

South Dakota Public Utilities Commission

EL18-003- In the Matter of the Application by Dakota Range I, LLC and Dakota Range II, LLC for a Permit of a Wind Energy Facility in Grant County and Codington County, South Dakota, for the Dakota Range Wind Project- Evidentiary Hearing

June 13, 2018, 8:00 a.m.

Room 413, State Capitol Building, Pierre, SD

Please Print Legibly

Person	Representing/Company/Agency	Address/City/State
Jeff Berrington	Xcel Energy	Mpls, MN
Kristi Nogen		Twin Brooks
Teresa Kaaz		South Shore
Steve Kolbeck	Xcel Energy	Sioux Falls, SD.
Wade Falk	Falk Farms	Stockholm SD
Stephanie Petelos	Dakota Range / Apex	St Paul MN
Alicia Meyer	Dakota Range	Watertown SD
Jennifer Bell	Dakota Range	Denver, CO
Patrick Adams	Dakota Range	Summit, SD
Karl's Powell	Dakota Range	Charlottesville, VA
MARK MAUGER	DAKOTA RANGE	ST. MICHAEL, MN
Don Zee	Dakota Range	Summit, SD
Molly Smith	Dakota Range	Minneapolis, MN
Lisa Givimanti	Dakota Range	Minneapolis, MN
Dave Phillips	Apex	Charlottesville, VA
Drew Silverman	Dakota Range	Charlottesville, VA
Mike McRae	McRae & Co.	Park Ridge, IL
Robert O'Neal	Dakota Range	Maryland, MA
DAVID HESSLER	SDPUC	ST GEORGE, UT
Alan Moore	Dakota Range	Charlottesville



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THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION EL18-003  
BY DAKOTA RANGE I, LLC AND  
DAKOTA RANGE II, LLC FOR A PERMIT  
OF A WIND ENERGY FACILITY IN  
GRANT COUNTY AND CODINGTON COUNTY,  
SOUTH DAKOTA, FOR THE DAKOTA ORIGINAL  
RANGE WIND PROJECT

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Transcript of Hearing  
Volume II, Pages 122-375  
June 13, 2018

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

COMMISSION STAFF  
Karen Cremer  
Adam de Hueck  
Greg Rislov  
Jon Thurber  
Darren Kearney  
Katlyn Gustafson

APPEARANCES

Mollie Smith and Lisa Agrimonti,  
appearing on behalf of Dakota Range.

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

Teresa Kaaz,  
appearing pro se.

Kristi Mogen,  
appearing pro se.

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

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The following transcript of proceedings was held in the above-entitled matter at the South Dakota State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota, on the 13th day of June, 2018, commencing at 8:30 a.m.

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1 MS. CREMER: Good morning, everyone. We're on  
2 day two, and I will call the hearing back to order in  
3 Docket EL18-003, in the matter of a permit for the Dakota  
4 Range Wind Farm.

5 When we recessed, excuse me, last night we were  
6 in the midst of the direct case of Dakota Range. At this  
7 time I'll ask Dakota Range to call their next witness or  
8 take whatever action they wish.

9 MS. AGRIMONTI: Good morning, Commissioners. I  
10 am responding to some questions yesterday with respect to  
11 outreach by Dakota Range to Ms. Kaaz for a lease  
12 agreement. And we have a witness we would like to call,  
13 Mr. David Lau, and we can either do that now or in  
14 rebuttal, whichever the Commission prefers.

15 CHAIRWOMAN FIEGEN: Now.

16 MS. AGRIMONTI: Thank you. Dakota Range would  
17 call Mr. David Lau.

18 David Lau,  
19 called as a witness, being first duly sworn in the above  
20 cause, testified under oath as follows:

21 DIRECT EXAMINATION

22 BY MS. AGRIMONTI:

23 Q. Good morning, Mr. Lau. Could you please introduce  
24 yourself to the Commission.

25 A. David Lau.

1 Q. And where do you live in relationship to the project  
2 area?

3 A. South of the project in Watertown, South Dakota.

4 Q. And how far is that from the project?

5 A. From the edge of the project, probably 15 miles.

6 Q. Do you own any property in the project area?

7 A. Yes.

8 Q. And is your business also in the project area?

9 A. Yes.

10 Q. All right. What role do you have with Dakota Range?

11 A. I'm a land agent.

12 Q. And how long have you had that role?

13 A. A little over two years.

14 Q. Are you aware that the Commission asked questions  
15 yesterday about whether a lease agreement had been  
16 offered to Ms. Kaaz?

17 A. Yes.

18 Q. As part of your job responsibilities with Dakota  
19 Range, did you personally contact Ms. Kaaz?

20 A. Yes.

21 Q. Please describe the contacts that Dakota Range had  
22 with Ms. Kaaz, including your own.

23 A. I spoke with Ms. Kaaz on the 23rd of February,  
24 talked to her on the phone for about a half-hour,  
25 discussing her issues with the wind farm and discussion

1 about being in a lease.

2 She agreed to meet with me the following week. I  
3 called her that following Monday and asked if she would  
4 want to meet, and she didn't give me any time to meet.  
5 She didn't have any time.

6 I followed up with another phone call, spoke to her,  
7 spoke to Danny, and they said they were not interested or  
8 comfortable speaking with me or going into a lease.

9 Q. Is Danny Mr. Kaaz?

10 A. Correct.

11 Q. What were some of the concerns that Ms. Kaaz raised?

12 A. Mainly setbacks.

13 Q. Okay. Would Dakota Range still be willing to enter  
14 into a wind lease agreement with the cause family?

15 A. Yes, we would. We'd go into what we call a good  
16 neighbor agreement, which is an agreement that we put her  
17 into the wind farm and that she would have no facilities  
18 or income on her property.

19 MS. AGRIMONTI: Thank you. I have no more  
20 direct questions for Mr. Lau.

21 MS. EDWARDS: Because we were unprepared for  
22 this witness, could we have five minutes to prepare with  
23 our analyst?

24 MS. CREMER: Certainly. We'll be in recess for  
25 five minutes.

1 (A short recess is taken.)

2 MS. CREMER: All right. We'll go back into  
3 session.

4 Staff.

5 CROSS-EXAMINATION

6 BY MS. EDWARDS:

7 Q. Good morning. So what you are willing to offer  
8 Ms. Kaaz right now is the good neighbor agreement;  
9 correct?

10 A. Correct.

11 Q. To your knowledge, is there anything about the good  
12 neighbor agreement that would prevent Ms. Kaaz from  
13 airing her concerns here today?

14 A. Repeat the question.

15 Q. Is there anything about that good neighbor  
16 agreement, any clause in there, that would prevent her  
17 from airing her concerns before the Commission today?

18 A. No.

19 Q. Or at a later date?

20 A. No.

21 Q. And you testified that you approached her on  
22 February 23?

23 A. Correct.

24 Q. Was that of this year?

25 A. Yes.

1 Q. Is there a reason she wasn't contacted prior to this  
2 docket being filed?

3 A. She had been contacted prior to that. At our  
4 Conditional Use Permit for Codington County Nate Pedder  
5 had spoke to her at that hearing after that.

6 And had actually been called after that with a  
7 follow-up call.

8 Q. Was she ever offered a lease before the February 23  
9 date?

10 A. I couldn't say for sure. It had been talked about.  
11 Nate Pedder had contacted her.

12 Q. Talked about with who? Like Ms. Kaaz?

13 A. Correct.

14 MS. EDWARDS: Okay. No further questions.

15 Thank you.

16 MS. CREMER: Thank you.

17 Ms. Kaaz, did you have any questions?

18 MS. KAAZ: I just have one.

19 CROSS-EXAMINATION

20 BY MS. KAAZ:

21 Q. Have you ever talked to me about my property values  
22 on a phone conversation?

23 A. No.

24 MS. KAAZ: That's the only question.

25 MS. CREMER: Thank you.

1 Ms. Mogen.

2 MS. MOGEN: I have no questions.

3 MS. CREMER: Commissioners.

4 COMMISSIONER HANSON: Hi. Gary Hanson. Thank  
5 you very much for being here, Mr. Lau. Appreciate your  
6 testimony.

7 Can you tell me -- what can you tell us about  
8 the good neighborhood [sic] agreement?

9 THE WITNESS: It's an agreement that --

10 COMMISSIONER HANSON: I don't want you to get  
11 into anything that you think is confidential.

12 THE WITNESS: I'll -- it's an agreement that we  
13 offer people if they don't want to be into a full on  
14 lease, they don't want to be -- have any facilities or  
15 cabling across their property. We can put them in.  
16 They're still in the project. They get a payment for  
17 being in the project.

18 COMMISSIONER HANSON: Okay. Thank you.

19 You said -- I believe you said you have a  
20 business close to the project area; is that correct?

21 THE WITNESS: Correct.

22 COMMISSIONER HANSON: Can you share with us, is  
23 that an ag business? Can you tell us what type of  
24 business?

25 THE WITNESS: It was a mechanic shop.

1           COMMISSIONER HANSON: Okay. And how close is  
2 that to the project?

3           THE WITNESS: In the project.

4           COMMISSIONER HANSON: In the project.

5           THE WITNESS: Yep.

6           COMMISSIONER HANSON: Okay. Thank you very  
7 much. Appreciate your testimony.

8           COMMISSIONER NELSON: Thank you for being here.  
9           So my understanding is that you are the witness  
10 that the company has brought here to help us understand  
11 the contacts between the company and Ms. Kaaz; is that  
12 correct?

13          THE WITNESS: Correct.

14          COMMISSIONER NELSON: But yet you can't tell us  
15 whether or not she was offered an agreement prior to  
16 February 23?

17          THE WITNESS: Not accurately.

18          COMMISSIONER NELSON: The good neighbor  
19 agreement, the payments that you mentioned, are those  
20 annual payments or one-time payments?

21          THE WITNESS: Annual payments. And for someone  
22 like Ms. Kaaz with a 15-acre acreage what would the  
23 annual payment be?

24          MS. AGRIMONTI: Commissioner, I think that that  
25 may be confidential. The compensation to the landowners

1 with that kind of breakdown is not something that's  
2 shared publicly.

3 COMMISSIONER NELSON: And would you be willing  
4 to file that confidentially?

5 MS. AGRIMONTI: Yes, Commissioner. We can do  
6 that.

7 COMMISSIONER NELSON: Thank you.

8 I have no further questions. Thank you.

9 MS. CREMER: Do you have any redirect?

10 MS. AGRIMONTI: Yes, I do. Thank you for the  
11 opportunity.

12 REDIRECT EXAMINATION

13 BY MS. AGRIMONTI:

14 Q. Mr. Lau, after the hearing yesterday did you reach  
15 out to the company to try to understand all the contacts  
16 with Ms. Kaaz?

17 A. After yesterday?

18 Q. After the hearing yesterday.

19 A. Did I reach out to Mrs. Kaaz?

20 Q. No, sir. Did you investigate the company's contacts  
21 with Ms. Kaaz?

22 A. Yes, I did.

23 Q. And when you came here today was it your intent to  
24 speak only to those matters which you had personal  
25 knowledge?



1 A. I can speak of other things, I guess, but what I  
2 know of for factual, that's what I brought to the table.

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

4 MS. CREMER: Staff, do you have any redirect  
5 based on that?

6 MS. EDWARDS: No.

7 MS. CREMER: I meant recross.

8 Ms. Mogen, did you, based on that?

9 MS. MOGEN: I do.

10 REXCROSS-EXAMINATION

11 BY MS. MOGEN:

12 Q. Commissioner Nelson I think brought up the good  
13 neighbor agreement and the payment.

14 Can we, besides just what a payment would be, have a  
15 good neighbor agreement, even if it's confidential, filed  
16 with the PUC with the payments?

17 MS. AGRIMONTI: I'm not entirely sure what  
18 Ms. Mogen would want with a confidential agreement  
19 because we don't have an agreement regarding  
20 confidentiality in this docket. So I would initially not  
21 be willing to voluntarily supply that.

22 MS. MOGEN: Let me clarify.

23 I would like to know if the PUC could have a  
24 good neighbor contract filed with them even if it is  
25 confidential and the public doesn't get to see it.

1 MS. EDWARDS: Could Staff weigh in?

2 MS. CREMER: We'll let the company, and then you  
3 can, yes.

4 MS. AGRIMONTI: I'm sorry. If there's a request  
5 from the Commission for that agreement, we can file that  
6 confidentially.

7 MS. CREMER: And then Staff.

8 MS. EDWARDS: I guess we'd be interested to see  
9 it simply because it's not clear to us what the purpose  
10 is. If they're not getting any facilities and they can  
11 still complain and -- I don't know what it would be then.

12 MS. CREMER: I guess then, Dakota Range, if you  
13 would file -- and I believe is it A20?

14 MS. AGRIMONTI: That would be the next number.

15 MS. CREMER: Yes. That would be.

16 Thank you.

17 And then, Ms. Mogen, did you have any further  
18 recross?

19 MS. MOGEN: One moment.

20 Q. (BY MS. MOGEN) Yesterday we heard that there's no  
21 health and safety issues. Why is a good neighbor  
22 agreement necessary then?

23 MS. AGRIMONTI: I'm going to object. Sorry.  
24 I'm going to object. Out of scope.

25 MS. CREMER: And I'm going to sustain that

1 objection. But you can -- that doesn't preclude you from  
2 asking another question.

3 MS. MOGEN: I'm finished. Thank you.

4 MS. CREMER: Okay. Ms. Kaaz, did you have any  
5 further recross?

6 MS. KAAZ: I don't believe so at this time.

7 MS. CREMER: Okay. Thank you. I think then --

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

9 MS. CREMER: All right. You may step down.  
10 Thank you.

11 (The witness is excused.)

12 MS. AGRIMONTI: Dakota Range would call  
13 Wade Falk.

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

17 DIRECT EXAMINATION

18 BY MS. AGRIMONTI:

19 Q. Good morning, Mr. Falk.

20 A. Good morning.

21 Q. Would you please introduce yourself to the  
22 Commission.

23 A. My name is Wade Falk. I'm a landowner in the  
24 project, and my family farms in the project. My parents  
25 and my brother and I and my sister own land in the

1 project.

2 Q. Did you file Prefiled Direct Testimony in this  
3 matter?

4 A. No.

5 Q. Did you file Prefiled Rebuttal Testimony on May 21,  
6 2018?

7 A. No. I don't think so.

8 Q. Let me ask it a different way.

9 Did you file Rebuttal Testimony in this hearing,  
10 written testimony for this proceeding, on or about  
11 May 21?

12 A. Yes.

13 Q. And is your Rebuttal Testimony Exhibit A12? And if  
14 you need to look in the binders there, you can look.

15 CHAIRWOMAN FIEGEN: These lawyers.

16 A. Yeah. Except -- okay. May 12.

17 Q. What may seem regular practice to us is new to  
18 others.

19 A. And how far back is that? Someone may have to show  
20 me where A12 is.

21 MS. AGRIMONTI: May I approach? Oh.

22 A. I see A2. Wrong binder?

23 CHAIRWOMAN FIEGEN: I am just so thankful you're  
24 here today. And I know there's lots of legal issues, but  
25 we'll help you all get through it.

1 A. Thank you.

2 Q. All right. Mr. Lau [sic], I'll ask the question  
3 again now that you have it in front of you.

4 I'm sorry. Mr. Falk. Thank you. And it's only  
5 8:48.

6 Okay. Is your Rebuttal Testimony presented as  
7 Exhibit A12?

8 A. Yes.

9 Q. All right. You mentioned that your family farms,  
10 and you're in the project area. Are you individually a  
11 participating landowner in the project?

12 A. Individually, no. As in Falk Farms, Incorporated,  
13 my family farm, my parents, my brother, and I are all --  
14 and my sister are all shareholders of the larger family  
15 farm.

16 So in that sense, yes. My personal land that's just  
17 under my name alone is not in the project area.

18 Q. All right. And how much land has the family farm  
19 signed up with Dakota Range?

20 A. You know, I didn't get an actual number, but I think  
21 it's like 10 or 12 quarters.

22 Q. Why did the family farm decide to participate in the  
23 Dakota Range project?

24 A. Oh, it's a great project. Of course -- I wouldn't  
25 say that's why, but the added income to the farming

1 community would be great right now. Not that it isn't  
2 always. The project is good for the community.

3 There's not a whole lot of other large businesses  
4 coming into the community that create jobs and income and  
5 tax base. And I guess you've heard it all before. But  
6 it's a great project.

7 Q. All right. What is your relationship like with  
8 Dakota Range, the project developer?

9 A. It's been good. Good. Gone to a lot of the  
10 meetings. Like I said, we're -- we've signed on so we've  
11 visited with them quite a bit.

12 Q. Okay. Are you personally satisfied with the lease  
13 and that it adequately protects your land?

14 A. Yeah. And I would say that would go for any of the  
15 landowners if you were one of the landowners that signed  
16 on. There's been like 50 or 60 landowners that signed  
17 on. If you weren't happy with the lease, you shouldn't  
18 have signed it.

19 Q. Would you -- if I asked you the questions that are  
20 in your prefiled testimony today, would your answers be  
21 the same?

22 A. My prefiled testimony?

23 Q. That's that Exhibit 12.

24 A. Yeah.

25 Q. It's another way of asking would you have any

1 changes to your testimony as you sit here today?

2 A. No. I might add.

3 Q. No. But your answers would be the same?

4 A. Yeah.

5 MS. AGRIMONTI: All right. Mr. Falk is  
6 available for cross-examination.

7 MS. CREMER: Thank you.

8 Staff.

9 CROSS-EXAMINATION

10 BY MS. REISS:

11 Q. Thank you, Mr. Falk. Your testimony indicates that  
12 your residence is in Stockholm, South Dakota; is that  
13 correct?

14 A. Yep. Two miles east and two miles north of  
15 Stockholm, South Dakota in Grant County.

16 Q. Okay. What's the approximate distance from your  
17 residence to the closest proposed wind turbine?

18 A. It's probably -- in this? There's another wind farm  
19 that has them on like my private land right there. But  
20 this one it would be probably -- probably 8 miles. So  
21 the land that I -- the farm where I grew up is in the  
22 project.

23 Q. But your residence is 8 miles away from the project?

24 A. Yeah.

25 Q. From the closest turbine; is that correct?

1 A. Right.

2 Q. Are there any proposed wind turbines hosted on your  
3 property?

4 A. On my property?

5 Q. Your property.

6 A. On my personal property, yes. But not with this.  
7 Not with Dakota Range.

8 Q. So there are no turbines associated with the Dakota  
9 Range project on your property; correct?

10 A. Okay. As in my property, as in my personal  
11 property?

12 Q. No. Sir -- sir, can you please answer the question?

13 MS. AGRIMONTI: If I might ask, I believe that  
14 the question is confusing to the witness because he has  
15 his property, which he attributes to his family farm, and  
16 then he has individual property. And I just think that's  
17 why there's some disconnect here.

18 MS. CREMER: And I would ask --

19 MS. REISS: Can I clarify?

20 MS. CREMER: Yes. Either refer to it as the  
21 family farm or his personal farm. I think that would  
22 clear it up.

23 Q. On your personal farm.

24 A. Well, the family farm is quite personal to me also.  
25 So I'm going to say yes.



1 Q. How far away from the closest proposed wind  
2 turbine -- how far is that from your personal property,  
3 not the family farm?

4 A. Not Falk Farms?

5 From the Dakota Range one? I guess I don't know.  
6 Probably 6 or 8 miles.

7 Q. Okay. Are those -- are you aware of whether those  
8 turbines are alternates?

9 A. Are alternates or --

10 Q. Or firmly set turbines?

11 A. Firmly set.

12 MS. REISS: No further questions.

13 MS. CREMER: Ms. Mogen.

14 CROSS-EXAMINATION

15 BY MS. MOGEN:

16 Q. Mr. Falk, when you signed your contract did you know  
17 that the wind turbines might affect the bottom line of  
18 some ag producers in the community?

19 MS. AGRIMONTI: Objection. Assumes facts not in  
20 evidence.

21 MS. CREMER: Do you want to maybe -- can you lay  
22 a little foundation with your question with him?

23 Q. Yesterday -- I can't remember. The Fish and Game --  
24 Kirschenmann had discussed honey bees and the species  
25 being impacted by turbines. And he discussed the species

1 would die. And South Dakota is No. 2 in honey production  
2 in the United States.

3 MS. AGRIMONTI: Objection. Mischaracterizes  
4 Mr. Kirschenmann's testimony.

5 MS. CREMER: Yeah. I think the problem is --  
6 have you heard Mr. Kirschenmann's testimony, Mr. Falk?

7 THE WITNESS: I walked in right towards the end.

8 MS. CREMER: Okay. I guess the debate I'm  
9 having is he is a landowner here to discuss, you know,  
10 his property, and I'm not sure this is his area of  
11 expertise.

12 So I'm going to sustain the objection, but you  
13 may continue to ask questions.

14 MS. MOGEN: Thank you.

15 Q. Falk Farms owns property approximately one mile from  
16 my home.

17 A. Yep.

18 Q. Will you allow me to use it every day for 15 to 30  
19 minutes for 50 years in any manner that I choose?

20 MS. AGRIMONTI: Objection. Relevance.

21 MS. CREMER: I'm going to sustain that.

22 You can ask another question.

23 Q. So I take it you are okay with removing some  
24 South Dakota ag land from production forever?

25 A. So the ag land that you must be talking about that

1 we -- like what we signed on, sure. There would be a  
2 little strip of road going out to facilities. The land  
3 right underneath the tower itself, yeah, that would  
4 probably be out of production maybe forever.

5 If we're going to look at ways to make energy, I  
6 don't know how you could do it with less. If you -- what  
7 the other option would be if we go without energy or --  
8 you'd be talking strip farming or coal mining. You know,  
9 strip farm -- strip mining for coal. This would be  
10 considerably less.

11 Q. Can strip mining for coal be reclaimed?

12 A. I suppose it could. It would be a different -- a  
13 different elevation because they've taken the mountain  
14 out from underneath, but sure it could. And I'm sure the  
15 base of a wind turbine, if it was not used, it could be  
16 reclaimed also.

17 Q. Is the base going to be removed from your property?

18 MS. AGRIMONTI: Objection. Vague.

19 A. I'm not sure that I know the answer to that.

20 MS. AGRIMONTI: I'm sorry. Again, it's your  
21 property, and I think that we've established with respect  
22 to Dakota Range there is no turbine on the family farm  
23 property.

24 THE WITNESS: Yeah. Unfortunately, no. We  
25 signed up to have them, but nothing fit.

1 MS. MOGEN: I'm finished. Thank you.

2 MS. CREMER: Ms. Kaaz.

3 MS. KAAZ: I do have one.

4 CROSS-EXAMINATION

5 BY MS. KAAZ:

6 Q. When you stated the benefits would support the  
7 community how does that affect me?

8 A. You particularly?

9 So I read in here that you went to Reville school.  
10 I mean, it's too bad it wasn't a little quicker. Reville  
11 school was closed because there were no children there,  
12 because there's no business coming in. It would be that  
13 sort of thing.

14 So you live now in the Waverly-South Shore School  
15 District. Think of the taxes brought into the Waverly  
16 School District. In all the land in all the school  
17 districts we own the Waverly School District has the  
18 highest taxes for the schools. And, you know, it's --  
19 this would -- so apparently they need it. This would  
20 definitely help with roads.

21 You live on a county road; right? Are you on a  
22 county road, or are you on a township --

23 Q. No. I'm on a township road.

24 A. Okay. How it would help you?

25 Yeah. It would help you as far as improving the

1 whole community. Tax base, money for roads, township  
2 roads exactly. They've signed -- if they use it, they'll  
3 make them better. They'll make sure they are not harmed  
4 because it would be bad publicity. Jobs. New jobs  
5 closer to home.

6 I know you're -- I think I can say that. I know  
7 your husband works clear in North Dakota. He could have  
8 a job closer to home.

9 Q. You should be our financial advisor.

10 A. No, thank you.

11 MS. CREMER: Did you have anymore questions,  
12 Ms. Kaaz?

13 MS. KAAZ: No. I have no more questions, I  
14 don't think.

15 MS. CREMER: Thank you.

16 Commissioner Nelson.

17 COMMISSIONER NELSON: Thank you. And thanks for  
18 being here today.

19 Of the 72 turbine locations for Dakota Range,  
20 what is the closest turbine location to Falk Farms,  
21 Incorporated property?

22 THE WITNESS: I would have to think there would  
23 have to be some right across the road. I'd have to -- if  
24 we had a big map, I could point them out to you.

25 COMMISSIONER NELSON: Well, I'm looking at a map

1 and to me it looks like it's probably three miles away  
2 but I may be missing something. But it looks like we're  
3 going to get a map, and you can help me out.

4 MS. AGRIMONTI: I'm showing the witness what's  
5 marked as Exhibit A15-3.

6 THE WITNESS: A15-3. And the turbines are --  
7 which ones are the turbines? Are the turbines the little  
8 Xs?

9 MS. AGRIMONTI: Yes, they are.

10 THE WITNESS: That's a map.

11 So I grew up right here on the Codington-Grant  
12 County line. So we own land here, here. If I'm in the  
13 right spot -- what is this? Oh, that's the project.  
14 Sure. (Indicating).

15 We own land here. Here, here, here. We own  
16 land right here, which that would be, you know,  
17 kitty-corner a mile across, kitty-corner across the road.  
18 (Indicating).

19 COMMISSIONER NELSON: Okay. So the 72 proposed  
20 turbines are the blue Xs. Show me where the closest blue  
21 X -- the closest blue is -- hold it right side up. There  
22 we go.

23 The closest blue is to your property.

24 THE WITNESS: Okay. Here we go again.

25 MS. AGRIMONTI: Yeah. Let's let the record

1 reflect now we're looking at a different map. It's  
2 Exhibit A15-4. And the turbines are numbered, Mr. Falk,  
3 so you can identify the turbine by number.

4 THE WITNESS: Closest to our property?

5 I'm trying to look for -- this must be Old  
6 Highway 81, I'm going to say. So, again -- if this is  
7 Old Highway 81, which I'm assuming it is, that's where I  
8 grew up. (Indicating).

9 Okay. So there's one there, which is five miles  
10 away. No. We're closer than that because we're not that  
11 far from Highway 81.

12 Yeah. That's right. I suppose it's five miles  
13 to No. 13. But if I'm in the right spot here, we have  
14 land here, which would be -- if I'm in the right spot,  
15 which I believe I am -- sure. There's the Indian River,  
16 which continues on to the Sioux. (Indicating.) So we  
17 would be --

18 COMMISSIONER NELSON: That's not a blue dot.

19 THE WITNESS: That's not blue. What is --

20 COMMISSIONER NELSON: Those are alternates.

21 THE WITNESS: Okay. So I'm looking at the  
22 alternate one. So it would be three miles from -- that's  
23 not it either. From 12 approximately. Maybe four.

