that I have, and the
18 legislature gives us that authority in statute.

19 Other discussion on the motion.

20 Commissioner Hanson.

21 COMMISSIONER HANSON: Thank you, Madam Chair.

22 Discussion is good. One of the arenas that I
23 kept looking at was the health aspects. I appreciate
24 Commissioner Nelson bringing up the health aspects
25 again.

1 I don't know that it needs to be a doctor that
2 makes a presentation. I was very moved by testimony from
3 the folks from Nebraska and Iowa who had had to move, who
4 were selling their properties, and who obviously were
5 telling the truth on the effect that it was having on
6 them.

7 And that was the -- that one little hole in
8 everything that I felt that -- I had forgotten about as I
9 was going through this and in all of my notes that I had
10 included that from the standpoint of No. 3 that -- of the
11 criteria in South Dakota Codified Law that provides that
12 the facility will not substantially impair the health,
13 safety, and welfare of the inhabitants. And that was the
14 one area that I felt was strong that I had actually
15 forgotten about as I was going through this process on
16 looking at distance.

17 And since we're back to the main motion and I
18 would have an opportunity to pursue a setback based upon
19 distance, I would just need a couple minutes with counsel
20 to see -- for a motion to amend to increase the setback
21 distance. Because I believe that we have had testimony
22 that provides us with support and evidence from a
23 standpoint of being able to require further setbacks.

24 CHAIRWOMAN FIEGEN: Okay. We will go into
25 recess.

1 (A short recess is taken.)

2 CHAIRWOMAN FIEGEN: We are back in from recess
3 and, Commissioner Hanson, you have the floor.

4 COMMISSIONER HANSON: Madam Chair, after meeting
5 with Commission advisors and with our counsel and going
6 over the process, there just does not seem to be any way
7 in the world that we could survive an objection in
8 Circuit Court to this -- a challenge in Circuit Court on
9 the motion that I -- the two motions -- actually three
10 different motions that I explored with counsel just now.
11 And for that reason just I can't make the motion.

12 Thank you.

13 CHAIRWOMAN FIEGEN: You know, thank you for your
14 consideration. I know I too looked a lot at setbacks and
15 spent a lot of time on that. And I do believe they're
16 outdated. I do believe the legislature really needs to
17 look at that. They're very technical. And I hope in
18 2019 that they will be proactive.

19 Other comments on the main motion that has been
20 amended.

21 Seeing none, all in favor of the main motion for
22 the permit of EL18-026, if I remember that right, say
23 aye; opposed, nay.

24 Commissioner Nelson.

25 COMMISSIONER NELSON: Aye.

1 CHAIRWOMAN FIEGEN: Commissioner Hanson.

2 COMMISSIONER HANSON: Aye.

3 CHAIRWOMAN FIEGEN: Commissioner Fiegen votes
4 aye.

5 Motion carries.

6 (The proceeding is concluded at 4:22 p.m.)

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CERTIFICATE

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5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter and
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 20th day of
11 November, 2018, and that the attached is a true and
12 correct transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 7th day of
14 December, 2018.

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/s/ Cheri McComsey Wittler
Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter
Certified Realtime Reporter

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