24 COMMISSIONER NELSON: Thank you.

25 I have no further questions.

1 MS. CREMER: Thank you.

2 Commissioner -- or Chair Fiegen.

3 CHAIRWOMAN FIEGEN: Thank you so much for coming  
4 to our State Capitol today.

5 Mr. Falk, you talked about that this is a good  
6 thing for your family, your corporate family group.

7 THE WITNESS: Yeah.

8 CHAIRWOMAN FIEGEN: Did you hire an attorney to  
9 look at the lease to ensure that this was a good thing  
10 for your corporate family farm?

11 Did you have an attorney?

12 THE WITNESS: No. Really didn't. We read it  
13 over ourselves, I guess in a way kind of trusting that  
14 way, trust the people we're working with.

15 CHAIRWOMAN FIEGEN: Okay. No further questions.

16 MS. CREMER: Thank you.

17 Commissioner Hanson.

18 COMMISSIONER HANSON: Thank you. Excuse me if  
19 my questions are redundant. I overheard Commissioner,  
20 Chair Fiegen, ask a question about an attorney as I was  
21 conferring with another Commissioner.

22 I think we've established that you're not an  
23 attorney.

24 THE WITNESS: No.

25 COMMISSIONER HANSON: And did Commissioner



1 Fiegen ask if you consulted with an attorney, I believe?

2 THE WITNESS: Yes. She just did.

3 COMMISSIONER HANSON: And your answer was?

4 THE WITNESS: No.

5 COMMISSIONER HANSON: How did you arrive at your  
6 statement then regarding your lease with Dakota Range,  
7 "Do you feel the lease adequately protects your property  
8 and your interests," and your testimony is yes?

9 THE WITNESS: Yes. Just from reading it over  
10 myself. And, you know -- and my family's read it over  
11 and everybody's on the same page, which if you can get  
12 that, you're doing great.

13 COMMISSIONER HANSON: Yes. That's true.

14 Just out of curiosity, I believe in your  
15 testimony you stated you lived on the -- or your family  
16 has lived on the property for five generations.

17 THE WITNESS: Yep.

18 COMMISSIONER HANSON: That's a lot of history  
19 there. So I assume that you're intimately familiar with  
20 the area.

21 Do you know if there's any gravel pits in the  
22 area?

23 THE WITNESS: Oh, yes.

24 COMMISSIONER HANSON: And is there reclamation  
25 practices that take place with those gravel pits?

1 THE WITNESS: Probably not as good as they  
2 should be.

3 COMMISSIONER HANSON: Well, that was going to be  
4 one of my questions.

5 Just wondering, in your experience as a  
6 landowner in that area, gravel pits are certainly --  
7 create far more disturbance with a property than about  
8 anything else.

9 THE WITNESS: Right.

10 COMMISSIONER HANSON: Have those -- in your  
11 experience, have they been successful in reclamation  
12 once --

13 THE WITNESS: Really not in the past. I think  
14 they will be now. I mean, I think people are doing a  
15 better job of that sort of thing now. You know, in  
16 fields here, there, everywhere you'll see a little gravel  
17 pit, you know, from -- all grown up to trees and mess  
18 and --

19 COMMISSIONER HANSON: So would it be safe to say  
20 that your answer is reflecting the fact that there hasn't  
21 been really an effort towards reclamation but where there  
22 has been reclamation -- and I don't want to answer this  
23 question for you. I just want you to tell me whether  
24 it's fact or not.

25 Has reclamation been successful where there has

1 been an effort towards reclamation?

2 THE WITNESS: You know, I can't say that I can  
3 answer that. Because the old ones weren't really  
4 reclaimed, and the newer ones are still being used.

5 COMMISSIONER HANSON: Okay. That's fair. Thank  
6 you very much. Appreciate that.

7 Thank you.

8 COMMISSIONER NELSON: If I could ask one more  
9 question.

10 THE WITNESS: Sure.

11 COMMISSIONER NELSON: If the company had  
12 proposed to put turbines on Falk Family, Incorporated  
13 property, would you prefer to have those on crop ground  
14 or on pasture ground?

15 THE WITNESS: I would prefer to have them on  
16 pasture ground.

17 COMMISSIONER NELSON: Thank you.

18 THE WITNESS: Just for the sake of farming  
19 around them. But we'd be glad to have them on either one  
20 but they --

21 MS. CREMER: And then, Dakota Range, did you  
22 have any redirect?

23 MS. AGRIMONTI: I do not.

24 MS. CREMER: Staff, based on Commission  
25 questions, do you have any recross?

1 MS. REISS: Yes. Just briefly, please.

2 RE CROSS-EXAMINATION

3 BY MS. REISS:

4 Q. Mr. Falk, is the family farm mainly cultivated or  
5 grassland?

6 A. Both. Mainly cultivated, but there's quite a bit of  
7 pasture involved too.

8 Q. Just based on your estimation, what would be the  
9 approximate split between the two?

10 A. I would say it's like 75 percent farmland.

11 Q. Okay. Thank you.

12 And were you given an explanation by Dakota Range on  
13 why no turbines would be sited on the family farm?

14 A. I think due to setbacks. And we have a lot of  
15 irrigated land so there's irrigation systems in the way.  
16 So that's the reason why.

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

18 MS. CREMER: Ms. Mogen.

19 RE CROSS-EXAMINATION

20 BY MS. MOGEN:

21 Q. Mr. Falk, did you attend the PUC hearing in Waverly?

22 A. I did, yes.

23 Q. Did you hear Mark Mauersberger in his presentation  
24 talk about the benefits to local schools, tax benefits?

25 A. I'm sure I did. I don't know that I can remember

1 exactly who he was. There was like how many people spoke  
2 that day? Like 50.

3 Q. Mark Mauersberger is the project manager for Dakota  
4 Range, and he did the presentation at the beginning.

5 A. Okay.

6 Q. Okay. Did you hear Jon Meyer, the superintendent of  
7 the Waverly School, talk about --

8 A. I'm sure I did.

9 Q. Okay.

10 A. I can't remember what he said or not. I'm sure I  
11 did.

12 Q. Jon Meyer put his comments that night in writing on  
13 the PUC website.

14 MS. MOGEN: I do have a copy of that if anybody  
15 needs one.

16 Can I ask Mr. Falk to read some of that  
17 comments?

18 MS. CREMER: Yes.

19 MS. AGRIMONTI: May I ask a point of order?  
20 Those comments are not in the record, and we don't have  
21 the author here to ask questions of so it would be  
22 hearsay.

23 Is that something that typically comes in the  
24 record if there are comments filed in the docket?

25 MS. CREMER: I believe she's using this for

1 impeachment purposes. He did discuss the benefits of tax  
2 so I will allow it.

3 MS. AGRIMONTI: I'm sorry. May I respond? The  
4 witness said he didn't recall what the author of the  
5 comments said. And I guess I would be concerned that if  
6 he's going to read things into the record, that that  
7 might be taken as substantive evidence.

8 I'll stand by your ruling.

9 MS. CREMER: Thank you.

10 A. Okay. "The revenue estimates for school districts  
11 as presented by Apex Clean Energy failed to take into  
12 account the reality of Public K through 12 school funding  
13 in South Dakota. The revenue estimates they presented  
14 assume that public school districts are allowed to keep  
15 100 percent of the tax revenues generated from the wind  
16 farms, in addition to the full amount of funding they  
17 would be otherwise entitled to receive from the State.

18 "While that was once the case, the recent changes in  
19 K through 12 public education funding laws now estimate  
20 the possibility. In short" --

21 Okay. Then skips down. She's got it marked.

22 "In short order, for a school district to be able to  
23 realize the financial benefit that has been advertised by  
24 a company such as Apex Clean Energy, South Dakota would  
25 have to drastically revise the public education funding

1 laws and remove the provisions such as the two described  
2 above."

3 I'm wondering if I should have read the whole thing.

4 MS. MOGEN: I'm fine with that if we want to  
5 take the time.

6 MS. AGRIMONTI: I would object to reading the  
7 entire document.

8 MS. CREMER: Yes. I think we -- you need to now  
9 ask questions about that.

10 Thank you.

11 Q. After hearing that from a superintendent of schools  
12 in our local community, do you still feel that there is a  
13 tax benefit to local schools?

14 A. If they're paying taxes to something in  
15 South Dakota, it's got to trickle down somehow. And I'm  
16 sure there's people here that could explain that better  
17 than I can.

18 Q. In Grant County have you heard the chief financial  
19 officer, Jason Kettwig, during his campaign in 2016 and  
20 beyond state that we do not have enough employees to fill  
21 the spaces and the job openings in Milbank at this time?

22 MS. AGRIMONTI: Objection. Relevance. Hearsay.

23 MS. CREMER: I would sustain that.

24 You can ask another question.

25 MS. MOGEN: I'm finished. Thank you.

1 MS. CREMER: Thank you.

2 Ms. Kaaz.

3 MS. KAAZ: No further questions.

4 MS. CREMER: Dakota Range, did you have some  
5 final redirect?

6 MS. AGRIMONTI: No. Thank you, Ms. Cremer. I'm  
7 concluded.

8 MS. CREMER: Thank you. You may step down.

9 (The witness is excused.)

10 MS. AGRIMONTI: Dakota Range would call  
11 Alice Moyer.

12 Alice Moyer,  
13 called as a witness, being first duly sworn in the above  
14 cause, testified under oath as follows:

15 DIRECT EXAMINATION

16 BY MS. AGRIMONTI:

17 Q. Good morning, Ms. Moyer.

18 A. Morning.

19 Q. If you could speak close to the mic so it will  
20 amplify your voice for those present.

21 A. Good morning.

22 Q. Thank you. Could you please introduce yourself for  
23 the Commission?

24 A. I'm Alice Moyer. 2020 13th Avenue in Watertown is  
25 my address.



1 MS. CREMER: You're going to have to get way  
2 closer to that mic. Pull it closer. Whatever you need  
3 to do.

4 Thank you.

5 A. Okay. I'm Alice Moyer. 2020 13th Avenue, Watertown  
6 is my address, but I do own land in Codington County.

7 Q. How long have you lived at your current address?

8 A. 15 years.

9 Q. And were you raised in South Dakota, lived there all  
10 your life?

11 A. Yes.

12 Q. Did you file Prefiled Rebuttal Testimony in this  
13 case on May 21?

14 A. Yes.

15 Q. And is that marked as A11?

16 A. Yes.

17 Q. You can check the book if you need to.

18 A. Yes.

19 Q. All right. Thank you. Are you a participating  
20 landowner in the Dakota Range project?

21 A. Yes, I am.

22 Q. Please describe the land that is under lease with  
23 Dakota Range.

24 A. Well, it's an acreage in the country. My son farms  
25 it.

1 Q. And how many acres in all?

2 A. 74.

3 Q. Why did you decide to participate in the Dakota  
4 Range project?

5 A. The income. It's revenue.

6 Q. Were there any other reasons?

7 A. I think if we can make our own energy, that's got to  
8 be progress.

9 Q. And what is your relationship like with Dakota  
10 Range?

11 A. Very good.

12 Q. Do you feel that your lease adequately protects you  
13 and your land?

14 A. Yes, I do.

15 Q. And if I asked you the same questions in your  
16 testimony that's in Exhibit 11 -- or A11, would they be  
17 the same today?

18 A. Yes.

19 MS. AGRIMONTI: Ms. Moyer's available for  
20 cross-examination.

21 MS. CREMER: Thank you.

22 Staff.

23 MS. REISS: Thank you.

24

25

CROSS-EXAMINATION

1

2 BY MS. REISS:3 Q. Ms. Moyer, what is the distance from your residence  
4 listed in your testimony to the closest proposed wind  
5 turbine?6 A. Well, the land, it's about 6,000 feet. A little  
7 over a mile.

8 Q. Okay. How about to your personal residence?

9 A. I live in Watertown.

10 Q. So do you have an idea of approximately how far  
11 Watertown is from the closest turbine? Or from the farm,  
12 the wind facility?

13 A. Say that again, please.

14 Q. Do you have an idea -- rough idea of how close your  
15 residence is from the closest wind turbine?

16 A. 14, 15 miles.

17 MS. REISS: Nothing further. Thank you.

18 MS. CREMER: Ms. Kaaz.

19

CROSS-EXAMINATION

20 BY MS. KAAZ:

21 Q. I just have one question for you.

22 Will your farm use the electricity produced by the  
23 Dakota Range project?

24 A. I hope so at some point.

25 MS. KAAZ: No further questions.

1 MS. CREMER: Thank you.

2 Ms. Mogen.

3 CROSS-EXAMINATION

4 BY MS. MOGEN:

5 Q. Were you told by Dakota Range about the -- how far  
6 flicker can go?

7 A. When I signed up my land that was not an issue, I  
8 guess. I signed it up because I thought it was a good  
9 project. I guess there's flickering lights everywhere.  
10 I guess I did not worry about it.

11 Q. Do you know where the energy is going to go from  
12 this project? Who benefits from it?

13 MS. AGRIMONTI: Objection. Compound question.

14 MS. CREMER: And by that you basically asked her  
15 two questions. If you could just break it into --

16 Q. Do you know where the energy -- do you know where  
17 the energy from this project will be sent?

18 A. Yes, I do.

19 Q. Where?

20 A. Otter Tail. Otter Tail.

21 Q. Otter Tail? And then who is it to benefit?

22 A. Electricity, we get all of our electricity from  
23 companies. And so it should benefit everybody.

24 Q. Are you aware Xcel Energy will be receiving the  
25 power?

1 A. Yes.

2 Q. Do you know why they are receiving the power?

3 MS. AGRIMONTI: I'm going to now object to this  
4 line of questioning. I let it go for a little bit. It's  
5 not relevant. That's my objection.

6 MS. CREMER: I would sustain that.

7 You can ask your next question.

8 MS. MOGEN: I'm finished. Thank you.

9 MS. CREMER: All right. Thank you.

10 Commission. Chair Fiegen.

11 CHAIRWOMAN FIEGEN: Thank you.

12 Thank you certainly for coming. Were you here  
13 yesterday too?

14 THE WITNESS: Just at the very end.

15 CHAIRWOMAN FIEGEN: My question is, again, you  
16 talk about that this is a good project. Did you hire an  
17 attorney to look at the lease to make sure you're --

18 THE WITNESS: No, I did not. I read it myself  
19 and then my son read it and we talked about it and  
20 trusted the lease was okay.

21 CHAIRWOMAN FIEGEN: Okay. You talked about this  
22 was an acreage? Is that what you said?

23 THE WITNESS: Yes, it is.

24 CHAIRWOMAN FIEGEN: Does somebody live there?

25 THE WITNESS: No.

1           CHAIRWOMAN FIEGEN: Okay. All right. Thank  
2 you.

3           MS. CREMER: Commissioner Hanson, did you have  
4 questions?

5           COMMISSIONER HANSON: I just want to thank you  
6 for being here today. Appreciate it.

7           THE WITNESS: You're welcome.

8           COMMISSIONER HANSON: And I'm assuming you're  
9 not an electrical engineer.

10          THE WITNESS: No.

11          COMMISSIONER HANSON: All right. All right.  
12 Well, thanks for being here.

13          COMMISSIONER NELSON: Wait a minute. I like her  
14 attitude. Get me out of this chair. Just a couple of  
15 questions.

16                 On the 74 acres is there a residential dwelling  
17 on the 74 acres?

18          THE WITNESS: No. It is farm. Just farmland.

19          COMMISSIONER NELSON: Thank you. And could you  
20 show me where the 74 acres is located on the map that has  
21 been presented?

22          THE WITNESS: I would say this -- it's on this  
23 side of the interstate.

24          MS. AGRIMONTI: If we could take a break for  
25 just a minute, I think Mr. Lau could help identify the

1 property on the land for her. It may expedite things.

2 MS. CREMER: That would be fine.

3 MS. AGRIMONTI: Thank you.

4 (Pause.)

5 MS. CREMER: So we're back on. So go ahead and  
6 you can explain to us where your land is.

7 THE WITNESS: Okay. From Highway 20 you've got  
8 to go north about 2 and a half miles. From Highway 20  
9 you go north 2 and a half miles.

10 COMMISSIONER NELSON: And is it on the west side  
11 of the interstate?

12 THE WITNESS: Yes.

13 COMMISSIONER NELSON: I'm looking at a land  
14 ownership map that was in the Application as Figure 5.  
15 Are you familiar -- and I'm not seeing your property  
16 listed.

17 Are you familiar with the surrounding  
18 landowners?

19 THE WITNESS: Some of them, yes.

20 COMMISSIONER NELSON: Can you give me a name of  
21 a surrounding landowner?

22 Is your property in Codington County or Grant  
23 County?

24 THE WITNESS: Codington. And my son lives right  
25 over here in this area. My son lives in this area right

1 here, 155th Street (indicating).

2 COMMISSIONER NELSON: And does your property  
3 border 155th Street?

4 THE WITNESS: Pardon?

5 COMMISSIONER NELSON: Do you know what street  
6 borders your property?

7 THE WITNESS: 457th Avenue.

8 COMMISSIONER NELSON: I apologize for dragging  
9 this out, but I'm looking two and a half miles north of  
10 Highway 20 on the west side of the Interstate, and I'm  
11 not seeing --

12 THE WITNESS: A mile and a half then, you know.  
13 Because our farm is here. You go to this corner and go  
14 down here to get to it (indicating).

15 Okay. You go from 155th Street, that corner,  
16 and then you go south. And so actually we're a mile too  
17 far.

18 COMMISSIONER NELSON: Okay. Does your land  
19 border the Interstate?

20 THE WITNESS: Yes.

21 COMMISSIONER NELSON: Okay. I'm seeing a parcel  
22 here that is probably about 74 acres that does not have a  
23 name on it, and so I think I see where it is.

24 Do you know how close the nearest proposed wind  
25 turbine is to your property?



1 THE WITNESS: 6,000 feet. A little over a mile.

2 COMMISSIONER NELSON: Thank you. And I  
3 appreciate your patience.

4 THE WITNESS: Okay.

5 MS. CREMER: Do you have any redirect, Dakota  
6 Range?

7 MS. AGRIMONTI: I do not.

8 MS. CREMER: And, Staff, do you have any recross  
9 based on Commission questions?

10 MS. REISS: No, thank you.

11 MS. CREMER: Ms. Mogen, do you have any  
12 questions based on Commission questions?

13 MS. MOGEN: No, thank you.

14 MS. CREMER: Ms. Kaaz?

15 MS. KAAZ: No, thank you.

16 MS. CREMER: Thank you, Ms. Moyer. You may step  
17 down, and, Dakota Range, you can call your next witness.

18 MS. AGRIMONTI: Thank you.

19 (The witness is excused.)

20 MS. AGRIMONTI: Dakota Range would call  
21 Mike MaRous.

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

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BY MS. AGRIMONTI:

Q. Mr. MaRous, I know you were here not that long ago, but would you please introduce yourself to the Commission.

A. Michael S. MaRous.

Q. And what are your experiences and qualifications with respect to real estate valuation?

A. I have been appraising property primarily throughout the Midwest for the past 40 plus years. I've appraised over 12,000 properties of \$15 billion of value from residential properties to very large acreage to large industrial facilities to retail facilities to large housing facilities, to name a few, and quite a few properties in South Dakota.

And I have the general certified licensure in the State of South Dakota, which is the highest form of real estate appraisal licensure, and I've held the MAI, which is the top real estate appraisal designation, for over 35 years and have published, have taught, have spoken, and have testified in many matters through many circuit and federal courts throughout the Midwest and many public hearings such as this one.

Q. Did you file Prefiled Direct Testimony in this matter on April 6?

1 A. I did.

2 Q. Let's try that again. Did you file prefiled on  
3 April 6, or did you file -- oh, wait a minute.

4 MS. AGRIMONTI: May I have just a moment?

5 Q. Sorry. It's Prefiled Supplemental Direct. I got  
6 it. Is it Exhibit A13 and A13-1 through 13-6?

7 A. Yes.

8 Q. And did you also file Rebuttal Testimony in this  
9 case on May 21?

10 A. Yes.

11 Q. And is that A14 with Exhibits A14-1 through A14-5?

12 A. Yes.

13 Q. Could you please provide a brief overview of the  
14 prefiled testimony that you made in this case?

15 A. Basically I visited the project area in February of  
16 this year and spent about three-quarters of the day  
17 viewing the project, viewing existing development, met  
18 with David who toured around and just to get to know the  
19 area, the lay of the land, the topography, the issues,  
20 and observe the existing conditions.

21 Extensive research was done in regard to economics,  
22 demographics, land use, population trends. And as part  
23 of this a study was done where I contacted every assessor  
24 that had over a 25-unit wind farm in the counties in the  
25 state of South Dakota to see if there had been any tax

1 appeals filed, to learn that.

2 I also reviewed peer reviewed articles. I also  
3 researched comparable data. As part of this whole  
4 process I also reviewed reports, testimony, data that was  
5 put together by David Lawrence out of Sioux Falls,  
6 another MAI designated appraiser, to review his  
7 information, and he provided excellent comparable  
8 additional data, which I reviewed.

9 And, you know, simply looking at all the issues, the  
10 benefits, the published studies, the other technical  
11 reports, I compiled my conclusions that the proposed  
12 development will have no negative impact on real estate  
13 values.

14 Q. Did you specifically review the Surrebuttal  
15 Testimony of David Lawrence filed on June 8?

16 A. I did.

17 Q. And based on that review, do you have any additions  
18 or corrections to your prefiled testimony?

19 A. My conclusions really remained the same. He  
20 provided some additional information on one of the comps  
21 that I think confirmed his observations on some area in a  
22 basement. He provided significant data in the Brookings  
23 market. Some of it I had; some of it I didn't.

24 And then I went to his conclusions, which basically  
25 confirmed my conclusion that through all of this evidence

1 some of the key factors really are proximity to  
2 employment and support centers, whether it be medical,  
3 whether it be shopping, whether it be jobs, and that is  
4 the key driver.

5 And his conclusions, I believe -- I'm not speaking  
6 for him -- confirmed my conclusions that a properly  
7 developed wind farm in South Dakota does not have a  
8 negative impact on value.

9 Q. Okay. Other than the public dates that you just  
10 provided, would your answers in your prefiled testimony  
11 be the same today if I asked you the same questions?

12 A. Yes.

13 MS. AGRIMONTI: Mr. MaRous is available for  
14 cross-examination.

15 MS. CREMER: Thank you.

16 Staff.

17 CROSS-EXAMINATION

18 BY MS. EDWARDS:

19 Q. Thank you, and welcome back, Mr. MaRous. This time  
20 I have no questions for you.

21 MS. CREMER: Thank you.

22 THE WITNESS: I can't say oh, darn.

23 MS. CREMER: No. But you can always think it.

24 Ms. Mogen.

25 MS. MOGEN: No questions.

1 MS. CREMER: Ms. Kaaz.

2 MS. KAAZ: Believe it or not, I do have one  
3 question.

4 CROSS-EXAMINATION

5 BY MS. KAAZ:

6 Q. Did you visit my property with David Lau as you were  
7 researching properties?

8 A. The answer is I did go by your property. I did not  
9 physically go on the site, but I observed it. I actually  
10 drove virtually every road in the project footprint and  
11 with particular attention to those residents that had  
12 concern or objection, including a tour past your  
13 property, including a tour, although way around,  
14 Punished Woman's Lake and, again, just kind of looking at  
15 this as an understanding of the lay of the land.

16 Q. I have been told that I am one of the outspoken  
17 persons in Codington County. Why would you not deem  
18 it -- you and David Lau deem it important to speak to me  
19 so you could give a good testimony considering the  
20 property values around my area?

21 MS. AGRIMONTI: Objection. Relevance, scope,  
22 and she's testifying.

23 MS. CREMER: I will sustain the objection.

24 Q. Did you evaluate my property?

25 A. The answer is generally I did. I had the benefit of

1 reviewing two independent appraisal reports done for  
2 lending purposes, one done in 2013, which I believe had  
3 an estimate of value of \$185,000, and that was the time I  
4 believe you were moving the house onto the site.

5 I reviewed the comments by the appraiser detailing  
6 the issue of limited market data, a soft economy,  
7 relatively minimal services, restaurants, bars, and  
8 limited employment opportunity, and basically  
9 exceptionally soft market.

10 Then I reviewed in 2017 by the same appraiser where  
11 the increase of value I think was up to \$205,000. I  
12 was -- and basically the same comments about the  
13 immediate area.

14 Of particular concern to me in both appraisers was  
15 to look at influences, positive and negative. And there  
16 were specific comments in there as to outside influences  
17 having a negative impact on value, adverse environmental  
18 impacts having an impact on value, and under those  
19 sections in both report there was absolutely no mention  
20 of the proposed wind farm, which was known in both times.

21 Q. I don't know why that was not given to us but I also  
22 spoke with my banker and they had no knowledge of this as  
23 well.

24 MS. AGRIMONTI: Objection. She's testifying  
25 again. I would ask that she be limited to asking

1 questions.

2 MS. CREMER: Did you have a question, Ms. Kaaz,  
3 on that?

4 Q. So did you evaluate my property while driving around  
5 with David Lau?

6 MS. AGRIMONTI: Asked and answered.

7 MS. CREMER: I believe he can answer that.

8 A. I reviewed your property. I reviewed the  
9 proposed -- I think there's potentially three turbines  
10 that would be sited by your property. I kind of looked  
11 at the view, you know, to and from your property. I  
12 looked at the conditions of the immediate neighborhood.

13 So I took those under consideration. I did not  
14 provide individual appraisal reports for each property in  
15 the project. But in your particular situation there was  
16 actually two independent reports, '13 and '17, that I did  
17 consider at a review.

18 Q. What date did you drive by my property?

19 A. I believe -- I can look in my records, but it was  
20 plus or minus February 18, 2017. I mean, 2018.

21 MS. KAAZ: No other questions.

22 MS. CREMER: Thank you.

23 Commissioner Hanson.

24 COMMISSIONER HANSON: Good morning.

25 THE WITNESS: Good morning, sir.



1 COMMISSIONER HANSON: Welcome back.

2 THE WITNESS: Thank you.

3 COMMISSIONER HANSON: Have you enjoyed your  
4 stays in our capitol?

5 THE WITNESS: I have. I have.

6 COMMISSIONER HANSON: On -- and you don't need  
7 to look this up, but in your testimony on page 6 and  
8 pretty much throughout your testimony in a variety of  
9 areas you've stated that you concluded that there was no  
10 market data indicating the project would have a negative  
11 impact on either rural, residential, or ag property  
12 values in the area surrounding the project.

13 Could we supplant the word "positive" for  
14 negative? I concluded that there was no market data  
15 indicating the project would have a positive impact on  
16 either rural, residential, et cetera? Or did your  
17 research find that the project would have a positive  
18 impact?

19 THE WITNESS: That's a long question,  
20 Commissioner. It's my opinion it's going to have a  
21 positive impact. But my focus was just to make sure  
22 there wouldn't be a diminution. And as my report goes to  
23 the economic vitality and really the addition to the  
24 agricultural -- addition into the community, in my  
25 opinion, is very positive, and it translates to the

1 dollars being generated by taxes and by immediate  
2 payments into the neighborhood. And I think as we have  
3 heard from one of the property owners, the impact on the  
4 schools, the roads, the job situation, it trickles all  
5 the way through. In the long-term I think it's going to  
6 be very positive once this project is built and  
7 stabilized.

8 COMMISSIONER HANSON: Okay. So one of your  
9 statements that for ag properties that host the turbines  
10 the additional income from the wind lease may increase  
11 the value and marketability of those properties, are you  
12 saying that's true for other properties that are not  
13 hosting a turbine?

14 THE WITNESS: The answer is yes because it  
15 brings up the values of the entire community. It  
16 provides more focus on investors, and it provides  
17 credibility to that immediate market area as a solid  
18 community. So the answer is yes.

19 Plus it provides better support for some of the  
20 new technologies having to do with some of the irrigation  
21 type issues and being able to upgrade some of the  
22 equipment to provide modernization to the whole ag  
23 community.

24 COMMISSIONER HANSON: Thank you.

25 In your testimony -- I'll call it rebuttal.

1 Yes. It's the Prefiled Rebuttal Testimony. On page 6  
2 there is -- you answer some positions that were stated by  
3 Mr. Lawrence in his testimony.

4 I'm just curious on item 3.

5 THE WITNESS: What exhibit is that?

6 COMMISSIONER HANSON: I don't know that you need  
7 to look at it.

8 THE WITNESS: Oh. Oh, okay.

9 COMMISSIONER HANSON: I'll explain it, I think,  
10 sufficiently.

11 THE WITNESS: Okay. Thank you.

12 COMMISSIONER HANSON: There is a home in  
13 question on Ratham Loop as to whether or not it has a  
14 finished basement or not.

15 I'm just curious. Do you recall that?

16 THE WITNESS: I clearly recall it, yes. Because  
17 it was a point of contention, concern, additional  
18 investigation, and issue.

19 COMMISSIONER HANSON: Did you go back to the  
20 property and ascertain whether it has a finished basement  
21 or not?

22 THE WITNESS: I didn't have to because I was  
23 given pictures of the interior that clearly showed that a  
24 portion of the basement was finished.

25 COMMISSIONER HANSON: Okay.

1           THE WITNESS: From the outside on the frontage  
2 you really can't see it because of the way the elevation  
3 is. But those interior photos do show that there is a  
4 partial finished basement.

5           COMMISSIONER HANSON: Thank you very much.  
6 That's all the questions I have.

7           MS. CREMER: Commissioner Nelson.

8           COMMISSIONER NELSON: Welcome back.

9           THE WITNESS: Thank you, Commissioner.

10          COMMISSIONER NELSON: Just a couple of  
11 questions.

12          As you were talking about your review of the two  
13 independent appraisals of the Kaaz property did I hear  
14 you correctly that they indicated that there were some  
15 negative environmental impacts on that property?

16          THE WITNESS: No. There's a specific portion in  
17 each appraisal that basically -- actually two different  
18 sections that deal with specific potentially negative  
19 environmental conditions. And then there's a section  
20 dealing with kind of neighborhood issues that, let's  
21 say -- and I'm going to -- from a negative, if you were,  
22 you know, building a garbage dump next door to it or  
23 something that would, you know, change the character of  
24 the area, those sections were in each report. They were  
25 addressed by the appraiser, and there was no comments

1 made about the pending wind farm as having any impact.

2 COMMISSIONER NELSON: Thank you.

3 If I could go to your Direct Testimony, on the  
4 second page, the top of the page, the question was asked,  
5 "What is your role in the project?" The last sentence in  
6 your answer -- and I need you to explain this to me.

7 The last sentence says, "When I use the phrase  
8 'proximity to wind turbines' I generally mean turbines  
9 within three to five times the hub height of a wind  
10 turbine." That sentence doesn't make sense to me. Help  
11 me understand what it says.

12 THE WITNESS: Basically from the tip -- and  
13 let's just say the tip is 400 feet. Three to five times  
14 would be 1,200 to 1,500 feet. And, conversely, if the  
15 tip height is lower, convincingly [sic] if the tip height  
16 is higher, that's kind of the range that generally is  
17 looked at.

18 COMMISSIONER NELSON: Okay. So what you're  
19 talking about is something that is within that distance  
20 from a turbine.

21 THE WITNESS: Yes. And it's usually a  
22 residential property. My experience has been that if  
23 it's vacant agricultural land, it really has no impact.  
24 But the concern is residential property. Then you go to  
25 the next situation, and is there basically a natural view

1 shield by trees or outbuildings, et cetera, that, you  
2 know, either does or does not have some blockage of the  
3 view.

4 And it also goes to the whole noise issue, but  
5 I'm not an acoustical engineer.

6 COMMISSIONER NELSON: So because of your  
7 definition of proximity, is it your thought that there is  
8 no impact from the wind turbines beyond that definition  
9 of proximity?

10 THE WITNESS: From all the investigation that  
11 I've done and all these numerous peer reviewed studies  
12 that has been done, that is correct.

13 But, you know, each situation needs to be looked  
14 at and evaluated. That's why I physically go out and  
15 kind of just drive the area, look at the situation, look  
16 at the issues.

17 COMMISSIONER NELSON: Thank you.

18 CHAIRWOMAN FIEGEN: I don't have anything.

19 MS. CREMER: Commissioner -- or Chair Fiegen has  
20 no questions.

21 So, Dakota Range, do you have any redirect?

22 MS. AGRIMONTI: I do not.

23 MS. CREMER: Staff, do you have any recross?

24 MS. EDWARDS: No.

25 MS. CREMER: Ms. Mogen, do you have any recross?

1 MS. MOGEN: No.

2 MS. CREMER: Ms. Kaaz, do you have any recross?

3 MS. KAAZ: No.

4 MS. CREMER: Thank you. You may step down.

5 (The witness is excused.)

6 (A short recess is taken.)

7 MS. CREMER: All right. We are back in session.

8 And, Dakota Range, I believe you were ready to call your  
9 next witness.

10 MS. SMITH: Yes. We're going to call  
11 David Phillips.

12 David Phillips,  
13 called as a witness, being first duly sworn in the above  
14 cause, testified under oath as follows:

15 DIRECT EXAMINATION

16 BY MS. SMITH:

17 Q. Mr. Phillips, could you please introduce yourself to  
18 the Commission.

19 A. Sure. My name is Dave Phillips. I'm the Vice  
20 President of Environmental at Apex Clean Energy.

21 Q. And did you file Prefiled Direct Testimony with the  
22 Application in this matter?

23 A. Yes.

24 Q. And is that Prefiled Direct Testimony in Exhibits A7  
25 and A7-1 through A7-2?

1 A. Yes.

2 Q. And did you also file Prefiled Rebuttal Testimony?

3 A. Yes.

4 Q. And is that Prefiled Rebuttal Testimony in A8 and  
5 A8-1?

6 A. Yes.

7 Q. And can you briefly discuss the topics that are  
8 covered in your testimony, your Direct Testimony, and  
9 your Rebuttal Testimony?

10 A. Sure. My testimony basically covers environmental  
11 compliance-related topics ranging from wetlands to  
12 cultural resources, water quality, surface water issues,  
13 bird and bat -- or wildlife studies.

14 Do you need more specifics, or is that sufficient?

15 Q. I think that gives them the gist of what you  
16 covered. Thank you.

17 A. Okay.

18 Q. And do you have any additions or corrections to your  
19 testimony?

20 A. No, I do not.

21 Q. Do you have any updates on any survey work that's  
22 being conducted?

23 A. Well, there are ongoing interactions or field  
24 surveys with the Sisseton-Wahpeton Oyate Tribes. Really  
25 actually all the field work has been completed,



1 evaluating the layout and potential impacts to sensitive  
2 tribal cultural properties. And all of those have been  
3 avoided.

4 We actually met with the SWO -- that's the acronym  
5 for the tribe -- and did some kind of minor final  
6 micro-siting in the field yesterday.

7 Q. And can you discuss the environmental analysis that  
8 was conducted for the project kind of starting from a  
9 macro level and working down into some of these field  
10 studies that you have been referencing?

11 A. Sure. We go through a process, particularly as it  
12 relates to wildlife and wildlife habitats, of interacting  
13 with the regulating agencies, looking at the site early  
14 on, initial site assessment work, kind of looking at  
15 whether or not this is overall a good area, what are the  
16 obvious resource concerns we should be looking at.

17 We agree on site-specific study plans to evaluate  
18 those resource concerns in more detail. Then we meet  
19 again with the agencies. That would be the South Dakota  
20 Game & Fish folks, U.S. Fish & Wildlife Service. We  
21 review the study results and agree on impact avoidance or  
22 minimization measures. And all of that is basically  
23 incorporated into the design or operational protocols of  
24 the project.

25 That information actually also extends out in

1 helping us decide the scope of our operational monitoring  
2 studies to evaluate our impacts or the -- you know, the  
3 effectiveness of our avoidance and minimization measures.

4 We also look at wetland resources early on using  
5 available desktop information. We complete field studies  
6 to specifically delineate those and avoid and minimize  
7 impacts to those resources so that we can comply with  
8 state and federal permitting requirements with regard to  
9 wetlands.

10 We also do the same with cultural resources. We do  
11 early desktop reviews, interacting with SHPO and the  
12 available data from previous surveys in the area. We  
13 then send cultural resource contractors out to evaluate  
14 the actual ground disturbance areas and microsite in  
15 response to their findings.

16 In this project we also involved the SWO in those  
17 surveys so they could specifically evaluate tribal  
18 resource concerns.

19 Q. And with respect to potentially untilled grasslands,  
20 were there steps taken to avoid or minimize impacts?

21 A. Yes. Yes. Early on we met with South Dakota Game &  
22 Fish and discussed measures to avoid and minimize impacts  
23 to grasslands. We used the Bowman, et al. data  
24 initially, which is available data of existing or known  
25 potential untilled grasslands. That was actually used by

1 Western Ecosystems Technology, environmental consultant,  
2 to look specifically for native intact prairie habitat as  
3 it relates to potential habitat to federally listed  
4 butterfly species. Very small areas were identified  
5 near, mostly outside of the project area, but we designed  
6 to avoid those.

7 We also avoided the majority of the potentially  
8 untilled grasslands in that data set of Bowman, et al.  
9 So yeah.

10 Q. Yeah. And how many acres are potentially to be  
11 impacted by the project of potentially untilled  
12 grasslands?

13 A. With our current design it's just over 9 acres of  
14 permanent impact listed as our -- actually almost all of  
15 that is linear impacts associated with turbine access  
16 roads. So very minor small foot print type of impacts.

17 Q. And can you talk a little bit about any efforts that  
18 Dakota Range made to avoid habitat fragmentation?

19 A. Well, one of the primary recommendations from  
20 environmental resource agencies is to try to place our  
21 disturbance in already disturbed habitats; for example,  
22 tilled cropland.

23 So we basically did that. I mean, really focused  
24 our siting on those less optimal grasslands and/or  
25 cultivated croplands.

1 Q. And as far as -- and I know you were not present  
2 yesterday, but I will indicate there were some questions  
3 regarding cumulative impacts.

4 Can you talk about any cumulative impacts analysis  
5 or considerations that were made as part of development  
6 of the project?

7 A. Sure. The cumulative -- from my perspective, I  
8 mean, I look at cumulative impacts as it relates to  
9 environmental resources, potential impacts to birds and  
10 bats and wetlands and sensitive habitats.

11 With regard to the PUC requirements, they'll look  
12 specifically at operating or in-construction projects.  
13 There really are none in the area. The nearest I think  
14 is over 30 miles to the west. You know, so we look at  
15 that issue early on, recognizing that we're not likely to  
16 have any sort of, one, significant adverse impacts with  
17 our project specifically but, two, additive or  
18 cumulative impacts associated with extensive development  
19 in an area.

20 MS. SMITH: All right. I have no further  
21 questions, and Mr. Phillips is available for  
22 cross-examination.

23 MS. CREMER: Thank you.

24 Staff.

25 MS. REISS: Thank you.

CROSS-EXAMINATION

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BY MS. REISS:

Q. Good morning, Mr. Phillips.

A. Good morning.

Q. In response to Ms. Smith's questions you indicated that there were 9 acres of grasslands that would be impacted by the project; is that correct?

A. It's actually -- approximately 9.7.

Q. Okay. Thank you. And is that a calculation of the direct and permanent impacts?

A. Correct.

Q. And that does not take into account any temporary or indirect impacts; correct?

A. That's correct. Temporary impacts are approximately -- it's just over 100 acres. The majority of that is associated with the installation of collection lines so they're trenched in, and then that area is re-vegetated with native seed mixes recommended by the NRCS or Natural Resource Conservation Service.

Some of that is on the kind of roadsides where we have some temporary disturbance and then reclaim the shoulders of those roads with similar re-vegetation measures.

Q. And what is the quantity -- or the quantity of the indirect impacts?

1 A. I'm not sure what you mean by indirect impacts.

2 Q. Did the company review potential indirect impacts?

3 A. To grassland habitat?

4 Q. Yes.

5 A. Again, I guess I'm not sure what you mean by  
6 indirect impacts. Could you give me an example of what  
7 you're referring to?

8 Q. What is your definition of indirect impacts, as you  
9 used it?

10 A. Are you saying as I used it?

11 Q. Yeah.

12 A. I'm not sure I did. Are you thinking temporary  
13 impacts?

14 Q. No. Let me go back.

15 Did the company ever consider whether there would be  
16 indirect impacts to grassland habitats due to the  
17 construction of the project?

18 A. I don't believe so. Again, I'm not sure what you  
19 mean by indirect impacts. We do look specifically at the  
20 amount of disturbance that would occur.

21 The way our design process works is basically as the  
22 environmental group we provide constraints to our  
23 engineers who design the project around those  
24 constraints. Typically in the case of grasslands we're  
25 talking about very physical, specific locations of a

1 resource that we want to avoid.

2 We did not implement setbacks from the potential  
3 grasslands or anything like that. We simply avoided and  
4 minimized the impacts.

5 Q. Did the U.S. Fish & Wildlife Service or South Dakota  
6 Game, Fish & Parks ever bring up the issue of indirect  
7 impacts?

8 A. On grasslands?

9 Q. Yes.

10 A. Not to my knowledge. I know that they requested  
11 avoiding and minimizing and possibly mitigating for  
12 impacts. So and it's fairly clear in our sort of  
13 summaries of our correspondence that we agreed to avoid  
14 and minimize, which actually it's pretty significant the  
15 way this project design is laid out with such minor  
16 impacts to the grasslands that are present on the  
17 landscape.

18 Q. Are you familiar with Staff's Exhibit 1, page 89 of  
19 the exhibit?

20 I believe the documents are next to you.

21 A. This one (indicating)?

22 Q. Yes.

23 A. Yes.

24 Q. Are you on page 89?

25 A. I may have looked at the wrong document.

1 MS. CREMER: Can you give him the exhibit number  
2 again? I'm not sure he has the --

3 MS. REISS: It would be S-1 and marked as JT-1.

4 MS. CREMER: I don't think he's --

5 MS. SMITH: I'm sorry. I didn't mean to  
6 interrupt you. I was just going to say I believe to the  
7 other side of you is a set of Staff -- no. Back.

8 There you go. Staff exhibits and I think those  
9 are marked with tabs that show the numbers, and that may  
10 help.

11 A. Okay. What was the exhibit? S --

12 Q. It would be S-1, and then at the top of the page it  
13 would be Exhibit JT-1, page 89 of 156.

14 A. I may need some guidance.

15 MS. CREMER: If you want to approach him and  
16 show him, because I think the numbering system is odd for  
17 him.

18 MS. REISS: Thank you.

19 (Discussion off the record.)

20 A. So you are referring to the meeting summary and  
21 comments from I believe the Fish & Wildlife Service and,  
22 yes, I am familiar with that.

23 Q. Yes. Did you attend that meeting?

24 A. Yes.

25 Q. Are you aware of any comments provided by the U.S.



1 Fish & Wildlife Service from that meeting?

2 A. Yes.

3 Q. Was one of those comments a reference to a Shaffer  
4 and Buhl Study?

5 A. I believe so.

6 Q. Are you familiar with that study?

7 A. Moderately, yes.

8 Q. Did the Applicant review that study after receiving  
9 this comment from the Fish & Wildlife Service?

10 A. Yes.

11 Q. And did the study discuss indirect impacts due to  
12 the destruction of grasslands?

13 A. I now understand your question. So you're referring  
14 to the potential displacement of grassland birds that  
15 would result from our permanent and/or temporary impacts?

16 Q. Yes.

17 A. As an indirect impact?

18 Q. Yes.

19 A. Got it. Sorry to be dense on that one.

20 Yes. We did review that article. We did discuss  
21 that with both the Fish & Wildlife Service and  
22 South Dakota Game, Fish & Parks.

23 Q. Did the Applicant take into consideration that study  
24 when determining the final layout for the project?

25 A. Definitely. What we agreed on was to avoid and

1 minimize impacts, and we did not voluntarily offer  
2 mitigation for those impacts. The indirect impacts  
3 associated with grassland birds, there have been a couple  
4 or few studies on that topic. The information is not  
5 very definitive for use in defining kind of what  
6 mitigation would be appropriate.

7 The Shaffer and Buhl Study is actually a good  
8 example where you have some bird species that show a  
9 response to the presence of a turbine at different  
10 distance bands from the turbine, whereas at another  
11 project that same species may show no response. And in  
12 some of those distance bands you may see an effect  
13 actually in the other direction where you have increased  
14 density of certain species.

15 So it's a very unclear science. But I can say that,  
16 you know, I'm a wildlife biologist. We take the  
17 environmental compliance-related topics very seriously,  
18 and we view the avoidance and minimization to these  
19 impacts of grasslands as a much more appropriate measure  
20 than to impact them at a high level and then try to  
21 offset that impact through mitigation.

22 So that was more the path we took, the constraints  
23 we provided to our engineers to design around, which does  
24 result in some energy loss and revenue loss for the  
25 project over time, but we view that as the more

1 appropriate approach.

2 Q. Did you ever quantify this issue within the  
3 Application?

4 A. What issue? Indirect impacts?

5 Q. Yes.

6 A. I don't believe we did.

7 Q. Why not?

8 A. As I mentioned, we avoided and minimized these types  
9 of displacement effects by minimizing our footprint in  
10 these undisturbed areas. So it's a fairly minor or --  
11 maybe insignificant type of an impact.

12 Q. As an environmental biologist wouldn't you believe  
13 that it would be prudent to look at all of the impacts  
14 and provide those in the Application for review?

15 A. Certainly. I mean, I think you could say that we  
16 have provided information on this topic with the very  
17 specific disturbance estimates that we provided for the  
18 different habitat types.

19 Q. In your Rebuttal Testimony you indicated that there  
20 are leks in the project area; is that correct?

21 A. Correct.

22 Q. How many leks are there?

23 A. There were four discovered in -- or evaluated,  
24 detected, in our surveys, one of which is about a third  
25 of a mile from the nearest turbines.

1 Q. Is that lek active?

2 A. It was in 2017 when it was last surveyed. Or at  
3 least surveyed by our project.

4 Q. In your Rebuttal Testimony you indicated that the  
5 project moved facilities to avoid two of the leks, but  
6 that required some facilities be moved closer to another  
7 lek; correct?

8 A. Correct.

9 Q. Is the closest lek that active lek you indicated  
10 previously?

11 A. Yes.

12 Q. And were the two leks you avoided active or  
13 inactive?

14 A. I would have to go back and look at that. I mean,  
15 each was active during one of the survey periods, 2016 or  
16 '17, but I'm not -- I'd have to look specifically at the  
17 study again.

18 Q. Would you look at -- would you look at Figure 1 of  
19 Appendix H for me of the Application?

20 A. Yes.

21 Q. Based on the figure, would you agree that one of  
22 those leks was an potential lek?

23 A. Yes. Lek No. 4.

24 Q. And that potential lek is the lek which you moved  
25 turbines and facilities away from; correct?

1 A. Correct. I personally did not move the facilities,  
2 but we considered that lek in our design.

3 Q. Can you explain why the project did not give more  
4 weight to an active lek versus a potential lek?

5 A. Well, potential is -- the term you're referring to,  
6 a lek would be considered accurate if you document males  
7 strutting multiple times. It might be a minimum of two  
8 males.

9 So basically the consultants discovered strutting  
10 males. I'm not sure they discovered them two times or  
11 something to that effect, so that's why it's called  
12 potential. We view that as a sensitive area that  
13 warrants consideration in our siting.

14 The active lek was also very low numbers of males  
15 strutting. We have considered that actually fairly  
16 carefully in our siting by siting greater than a quarter  
17 mile -- it's actually a third of a mile with our nearest  
18 turbines. I think there's just a few turbines within a  
19 mile.

20 We addressed that potential risk by minimizing our  
21 construction activities during the lekking and nesting  
22 period within a mile of the lek. So the lekking behavior  
23 occurs basically through the night and the morning so any  
24 construction activities that we needed to do during that  
25 period would be done from three hours after sunrise to an

1 hour before sunset, so as to not disturb that lek.

2 Q. Do you recall what the Game, Fish & Parks'  
3 recommendation was for placing turbines and facilities  
4 near a lek?

5 A. I believe in our early coordination I believe they  
6 requested a mile setback.

7 Q. And you indicated the closest lek was .3 miles from  
8 the nearest facility; is that correct?

9 A. Approximately a third of a mile, .33. I think it's  
10 just over that, but by a fraction.

11 So the recommendation is not a rule or policy that  
12 protects this species. In other words, we're not  
13 required to follow it by law, but we recognize that this  
14 is an important resource. The construction timing  
15 stipulation and setback is also part of the  
16 recommendation.

17 We basically acknowledge that it would be very  
18 difficult to install a project here and honor that  
19 one-mile setback, but by incorporating that construction  
20 timing stipulation, that it could work and would work. I  
21 think that it's important to note that the available  
22 research on the effect of wind turbines on leks is  
23 evolving, and I would say that the current science  
24 indicates it's not likely to have a displacement effect.  
25 A turbine a third of a mile away is not likely to

1 influence the birds.

2 And habitat impacts in proximity to that lek are  
3 very minor. So the lekking birds, the hens, you know,  
4 are able to go out and continue to use that habitat  
5 during the operations of the project for nesting and  
6 brood rearing.

7 Q. Thank you. I just have one final question for now.

8 From a purely environmental perspective would the  
9 impacts be less if the turbines were all sited on  
10 cultivated land rather than grassland?

11 A. I believe that the ground disturbance would probably  
12 be similar. It might actually be greater because you  
13 need to have -- place turbines further apart or in, you  
14 know, more dispersed across the landscape.

15 Q. How about related to grassland impacts?

16 A. Well, if we sited no facilities on grasslands, then  
17 obviously that would be less. The landowners that own  
18 the property with grasslands would probably be the most  
19 impacted in that they would receive no turbine revenue.

20 Q. But from a purely environmental perspective, there  
21 would be less impact if they were all on cultivated land?

22 A. I really think that's a matter of perspective.

23 There are a lot of species, organisms that are adapted to  
24 tilled agricultural, highly disturbed habitats, so by  
25 avoiding effects in one habitat you're actually

1 increasing effects in another.

2 But, you know, certainly by doing that we would  
3 minimize or reduce our impacts in grasslands.

4 MS. REISS: Thank you.

5 Staff has nothing further at this time.

6 MS. CREMER: Thank you.

7 Ms. Mogen.

8 MS. MOGEN: No questions.

9 MS. CREMER: Ms. Kaaz.

10 MS. KAAZ: No. No questions.

11 MS. CREMER: Thank you.

12 Commissioner Nelson.

13 COMMISSIONER NELSON: Thank you. Thanks for  
14 being here.

15 Were you present this morning for the testimony  
16 of Wade Falk?

17 THE WITNESS: Yes.

18 COMMISSIONER NELSON: And did you hear the  
19 question I asked him and his response when I asked him as  
20 a landowner he would prefer to have a turbine on crop  
21 ground or on pastureland?

22 THE WITNESS: Yes.

23 COMMISSIONER NELSON: And his answer was on  
24 pastureland.

25 I understood your testimony to be that you were



1 giving preference to placing turbines on crop ground; is  
2 that correct?

3 THE WITNESS: Generally we're directed or  
4 recommended by the environmental agencies to optimize our  
5 siting in disturbed habitats. So yes.

6 COMMISSIONER NELSON: And so you are placing a  
7 preference on advice from environmental agencies as  
8 opposed to landowners; is that correct?

9 THE WITNESS: Absolutely. In this situation.

10 COMMISSIONER NELSON: Thank you.

11 The only other question I've got, there was a  
12 discussion about leks. How are leks impacted by cattle  
13 grazing?

14 THE WITNESS: That's a good question. I would  
15 expect there would be not too much impact. The leks are  
16 basically at courtship or displayed breeding ground.  
17 They're usually fairly visible to other birds and, you  
18 know, so extensive grazing, things like that, may  
19 actually enhance the visibility of those birds.

20 I'm just speculating, though.

21 COMMISSIONER NELSON: And you, Dakota Range,  
22 doesn't have any other expert that would be able to cast  
23 anymore light on that question? Is that correct?

24 THE WITNESS: I would say I would be the expert  
25 on that topic.

1 COMMISSIONER NELSON: Okay. Thank you.

2 THE WITNESS: I've worked a lot with various  
3 prairie grass species and siting of primarily wind  
4 development and their habitats.

5 COMMISSIONER NELSON: Okay. Thank you.

6 MS. CREMER: Commissioner Fiegen.

7 CHAIRWOMAN FIEGEN: Thank you. And certainly  
8 thank you for being here today.

9 Did you look at the stipulations? Because it's  
10 in your rebuttal, Stipulation 34, where it talks about  
11 the one-year independent conducting of a postconstruction  
12 survey.

13 But the second year it appears to me the  
14 coordination would be determined by U.S. Fish & Wildlife  
15 Services and Game, Fish & Parks, but it doesn't have  
16 anything that the Commission would actually see the  
17 report or be in coordination to see if you have to do a  
18 second year report. Although we do get a copy of it the  
19 first year.

20 So why wouldn't we also have the Commission to  
21 ensure -- at least be at the table?

22 THE WITNESS: I don't know the answer to that  
23 question. I mean, generally when we're coordinating on  
24 wildlife impacts it's with the U.S. Fish & Wildlife  
25 Service and the State Wildlife Agency. In other state

1 permitted projects, those reports are provided. I'm  
2 trying to think of situations where a PUC or equivalent  
3 would be at the table, but I don't see any problem with  
4 that.

5 CHAIRWOMAN FIEGEN: Okay. And then the --  
6 your -- we certainly have talked a lot about whooping  
7 cranes in dockets of wind farms. And you have a  
8 procedure that you will have. Can you explain that just  
9 a little bit more?

10 Because it's hard for me to understand because I  
11 don't follow whooping cranes and how you would know  
12 they're 1,000 feet above and who's monitoring that and  
13 when do they land or when do they -- could you just  
14 explain more about that?

15 THE WITNESS: Sure.

16 In this part of the country the primary risk  
17 period is spring and fall migration. The whooping crane  
18 migration corridor is very well-defined. It's actually  
19 not very close to the project. So the likelihood of  
20 whooping cranes moving through the area of the project is  
21 very low.

22 The impact of wind projects in the migration  
23 corridor on whooping cranes is also not documented as  
24 likely. No whooping cranes have flown into turbines,  
25 even though there are literally hundreds or possibly

1 thousands within their concentrated migratory pathway.

2 So to answer your question, in coordinating with  
3 the agencies, they agree it's a very low risk issue. The  
4 likelihood of take or impact is unlikely.

5 So we, though, take reasonable precautions by  
6 training our operations Staff. We'll actually notify  
7 them during the migration period, hey, stay alert. We're  
8 in the migration period. They're a very prominent, very  
9 visible bird. So if present -- you know, these guys  
10 aren't actually out surveying for them, but if they see  
11 them, we implement a response immediately, which is to  
12 basically contact the remote operations center.

13 Those guys would respond by shutting turbines  
14 down if there were cranes in close proximity to the  
15 turbines, and we would sort of rapidly coordinate with  
16 the Service, most likely, on the next steps.

17 CHAIRWOMAN FIEGEN: So I still need some  
18 understanding of -- do you work with other agencies? So  
19 is there kind of an alert system? If all the sudden  
20 someone sees something within 100 miles, would they call  
21 Apex and say, hey, we have some sighting 100 miles from  
22 you, it could possibly -- or how does that work?

23 THE WITNESS: We don't have that established for  
24 this project. In areas where we are operating projects  
25 where whooping crane risk is more significant we actually

1 have kind of an interactive relationship with the  
2 Service.

3 South Texas is a great example. These birds  
4 wind up down there in winter. There's a lot of avid  
5 birding groups. When they see whooping cranes they tend  
6 to report them on the internet. The Fish & Wildlife  
7 Service are aware of those, and they've actually  
8 contacted us and say, hey, you know, we have whooping  
9 cranes near project X.

10 If it's 100 miles away, I don't think they would  
11 contact us, nor would we be concerned about it. If it  
12 was on-site and within a couple miles and on the ground,  
13 then we would certainly pay attention to that issue,  
14 probably monitor that bird until it left the area.

15 CHAIRWOMAN FIEGEN: So how far do whooping  
16 cranes travel?

17 THE WITNESS: During migration? I actually read  
18 this recently and I'm going to cite the wrong number but  
19 I think -- it depends on the weather, but I think they  
20 can -- from one stopover location to the next can be up  
21 to 150 miles.

22 CHAIRWOMAN FIEGEN: So if they're at a location  
23 let's just say south of you 50 miles or 30 miles or  
24 100 miles or 10 miles -- and I know it's a potential and  
25 I know it's a small risk, but if somebody sighted that,

1 wouldn't you have some type of coordination that they  
2 could possibly fly through the area?

3 THE WITNESS: We could -- we could set that up.  
4 It's not something that's been recommended by the  
5 wildlife biologists that regulate that issue.

6 If we had birds south of the project during  
7 spring migration, meaning they may be then flying north,  
8 and we were notified of that, I think probably our  
9 response would be to have our operational staff, you  
10 know, remain very vigilant and aware so that they could  
11 respond quickly.

12 CHAIRWOMAN FIEGEN: Okay. Thank you.

13 COMMISSIONER HANSON: Still morning. Good  
14 morning.

15 THE WITNESS: Good morning.

16 COMMISSIONER HANSON: I wasn't going to ask  
17 questions on whooping cranes, but now I am.

18 THE WITNESS: Okay.

19 COMMISSIONER HANSON: My wife and I were down in  
20 Nebraska and observed the -- spent time down there so we  
21 could watch the sandhill cranes and whooping cranes this  
22 year. It was very neat.

23 THE WITNESS: It's amazing.

24 COMMISSIONER HANSON: Do you consider yourself a  
25 birder?

1 THE WITNESS: Yes.

2 COMMISSIONER HANSON: That's great.

3 You referred to the whooping crane migration  
4 pathway is well-defined, and it certainly is. However,  
5 you referred to it singularly, and are there not two  
6 pathways that are fairly defined for whooping cranes?

7 THE WITNESS: For this population of whooping  
8 cranes, no. There is an eastern population that is --  
9 actually the migratory corridor is -- that's  
10 well-defined, but it is substantially east of the  
11 project.

12 COMMISSIONER HANSON: Correct. But there are  
13 the two of them.

14 THE WITNESS: Yes.

15 COMMISSIONER HANSON: I just want to make sure  
16 I -- you know more about this than I, so I just wanted to  
17 make sure I was correct there.

18 And I would agree with you that it's very  
19 unlikely that it would be affected in this area. I don't  
20 mean to testify, but I really appreciate you being here.

21 It seems like you're responsible for quite a bit  
22 of information that was presented here on environment,  
23 especially avian mortality. And I'm wondering, there  
24 seems to be somewhat of a paradox when I look at  
25 information that's presented such as it's on -- and no

1 need to turn to this, but on the Applicant's page 14-13  
2 under State Listed Species it makes the statement that's  
3 somewhat reflected throughout your testimony and  
4 throughout so much testimony we've heard on other  
5 projects and things of that nature when it states that,  
6 "Only one individual was observed during 221 hours of  
7 systematic avian study, suggesting that use of the  
8 project by this species and associated risk of impact is  
9 very low."

10 But isn't that somewhat of a paradox? We know  
11 that this is a rare species so shouldn't we -- isn't it  
12 intuitive that there would be very few of them observed?  
13 And shouldn't it tell us that in relationship to  
14 populations, especially if you're looking at a red-winged  
15 blackbird or a starling, there's thousands and thousands  
16 of them, and there's certainly more likely to be a higher  
17 mortality there than there would be with a species that  
18 is -- that is endangered.

19 So when you look at the population, 1,000  
20 blackbirds, a variety of them obviously but losing 1,000  
21 blackbirds as compared to losing a peregrine falcon, it  
22 shouldn't be just by numbers. It should be by  
23 percentage.

24 So when we look at it from the standpoint, oh,  
25 there's only one, isn't that one perhaps even more



1 important than the hundreds and perhaps thousands of  
2 another species?

3 THE WITNESS: I think you're on the right track  
4 in thinking in terms of relative impact. So a large  
5 number of birds could be impacted in a large population  
6 and have a similar effect as one individual being  
7 impacted in a small population.

8 The species that you're referring to, peregrine  
9 falcon, that would be -- it is a state-listed species.  
10 If there was nesting habitat in the area, which there's  
11 not, we would certainly consider that because the impact  
12 risk would be much more likely. But to document one  
13 peregrine over the course of two winters and springs of  
14 study suggests the likelihood of affecting that  
15 individual that was observed or the individuals in the  
16 local area population or regional population is very  
17 unlikely.

18 And to address your question, should take occur,  
19 meaning a collision mortality, I mean, I would still view  
20 that, one, a very rare event likely to happen often  
21 during the operation of the project but, two, not a  
22 significant impact to the population.

23 The peregrine falcon is a fairly remarkable  
24 success story that was once listed on the Federal  
25 Endangered Species Act, has since been delisted,

1 primarily because of its return in numbers -- well,  
2 actually specifically because of that.

3 So it's become fairly common in some parts of  
4 its range, particularly in urban settings where there's a  
5 lot of artificial nesting habitat created by buildings.

6 COMMISSIONER HANSON: Thank you very much for  
7 the answer.

8 I probably want to refine that a little bit  
9 more, but you did a great segue in relationship to the  
10 peregrine falcon and the positive actions that were  
11 taken. We even did that in Sioux Falls to introduce and  
12 to help the peregrine falcon recover.

13 And that's another question I wanted to ask so I  
14 appreciate that. Could the Applicant not take -- I  
15 should rephrase that in a positive fashion.

16 Could the Applicant take actions to help, as has  
17 been done with what you just explained with the peregrine  
18 falcon, in the area to help assure that certain species  
19 have a better opportunity for recovery?

20 And I say that --

21 THE WITNESS: Sure.

22 COMMISSIONER HANSON: -- knowing that the  
23 information that you provided to us along with what the  
24 Applicant has provided to us shows they're following  
25 through on all of those things, that they're doing an

1 admirable job on protecting and attempting to mitigate  
2 challenges that occur for mortality.

3 But on the other side of that, in addition to  
4 taking all of these precautions, can something positive  
5 be done to help assure the viability of the species?

6 THE WITNESS: The typical mechanism for that is  
7 through a state or federal permitting process. So where  
8 we go -- develop a project and we actually anticipate  
9 specific impact or take of an individual species that is  
10 protected by regulation. Often that regulation requires  
11 us to offset that effect.

12 In the case of the peregrine falcon or grassland  
13 habitat or grassland bird species, there's no mechanism  
14 to do that in South Dakota, no regulatory or permitting  
15 mechanism to do that.

16 COMMISSIONER HANSON: Correct. However, there's  
17 nothing preventing the Applicant from doing it.

18 THE WITNESS: That is correct.

19 COMMISSIONER HANSON: Okay. Thank you very  
20 much. I really appreciate your testimony and the  
21 information that you provided to us.

22 Thank you.

23 THE WITNESS: You're welcome.

24 MS. CREMER: Dakota Range, did you have any  
25 redirect?

1 MS. SMITH: I do not.

2 MS. CREMER: And, Staff, do you have any recross  
3 based on Commission questions?

4 MS. REISS: No, thank you.

5 MS. CREMER: Ms. Mogen.

6 MS. MOGEN: I have some on grasslands.

7 REXCROSS-EXAMINATION

8 BY MS. MOGEN:

9 Q. In healthy grasslands what is the depth of roots to  
10 grasses?

11 A. I don't know the answer to that.

12 Q. Are you aware of soil -- the benefits of soil carbon  
13 sequestration through grasslands?

14 A. To some extent but would not consider myself an  
15 expert or overly knowledgeable on that topic.

16 Q. Can you speak a little bit to it for somebody who  
17 hasn't heard anything about it?

18 MS. SMITH: Object that this is outside the  
19 scope of his testimony.

20 MS. CREMER: I would sustain that. This part is  
21 only as to Commission questions that were raised for  
22 recross.

23 So you can ask your next question if you have  
24 one.

25 MS. MOGEN: I'm finished. Thank you.

1 MS. CREMER: Ms. Kaaz.

2 MS. KAAZ: No questions.

3 MS. SMITH: I don't have anything further.

4 MS. CREMER: All right. With that, you may step  
5 down, and you may call your next witness.

6 THE WITNESS: Thank you.

7 (The witness is excused.)

8 MS. SMITH: Certainly. We'd call Brenna  
9 Gunderson.

10 Brenna Gunderson,  
11 called as a witness, being first duly sworn in the above  
12 cause, testified under oath as follows:

13 MS. SMITH: So sorry for the delay. I just  
14 wanted to hand that out before we started. And I may not  
15 have kept one for myself. So I may have to get one in a  
16 second. Thank you.

17 Did you find it?

18 THE WITNESS: I did not.

19 DIRECT EXAMINATION

20 BY MS. SMITH:

21 Q. Ms. Gunderson, can you please introduce yourself to  
22 the Commission.

23 A. Sure. My name is Brenna Gunderson, and I'm a  
24 Director of Project Development with Apex Clean Energy.

25 Q. And I know you were looking for your prefiled

1 testimony so we're just going to get you the right binder  
2 before we start. I think it's hard when we have two.

3 Did you file Prefiled Direct Testimony with the  
4 Application?

5 MS. CREMER: I'm going to interrupt for a  
6 minute.

7 (Discussion off the record.)

8 Q. I think you were saying no, you didn't but --

9 A. I did not, but I'm the backup for Mark Mauersberger  
10 who did.

11 Q. And did you file Prefiled Rebuttal Testimony on  
12 May 21, 2018?

13 A. Yes.

14 Q. And is your testimony A15 and Exhibits A15-1 through  
15 A15-4?

16 A. Yes.

17 Q. And can you give a brief description of what is  
18 covered in your testimony?

19 A. We are asking that the permit allow us to shift a  
20 turbine within 500 feet as long as we maintain the  
21 setback requirements as well as avoid other areas that we  
22 have committed to avoid and meet sound and shadow flicker  
23 criteria.

24 Q. And your proposal is provided in A15-2; is that  
25 correct?

1 A. Yes.

2 Q. And do you have any additions or corrections to your  
3 prefiled testimony?

4 A. I think the correction would be the -- there were  
5 five locations that we believed were -- at the time that  
6 we needed to make an arrangement or change due to SWO  
7 reviews of the site. And that number now has shifted.  
8 It's changed.

9 And the reason for that, two of the five sites were  
10 cleared by SWO. Two of the sites would require a shift  
11 in order to avoid them. And the one we chose to use an  
12 alternate turbine location.

13 Q. And then the final one, did you also remove that? I  
14 think there were five you mentioned. Was there another  
15 one that was removed as well?

16 A. We did remove another one as well. No. 49.

17 Q. And let's just walk through. We have some exhibits  
18 that were filed as supplements to your testimony, and  
19 we're going to start with A15-3, which are the  
20 constraints maps.

21 Can you please describe what are shown in these  
22 exhibits?

23 A. Sure. First you'll see a solid black line, which is  
24 the boundary of the project, and within that it is  
25 showing turbine locations using different colored dots.

1 So you have the blue dots which we're looking at as  
2 potentially primary turbine locations, and the yellow  
3 dots are alternate turbine locations.

4 You will also see there's a gray-blue color, and  
5 that is depicting required setbacks. And there is a  
6 peachish color and that indicates the environmental  
7 avoidance areas. And if you look on the bottom right,  
8 you will see a key that will indicate what all the  
9 different setbacks are.

10 Q. And then accompanying the overview map, does it also  
11 have kind of callouts of different segments of the  
12 project?

13 A. It does. On other pages we broke it down into  
14 quadrants as requested by Staff to get a closer look at  
15 different areas of the project. And then we went on  
16 further to show more specifically the areas where we  
17 would like to shift a turbine.

18 Q. And if you could, let's walk through. There's four  
19 maps that are the blowup maps, I'm going to call them,  
20 with the close-ups of four proposed turbine shifts.

21 MS. SMITH: And just we are not going to refer  
22 to turbine numbers. We're going to refer to turbine  
23 distances because we are sensitive to disclosing  
24 potential tribal resources. And so to avoid that we will  
25 refer to the shift distance.



1           The nonconfidential version does not include --  
2     it includes an example. It does not include all of them  
3     so that we could avoid having to have any issues at the  
4     hearing.

5           So I'm just laying the groundwork. Sorry for  
6     that long discussion.

7     Q.    But let's walk through the first callout that is in  
8     Exhibit A15-4. And I believe it is the one that says  
9     it's 115.7 feet.

10    A.    Yes. This is a shift that we're requesting. You  
11    have the red dot and a blue dot. So when we filed the  
12    Application it was at the location -- the turbine was at  
13    the red dot location, and now we're looking to shift it  
14    to where the blue dot is located.

15    Q.    And what is the reason for the request?

16           MS. REISS: Can we clarify, is this Exhibit 15-3  
17    or 15-4?

18           MS. SMITH: This is 15-4. I'm pretty sure.

19           Oh, no. I apologize. You're correct. It's  
20    15-3. Sorry about that.

21           MS. CREMER: Okay. I couldn't figure out why I  
22    couldn't find it either.

23           MS. SMITH: Thank you for calling it out.

24           MS. REISS: Sorry for the interruption.

25    Q.    So we are on the callout page on 15-3, a 115.7 foot

1 shift. And do you know the reason for that shift -- or  
2 why you're proposing that shift?

3 A. Yes.

4 Q. Do you want to tell us? Is this a tribal resource  
5 shift?

6 A. Yes.

7 Q. Is that why you're hesitant to say?

8 A. Yes.

9 Q. Okay. That's why we're not referring to turbine  
10 numbers. So it's okay to reference the reason. You just  
11 shouldn't reference the turbine number.

12 Does that make sense?

13 A. Okay. Because it's not numbered on there?

14 Q. So I apologize. Let's move to the second one.  
15 360.4 is the shift distance.

16 A. This was by the request of a landowner who preferred  
17 to have the turbine located between his two fields as  
18 opposed to where it was. You'll see the red dot was the  
19 original location, and he requested that we move it  
20 south. You can see in the picture where it's right on  
21 the splits between the way he uses his field.

22 Q. And then if you'll turn to the third map, which is a  
23 distance of 420.7?

24 A. Yes. This was a request by SWO, a tribal request.

25 Q. And is this the one that's now being removed?

1 A. Yes. This one we are now removing -- we would like  
2 to remove it altogether because after further analysis,  
3 it would bring us over the 30 hours of shadow flicker.

4 Q. At a nonparticipating?

5 A. At a nonparticipating residence.

6 Q. And then if we look at the last one, it's a  
7 13.9-foot shift?

8 A. Yes. This is an alternate turbine location. It's  
9 moved 13.9 feet away from the hedge row shown in the  
10 picture.

11 Q. And as far as the request for 500 feet, would the  
12 company be open to a commitment of 325 feet going forward  
13 if these shifts that are currently over 325 feet were  
14 approved as part of the permit?

15 A. Yes.

16 Q. So then if you can look at exhibit -- this time  
17 actually 15-4. And I know I'm referring to the right one  
18 this time.

19 Can you explain what's shown in 15-4?

20 A. 15-4, this is just another way of showing the  
21 project with the boundary and all of the facilities. And  
22 on this I think it would be just important to point out  
23 that we now have a better understanding of where the  
24 interconnect switchyard will be located.

25 And if you look at the legend on the left, you'll

1 see it's depicted by an orange box.

2 Q. And -- oh, I'm sorry. Go ahead.

3 A. Right next to it would be the project substation,  
4 which is a small yellow box, as well as our operations  
5 and maintenance facility and lay down yard. We are still  
6 currently working with the landowner to finalize  
7 agreements for the project substation, the lay down yard,  
8 and the O&M facility.

9 Q. Have you spoken with those landowners verbally to  
10 see if they're interested in hosting those facilities?

11 A. Yes, we have, and they are interested.

12 Q. And on this map that's shown, 15-4, are the blacked  
13 out circles turbines that have been removed?

14 A. I'm not seeing those on this one, but they were  
15 on -- I believe the other one they were shown as blacked  
16 out.

17 Q. I'll just point you to an example. I think like A19  
18 over on the right-hand side of the map, if you're looking  
19 at it not upsidedown like me, is a blacked out circle?

20 COMMISSIONER NELSON: No.

21 MS. CREMER: Ms. Smith, I don't believe the map  
22 we're looking at has blacked dots.

23 MS. SMITH: Mine does. So I'm curious.

24 COMMISSIONER NELSON: You're on 3.

25 MS. SMITH: I said I knew I was right, and I was

1 wrong. So I apologize.

2 Q. Yeah. So going back to -- let's go back to 15-3  
3 then. And just to summarize, are there eight turbines  
4 that have been removed as shown on 15-3?

5 A. Yes.

6 Q. And then I believe your testimony was that two  
7 additional turbines have been removed also?

8 A. Right. One would be the one we spoke about, which  
9 was already on the callout. The other would be  
10 turbine 49.

11 Q. And then you have a few turbine locations that were  
12 alternates that are now going to be prime areas; is that  
13 correct?

14 A. Correct.

15 Q. And regarding -- we've spoken about four turbines in  
16 proximity to Ms. Kaaz's residence. Will all four of  
17 those turbines be constructed?

18 A. We will commit to only constructing three out of the  
19 four.

20 Q. And currently A26 is the alternate?

21 A. Correct.

22 Q. And now I'm going to direct you to what we've now  
23 marked as A21, entitled Proposed Decommissioning  
24 Condition that was just handed out.

25 Can you summarize what this document describes as

1 far as a proposed condition?

2 A. Sure. If Xcel Energy owns Dakota Range, they could  
3 file documentation indicating that they would be  
4 financially responsible for Dakota Range, and they  
5 would then submit an updated decommissioning plan and  
6 cost estimate at that time.

7 The Commission would then determine the financial  
8 security that would be required and the type of form as  
9 well as the amount. In the event that Xcel Energy does  
10 not own Dakota Range, then the Applicant can file a  
11 decommissioning plan and a cost estimate as well prior to  
12 the operation of the project and then the Commission  
13 would determine the form the amount and the timing of  
14 that financial security.

15 Q. And with respect to if Xcel Energy were to purchase  
16 the project and file the documentation indicating it's  
17 financially responsible, the proposal is that  
18 decommissioning financial security would be reviewed at  
19 year 10 of operation?

20 A. Year 10 of operation.

21 Q. And if it were not, either that documentation  
22 weren't filed or it were not Xcel that owns the project,  
23 the proposals and updated plan would be provided prior --  
24 60 days prior to operation?

25 A. Operation, correct.

1 Q. And as far as discussion of the specifics of the  
2 decommissioning financial assurance, why are you  
3 proposing holding off on any specifics at this time?

4 A. We think that it would be better for the owner to be  
5 able to understand and get to the Commission with that  
6 information, depending on who that owner is.

7 Q. As they may have -- might the owner have differences  
8 of opinion on what form of financial security would be  
9 requested?

10 A. Yep. Correct. Correct.

11 Q. Other than the updates that you've just provided in  
12 your testimony, do you have any changes to the testimony  
13 that you provided previously?

14 A. No.

15 MS. SMITH: I would offer Ms. Gunderson for  
16 cross-examination.

17 MS. CREMER: Did you want to offer A21?

18 MS. SMITH: I would offer A21 as well.

19 MS. CREMER: Staff, do you have any objection?

20 MS. REISS: No objection.

21 MS. CREMER: Ms. Kaaz, do you have any  
22 objection?

23 MS. KAAZ: No objection.

24 MS. CREMER: And Ms. Mogen.

25 MS. MOGEN: No objection.

1 MS. CREMER: Thank you. It is admitted.

2 And, Staff, you may cross-examine.

3 MS. REISS: Staff has no questions at this time.

4 Thank you.

5 MS. CREMER: Thank you.

6 Ms. Mogen, do you have any questions?

7 MS. MOGEN: I do.

8 CROSS-EXAMINATION

9 BY MS. MOGEN:

10 Q. Will the turbines in this project have serrated  
11 trailing edge blades?

12 MS. SMITH: I would object. That's outside the  
13 scope of Ms. Gunderson's testimony.

14 MS. CREMER: I believe that is outside of what  
15 her testimony is.

16 Do you have another question? I would sustain  
17 that.

18 MS. MOGEN: One moment.

19 What witness should I ask that question to?

20 MS. SMITH: I don't know. It wasn't in the  
21 scope of anyone's testimony, that I recall. So at this  
22 point I'm not sure that it was covered by anyone  
23 specifically.

24 We can look at the record and see if there's  
25 something that would answer your question.



1 MS. MOGEN: It is in Ryan O'Neal's report.

2 MS. SMITH: Would you mind if we take this off  
3 line at a break? I'd be happy to talk with you to figure  
4 out if there's a way to answer that question.

5 MS. CREMER: I think we could do that, and they  
6 can either recall him or --

7 MS. MOGEN: Okay. Thank you.

8 MS. CREMER: Did you have more questions then?

9 MS. MOGEN: Oh. Can I do that after the break?

10 MS. CREMER: Yes. I don't know that we were  
11 going to take the -- did you want to take the break now,  
12 Ms. Smith, or --

13 MS. SMITH: I'm sorry?

14 MS. CREMER: Did you need to take the break now,  
15 or did you mean in a bit and we'll finish up?

16 MS. SMITH: My thought was we would go ahead and  
17 finish with Ms. Gunderson's testimony. I apologize. And  
18 then we could address the question posed by Ms. Mogen.

19 MS. CREMER: Yes. So did you have any other  
20 questions for her?

21 MS. MOGEN: I do. One moment.

22 Q. (BY MS. MOGEN) What report -- how did you derive  
23 that a turbine had over 30 hours shadow flicker on a  
24 resident?

25 A. We have a third-party consultant, Epsilon, that did

1 a study for us.

2 Q. Will he be here to answer questions?

3 A. Yes. He is here.

4 MS. MOGEN: Okay. I'm finished. Thank you.

5 MS. SMITH: And may I ask a question? Is that  
6 who you were referencing as Rob O'Neal? You said Ryan  
7 and, sorry, but we couldn't find a Ryan.

8 MS. MOGEN: Sorry. Just one moment. Robert.

9 MS. SMITH: Okay. That clarifies it for us.  
10 Mr. O'Neal will be testifying next.

11 MS. CREMER: Ms. Kaaz, did you have any  
12 questions?

13 CROSS-EXAMINATION

14 BY MS. KAAZ:

15 Q. Are you the person I talk to as to why they're using  
16 A26? And which turbine is that using an alternate for?

17 A. I'm sorry. I'm not sure I understand. At this time  
18 A26 is an alternate turbine location.

19 Q. Okay. So are you using A26?

20 A. We don't have plans to at this time.

21 Q. Oh.

22 MS. KAAZ: No other questions.

23 MS. CREMER: Thank you. That would take us to  
24 Commission questions. And I believe we start with  
25 Commissioner -- or Chair Fiegen.

1           CHAIRWOMAN FIEGEN: Thank you for coming,  
2 Ms. Gunderson.

3           The Proposed Decommissioning Condition, were you  
4 involved in drafting that?

5           THE WITNESS: Yes.

6           CHAIRWOMAN FIEGEN: Okay. And did you work with  
7 Staff or Intervenors or anyone else in drafting this?

8           THE WITNESS: I worked with my attorney.

9           CHAIRWOMAN FIEGEN: Okay. So it certainly as  
10 part of the discussion we had yesterday is who's the  
11 owner?

12          THE WITNESS: Correct.

13          CHAIRWOMAN FIEGEN: And if Xcel Energy is the  
14 owner, that's where the decommissioning is, in my view,  
15 of course, and everybody else's view would be -- and I  
16 certainly appreciate you bringing this condition so we  
17 can actually use this as a template if we so choose.

18          Thank you.

19          THE WITNESS: Uh-huh.

20          MS. CREMER: Commissioner Hanson.

21          COMMISSIONER HANSON: Good morning.

22          THE WITNESS: Good morning.

23          COMMISSIONER HANSON: I think I heard that you  
24 brought some good news. Did we switch from a 500-foot  
25 radius to a 325-foot radius?

1 THE WITNESS: Yes. We'd like the two shifts --  
2 or I should say the one that's beyond 325 to be approved.

3 COMMISSIONER HANSON: So are all of these  
4 locations now 325 foot as opposed to a 500-foot  
5 recommendation?

6 THE WITNESS: Except the one that was 360.

7 COMMISSIONER HANSON: Okay. I'm going to  
8 piggyback just a little bit on Mrs. Kaaz's question  
9 because I think she's concerned about under what  
10 circumstance an A26 site might be used.

11 So I ask that question of you.

12 THE WITNESS: Alternate turbine locations are  
13 available should we not be able to use one of the primary  
14 turbine locations. And so we would commit to only having  
15 three primary turbines around Kaaz's home. Right now A26  
16 is an alternate.

17 So should we want to employ 67, 68, or 69 -- I'm  
18 sorry. Should we not want to use 67, 68, or 69, we may  
19 remove one of them and use A26 in its place.

20 COMMISSIONER HANSON: Do you have knowledge as  
21 to the likelihood of that taking place?

22 THE WITNESS: I don't think it's very likely at  
23 this time.

24 COMMISSIONER HANSON: Okay.

25 THE WITNESS: But it's mostly during --

1 potentially construction activities or if another  
2 microwave beam path tower was installed and it happened  
3 to -- the path of that happened to be in this area, those  
4 would be, I think, a couple of reasons that may come up  
5 that we don't know about right now that could cause us to  
6 need to shift.

7 COMMISSIONER HANSON: Okay. Thank you. I was  
8 just trying to get some piece of mind here. Appreciate  
9 that.

10 I'll see if I have any other questions that I've  
11 written down.

12 In regards to the 325 foot previous, your  
13 testimony shows that Apex has been involved in 2,200  
14 megawatts of wind development in the last nine years. Do  
15 you have an idea of what the radius has been on those  
16 facilities?

17 THE WITNESS: Of shifts?

18 COMMISSIONER HANSON: Correct.

19 THE WITNESS: Not all of them. We don't have a  
20 repository database with that specific information but I  
21 have been involved with projects and I think every  
22 project I have been involved in has required shifts in  
23 turbine locations.

24 COMMISSIONER HANSON: Do you know approximately  
25 what the typical footage is?

1           THE WITNESS: It does vary based on, you know --  
2 a project I worked on in northwest Iowa there were  
3 microwave beam path towers installed, and -- after we had  
4 done our report and, therefore, we worked very closely  
5 with them to make sure that the turbine and its blades  
6 were out of that path.

7           And in some cases it could be several hundred  
8 feet that it would have to move. Could be 50 feet. It  
9 would just depend on where these towers were lining up  
10 and what that would be.

11          COMMISSIONER HANSON: In states where you have  
12 development, have there been orders similar to siting  
13 orders from PSCs, PUCs?

14          THE WITNESS: Most of the areas where I've  
15 developed projects that are currently operating have been  
16 where there's local permitting. And so it does vary, but  
17 it's typically been either within the parcel that it was  
18 permitted or a specific distance.

19          In another case it was no -- more than a  
20 specific distance unless you provide information to us  
21 that will help us determine if it's something that we  
22 administratively can do or if you would have to go back  
23 through and reapply through the Conditional Use Permit  
24 process.

25          COMMISSIONER HANSON: So are you testifying that

1 in different states the orders did not have a distance  
2 requirement similar to the one that we're discussing  
3 here?

4 THE WITNESS: Different than what we're --  
5 different than the 500 feet --

6 COMMISSIONER HANSON: 320 -- forgive me for  
7 talking over you.

8 That's correct. We're discussing a radius by  
9 which there's flexibility. And that's what I'm curious  
10 about from the standpoint of other states. If they have  
11 orders, what is typically the flexibility that they have  
12 in their orders?

13 THE WITNESS: It can vary even by county, not  
14 just state, in some states. And so in some it could be  
15 as big as the parcel that was permitted would be. We  
16 would have that flexibility to shift within that parcel.  
17 So it could be beyond 500 feet.

18 COMMISSIONER HANSON: Forgive me again. I'm  
19 searching for an answer to my question on specifically  
20 orders from a state.

21 I understand that there's local setbacks and  
22 local flexibility apparently in other areas, but do other  
23 states have in their orders a footage flexibility?

24 THE WITNESS: I believe that there are. I  
25 believe that Minnesota is one that has some flexibility,

1 but I don't have direct knowledge of that.

2 COMMISSIONER HANSON: If you don't -- if you  
3 don't know, you don't know. Okay.

4 Thank you very much. Appreciate it. Those are  
5 all the questions.

6 MS. CREMER: Commissioner Nelson.

7 COMMISSIONER NELSON: Thank you for being here,  
8 and, very specifically, thank you for A15-3 and A15-4.  
9 Those maps were very, very helpful to me.

10 A couple of questions. Relating to A21, the  
11 decommissioning condition, I appreciate you taking a good  
12 stab at this and trying to find a creative answer to this  
13 very important question.

14 Assuming that Xcel buys the project, I  
15 understand what this would require. What would this  
16 require if Xcel then subsequently sells the project to  
17 someone else prior to decommissioning?

18 THE WITNESS: I believe that should they sell to  
19 somebody else, they would be selling -- it would be part  
20 of what the commitment is that they have made here to the  
21 PUC.

22 COMMISSIONER NELSON: Well, and obviously that's  
23 part of our struggle. Commitments are one thing, but  
24 actually having cash to do the deal is something else.  
25 And that's my concern.



1 I think through all of the questioning you've  
2 answered most of my questions as it related to A15-3. I  
3 think the only one that's not been answered is which  
4 alternative sites are now planned to be used?

5 Can you ID those for us, please.

6 THE WITNESS: I have it written in my notes.  
7 I'm not sure that I remember. I believe that there are  
8 four or five that are now planned to be used.

9 COMMISSIONER NELSON: Yes. And I need to know  
10 the numbers, and so if you need to consult notes, that's  
11 fine.

12 MS. SMITH: May we have just a second? I have  
13 one other question that I want to ask before she went up  
14 that we may be able to address a potential question on  
15 the decommissioning? Is that all right?

16 Can we go off the record just a few minutes?

17 MS. CREMER: Yes.

18 MS. SMITH: Thank you.

19 (Discussion off the record.)

20 THE WITNESS: I have the information. Turbine  
21 A15, A16, A11, and A24.

22 COMMISSIONER NELSON: Thank you. I think that's  
23 all the questions I've got.

24 MR. RISLOV: If I may, did you consult with Xcel  
25 before drafting that condition?

1 THE WITNESS: Yes.

2 MR. RISLOV: And it's a bit curious because this  
3 Commission does have routine regulatory responsibility  
4 over all decommissioning of generation plants of  
5 regulated utilities.

6 So I was curious if for some reason they  
7 indicated why they should be any different?

8 THE WITNESS: The information that I received  
9 from Xcel was that this was consistent and that they were  
10 fine with the provision that we showed them.

11 MR. RISLOV: Thank you.

12 MS. CREMER: Dakota Range, did you have any  
13 redirect?

14 MS. SMITH: I do have --

15 REDIRECT EXAMINATION

16 BY MS. SMITH:

17 Q. In response to the comments, concern that  
18 potentially the project could be sold, would you -- would  
19 Dakota Range be okay with adding to the condition that if  
20 the project were sold, decommissioning, financial  
21 security, would have to be reexamined at that time?

22 A. Yes.

23 Q. And we would -- we can word it more appropriately,  
24 but it would be along those lines; is that correct?

25 A. Yes.

1 Q. And I think Mr. Rislov asked my other question about  
2 consulting with Xcel, but you did contact them. They  
3 have approved what you have shown them?

4 A. Yes.

5 MS. SMITH: I have no further questions.

6 MS. CREMER: Thank you.

7 Staff, did you have any recross?

8 MS. REISS: Yes. Just briefly, please.

9 REXCROSS-EXAMINATION

10 BY MS. REISS:

11 Q. Ms. Gunderson, is it your understanding that if this  
12 project were sold, Xcel would need to come before the  
13 Commission for approval for a transfer of the permit?

14 MS. SMITH: That calls for a legal conclusion.  
15 I mean, we can stipulate that if -- it really does call  
16 for a legal conclusion so I guess that would be my  
17 objection.

18 MS. REISS: That's fine.

19 Q. Would you be able to clarify which turbines are  
20 being removed and moved?

21 A. Let's see. Yes.

22 On Exhibit A15- I believe it's 3, there are  
23 black-grayish dots, and it's indicating the turbines that  
24 we are planning to remove.

25 What's not shown with the black dot that we want to

1 remove now is 60A, but it would be A1, A2, A9, 24, 25,  
2 A19, A20, and A21. And I'm sorry. 49 as well. That's  
3 another that is not shown with a black dot.

4 MS. SMITH: If it would be helpful, we'd be  
5 happy to provide an updated map and a summary sheet  
6 listing that. A couple of the changes didn't come up,  
7 obviously, until after we filed this.

8 MS. REISS: Yes. That would be helpful. Thank  
9 you.

10 Staff has nothing further.

11 MS. CREMER: Thank you.

12 Ms. Mogen, did you have any questions of this  
13 witness?

14 MS. MOGEN: No questions. Thank you.

15 MS. CREMER: And Ms. Kaaz.

16 MS. KAAZ: No questions.

17 MS. CREMER: Thank you.

18 With that, I believe you are done.

19 (The witness is excused.)

20 MS. SMITH: We have one more.

21 MS. CREMER: Okay. Go ahead.

22 MS. SMITH: So we would call Robert O'Neal.

23 MS. CREMER: Okay. I thought you meant you have  
24 one more question for her.

25 MS. SMITH: I apologize.

1 MS. CREMER: So in that case it's 11:30, and we  
2 should probably take lunch now. So 1:15 we will  
3 reconvene.

4 I'm wrong on that. 1 o'clock. Thank you.

5 (A short recess is taken.)

6 MS. CREMER: I'll call this hearing back into  
7 session.

8 Dakota Range, you may call your next witness.

9 MS. SMITH: We'd call Robert O'Neal.

10 Robert O'Neal,

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

13 DIRECT EXAMINATION

14 BY MS. SMITH:

15 Q. Mr. O'Neal, could you please introduce yourself to  
16 the Commission.

17 A. Sure. My name is Robert O'Neal. I'm a principal at  
18 Epsilon Associates. I've got a little over 30 years  
19 experience doing community sound level impact studies.  
20 And I run the acoustics group at our firm, and I  
21 sponsored the sound and the shadow flicker studies in the  
22 Application.

23 Q. And with respect to those studies and your  
24 testimony, are those found in Exhibits A5 and A5-1 with  
25 the studies in the Application. It will be in Volume 1.

1 It's hard to find them all.

2 A. I'm sorry. Could you say the numbers again?

3 Q. Sure. A5 and A5-1.

4 A. Right at the very back.

5 Yes.

6 Q. And can you just give an overview of your testimony,  
7 both your direct and your rebuttal?

8 A. Sure. So the -- my Direct Testimony, as I said, I  
9 sponsored the sound and the flicker studies. In broad  
10 terms, we studied potential sound level impacts of  
11 constructing the project, taking information of -- from  
12 the layout and all the engineering parameters and  
13 calculating an expected worst-case future sound levels at  
14 receptors throughout the project area. So calculating  
15 various sound levels.

16 And the same was true for shadow flicker, using the  
17 same layouts, same turbines, some engineering  
18 information, and some meteorological data. There's  
19 software program that looks at the geometry throughout of  
20 the course of the year is able to calculate potential  
21 shadow flicker, hours, minutes, at different locations.

22 Q. And with respect to sound to start with, is it your  
23 understanding that Dakota Range and the PUC Staff have  
24 come to an agreement on a proposed condition that has  
25 been presented in Exhibit A18?

1 A. That's my understanding, yes.

2 Q. And just for reference, that's provision 27 of A18.

3 And with respect to that provision, based on the  
4 modeling that you've conducted for the project, will the  
5 project comply with the requirement set forth in  
6 Condition 27?

7 A. Yes, it will.

8 Q. And regarding the Grant County and Codington County  
9 sound or noise requirements, will the project also comply  
10 with those requirements as well?

11 A. It will comply with both of those.

12 Q. And with respect to sound and shadow flicker, the  
13 commitment was made -- is it your understanding that the  
14 commitment was made by Dakota Range to remain at 30 hours  
15 or less at nonparticipating residences?

16 A. That's my understanding of the commitment, yes.

17 Q. And based on your modeling that you conducted to  
18 date, will that commitment be satisfied?

19 A. It will be satisfied, yes.

20 Q. And that is in part based on -- I believe you were  
21 present when Ms. Gunderson testified; is that correct?

22 A. That is correct.

23 Q. And she noted there were two turbines that were  
24 removed from the layout due to shadow flicker concerns.  
25 Did you hear that?

1 A. That's right.

2 Q. And so with those two particular turbines removed,  
3 does that address the issue of any modeled levels of  
4 shadow flicker being above 30 hours per year at a  
5 nonparticipating residence?

6 A. Right. That addresses that.

7 Q. And Ms. Gunderson also spoke regarding four  
8 alternate turbines that would be activated. Based on the  
9 modeling that you conducted, what is the result with  
10 respect to those activated turbines?

11 Will they also meet the applicable requirements?

12 A. Sure. Using those alternate locations will not  
13 change my conclusions.

14 Q. And your conclude was that all of the  
15 nonparticipating residences would be 30 hours or less?

16 A. That's right.

17 Q. And there was a question that was asked by Ms. Mogen  
18 regarding serrated trailing edges in your report. Would  
19 you please explain what those are and if they're being  
20 used for the project.

21 A. Absolutely.

22 So STE, or serrated trailing edges, is a component  
23 that manufacturers can include in their turbine blades,  
24 and what that does is reduces some of the turbulence  
25 coming off the blades and, therefore, reduces sound



1 levels.

2 So Dakota Range has committed to using that STE  
3 technology in this project, and our report assumes that  
4 commitment.

5 Q. Other than what we talked about today, if I asked  
6 you the questions in your testimony, would they remain  
7 the same?

8 A. Yes, they would.

9 MS. SMITH: I have no further questions.

10 MS. CREMER: Thank you.

11 Staff.

12 MS. EDWARDS: Nothing.

13 MS. CREMER: Ms. Kaaz, did you have any  
14 questions?

15 MS. KAAZ: No, I don't.

16 MS. CREMER: Thank you.

17 Ms. Mogen?

18 MS. MOGEN: Yes, I do.

19 CROSS-EXAMINATION

20 BY MS. MOGEN:

21 Q. Mr. O'Neal, in your sound study on page 5-1, can you  
22 turn to that?

23 A. Okay. I'll need a little help understanding which  
24 exhibit that is.

25 MS. SMITH: I believe that is in the

1 Application, and it is either Appendix P.

2 MS. MOGEN: Sorry.

3 MS. SMITH: That's all right. And it is one of  
4 the appendices. I believe it is --

5 MS. MOGEN: I thought it was Appendix I.

6 MS. SMITH: It may be Appendix I. You may very  
7 well be correct.

8 MS. MOGEN: Okay.

9 A. Okay. I'm on page 5-1 of the sound study.

10 Q. Okay. In the middle of the first paragraph it  
11 starts, "A technical report."

12 Can you read that sentence, please.

13 A. "A technical report from Vestas was provided by Apex  
14 which documented the expected sound power levels  
15 associated with the Vestas V136-4.2 wind turbine."

16 Q. Okay. Can you turn the page to 5-2.

17 A. Okay.

18 Q. On the bottom of the page there is the sound --  
19 source sound levels?

20 A. Yes. I see that.

21 Q. Can you read the first sentence?

22 A. "Octave band sound power levels for the Vestas  
23 V136-4.2 wind turbines calculated from the provided third  
24 octave band levels in technical report were input to the  
25 model."

1 Q. So you received technical reports from Vestas?

2 A. It's the same technical report that was referenced  
3 on the previous page. But yes.

4 Q. Okay. And who provided those to you?

5 A. Apex provided those.

6 Q. Okay. Then can we move on to this report was  
7 provided -- you did the report or supervised it?

8 A. The sound study?

9 Q. Yes.

10 A. Yes. It was conducted under my supervision.

11 Q. On page 5-2 under Modeling Locations it starts with,  
12 "These sensitive receptors were modeled." Do you see  
13 that?

14 It's in the middle of that paragraph of Modeling  
15 Locations.

16 A. Yes. I see that.

17 Q. Can you finish that sentence?

18 A. "These sensitive receptors were modeled as discrete  
19 points at a height of 1.5 meters above ground level to  
20 mimic the ears of a typical standing person."

21 Q. Okay. And is 1.5 meters approximately 4.2 feet --  
22 or 4.92 feet?

23 A. I don't have my calculator handy, but that's  
24 approximate.

25 Q. That's what Google told me so --

1 A. That's approximately correct, yes.

2 Q. All right. What is the height of a nacelle?

3 A. The nacelle is at 82 meters.

4 Q. And how many feet is that?

5 A. I would need a calculator.

6 Q. 296.

7 What is the dBA? I had asked this question in my  
8 Data Request, but I didn't make it clear enough. What is  
9 the dBA noise level at the nacelle?

10 A. So to answer that question, it's -- what is provided  
11 by a manufacturer, which is required by standard, is  
12 what's called the sound power level. So it's not what's  
13 at the nacelle, what's at the ground. It's a --

14 Q. Please answer my question.

15 A. It's a --

16 Q. Please answer my question.

17 MS. SMITH: Excuse me. He's trying to answer  
18 your question.

19 Q. I would like to know just the dBA at the nacelle.

20 A. I don't know what that number is.

21 Q. Okay. I have that for you. It is in --

22 MS. SMITH: I'm going to object. Any statements  
23 of what the answer is, that's testimony.

24 MS. MOGEN: It's provided in the --

25 Q. I'm going to find it for you in the document.

1 Exhibit A2-7. Page 12.

2 A. I'm at that page now.

3 Q. No. 2. Can you read that, please. You can just  
4 read the first sentence.

5 A. "The sound power level of a typical modern utility  
6 scale wind turbine is on the order of 103 dBA but can be  
7 somewhat higher or lower depending on the details of the  
8 design and the rated power of the turbine."

9 Q. Okay. Thank you. How big is a nacelle?

10 A. You mean what are the physical dimensions?

11 Q. Do you have any idea what size that is?

12 A. I don't have the dimensions. I don't know.

13 Q. Okay. Okay. What is a comparative sound level at  
14 103 dBA?

15 A. So as I was trying to explain before, 103 decibels  
16 is not what one hears at the nacelle or on the ground or  
17 anywhere else. It's a rating --

18 Q. I asked -- please answer my question.

19 MS. SMITH: Excuse me. He's trying to answer  
20 your question.

21 Q. I would like to know what a sound -- a comparable  
22 sound level is at 103 dBA.

23 MS. CREMER: And I believe he will need to  
24 explain that.

25 MS. MOGEN: Okay.

1 A. It's not -- you can't make that same comparison. A  
2 sound power level is a rating of a certain physical  
3 instrument.

4 It's like a light bulb. These might be 100-watt  
5 light bulbs; right? But they're a 100-watt light bulb  
6 whether I'm standing underneath it or whether I'm in the  
7 back of the room. It's still a 100-watt light bulb.  
8 What I see - the intensity of it changes as I move away  
9 or get closer.

10 It's the same with the sound power rating system.  
11 So the turbines for this project have a sound power  
12 rating of 103.9 decibels, approximately 104 decibels, but  
13 that is a power rating. What one hears is nowhere near  
14 that once you -- because that sound propagates. It's  
15 just a rating.

16 So it would not be -- it would not be a comparison  
17 to say what's 103 decibel because there's nothing at the  
18 project that generates 103 decibels worth of sound.

19 Q. Mr. O'Neal, in your report, Figure 3.1 there is a  
20 common indoor sound and a common outdoor sound, and it  
21 says sound pressure level dBA.

22 What's up there around the 100 mark, just right over  
23 the 100 mark, because we are just over the 100 mark also?

24 A. Right. So, again, this is sound pressure level,  
25 which is what we hear. The sound power level of 103 is

1 not the same as this.

2 But to answer your question, a 100-decibel sound  
3 pressure level, that would be a jet flying over at  
4 1,000 feet.

5 Q. Okay. Have you been -- have you physically been to  
6 this project?

7 A. I have not physically been to this project, no.

8 Q. So you have not visited and seen where Teresa Kaaz's  
9 home is placed in correlation to turbine 67, 68, 69, or  
10 A26?

11 A. I have reviewed the maps so I understand where her  
12 home is in relation to the wind turbines.

13 Q. Okay. Exhibit A17 provided by Apex in a Data  
14 Request has elevations on it.

15 A. Just takes a minute to flip through these very large  
16 binders.

17 Okay. I'm at Exhibit A17.

18 Q. What is the elevation of turbine number 67?

19 A. Turbine 67 is listed with a base elevation of  
20 1,976.9 feet.

21 Q. What is the elevation of Teresa's house?

22 A. I don't know exactly.

23 Q. Where would have you gotten that information to do  
24 this report?

25 A. Let's turn back to the report for a moment, if we

1 will.

2 So I'm back at Appendix I. On page 5-2 is a  
3 discussion of the terrain elevation. So the terrain  
4 elevation for all locations throughout the site, any of  
5 the homes, et cetera, they were -- they came from a  
6 national elevation data set provided by the USGS,  
7 U.S. Geological Survey.

8 Q. From the USGS her elevation is 2,045. So when we  
9 look at a nacelle at 296 feet and the base elevation is  
10 1,976, that would put the elevation of this nacelle at  
11 2,272.

12 Do you want to check my math?

13 A. I guess I'm not going to either confirm or deny  
14 that.

15 Q. Okay.

16 A. What I'm going to say is the software takes that all  
17 into consideration. It takes in the elevation of the  
18 turbines and the elevation of all the homes in the area,  
19 and it does the calculations.

20 Q. I do understand that.

21 Do you -- so Teresa Kaaz's bedroom is on the second  
22 floor so that would raise her elevation?

23 MS. SMITH: Objection. Is there a question?

24 MS. MOGEN: I'm getting there.

25 Q. Would Teresa Kaaz have the difference of 296 feet



1 between the nacelle and her second story bedroom window?

2 A. So, as I said, the -- whatever the elevations are  
3 for her home and the turbines, those are all input to the  
4 model. The receptors that were calculated were based on  
5 first floor locations so the number in the report would  
6 be at her first floor.

7 Q. Okay. I'd like to move on to the shadow flicker  
8 report. And, again, did you do this report or supervise  
9 it?

10 A. It was prepared under my direction.

11 Q. Okay. On page -- it's Exhibit A5, page 9 of your  
12 testimony. Can you read that for me when you get there?

13 A. I'm sorry. Give me the reference again, please.

14 Q. A5, page 9.

15 A. Okay. I'm there.

16 Q. Can you read -- could you please explain what shadow  
17 flicker is. Can you read that answer?

18 A. So lines 3 through 9? Read the entire thing?

19 Q. Yes, please. Uh-huh.

20 A. "With respect to wind turbines, shadow flicker is an  
21 intermittent change in the intensity of light in a given  
22 area resulting from the operation of a wind turbine due  
23 to its interaction with the sun. While indoors an  
24 observer experiences repeated changes in the brightness  
25 of the room as shadows cast from the wind turbine blades

1 briefly pass by windows as the blades rotate. In order  
2 for this to occur the wind turbine must be operating, the  
3 sun must be shining, and the window must be within the  
4 shadow region of the wind turbine. Otherwise, there is  
5 no shadow flicker."

6 Q. For clarification, is there shadow flicker outside?

7 A. There could be shadow flicker on the ground outside,  
8 yes.

9 Q. Okay. On Appendix J, 1-1 -- never mind. Excuse me.  
10 That's been established with the new exhibit that was  
11 submitted.

12 Let's go there. I'll ask another question.  
13 Appendix J, 1-1.

14 A. Okay.

15 Q. The last line, Modeling Results, will you read that,  
16 please.

17 A. "The modeling results are conservative in that  
18 modeling receptors were treated as structures with  
19 windows on all sides (greenhouses) and the surrounding  
20 area was assumed to be without vegetation or  
21 structures (bare earth)."

22 Q. Was the greenhouse moving at 65 miles an hour?

23 MS. SMITH: Objection. Relevancy.

24 MS. CREMER: I didn't hear what you said. Was  
25 the what moving?

1 MS. MOGEN: The greenhouse moving at 65 miles  
2 per hour?

3 MS. CREMER: Okay. Then what was your  
4 objection?

5 MS. SMITH: Well, I'm not sure where this is  
6 going, but it's a vague question.

7 MS. MOGEN: In his report he cited the Epilepsy  
8 Foundation.

9 MS. SMITH: I'll just -- I'll withdraw the  
10 objection, hear what he says, and we'll go from there.

11 MS. CREMER: Thank you.

12 A. I mean, obviously, the greenhouse is not moving at  
13 65 miles an hour. This is an analysis at homes, at  
14 stationary structures.

15 Q. That's -- thank you.

16 Looking at the Application Figure No. 5, the  
17 Constraints Map -- so in the Application, the Constraints  
18 Map, looks like this. Oh, Appendix A. Sorry. Figure 5.

19 A. So the Application Appendix A?

20 Q. Yes. It's under Application in figures, and it is  
21 Figure 5. You're in the right area.

22 A. Okay. I'm there.

23 Q. Do you see turbine number 67?

24 A. Yes, I do.

25 Q. Can you identify that little white spot there? Is

1 there a name on it? I don't know if there's a name on  
2 that. That's Teresa Kaaz's home. Okay.

3 Can you go to the flicker map of Appendix J? It's  
4 3B?

5 A. Which figure number in Appendix J?

6 Q. 3-2B.

7 A. 3-2B. Yes, I'm there.

8 Q. Comparing the two maps, in the first map Teresa  
9 Kaaz's house is the white -- her property is the white  
10 box. It is back in the furthest northwest corner.

11 A. Yes.

12 Q. On the flicker map is the box in the furthest  
13 northwest corner?

14 A. It may be helpful to reference the receptor ID  
15 numbers which are contained in an earlier figure in the  
16 report.

17 Q. I believe it's 1698.

18 A. That's correct. And you can see that from  
19 Figure 3-1B in the shadow flicker report. You can see  
20 Ms. Kaaz's house at ID number 1698, which is southwest of  
21 turbine 67.

22 Q. Uh-huh. What are you referring to? What --

23 A. I'm looking at Figure 3-1B, as in boy, in the shadow  
24 flicker study, which is Appendix J. That shows the same  
25 structures that were used in the model, but it puts an

1 identification number, number 1698. I think it's the one  
2 you're talking about.

3 Q. Correct. And does that placement look correct to  
4 you even on this map?

5 A. Yes, it does.

6 Q. Let's compare all three of those maps. It seems to  
7 me that 3-1B is to the west of the section line. 3-2B is  
8 south of the property line.

9 A. No. Those locations are in the same spot. I would  
10 offer they are correct.

11 Q. Now on the flicker map with Teresa's house  
12 identified, I blew that up. Can I get the M-6b exhibit?  
13 Well, actually it's in there. It should be in the file;  
14 is that correct?

15 So Exhibit M-6b.

16 A. I've been handed M-6b. Does it look like this?

17 Q. Yes.

18 A. Does that receptor --

19 MS. CREMER: I'm going to interrupt here for a  
20 minute. So is this an exhibit -- so it hasn't been  
21 admitted; correct?

22 MS. SMITH: It has not been admitted.

23 MS. CREMER: So my question would be is this  
24 something that's already in the record that was one of  
25 your maps that we could look at, or what are we talking

1 about here? And not that you would know but --

2 MS. SMITH: I'll take a shot at it.

3 My understanding is it's a blowup of one of the  
4 figures that's in the report, with the shadow flicker  
5 report, but I believe Ms. Mogen would have to confirm  
6 that.

7 MS. CREMER: Okay. So is this a blowup of one  
8 of the maps in the Application?

9 MS. MOGEN: 3-2B.

10 MS. CREMER: 3-2B. Okay. Which is already  
11 admitted.

12 MS. SMITH: We would object to admitting this  
13 because it isn't an accurate representation of what was  
14 shown in the original figure.

15 The original figure is at a different scale.  
16 This has been blown up and distorted by the blowup. And  
17 so we would object to using that. We would ask that the  
18 exhibit that has been admitted be used. I think the same  
19 point can be made.

20 MS. CREMER: Can it be used for illustrative  
21 purposes blown up like this?

22 MS. SMITH: Not really because it's not at  
23 scale. We have discussed this exhibit with our expert to  
24 understand if he knew where this came from, and he was  
25 the one who was able to tell us that it was a blowup that

1 had been distorted by the expansion of the map.

2 COMMISSIONER NELSON: I'm going to interject, if  
3 I could.

4 I would sustain the objection. It's clear that  
5 this has been elongated, and I don't see that it can be  
6 used for any accurate demonstration.

7 MS. CREMER: So I would say if you wanted to use  
8 the one that's been admitted to ask your questions --

9 MS. MOGEN: Okay. Okay.

10 Q. Going back to the Constraints Map, this one in the  
11 Application. You are looking at that?

12 A. I'm there.

13 Q. Yep. Can you go over and look at turbine number 7?

14 A. Okay. I see it.

15 Q. There is a little white nonparticipator there.  
16 There's two of them. Do you see those?

17 A. I see a couple to the west of turbine 7.

18 Q. Yes. That's correct.

19 A. Okay. I see that.

20 Q. Can you give me the receptor numbers for those?

21 MS. SMITH: And just for ease, if you would like  
22 to remove the map from the booklet, please feel free to  
23 do so. We'll fix it.

24 A. I don't see any explicit receptors in those two  
25 blank white spaces. I don't know if the blank white

1 space in the Constraints Map means there's a house there  
2 or if that's just a parcel of land. I don't know. But I  
3 do not see any residential receptors within those two  
4 white parcels due west of turbine 7.

5 Q. That's one of my friends' houses.

6 Is a receptor on Apex -- or Appendix J or Appendix I  
7 maps?

8 A. Well, that's what I was just looking at. I'm  
9 looking at the shadow flickers maps of receptors in  
10 Appendix J. So, for example, Figure 3-1A shows the  
11 receptors. And there are some southwest of turbine 7 and  
12 slightly north or -- northwest of turbine 7. Receptors  
13 1985, 1968, for example.

14 Q. Are those receptors in the same place as on the  
15 Constraints Map?

16 A. No, they are not.

17 Q. Is Apex picking on my friends?

18 How many more --

19 MS. SMITH: Objection.

20 Q. How many more are missing off this map?

21 MS. SMITH: That's a mischaracterization of the  
22 testimony. He didn't say that it was missing. He was  
23 pointing to a different receptor.

24 MS. CREMER: I would sustain that objection.

25 MS. MOGEN: I'm done.



1 MS. CREMER: Ms. Kaaz, did you have questions  
2 then?

3 CROSS-EXAMINATION

4 BY MS. KAAZ:

5 Q. How many hours of flicker are on my property as an  
6 average?

7 A. I can give you the number. I'm looking at, again,  
8 Appendix J in the Application, which has the shadow  
9 flicker modeling report. And your home, as I understand  
10 it, is the receptor ID number 1698. 1698.

11 So if you turn to Appendix B in that report, there's  
12 a table of all the receptors and the expected shadow  
13 flicker hours per year. And your location 1698 has  
14 approximately 27 hours per year of expected shadow  
15 flicker.

16 Q. How about the trees and the shop?

17 A. I'm not sure I understand the question.

18 Q. There's a home, shop, and the trees. The shadow is  
19 on the shop, the trees, and the house. So the house has  
20 an average of 27 hours of flicker; is that correct?

21 But the shop is more, and the trees are more; is  
22 that correct?

23 A. I can't speak to the shop. I'm not exactly sure  
24 where that is.

25 With regard to the trees, you have to remember what

1 I said at the beginning. This is a bare earth scenario.  
2 We assume -- for shadow flicker, we assume no trees. The  
3 effect of trees would actually be to block shadow flicker  
4 and -- in those directions.

5 Q. How about on the northern part of the property line?

6 A. I don't have your property boundary overlaid on this  
7 figure. Is there perhaps another figure in the record  
8 that shows your property line?

9 Q. I have here A17, the map that was provided to me by  
10 Apex. This is an enlargement. It's not a blowup so it  
11 should be precise.

12 Can we show that so they understand what I'm talking  
13 about?

14 MS. CREMER: Have you shown Dakota Range this  
15 yet? Have you shown them your enlargement?

16 MS. KAAZ: It's in the file marked A17 so you  
17 can look at it on your --

18 MS. CREMER: Right. But I would like to confirm  
19 that that is an accurate enlargement.

20 MS. SMITH: And, Ms. Kaaz, is your question just  
21 can we refer to this map, have him look at this map? Is  
22 that what you're asking?

23 MS. KAAZ: Yeah. That's fine. I think it's the  
24 same as this one.

25 MS. SMITH: Yeah. This is the map that you're

1 talking about. Yep. That's fine.

2 MS. KAAZ: Could you share that with him so he  
3 could look at that map?

4 MS. SMITH: We helped him -- yeah. We located  
5 it for him.

6 A. I do have a copy from the binder here.

7 Q. Okay. I apologize. I don't know how to go any  
8 farther with this.

9 Are you still going to answer me?

10 A. I think I'm ready to try to attempt to give you an  
11 answer.

12 Q. Okay. I appreciate that.

13 A. I think, if I recall, the question was what would I  
14 estimate potential shadow flicker to be on the north side  
15 of your property up at the northern property line?

16 Q. Yes.

17 A. So for that I would look at Figure 3-2B in the  
18 shadow flicker report which has the contours, helped out  
19 by Exhibit A17, I believe, which shows your property  
20 line.

21 From that I would estimate perhaps up to 50 hours  
22 per year up at that property line -- well, essentially  
23 the road there. 156th Street.

24 Q. I might be wrong but did not Apex state that they  
25 would voluntarily make sure our flicker was closer to

1 30 hours? So is my property --

2 MS. SMITH: I'm going to object. That's a  
3 misstatement of testimony.

4 Q. -- average?

5 MS. CREMER: And, again -- you could ask this  
6 witness what his understanding would be of the condition.

7 Q. What is your understanding of the amount of flicker  
8 that Dakota Range has said is an average that they  
9 volunteered?

10 A. So my understanding is that Dakota Range has agreed  
11 to limit shadow flicker at a nonparticipating residence  
12 at the residence to 30 hours per year or less. That's at  
13 the residence.

14 Q. Does my residence start at my property line?

15 A. Well, I think the residence is -- the home is the  
16 actual residence.

17 MS. KAAZ: No further questions.

18 MS. CREMER: Thank you.

19 Commissioner Nelson.

20 COMMISSIONER NELSON: Thank you.

21 Thank you for being here. I'm trying to follow  
22 things on the map, and I do need to follow up on  
23 Ms. Mogen's question regarding a potential residence  
24 about a half-mile west of turbine 7.

25 It's not listed as a potential receptor, but

1 it's pretty clear to me that there is a residence there.  
2 So I guess the question would be why that was not  
3 identified as a potential receptor.

4 THE WITNESS: I'm just taking a moment to flip  
5 back to Figure 3-1A, which has the receptor map there.

6 So I see an area to the west of 7 which has some  
7 lighter colors in it. I don't know -- again, for these  
8 analyses we relied on the receptor data file that was  
9 assembled by Apex and provided to us. So I was relying  
10 on their receptor file.

11 COMMISSIONER NELSON: Okay.

12 The other question, the model that you use for  
13 shadow flicker, obviously flicker's going to be impacted  
14 by wind direction; correct?

15 THE WITNESS: That's correct.

16 COMMISSIONER NELSON: And wind speed; correct?

17 THE WITNESS: Wind speed, not very much.  
18 Because all you need to know is are the turbines turning?  
19 Is it above cut-in speed? Which is most of the year.

20 COMMISSIONER NELSON: But doesn't wind speed  
21 affect the angle of the -- the pitch of the blade, and,  
22 therefore, wouldn't the pitch of the blade impact  
23 flicker?

24 Or is that so minuscule that it doesn't matter?

25 THE WITNESS: That's where I would go with that,

1 frankly. The software assumes that you're looking at the  
2 full extent of the blade. It does not try to micro-sight  
3 it so it's turned a little bit. It assumes a full blade.

4 COMMISSIONER NELSON: So in that regard it  
5 really is maybe a more conservative estimate than what  
6 reality might show; is that correct?

7 THE WITNESS: That's correct. Yes.

8 COMMISSIONER NELSON: Thank you. I think that's  
9 all the questions I have.

10 MS. CREMER: Thank you.

11 Commissioner Fiegen.

12 CHAIRWOMAN FIEGEN: Just to clarify, in your  
13 Rebuttal Testimony I think you addressed a question maybe  
14 that Jon Thurber had. And so it's on page 1 of your  
15 Rebuttal Testimony.

16 And at that last question could you read that  
17 and your response on your Rebuttal Testimony?

18 THE WITNESS: Could you help me out with the  
19 exhibit number for that, please.

20 CHAIRWOMAN FIEGEN: Oh, I'm sorry. I don't even  
21 know what your Rebuttal Testimony -- A6, I guess.

22 THE WITNESS: That's a different volume.

23 MS. SMITH: It is a different volume. Sorry.

24 THE WITNESS: Oh, no problem.

25 CHAIRWOMAN FIEGEN: Otherwise, I can certainly

1 read it and ask you the question.

2 THE WITNESS: No, no. That's okay. I can find  
3 it.

4 In Exhibit A6, my Prefiled Rebuttal Testimony  
5 from May 21. I have it.

6 CHAIRWOMAN FIEGEN: Great. And then on page 1  
7 the very last question starting on line 27 and then your  
8 response.

9 THE WITNESS: Yes. I see that.

10 CHAIRWOMAN FIEGEN: Could you read that.

11 THE WITNESS: Oh, sure. Read the question and  
12 the answer?

13 "Staff requests that Dakota Range commit to  
14 mitigating shadow flicker for any residence that  
15 experiences shadow flicker in excess of 30 hours per year  
16 based on actual operation. Is it your understanding that  
17 Dakota Range is willing to make such a commitment?" And  
18 then my answer was, "Yes."

19 CHAIRWOMAN FIEGEN: Okay. Can you also read  
20 in -- let's see. We have a new exhibit, which are the  
21 conditions, A18. No. 28.

22 THE WITNESS: I don't have A18.

23 CHAIRWOMAN FIEGEN: You know what. I'll just  
24 read it to you. No. 28, "The Applicant will take  
25 reasonable steps to mitigate shadow flicker concerns at

1 the residence that could experience shadow flicker levels  
2 above 30 hours per year."

3 In your testimony that you were just talking  
4 about -- or your responses to some questions you talked  
5 about nonparticipating. But when I read this it looks  
6 like it's nonparticipating and participating. Is that  
7 correct?

8 THE WITNESS: So I'm not -- the modeling shows  
9 that 11 locations could be over 30 hours per year, and  
10 those are all participating landowners. My understanding  
11 of the commitments -- I could be wrong -- is that Dakota  
12 Range is going to offer them -- talk to them and see if  
13 they wanted mitigation in the form of screening or  
14 plantings or so forth, but there was not -- I guess,  
15 committed to talk to them.

16 MS. SMITH: You're looking at me like I should  
17 answer, Commissioner. Do you want me to?

18 CHAIRWOMAN FIEGEN: Sure. I just need to have  
19 an understanding of that condition.

20 MS. SMITH: So the condition is referencing  
21 residences generically, in part because it's accounting  
22 for the fact that the commitment still is there to be  
23 under 30 hours at non -- nonparticipating residences.

24 It's only nonparticipating residences. So we  
25 just used residences in case there was any question of



1 who they were offering mitigation to if it went over  
2 30 hours at any point in the future.

3 So the commitment is if it goes over 30 hours,  
4 there would be steps, reasonable steps, taken to  
5 mitigate. I believe I'm accurately representing that.

6 CHAIRWOMAN FIEGEN: That's only for  
7 nonparticipating?

8 MS. SMITH: No.

9 CHAIRWOMAN FIEGEN: For all.

10 MS. SMITH: It says residences. It means  
11 residences. It means whoever that may affect.

12 CHAIRWOMAN FIEGEN: Perfect. That's what I just  
13 wanted to make sure.

14 The very last question, I think it's in the  
15 information here, but I just want you to help me  
16 understand since you are a sound expert. Help me  
17 understand the accumulation of sound when you have wind  
18 towers surrounding your residence.

19 Is there accumulation where it's louder than  
20 when you just have one?

21 THE WITNESS: That's a great question.

22 So the standard that we use, that all noise  
23 consultants use, to do these calculations is the  
24 ISO 9613-2 standard, which you may have seen some reports  
25 or heard. That standard forces us to take the

1 conservative approach that the wind is blowing from every  
2 turbine towards every receptor at the same time.

3 CHAIRWOMAN FIEGEN: Thank you.

4 THE WITNESS: So the calculations always assume  
5 that a particular home is downwind of any given receptor  
6 simultaneously. So if you have three turbines to the  
7 east and one or two turbines to the west, it assumes the  
8 wind is blowing from the east and the west at the same  
9 time.

10 So it is a measure of conservatism in the  
11 calculations.

12 CHAIRWOMAN FIEGEN: Okay. I just wanted to make  
13 sure that that was on the record.

14 Thank you.

15 MS. CREMER: Commissioner Hanson.

16 COMMISSIONER HANSON: Thank you.

17 Good afternoon, Mr. O'Neal.

18 THE WITNESS: Good afternoon.

19 COMMISSIONER HANSON: I appreciate you being  
20 here and the information that you provided was easy for a  
21 layperson -- at least for this layperson to read and it  
22 was well thought out and I appreciate that very, very  
23 much.

24 I'm not going to ask you any questions. I'm  
25 just going to request of the Applicant if they will --

1 having viewed the discussions that have taken place and  
2 especially with Ms. Gunderson's testimony that A26 is  
3 very unlikely to be used, if you would consider removing  
4 that from the plan.

5           You don't have to do that at this juncture.  
6 However, it would assist from a standpoint of -- I can't  
7 speak for my fellow Commissioners because they  
8 occasionally -- only occasionally agree with me on  
9 things. So it would eliminate some discussion later on  
10 when we're looking at this process some days from now.

11           Thank you.

12           MS. SMITH: Yes. We will consider that and come  
13 back to you, Commissioner.

14           COMMISSIONER HANSON: Thank you.

15           No further questions.

16           MS. CREMER: Commissioner Nelson.

17           COMMISSIONER NELSON: I hesitate to ask this  
18 question because by asking it it means I have to  
19 understand your answer, but I think I need to.

20           Can you help me understand this difference  
21 between sound pressure and sound power? And that means  
22 my fellow Commissioners have to understand it also.

23           THE WITNESS: Absolutely.

24           In broad terms sound power is calculated from  
25 sound pressure level measurements. So when I take my

1 meter out to measure a source of sound, anything, I take  
2 a series of measurements around it at a known distance, a  
3 referenced distance, 25, 50 feet, 1 meter, whatever that  
4 is, and there's methodologies that we follow to then take  
5 those measurements and the dimensions of whatever we're  
6 measuring, and that information that goes into the  
7 standard that then does a series of calculations, that  
8 converts it to a sound power.

9           And what that does is it's useful to allow  
10 people to compare different products from a noise  
11 perspective or sound perspective. So for the wind  
12 turbine industry it's great because there's a rigorous  
13 standard that every turbine manufacturer has to use to  
14 test, take their sound measurements of their turbine,  
15 calculate them into a sound power.

16           So it's very easy for us to say Vestas has this  
17 sound power, GE has this sound power, and it's really  
18 comparable. That sound power is calculated from sound  
19 pressure.

20           Does that help?

21           COMMISSIONER NELSON: Actually I could  
22 understand that. So now I'm going to ask a follow-up  
23 question.

24           So when we hear just a typical reference that  
25 such and such is 60 decibels, is that power, or is that

1 pressure?

2 THE WITNESS: That is pressure. And to be  
3 accurate, someone should say it's 60 decibels at X feet,  
4 25 feet, 50 feet. That would be the proper way to say  
5 that.

6 COMMISSIONER NELSON: Thank you. That's as far  
7 as I'm going to go.

8 THE WITNESS: Thank you.

9 MS. CREMER: Do you have any redirect?

10 MS. SMITH: I do not.

11 MS. CREMER: And, Staff, based on Commission  
12 questions?

13 MS. REISS: No.

14 MS. CREMER: And, Ms. Mogen, based on Commission  
15 questions?

16 MS. MOGEN: No.

17 MS. CREMER: Ms. Kaaz.

18 MS. KAAZ: No.

19 MS. CREMER: Thank you. You are excused. You  
20 may step down.

21 And, Dakota Range, you can tell us what your  
22 next step is.

23 (The witness is excused.)

24 MS. SMITH: We may call rebuttal witnesses  
25 particularly to address a couple of questions that were

1 raised earlier in the hearing, but for now we have put in  
2 all of our witness testimony.

3 MS. CREMER: So do you want to call them now, or  
4 do you want to wait?

5 MS. SMITH: No. We'll wait.

6 MS. CREMER: All right. Staff -- or no. Yes.  
7 Staff you are next. Do you need a minute?

8 Let's just reconvene at 2 o'clock.

9 (A short recess is taken.)

10 MS. CREMER: Staff, when you're ready.

11 MS. EDWARDS: Staff calls David Hessler.

12 David Hessler,

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

15 DIRECT EXAMINATION

16 BY MS. EDWARDS:

17 Q. Mr. Hessler, will you please introduce yourself for  
18 the record and begin by hitting the green button on the  
19 microphone.

20 A. Yes. My name is David Hessler. I'm the vice  
21 president of Hessler Associates. It's a family-owned  
22 acoustical engineering company started by my father. And  
23 we've specialized in the acoustical design of power  
24 generation facilities for almost 40 years now, and I have  
25 about 27 years of experience.

1 Q. Thank you. You just covered my first three  
2 questions. So did you file prefiled testimony in this  
3 docket?

4 A. Yes, I did.

5 Q. Do you have any additions, corrections, or changes  
6 to make to that testimony?

7 A. No.

8 Q. Are you familiar with the condition agreed upon by  
9 Staff and the Applicant in this proceeding regarding  
10 noise levels?

11 A. Yes, I am. I drafted an initial condition, and it  
12 went through -- back and forth through a number of  
13 iterations that ended up with the final version the other  
14 day, and I'm good with that.

15 MS. EDWARDS: All right. No further questions.  
16 I will tender him for cross.

17 MS. CREMER: Thank you.

18 And, ironically, I'm having a hard time hearing  
19 you because of the noise of the air conditioner. So if  
20 you could either scoot the mic. closer or -- yeah. I  
21 would appreciate that. Thank you.

22 I will begin with Dakota Range.

23 CROSS-EXAMINATION

24 BY MS. SMITH:

25 Q. And I may be asking what Ms. Edwards just asked, but

1 did you indicate that you agreed with the condition that  
2 had been imposed in A18?

3 A. Yes. The latest version of the condition that came  
4 out yesterday is good, in my opinion.

5 MS. SMITH: Okay. I have no further questions.

6 MS. CREMER: Thank you.

7 Ms. Kaaz.

8 MS. KAAZ: No, I don't.

9 MS. CREMER: Ms. Mogen.

10 MS. MOGEN: No.

11 MS. CREMER: Yes. Commissioner questions. I'm  
12 just trying to remember who to start with.

13 Is it Chair Fiegen?

14 CHAIRWOMAN FIEGEN: I can.

15 MS. CREMER: Commissioner Hanson, she overrules  
16 you so you will go first.

17 CHAIRWOMAN FIEGEN: I have no questions, but  
18 welcome to South Dakota. It's nice to see you in person.

19 THE WITNESS: It's much better than being on the  
20 phone, a disembodied voice.

21 CHAIRWOMAN FIEGEN: Right. And then you can see  
22 how mean Commissioner Hanson is in his questioning  
23 because he's really the first Commissioner to ask  
24 questions if he has any. But I'm going to take a pass  
25 this time.



1 COMMISSIONER HANSON: Such comradery.

2 Mr. Hessler, welcome.

3 THE WITNESS: Thank you.

4 COMMISSIONER HANSON: I read your prefiled --  
5 your Direct Testimony some time ago as I did with the  
6 others so I was counting on someone asking questions so I  
7 could review all my highlighted areas.

8 And I see I have an exclamation point on page 5  
9 after the question, "Is your suggested long-term average  
10 sound level at 45 resident currently being met?" And I  
11 wrote the --

12 (Discussion off the record.)

13 COMMISSIONER HANSON: Curious that you would use  
14 the very same modeling, that you seem to agree with the  
15 50 dBA to an extent, but you would bring it all the way  
16 down to 40 dBA; is that correct?

17 THE WITNESS: What we've found from doing  
18 compliance tests on completed wind projects is that once  
19 the level at someone's house is 40 or less it's generally  
20 so quiet in absolute terms that the complaints are very,  
21 very rare.

22 So what we've recommended in different papers  
23 and conferences and things is that 45 is good as a fair  
24 regulatory limit but that 40 should be considered an  
25 ideal design goal. It's really where every project

1 should be, but there's very, very few that can actually  
2 accomplish that because it requires enormous setbacks.  
3 So we feel that 45 is a fair limit, regulatory limit.

4 COMMISSIONER HANSON: Is there an industry  
5 standard?

6 THE WITNESS: No, there isn't. Wind turbines  
7 are, oh, a subset of power generation noise unto  
8 themselves. And what it boils down to is that the whole  
9 range from practically no impact to a serious impact is  
10 really 10 dBA wide, 40 to 50.

11 At 40, like I say, we've found very few people  
12 object to it. At 50 a lot of people object. It's that  
13 small of a range. So that's totally different than a  
14 normal power plant or anything else.

15 COMMISSIONER HANSON: Can you give us an  
16 approximation of an urban setting where a next door  
17 neighbor's central air conditioning unit is outside their  
18 home. I know that this is a wide range.

19 The neighbor who's affected does not have the  
20 central air on their property. Their bedroom is on the  
21 first floor 10 feet, 20 feet away, 15 feet away from the  
22 air conditioner. Any idea what dBA that would be?

23 THE WITNESS: That sounds like my house and my  
24 neighbor's house. I think it would be -- I would say  
25 that's 55, something like that.

1           COMMISSIONER HANSON:  When I was a kid I grew up  
2 two houses -- three houses away from a railroad track.  
3 And one time a friend was sleeping over, and he woke up  
4 in the middle of the night, what's that, what's that?

5           And I didn't know what he was talking about, and  
6 then the train whistle went off.  I had become so  
7 accustomed to it I didn't even hear it.  How loud is a  
8 train whistle?

9           THE WITNESS:  I just heard that this morning at  
10 the hotel.

11          COMMISSIONER HANSON:  Did it wake you up?

12          THE WITNESS:  Inside I would say that was -- I'd  
13 say that was probably about 55.

14          COMMISSIONER HANSON:  Really?

15          THE WITNESS:  Yeah.  Inside.  Yeah.

16          COMMISSIONER HANSON:  Thank you for your  
17 testimony.  Appreciate it.

18          THE WITNESS:  Are you sure you don't want to go  
19 over power and pressure again?

20          COMMISSIONER HANSON:  I look at it like  
21 electricity; voltage and watts.

22          Thanks.

23          THE WITNESS:  All right.

24          MS. CREMER:  Commissioner Nelson.

25          COMMISSIONER NELSON:  Yes.  In Pierre we put our

1 hotels directly next to the railroad tracks.

2 THE WITNESS: Very nice.

3 COMMISSIONER NELSON: On page 8 of your Direct  
4 Testimony where you were talking about your observations  
5 of Cooper's work you make the statement, "However,  
6 Cooper's experimental results now convince me that a  
7 minority of people do have a sensitivity to the minute  
8 pressure pulsations associated with the blade passing  
9 frequency."

10 Is that sensitivity manifested in illness or in  
11 anxiety? Or something else?

12 THE WITNESS: There's been a number of symptoms  
13 reported to be associated with that. It's -- I would say  
14 principally it's a kind of feeling of vertigo or mild  
15 nausea or disorientation or sleep disturbance. Things of  
16 that nature have been reported.

17 COMMISSIONER NELSON: And so you concur that  
18 this minute pressure pulsations can cause those types of  
19 effects in some people; is that correct?

20 THE WITNESS: Yeah. I was skeptical of that for  
21 many years, but I think that there are -- or there is a  
22 very small minority of people that are sensitive to it  
23 and that are bothered. But it's evidently a very small  
24 minority because if there were -- it was a common thing,  
25 this problem would be evident at every wind project and

1 they're all over the place and this only happens very  
2 rarely.

3 So I think it exists, but it's a rarity. So  
4 there's a risk here. There's no way to put a number on  
5 it, though.

6 COMMISSIONER NELSON: Were you here when  
7 Dr. Roberts testified yesterday?

8 THE WITNESS: No.

9 COMMISSIONER NELSON: In the questioning that I  
10 had with him I asked a question along the line of we know  
11 that anxiety can manifest itself in symptoms and that  
12 some people are simply anxious about the presence of wind  
13 turbines, and so that anxiety then may manifest itself in  
14 symptoms.

15 So my question for you is do you believe that  
16 the things that you were talking about that people have  
17 experienced, is that anxiety related, or is that  
18 literally related to the pulsations on the body?

19 THE WITNESS: Yeah. I think it's a direct  
20 consequence of some sound pulsation. At least that's the  
21 outcome of the Cooper study where in a nutshell he  
22 plays -- a double-blind experiment involving people that  
23 had complained about this issue and others that haven't.

24 And he played a sound recorded inside of a house  
25 at a wind turbine, wind farm, that -- it was inaudible,

1 but they played this recording. And the people that were  
2 at that wind farm and had been complaining about it were  
3 able to tell with 100 percent accuracy when it was being  
4 played and when it wasn't. And the control group never  
5 heard anything, never felt anything. I feel like that's  
6 very compelling evidence.

7 Now why it happens and exactly what it is, I  
8 don't think is known yet.

9 COMMISSIONER NELSON: Thank you.

10 MS. CREMER: Staff, do you have any redirect?

11 REDIRECT EXAMINATION

12 BY MS. EDWARDS:

13 Q. Mr. Hessler, are you aware of any regulatory limits  
14 of 40 dBA in any jurisdiction with which you are  
15 familiar?

16 A. No. That's very low, and it would be very rare for  
17 any project to be able to make that.

18 MS. EDWARDS: Nothing further.

19 MS. CREMER: Dakota Range.

20 MS. SMITH: I don't have anything. Thank you.

21 MS. CREMER: Ms. Kaaz.

22 CROSS-EXAMINATION

23 BY MS. KAAZ:

24 Q. I apologize if I overstate. I'm just going to ask a  
25 question.

1           In Clark with a three-quarter-mile setback what  
2           is the average dBA going to be at a home at a  
3           three-quarter-mile setback?

4           MS. SMITH:  Objection.  That's outside of this  
5           record.  I believe they're referencing a different  
6           project.

7           MS. KAAZ:  Did he not testify for Clark also?

8           MS. CREMER:  Yes.  But the relevancy here would  
9           be minimal so I would sustain.

10          So you can ask another question.

11          MS. KAAZ:  Okay.

12          Q.    The Dakota Range project, if a turbine is, say,  
13               three-quarter mile away from a residence home, what is  
14               the expected dBA at that property with that distance?

15          MS. SMITH:  Objection.  I don't think there's a  
16               foundation to address that question.  There's nothing in  
17               the record to support the answer.

18          MS. CREMER:  I'm going to overrule.  If he can  
19               answer, he can.

20          A.    Well, it's very difficult to answer that.  If it  
21               were just one turbine by itself, that number could be  
22               calculated.  But in a normal wind farm there's a number  
23               of different turbines and they're all adding up and  
24               they're all contributing at some point of interest.

25               And that's why we do noise modeling to figure out

1 what the answer is. So I don't know off the top of my  
2 head.

3 Q. How about if I said three turbines at three-quarters  
4 of a mile setting 1,000 feet apart or how far?

5 A. That would still involve calculations. I can't tell  
6 you.

7 MS. KAAZ: No further questions.

8 MS. CREMER: Thank you.

9 Ms. Mogen.

10 MS. MOGEN: No questions.

11 MS. CREMER: Anything, Staff? Final redirect?

12 MS. EDWARDS: No.

13 MS. CREMER: You are --

14 COMMISSIONER NELSON: If --

15 MS. CREMER: Sorry. I didn't see you.

16 COMMISSIONER NELSON: You are very close to  
17 stepping down.

18 If I could ask, I'm going to try to ask  
19 Ms. Kaaz's question in a way that I think would be  
20 helpful for us.

21 Would it be accurate that in any setting a wind  
22 turbine three-quarters of a mile away would have less --  
23 the dBA level at the receptor would be lower than one  
24 that is 1,000 feet away?

25 THE WITNESS: Yeah. Certainly. I would expect



1 it to be down -- I'm guessing, but somewhere 40 or maybe  
2 in the 30s at that kind of distance. Very quiet. Much  
3 quieter than this room.

4 COMMISSIONER NELSON: Thank you.

5 MS. CREMER: You may step down.

6 (The witness is excused.)

7 MS. CREMER: And, Staff, you can call your next  
8 witness.

9 MS. EDWARDS: Staff calls David Lawrence.

10 David Lawrence,  
11 called as a witness, being first duly sworn in the above  
12 cause, testified under oath as follows:

13 DIRECT EXAMINATION

14 BY MS. EDWARDS:

15 Q. Mr. Lawrence, please introduce yourself for the  
16 record.

17 A. My name is David Lawrence. I'm a real property  
18 appraiser with an MAI, SRA, SRWA and AI --

19 (Discussion off the record.)

20 A. I'm sorry. I should have just said I'm a real  
21 property appraiser, but I have designation with MAI, SRA,  
22 SRWA and an AIRRS.

23 MS. CREMER: And then if you could either pull  
24 yourself closer to the mic. or the mic. closer to you,  
25 that would help.

1 Thank you.

2 THE WITNESS: Sure.

3 Q. How did you become involved in this docket?

4 A. I was contacted by Staff at the PUC.

5 Q. Have you testified before the PUC before?

6 A. Yes, I have.

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

8 A. Yes, I have.

9 Q. Did you file Prefiled Rebuttal Testimony -- or  
10 Surrebuttal Testimony in this docket?

11 A. Yes, I have.

12 Q. At this time do you have any additions, corrections,  
13 or changes to make to that testimony?

14 A. Not at this time.

15 MS. EDWARDS: No further questions.

16 And Staff would tender Mr. Lawrence for cross.

17 MS. CREMER: Thank you.

18 Dakota Range.

19 MS. AGRIMONTI: Thank you.

20 CROSS-EXAMINATION

21 BY MS. AGRIMONTI:

22 Q. Good afternoon, Mr. Lawrence.

23 A. Good afternoon.

24 Q. I'd like to ask you a couple of questions about your  
25 Surrebuttal Testimony that was filed last Friday. That

1 included some testimony and then Exhibit 1; is that  
2 correct?

3 A. That's correct.

4 Q. Could you please get Exhibit 1 before you.

5 A. Can you reference where that would be?

6 Q. It would be in the Staff Exhibits, No. 6.

7 MS. CREMER: I think they might be to your left  
8 on the ledge there maybe.

9 A. All right. I have Exhibit 6 in front of me.

10 Q. All right. Do you have Exhibit 1 to Exhibit 6  
11 before you?

12 A. I'm sorry. What did you say?

13 Q. Exhibit 1 to Exhibit 6. It's a table titled Rural  
14 Residential Transaction Summary Table.

15 As part of your Surrebuttal Testimony you provided  
16 information regarding six rural residential sales  
17 BK-1 through 5 and 7?

18 A. That's correct.

19 Q. And is this table intended to be the summary of your  
20 analysis?

21 A. It's part of my analysis.

22 Q. Okay.

23 A. But there's another summary of tables. But, yes,  
24 this is part of the summary of my analysis.

25 Q. All right. If I look to the far right-hand column,

1 is it fair to say that you found no measurable effects of  
2 proximity of wind turbines for any and all of these  
3 residential sales?

4 A. For the residential sales in Brookings County I  
5 found no measurable effects.

6 MS. AGRIMONTI: I have no further questions.

7 MS. CREMER: Thank you.

8 Ms. Mogen.

9 MS. MOGEN: Thank you.

10 CROSS-EXAMINATION

11 BY MS. MOGEN:

12 Q. Mr. Lawrence, have you evaluated properties that no  
13 longer qualify for FHA loans, financing?

14 A. Yes. I have appraised homes that were for FHA  
15 financing that did not qualify.

16 Q. Why did they no longer qualify? Can you give me an  
17 example?

18 A. An example I'm specifically thinking of was a  
19 damaged property case with an overhead transmission line  
20 which was -- there was a number of things going on with  
21 the property, but it was within the fall zone, which  
22 disqualified it for health safety reasons for the FHA  
23 financing criteria.

24 Q. Does the FHA regularly update its guidelines?

25 A. And when we're talking about FHA guidelines, there

1 are minimum property requirements if you're going to ask  
2 for FHA financing at the appraisal process that the  
3 appraisal must meet. And, yes, they do update these  
4 regularly.

5 Q. Can you search the MLS for a wonderful feature of  
6 wind turbines?

7 MS. AGRIMONTI: Objection. Argumentative.

8 Q. Can you search the MLS for a feature of wind  
9 turbines?

10 A. No. I'm not aware of how to do that.

11 Q. How do you find properties hosting wind turbines?

12 A. Through research. It's not a -- it's not an easy  
13 process to identify properties that are in proximity to  
14 wind turbines. There's ways to do it through county  
15 records, MLS, if they're available, by searching property  
16 sales that are near or within wind projects.

17 And then also sometimes counties will have GIS  
18 systems that you can use to try to provide leads for some  
19 type of sales.

20 MS. MOGEN: Thank you. Thank you.

21 MS. CREMER: Ms. Kaaz.

22 MS. KAAZ: No. I don't have any questions.

23 MS. CREMER: Thank you.

24 Commissioner Hanson.

25 COMMISSIONER HANSON: Good afternoon,

1 Mr. Lawrence.

2 THE WITNESS: Good afternoon.

3 COMMISSIONER HANSON: Appreciate you being here  
4 and the information you provided. I find it interesting.

5 I'm curious. On your Direct Testimony, page 6,  
6 bottom of the page you give four concerns that you have  
7 with the market impact analysis that was presented by the  
8 Applicant and you state as your fourth reason for concern  
9 that the studies that were used do not reveal a  
10 consistent consensus among the authors about potential  
11 impacts of wind towers, turbines, and wind projects on  
12 property values.

13 Are you aware of any such study that exists?

14 THE WITNESS: Study that exists that --

15 COMMISSIONER HANSON: That would comply with  
16 that fourth concern.

17 THE WITNESS: That --

18 COMMISSIONER HANSON: You're referencing studies  
19 that were used by the Applicant.

20 THE WITNESS: Uh-huh.

21 COMMISSIONER HANSON: And I'm wondering, you  
22 said that the studies that were used by the Applicant  
23 have a number of -- you expressed four concerns, and your  
24 fourth one was what I just read.

25 THE WITNESS: Uh-huh.

1           COMMISSIONER HANSON:  And I'm wondering if you  
2 are aware of any study since the -- since the ones that  
3 were used by the Applicant to meet that standard that you  
4 set forth, are you aware of any study that does meet that  
5 standard, that concern that you expressed?

6           THE WITNESS:  And the concern that I expressed  
7 there was that they were inconsistent.  I'm sorry.  I  
8 don't have that in front of me.

9           COMMISSIONER HANSON:  You state that the studies  
10 do not reveal a consistent consensus among the authors of  
11 those about potential impacts of wind towers, turbines,  
12 wind projects on property values.

13          THE WITNESS:  Okay.  No.  I'm not aware of any  
14 additional studies that are consistent.

15          COMMISSIONER HANSON:  It seems that as I went  
16 through your testimony that your concern is that there  
17 isn't any evidence to show that there is not a negative  
18 effect.

19                   Is that accurate?

20          THE WITNESS:  I would say yes, along a time line  
21 of my testimony.  When I originally developed my Direct  
22 Testimony I identified 13 sales in South Dakota, which at  
23 that time I didn't have any time to investigate those  
24 sales.

25                   Hence, why I provided my Surrebuttal Testimony.

1 Because between early May and now I was able to look into  
2 those sales to see what the evidence was.

3 COMMISSIONER HANSON: And how would you -- how  
4 would you now conclude the effect on a property value  
5 such as Ms. Kaaz? Did you go to that -- did you get down  
6 that granular where you have an opinion on how it -- and  
7 I understand appraisal work and so it's not really fair  
8 to ask that question of you, but do you have some --

9 I don't know what amount of work you did in  
10 relationship to that property or not. But can you give  
11 us some idea on your belief on what the effect of this  
12 project would have on her property?

13 THE WITNESS: Okay. And I'm not familiar with  
14 her property. I didn't look at it specifically.

15 COMMISSIONER HANSON: Okay.

16 THE WITNESS: How close are the wind turbines to  
17 the property?

18 COMMISSIONER HANSON: I forgot.

19 THE WITNESS: Just I can give you a quick  
20 overview of some of the things that I did for my  
21 research. When I set out I randomly selected some --  
22 well, there was a few properties that I selected with --

23 I've heard the term nonparticipating wind -- or  
24 landowners, and I would classify those as landowners that  
25 owned their property prior to the installation of a wind



1 tower. And I went to some of those properties and talked  
2 to landowners and walked the property. And it seemed  
3 pretty consistent.

4 If you're a landowner near wind towers that have  
5 not purchased the property, you have a lot of complaints  
6 about noise, you know, visibility, view obstruction,  
7 those type of things. It seemed that those landowners  
8 never had the option of -- to be located around wind  
9 towers.

10 But then when I moved on to talking with buyers  
11 that purchased property, and I'm specifically talking  
12 about in Brookings County, surprisingly the story changed  
13 to when you talked about buyers who purchased acreages in  
14 Brookings County really there was -- the price that they  
15 paid was not affected by the presence of wind towers,  
16 which surprised me in a lot of the cases.

17 Does that answer your question?

18 COMMISSIONER HANSON: Yes. And Commissioner  
19 Fiegen provided me with information showing that the A26  
20 location, which is a potential location, is approximately  
21 one half-mile -- a smidgen less than a half-mile away  
22 from her residence.

23 THE WITNESS: Uh-huh.

24 COMMISSIONER HANSON: Do you have an opinion on  
25 how that might affect her property value?

1           THE WITNESS: I observed properties, physically  
2 walked the properties in Brookings County on a number of  
3 them. And I believe on some of those properties the  
4 towers ranged around that proximity of about 2,500 feet.

5           And the day that I was there it was a windy day,  
6 and you could hear the towers on the property. So there  
7 was some kind of a noise invasion you would be able to  
8 pick up. It was pretty obvious. You're going to have  
9 the view obstruction. And then there is that --

10           I did hear a number of comments from  
11 participants about the flicker effect. But that seemed  
12 to be more of a narrow time of around an angle of the sun  
13 when I heard comments about that, that there was that  
14 flicker effect around the property, in the yard, in the  
15 house if you didn't have window shades. But those are  
16 the kind of effects that I would expect of a home that's  
17 within 2,000, 2,500 feet of a wind turbine.

18           COMMISSIONER HANSON: I appreciate that  
19 information. I'm going to ask the question in a slightly  
20 different way.

21           Do you believe that that would -- that a wind  
22 turbine approximately that close to a residence would  
23 have an adverse effect on the home's value?

24           THE WITNESS: With the six sales that I looked  
25 at in Brookings County with the rural residential

1 properties the sales evidence did not show any measurable  
2 effects on value.

3 COMMISSIONER HANSON: Thank you very much.  
4 Appreciate that. Thank you.

5 MS. CREMER: Commissioner Nelson.

6 COMMISSIONER NELSON: Thank you. I don't have  
7 any questions, but I want to say thank you for your  
8 Surrebuttal Testimony and the work that you did on that.  
9 It was very helpful to me.

10 Thank you.

11 THE WITNESS: You're welcome.

12 CHAIRWOMAN FIEGEN: No questions.

13 MS. CREMER: Did you have any redirect, Staff?

14 MS. EDWARDS: No redirect.

15 MS. CREMER: Dakota Range, do you have any  
16 recross based on Commission questions?

17 MS. AGRIMONTI: No, thank you.

18 MS. CREMER: Ms. Mogen, did you have any  
19 questions?

20 MS. MOGEN: No.

21 MS. CREMER: Ms. Kaaz, do you have any?

22 MS. KAAZ: Unfortunately, not.

23 MS. CREMER: All right. With that -- yeah.

24 Because there were no questions, Staff, there's no final  
25 redirect.

1           You may step down. Thank you.

2                           (The witness is excused.)

3           MS. CREMER: Staff, you can call your next  
4 witness.

5           MS. REISS: Thank you. Staff calls Paige Olson,  
6 please.

7                           Paige Olson,  
8 called as a witness, being first duly sworn in the above  
9 cause, testified under oath as follows:

10   DIRECT EXAMINATION

11 BY MS. REISS:

12 Q. Thank you. Ms. Olson, would you please introduce  
13 yourself to the Commission.

14 A. Yes. My name is Paige Olson, and I'm the Review and  
15 Compliance Coordinator at the South Dakota State  
16 Historical Society.

17 Q. And how did you become involved in this docket?

18 A. I got a subpoena from the PUC.

19 Q. Thank you. And did you prepare testimony to be  
20 submitted in this docket?

21 A. I did.

22 Q. And is the document marked as Staff's Exhibit 3? I  
23 believe they're next to you if you'd like to check.

24 A. Yes.

25 Q. At the time your testimony and exhibits were filed

1 was it true and correct to the best of your information  
2 and knowledge?

3 A. Yes.

4 Q. And if I asked you the same questions today as those  
5 posed in your prefiled testimony, would your answers be  
6 the same?

7 A. Yes.

8 Q. Okay. Do you have any additions or deletions or  
9 edits to make to your testimony?

10 A. No.

11 Q. Have you had the opportunity to review the  
12 conditions proposed in Exhibit A18? That would be the  
13 conditions.

14 A. Yes.

15 Q. Okay. And do Conditions 11, 12, and 13 of that  
16 document address your concerns raised in your testimony?

17 A. Yes.

18 MS. REISS: Staff has nothing further at this  
19 time.

20 I would offer Ms. Olson for cross-examination.

21 MS. CREMER: Thank you.

22 Dakota Range.

23 CROSS-EXAMINATION

24 BY MS. SMITH:

25 Q. I guess I just want to confirm. Based on all those

1 conditions and your testimony, you're confirming that you  
2 have no further issues or no concerns regarding the work  
3 that's been done on cultural resources by Dakota Range?

4 A. I do have some concerns, but I cannot address those.  
5 Those have to be addressed by the -- by the tribes.

6 Q. Okay. So and that helps me. Thank you.

7 As far as tribal concerns, you do understand that  
8 Dakota Range has engaged with and I'm going to use the  
9 acronym SWO and has engaged in tribal efforts to identify  
10 tribal resources?

11 A. Yes.

12 Q. And so my understanding of your recommendation was  
13 that you had recommended that they do reach out to  
14 Native American Tribe and consult on tribal resources;  
15 correct?

16 A. Yes.

17 Q. And do you understand that that has been done?

18 A. Yes.

19 Q. So your particular recommendation has been  
20 satisfied; is that correct?

21 A. As far as I know.

22 Q. All right. And just to confirm, the SHPO in this  
23 particular instance, given that this does not have a  
24 federal nexus, Section 106 does not apply to this  
25 project; is that correct?

1 A. It does not.

2 Q. And while there's a tribal component under  
3 Section 106, there is not a tribal component under the  
4 state statute on cultural resources; is that correct?

5 A. There is not.

6 MS. SMITH: I have no further questions. Thank  
7 you.

8 MS. CREMER: Ms. Kaaz, did you have any  
9 questions?

10 MS. KAAZ: No, I do not.

11 MS. CREMER: Thank you. Ms. Mogen.

12 MS. MOGEN: No questions.

13 MS. CREMER: Commissioner Nelson.

14 COMMISSIONER NELSON: Thank you for being here  
15 again.

16 In your Direct Testimony on page 5.

17 THE WITNESS: Yes.

18 COMMISSIONER NELSON: Line 12 and 13 you said,  
19 "Dakota Range will need to provide the Commission with  
20 SWO's findings and recommendations if available."

21 I don't see that in any of the three recommended  
22 conditions. So help me understand. Is your statement  
23 still applicable and still something that needs to happen  
24 or not?

25 THE WITNESS: So I can't speak on behalf of the

1 tribes about their tribal resources. And in order to --  
2 for the Commission to fully understand adverse effects or  
3 any effects to these types of sites, you have to  
4 understand their significance.

5 And I don't -- I have not been -- I haven't been  
6 privileged to see the data that was -- that was gathered  
7 by SWO so --

8 COMMISSIONER NELSON: But what I'm understanding  
9 from your statement and your testimony is that you  
10 believe that the Commission needs to see that report in  
11 order for us to do our job; is that correct?

12 THE WITNESS: To understand the effects to those  
13 sites, that information really needs to come from the  
14 tribe.

15 COMMISSIONER NELSON: I don't mean this to sound  
16 flippant, but do we as a Commission need to understand  
17 those impacts if the conditions of a permit require the  
18 cultural resources to be taken into account throughout  
19 construction? Taken into account and protected.

20 THE WITNESS: Right. My understanding is that  
21 the condition is that they will be physically avoided.  
22 Cultural resources often have other components that make  
23 them significant, such as view shed.

24 COMMISSIONER NELSON: And so, again, do we need  
25 to understand all of that, as long as there is a



1 condition requiring that to be protected?

2 THE WITNESS: If you want to truly assess the  
3 adverse effects or the effects to the site, you need to  
4 understand that.

5 COMMISSIONER NELSON: Okay. Thank you.

6 COMMISSIONER HANSON: I didn't know who the  
7 teacher was going to call on is all.

8 Good afternoon.

9 THE WITNESS: Good afternoon.

10 COMMISSIONER HANSON: Pleasure to have you  
11 before us again.

12 THE WITNESS: Thank you.

13 COMMISSIONER HANSON: I'm sure just as big of  
14 pleasure for you as it is for us.

15 In your position with the State Historic  
16 Preservation Office it appears from the discussion that  
17 just took place with the Applicant and yourself that you  
18 have a working relationship with them. And apparently  
19 they are keeping you up to date as far as what has taken  
20 place; is that correct?

21 THE WITNESS: Yes. Except for the tribal  
22 surveys.

23 COMMISSIONER HANSON: But are they keeping you  
24 up to date as far as what they are doing in that arena?

25 THE WITNESS: Yes. That they have -- they are

1 using the Sisseton-Wahpeton Oyate Tribal Historic  
2 Preservation Office to conduct surveys.

3 COMMISSIONER HANSON: Thank you.

4 It appears from what you're saying that they  
5 have been cooperative with you. Is that accurate, that  
6 they've --

7 THE WITNESS: Yes.

8 COMMISSIONER HANSON: -- worked cooperatively  
9 with you?

10 THE WITNESS: Yes.

11 COMMISSIONER HANSON: Okay. Do you have any  
12 concerns at this juncture, other than what you've told  
13 us?

14 THE WITNESS: No.

15 COMMISSIONER HANSON: Okay. Thank you.

16 Thank you.

17 MS. CREMER: Chair Fiegen.

18 CHAIRWOMAN FIEGEN: Thank you for coming back  
19 with us.

20 It appears to me when the Staff asked you  
21 questions your concerns are all addressed in Conditions  
22 No. 11, 12, and 13. And the questioning of Commissioner  
23 Nelson, that that needs to be done at the tribal level.

24 So I don't believe I have any questions for you  
25 today. Thank you.

1           COMMISSIONER NELSON: I have one, if I might.  
2 And I'm going back to the same issue, just so I  
3 understand.

4           I'm reading through the Proposed Condition 13.  
5 "The Applicant shall file the final cultural resources  
6 report with the Commission prior to construction."

7           Do you know, would that cultural resources  
8 report contain the information from Sisseton-Wahpeton  
9 that you and I have been discussing?

10          THE WITNESS: I don't know.

11          COMMISSIONER NELSON: Thank you.

12          MS. CREMER: Staff, did you have any redirect?

13          MS. REISS: No. Thank you.

14          MS. CREMER: And, Dakota Range, did you have any  
15 redirect [sic] based on Commission questions?

16          MS. SMITH: No. Thank you.

17          MS. CREMER: Ms. Mogen, did you have any  
18 questions?

19          MS. MOGEN: No.

20          MS. CREMER: Ms. Kaaz?

21          MS. KAAZ: No, I don't.

22          MS. CREMER: Thank you, Paige. You may step  
23 down.

24                                   (The witness is excused.)

25          MS. CREMER: And, Staff, you can call your next

1 witness.

2 MS. EDWARDS: Staff calls Jon Thurber.

3 Jon Thurber,

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

6 DIRECT EXAMINATION

7 BY MS. EDWARDS:

8 Q. Please state your name for the record.

9 A. Jon Thurber.

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

11 A. Yes, I did.

12 Q. At this time do you have any corrections, deletions,  
13 or additions to make?

14 A. No, I do not.

15 Q. To your knowledge, were Staff and the Applicant able  
16 to agree upon any conditions?

17 A. Yes. We were able to agree to the conditions listed  
18 on Exhibit A18.

19 Q. Are there any conditions outside of Exhibit A18  
20 which, in your opinion, would need to be added?

21 A. Yes. There's three remaining issues that aren't  
22 covered through that list of conditions. The first is  
23 environmental issues, and the parties both provided  
24 evidence on that issue.

25 The two remaining issues is material deviations.

1 That condition was included in Exhibit A18 but did not  
2 include a feet threshold. And then the third is  
3 decommissioning.

4 Q. Did you have a recommendation on the feet threshold  
5 you just mentioned?

6 A. Yes. Commission Staff was comfortable going with  
7 325 feet like the Commission decided in the Crocker  
8 Docket. If the Commission decides to go with a different  
9 footage level, I would just encourage the Commission to  
10 think of the maximum footage threshold that it would be  
11 comfortable with so that this issue could maybe be  
12 resolved.

13 I don't believe it's really a case-by-case basis  
14 because there's a fair amount of judgment involved. So  
15 rather than continuing to bring that condition before the  
16 Commission, we would appreciate an order that kind of  
17 sets a maximum threshold the Commission would be  
18 comfortable with.

19 Q. Thank you.

20 You also mentioned the decommissioning process.  
21 There have been questions asked regarding how Xcel Energy  
22 might be involved. Are you familiar with that line of  
23 questioning?

24 A. Yes, I am.

25 Q. To your knowledge, is Xcel a regulated public

1 utility?

2 A. Yes. They're regulated here in South Dakota.

3 Q. Do you have any experience with utility rates and  
4 rate regulation?

5 A. Yes, I do. I've processed a number of rate cases  
6 before.

7 Q. Do you have any such experience with respect to  
8 Xcel Energy?

9 A. Yes. I've processed two rate cases for Xcel Energy.

10 Q. Based upon your training and experience, and without  
11 binding Staff to any future position that might be taken  
12 in a rate proceeding, can you tell us how a regulated  
13 utility such as Xcel might pay for a decommissioning  
14 process?

15 A. Sure. The decommissioning costs are estimated as  
16 part of the depreciation study. And at the time of cost  
17 recovery or request for cost recovery of an asset the  
18 company also estimates the decommissioning cost, develops  
19 a depreciation rate, and requests that rate be reflected  
20 and adopted through the cost of service.

21 So at the point in time that a regulated utility  
22 requests recovery of a generation asset the Commission  
23 will have an opportunity to look at the decommissioning  
24 costs and the amount that would be appropriate in their  
25 rates.

1 Q. If an account were to be created to provide for  
2 decommissioning, would any surplus that remained in that  
3 account after decommissioning be passed on to ratepayers?

4 A. So if the Commission elects to kind of address  
5 decommissioning for a regulated utility through your  
6 general rates at the time that the asset's  
7 decommissioned, my understanding is any difference in  
8 what would be recovered would be rolled into the next  
9 depreciation rates.

10 So, in essence, it would be refunded or reflected  
11 into the rates of your ratepayers. So that access would  
12 be refunded back to ratepayers at that time.

13 Q. There was also a question posed about whether Xcel  
14 could get out from under any future obligation if  
15 incurred while selling that asset. Do you have an  
16 opinion on that?

17 A. I have an analyst opinion and would want to consult  
18 with my legal attorney as well. But my understanding of  
19 that statute would require a filing with the Commission,  
20 and at that time if there's a sale of the asset, the  
21 Commission would have the opportunity to address  
22 decommissioning with whoever purchased that asset from  
23 Xcel Energy.

24 Q. Thank you.

25 Turning your attention to Exhibit A21 filed today by

1 the Applicant, that is the proposed decommissioning  
2 proceeding -- or proposed decommissioning conditions.

3 Were you involved with the drafting of this  
4 condition?

5 A. No, I was not. There's been some discussion between  
6 Staff and the Applicant, but there's been -- Staff did  
7 not have any involvement in drafting this condition.

8 MS. EDWARDS: I would tender this witness for  
9 cross.

10 MS. CREMER: Thank you.

11 Dakota Range.

12 CROSS-EXAMINATION

13 BY MS. SMITH:

14 Q. Good afternoon, Mr. Thurber.

15 A. Good afternoon.

16 Q. Regarding the 325 feet -- and I believe you were  
17 present when Ms. Gunderson indicated that Dakota Range  
18 would agree to 325 feet going forward if the one shift  
19 that's between 325 feet and 500 were approved as part of  
20 this docket -- does Staff have any objection to approval  
21 of that particular shift within this docket?

22 A. I don't believe we've had an opportunity to review,  
23 you know, all the compliance features outside of that  
24 with noise and shadow flicker. But as long as we've met  
25 those requirements with noise, shadow flickers, and the



1 other applicable requirements, Staff has no objection to  
2 that approach.

3 Q. Okay. And regarding the decommissioning condition,  
4 I just want to make sure that we understand where Staff  
5 is at.

6 Are there any -- with the language that's been  
7 proposed are there suggested revisions, or is what is  
8 proposed with the addition, if needed -- it sounds like  
9 maybe it's not needed, of a provision that if the project  
10 were sold by Xcel, perhaps a default or a reexamination  
11 of decommission funding would be required or added.

12 Is Staff supportive of this condition as written  
13 with that addition?

14 A. So we -- through testimony and through discovery  
15 it's been unclear that Xcel Energy is fully responsible  
16 for the decommissioning costs.

17 I would like to refer to Staff Exhibit S1, and I  
18 will find that discovery request.

19 So I'm referring to Staff Exhibit S1, Exhibit JT-1,  
20 page 13 of 156.

21 MS. CREMER: Okay. Was somebody asking me a  
22 question? We were having a discussion.

23 Okay. Thank you.

24 A. So I'm referring to the response to 2-1. Our  
25 question was, "Referring to Section 6.0 of the

1 Application, please explain why Xcel Energy is not listed  
2 as the proposed rights for ownership of the project."

3 And I guess the response that I would like to refer  
4 to is at the very bottom of the response it says,  
5 "Second, even after the sale is finalized, the project  
6 will still be owned by Dakota Range I, LLC and Dakota  
7 Range II, LLC."

8 So if Staff can get comfortable with the actual  
9 ownership structure -- and from some of the discussion  
10 with Mr. Mauersberger yesterday it kind of went back and  
11 forth whether Xcel was going to be owner and fully  
12 responsible or if it would be Dakota Range, LLC.

13 Without knowing that and getting a very direct,  
14 specific answer that Xcel Energy is going to be  
15 responsible and fully responsible for the  
16 decommissioning, at that point in time if we get that  
17 answer, then I believe that decommissioning becomes less  
18 of a concern because it can be addressed through our  
19 general rates and through our normal rate process.

20 So if you're looking at proposed decommissioning  
21 condition, it indicates that, "Decommissioning financial  
22 security will be analyzed in year 10 of operation."

23 And I have some concerns with that. You know, I  
24 believe that decommissioning should be analyzed at the  
25 point in time where cost recovery of the asset is

1 requested so that, you know, the folks that are receiving  
2 the benefit through rates of the asset should also be  
3 paying for the decommissioning of the assets, follows  
4 cost causation principles.

5 So what Staff would -- I think I answered your  
6 question. So --

7 Q. I think you did.

8 And if I can refer you to A21, which is that  
9 decommissioning provision, and if you look at the second  
10 line, maybe -- I'll just read the first couple of lines.  
11 So it says, "If the Applicant is purchased by Northern  
12 States Power Company, d/b/a Xcel Energy, and at least  
13 90 days prior to commencing project operations Northern  
14 States power Company, d/b/a Xcel Energy, files  
15 documentation indicating it will be financially  
16 responsible for decommissioning costs, then  
17 decommissioning financial security will be analyzed in  
18 year 10 of operation."

19 Does that second clause of that particular sentence  
20 address your concern regarding having documentation of  
21 Xcel's financial responsibility for decommissioning?

22 A. Well, I'm -- I would like to know during the hearing  
23 whether they have financial responsibility or not.

24 Q. But wouldn't this condition make it so?

25 And if they didn't make that filing, it goes on to

1 say that the -- you know, then you have to come back to  
2 the Commission before operations and address  
3 decommissioning funding.

4 Does that last clause address your concern?

5 A. Can you please point me again to the specific clause  
6 you're referring to?

7 Q. Sure. So we have the -- the first sentence has the  
8 requirement of the documentation filing. Do you see  
9 that?

10 A. Yes.

11 Q. And then if you look down in -- where it  
12 starts -- the third sentence. So it would be, "In the  
13 event.

14 "In the event that Northern States Power Company,  
15 d/b/a Xcel Energy, does not purchase the project or does  
16 not file documentation with respect to decommissioning  
17 costs in accordance with this condition, the Applicant  
18 will file an updated decommissioning plan and cost  
19 estimate at least 60 days prior to commencing project  
20 operations and the Commission will determine the form,  
21 amount, and timing of financial security to be provided  
22 by the Applicant."

23 Does that default, if there is not that financial  
24 commitment made by Xcel, address your concern?

25 A. I guess that's a question of whether the Commission

1 should allow construction to begin prior to having that  
2 financial security at decommissioning known at the time.

3 So I guess I would prefer to have the financial  
4 security known prior to the -- you know, the start of  
5 construction.

6 MS. SMITH: Just one second, please.

7 (Pause.)

8 MS. AGRIMONTI: One moment, please.

9 (Pause.)

10 MS. SMITH: I have no further questions at this  
11 time.

12 MS. CREMER: Ms. Kaaz, did you have any  
13 questions?

14 MS. KAAZ: Yes, I do.

15 CROSS-EXAMINATION

16 BY MS. KAAZ:

17 Q. On your Staff Data Request you -- on page 114 you  
18 asked Mark Mauersberger -- I think I said that right --  
19 about the ADA lighting system. Is the -- is the  
20 Commission or Staff, are they going to request that they  
21 use the ADA -- sorry. ADLS lighting systems on these  
22 towers?

23 A. Can I ask for the page number again? I'm sorry.

24 Q. It's page 1, I believe. And I saw it on the Staff  
25 Data Request and then 1-4. I just was reading through,

1 and it just was a question that he answered.

2 A. I can't seem to find it based on your reference.

3 Q. Is it included in the recommended permit conditions?

4 A. No, it is not.

5 Q. Okay. Are you satisfied with his answer to why they  
6 were not going to use that lighting system in the Dakota  
7 Range project?

8 A. I believe that Dakota Range's current lighting  
9 system based on their response does satisfy the federal  
10 requirements for such a lighting system. I think an ADLS  
11 system would be beneficial for the public, but I don't  
12 believe that there's a requirement to do so.

13 MS. KAAZ: I'm not sure how I should proceed  
14 with this in asking that you make it a requirement as to  
15 not only the -- and I don't want to testify. I think  
16 I --

17 MS. CREMER: And I would just say when you do  
18 offer your testimony you could offer that as a condition.

19 MS. KAAZ: Okay. That was all. I just wanted  
20 to make sure it didn't get forgot -- or missed. So I  
21 apologize, but I think I'm done.

22 THE WITNESS: You're fine.

23 MS. CREMER: Ms. Mogen, did you have any  
24 questions?

25 MS. MOGEN: No. No questions.

1 MS. CREMER: Thank you.

2 Commission questions. Commission -- or Chair  
3 Fiegen.

4 CHAIRWOMAN FIEGEN: Just a question on the  
5 proposed decommissioning condition on A21. Was it my  
6 understanding you just got this this morning when we  
7 received this?

8 THE WITNESS: The company shared it with us  
9 yesterday.

10 CHAIRWOMAN FIEGEN: Okay. Did you guys have  
11 time to review it as a Staff and analyze it and talk to  
12 your analysts that do rate cases, et cetera, to ensure  
13 that your edits to this -- I mean, right now -- we're  
14 kind of making you edit it on the fly, and I just want to  
15 make sure that we give -- because this is new to us as a  
16 Commission anyway.

17 THE WITNESS: Right. It was provided yesterday,  
18 and we have not had an opportunity to propose any edits  
19 and sit down as a group and really go through the  
20 proposal.

21 CHAIRWOMAN FIEGEN: Do you work with your other  
22 analysts that work on rate cases when you would look at  
23 this type of condition and --

24 THE WITNESS: Yes.

25 CHAIRWOMAN FIEGEN: And were they available

1 today?

2 THE WITNESS: No. I have not had an opportunity  
3 to discuss this proposal with them.

4 CHAIRWOMAN FIEGEN: Were they out of the office  
5 today possibly?

6 THE WITNESS: I don't know where they are.

7 MS. AGRIMONTI: I believe he's out of the office  
8 today.

9 CHAIRWOMAN FIEGEN: You're out of the office.  
10 You're on fourth floor.

11 Thank you. That's really, I believe, all my  
12 questions at this point.

13 MS. CREMER: Thank you.

14 Commissioner Hanson, did you have any questions?

15 COMMISSIONER HANSON: Mr. Thurber, I don't have  
16 any questions for you. I just want you to know I  
17 appreciate your testimony, your written testimony and  
18 information. I went through it thoroughly, and I have --  
19 as my Commissioners, fellow Commissioners, would attest,  
20 I have lots of sticky notes and information on it, and I  
21 used that as a good reference guide for concerns in  
22 relationship to the other work that I did in looking at  
23 the other testimony throughout.

24 So thank you very much for that.

25 THE WITNESS: You're welcome.



1           COMMISSIONER NELSON: Mr. Thurber, one question.  
2 When you were asked if there were any additional  
3 conditions that Staff would recommend, you mentioned  
4 there were three. The first being environmental. Can  
5 you flesh that out?

6           What do you mean by that?

7           THE WITNESS: I think at this point in time  
8 there's still concerns from our witness that we  
9 subpoenaed from Game, Fish & Parks, Mr. Kirschenmann,  
10 regarding mitigation on grasslands. So we will be  
11 discussing with him after the end of the evidentiary  
12 proceeding and briefing and -- that issue.

13          COMMISSIONER NELSON: And so can I anticipate  
14 that you'll be putting that in writing in your  
15 posthearing brief?

16          THE WITNESS: Correct.

17          COMMISSIONER NELSON: Thank you.

18          MS. CREMER: Mr. Rislov.

19          MR. RISLOV: I can't pass up this opportunity.  
20 I have a couple.

21          CHAIRWOMAN FIEGEN: Be careful.

22          MR. RISLOV: You yourself are the most  
23 experienced rate case analyst among the Staff right now,  
24 aren't you?

25          THE WITNESS: Ms. Mehlhaff and I have haven't

1 counted rate cases together, but it might be a close call  
2 but --

3 MR. RISLOV: So going to decommissioning, do you  
4 believe that language can be drafted that would satisfy  
5 both Commission's jurisdiction and the interest of the  
6 company to I think properly comfort that burden, how it  
7 should be assigned based on ownership?

8 THE WITNESS: Correct. If I had a preference  
9 between, you know, the method proposed in Crocker versus  
10 the method proposed here because we have regulation over  
11 that utility, I think it would be better addressed  
12 through general rates than through a condition of a  
13 permit.

14 MR. RISLOV: But you don't see this as a  
15 difficult redrafting problem, do you?

16 THE WITNESS: I do not. I see slight  
17 differences between and in, you know, counsel with legal  
18 to make sure that some of the outs that we were talking  
19 about if Xcel sells and perhaps getting some type of  
20 documentation in the record clarifying whether Xcel has  
21 full financial responsibility sooner rather than later  
22 would certainly assist Staff in forming a position.

23 MR. RISLOV: I'm going to go back to the second  
24 suggestion that you have regarding a change or an  
25 addition to conditions. And that related to, to date

1 what we heard about, some shifts that the company is  
2 proposing.

3 Now in the past I've known that the Commission's  
4 drafted orders where there's been a change they requested  
5 the company come in and get that approved. The company  
6 is suggesting it now rather than later after the hearing  
7 is over.

8 Has Staff had a chance to look at those proposed  
9 shifts to see if they would comply -- I shouldn't say  
10 comply but that the Commission should be in a position to  
11 approve those posthearing, this hearing, rather than  
12 treating them as a separate matter down the road?

13 THE WITNESS: We haven't had a lot of time to  
14 consider it. We haven't had a time to really look  
15 through the one or two changes that exceed the 325 feet  
16 threshold that we're comfortable with.

17 Because of the distance between time when -- if  
18 the Commission does grant this permit and when it would  
19 actually be constructed or when the construction would  
20 start, one option would be to require them to make a  
21 material deviation filing for the changes over 325 feet.

22 And I do think there's adequate time if the  
23 Commission feels as though they haven't had a record put  
24 before them that they're comfortable approving these one  
25 or two changes -- or shifts that exceed 325 feet.

1           MR. RISLOV: Yeah. I assume it's a legal matter  
2 the attorney's going to have to discuss, but I was just  
3 curious if that's something both company and Staff -- I'm  
4 sure the company can answer that question for themselves,  
5 would intend to have us review now rather than as a  
6 separate matter down the road in order to agree to the  
7 325-foot shift proposed as, let's say, a condition of  
8 making those changes.

9           THE WITNESS: Yeah. I do believe the offer that  
10 the company put forward included, you know, approval as  
11 part of this proceeding, this change. I just wanted to  
12 make the Commission aware that we have not had an  
13 opportunity to look in detail at those shifts yet.

14           But if the evidence is in the record and we can  
15 discuss that with the Applicant, perhaps we can brief it  
16 to let you know if, you know, we've looked at the one or  
17 two changes and we don't see any concerns with them.

18           MR. RISLOV: Thank you.

19           COMMISSIONER NELSON: This might be more of a  
20 statement than a question, but I will say at least as  
21 this Commissioner, I found the Applicant's offer in this  
22 regard to be very reasonable but would certainly like  
23 Staff to brief your observations of those shifts in your  
24 brief.

25           Thank you.

1 MS. CREMER: Mr. Thurber, and possibly you've  
2 addressed this, but you're familiar with the Crocker  
3 escrow account for decommissioning; correct?

4 That was what was ordered in the Crocker;  
5 correct?

6 THE WITNESS: Yes. I'm somewhat familiar with  
7 it.

8 MS. CREMER: So my question is would Xcel's  
9 ownership of this project impact -- if the Commission  
10 were to still set this up as an escrow because Dakota  
11 Range currently owns the project, does that somehow  
12 impact what would happen if Xcel ultimately buys it?  
13 Would you have any --

14 I mean, do you have any idea?

15 THE WITNESS: I think your escrow option is --  
16 it's also something that the Commission could do if it  
17 preferred. I guess decommissioning, in my opinion, is  
18 looking at concerns of THE financial viability of the  
19 entity that owns it. And the financial viability of a  
20 regulated utility which the Commission sets rate for is  
21 certainly different.

22 If A regulated utility owns the asset compared  
23 to if a developer which we don't have rate authority --  
24 so the level of concern is a little different, having  
25 different depreciation methods for this asset compared

1 to -- or excuse me. Different decommissioning methods  
2 for this asset compared to other assets owned by -- by  
3 Xcel Energy, I don't know if we need to do that.

4 If you're interested in thoughts on how that  
5 escrow option -- how Staff would recommend tweaking or  
6 modifying that escrow option for this case, I can  
7 certainly provide those for you if you're interested.

8 MS. CREMER: Yes. That would be preferred.

9 Thank you.

10 THE WITNESS: So based on the -- I believe it  
11 was 40 -- I'd have to look at the DVGNL [sic] study. I  
12 think it was \$44,000 in 2017, real dollars. I forget  
13 exactly which exhibit that was.

14 So assuming \$44,000, if the Commission wanted to  
15 continue to do \$5,000 per year per turbine, I guess I  
16 would recommend bringing the company back in, say, in  
17 year five instead of year 10. Say you come back in under  
18 the amount stated in the record as an opportunity to  
19 reevaluate the decommissioning amounts. Because at year  
20 10 you would exceed what they're recommending. I don't  
21 know where that would be at escalated for inflation, but  
22 I guess I would recommend modifying that proposal as  
23 such.

24 Also I'm not as familiar with all the other  
25 conditions that were put on the escrow account. I do

1 know that bankruptcy law is a complicated matter, and I  
2 think our attorneys would want to do a deep dive into  
3 some of those conditions.

4 MS. CREMER: Thank you.

5 Does the Commission or anybody have anymore  
6 questions?

7 Staff, do you have any redirect?

8 MS. EDWARDS: I do not.

9 MS. CREMER: Dakota Range, do you have any  
10 recross based on Commission questions?

11 RE CROSS-EXAMINATION

12 BY MS. SMITH:

13 Q. I just have one question. Regarding the escrow  
14 account, is it your understanding that the cost --  
15 carrying cost of an escrow account would be higher than,  
16 for instance, a surety bond or a letter of credit?

17 A. I do believe that the Applicant provided some  
18 information that Staff requested on the different  
19 financial options, but off the top of my head I don't  
20 recall what that information was that the Applicant  
21 provided.

22 Q. Okay. If the carrying costs were higher on an  
23 escrow account, for instance, wouldn't it be preferable  
24 for ratepayers if there were a form of security that  
25 provides the decommissioning, you know, assurances but

1 also minimizes the cost to a regulated utility such as  
2 Xcel?

3 A. Yes. If it carries the same level of insure --  
4 assurance. I think we would want the cheapest option  
5 with the same level of coverage.

6 MS. SMITH: Okay. I have no further questions.

7 MS. CREMER: Ms. Mogen.

8 MS. MOGEN: No questions.

9 MS. CREMER: Ms. Kaaz. Ms. Kaaz.

10 MS. KAAZ: No questions.

11 MS. CREMER: All right. Thank you.

12 MS. EDWARDS: Nothing further.

13 MS. CREMER: All right. You may step down,  
14 Mr. Thurber.

15 (The witness is excused.)

16 MS. CREMER: I do have a question for Staff. Do  
17 you have another witness or --

18 MS. EDWARDS: I stand willing and able to call  
19 Patrick Steffensen and Eric Paulson, if you like. I do  
20 know they are in the office and listening. However,  
21 Mr. Thurber is our last witness at this time.

22 MS. CREMER: All right. Thank you.

23 Before we take a break, I just want to make sure  
24 that Exhibit A19, which is the wind energy lease and A20,  
25 which is the good neighbor document, were offered.



1 MS. SMITH: I thought that the one -- the lease  
2 was. I'm not sure that the good neighbor agreement was.  
3 For the sake of completeness, I'll just ask that each be  
4 admitted into the record.

5 MS. CREMER: Thank you.

6 And, Staff, do you have any objection?

7 MS. EDWARDS: No objection.

8 MS. CREMER: Ms. Mogen, do you have any  
9 objection?

10 MS. MOGEN: No objection.

11 MS. CREMER: Ms. Kaaz?

12 MS. KAAZ: No objection.

13 MS. CREMER: And hearing no objection,  
14 Exhibit A19 and A20 are admitted into the record.

15 It's probably time for a break. We'll be back  
16 at 3:30 unless there's anything else we need to take care  
17 of before that.

18 When we come back from the break it will be the  
19 Intervenors' turn to present their case. You guys can  
20 decide which one of you want to go first, and we'll  
21 reconvene at 3:30.

22 (A short recess is taken.)

23 MS. CREMER: I'll call the hearing back to  
24 order. And if I recall correctly, Staff had concluded  
25 their case, and we are prepared to take Intervenor

1 testimony. Which of you would like to go first?

2 MS. KAAZ: I'll go first. Ask questions; right?

3 MS. CREMER: To testify. To put in your case.

4 MS. KAAZ: I will go first.

5 MS. CREMER: All right. If you want, you can  
6 just go sit in the witness chair. And take your -- if  
7 you have your prefiled testimony, you can take that up  
8 there with you.

9 MS. KAAZ: Is it okay if I just call a witness?

10 MS. CREMER: I don't recall that you had  
11 anybody -- or that there was any prefiled testimony by  
12 another witness.

13 MS. KAAZ: I did have a couple persons I was  
14 going to ask questions to. And I was going to have Dan  
15 enter his comments, but he was brought up in testimony  
16 today so he came so he could answer those questions.

17 MS. CREMER: Let's do this. I think you need to  
18 take the witness stand in order to get your testimony in.  
19 So we'll have to start with that. And we'll start there  
20 and then see how things roll out. How about that?

21 MS. KAAZ: Okay. That's fine.

22 MS. CREMER: So you can just take the chair  
23 there, and the court reporter will swear you in.

24 MS. MOGEN: Can I ask, is it possible that I ask  
25 Teresa questions?

1 MS. CREMER: And either that or I can kind of  
2 direct her a little. We just really -- what you need to  
3 do is just kind of state your name, where you live, your  
4 concern here and just --

5 MS. MOGEN: May I go first then?

6 MS. CREMER: Yes, you may.

7 Kristi Mogen,  
8 called as a witness, being first duly sworn in the above  
9 cause, testified under oath as follows:

10 MS. CREMER: Did you want me to direct a few  
11 generic questions your way, or are you prepared to just  
12 go forward.

13 THE WITNESS: The generic questions, asking if I  
14 have corrections, that would be good.

15 MS. CREMER: You can just kind of tell us that.  
16 You can summarize -- tell us your name, and why don't you  
17 give us your address, maybe how far you are from the  
18 project. And then summarize your testimony, your  
19 prefiled testimony.

20 THE WITNESS: Okay. My name is Kristi Mogen. I  
21 live in Twin Brooks, South Dakota. And I think I read  
22 that I was about 8 miles -- 8, 9 miles to the closest  
23 turbine. Okay.

24 I do have testimony. In paragraph 5 it should  
25 read, "Included in the Application is the decommissioning

1 report that understates the cost of decommissioning. The  
2 wind industry representative Tyler Wilhelm at the  
3 March 12, 2018, (recording can be provided), Codrington  
4 County Planning and Zoning Meeting stated decommissioning  
5 is 170,000 per turbine."

6 That was in response to a question in somebody's  
7 Rebuttal Testimony.

8 Why I'm here today. I'm a farmer. I also have  
9 a home-based business so I'm at home a lot. But I farm,  
10 and the land is so important.

11 We were in Wyoming for quite a while farming,  
12 and an energy company who was fracking moved in two miles  
13 from our home. We thought nothing of it. We heard  
14 stories about it. We thought nothing of it. Within a  
15 month we had to evacuate our home. We had to go back.

16 So after several neighbors died of cancer, my  
17 daughter got a tumor, my husband was very sick, we  
18 abandoned our home, and we moved to South Dakota. I grew  
19 up here. I thought I was coming home to a wonderful,  
20 safe agricultural environment. I called the County  
21 before I moved there. They said agriculture is number  
22 one. I said no mineral supremacy? They said agriculture  
23 is number one. I said that's where we need to be.

24 We do no tilling. We are working to restore  
25 native grasses. We do soil carbon farming, which is

1 taking the carbon from the air and putting that back into  
2 the soil by proper management of our grasses. So the  
3 grasslands are very important to us, and that is what  
4 sustains our farm. And it is being profitable on a  
5 smaller scale, producing breeding -- breeding stock and,  
6 because we do grass fed, we take our calves all the way  
7 to finish.

8 We do pollinators. We have people come to our  
9 property and harvest dung beetles.

10 I should be the poster child for wind turbines.  
11 I've lived through fossil fuel nightmare. And I just  
12 can't believe that I'm going back through impacts and  
13 somebody using my land by trespassing either with noise,  
14 flicker, chemical. I bought that land. I pay taxes on  
15 it, and I have a right to decide what is done on it.

16 I protect my waters. My cattle are not allowed  
17 in them. I have riparian areas for my birds. The  
18 ecology is important to me.

19 When I started this I didn't understand about  
20 the turbines. You know, I drive by. They don't even  
21 bother me. I'm just like they're 6 miles away. I kind  
22 of thought they were pretty up there. Kind of seemed  
23 like pinwheels in the sky to me.

24 And I started hearing -- I was at a cracker  
25 barrel, and my representative wasn't protecting public

1 health and safety. And I kind of got on him.

2 After that meeting a couple of people came over  
3 from Clear Lake, and they said, hey, well, you know  
4 something about this stuff. I said, well, I've lived it.  
5 They said, let me tell you some stories. I went out and  
6 verified those stories, and I'm like these people are  
7 saying the same things that I said in the fracking field  
8 with the impacts and they're abandoning their homes.  
9 Vickie May, David James, Ted Harke [phonetic]. I've  
10 talked to them. I've personally talked to them, and  
11 their story was the same as mine.

12 So then I started investigating. One of the  
13 things that really got me going, I saw an aerial picture  
14 of a turbine farm -- project. And that gave me -- one of  
15 my friends said that's your PTSD moment. It looked like  
16 a fracking field.

17 And then my aha moment went on with there was  
18 this huge report that came out about fracking and carbon  
19 footprint. Because everybody was running around saying  
20 fracking's cleaner than coal, and it was disproven, when  
21 they started taking the cradle to grave footprint and all  
22 the information.

23 So I started researching it, and then I found  
24 out about the flicker. And the flicker may or may not  
25 cause my daughter to have a seizure. I don't know that

1 yet. I know a lot of things do cause her to have  
2 problems, vertigo issues.

3 I do know that her driving through flicker is  
4 different than a stationary greenhouse study. My  
5 daughter wants to take over that land, and it is her  
6 chance to never be on disability. We have not raised our  
7 kids even if they have a disability to live off the  
8 system. And she will have a lower income than most  
9 because of her medical conditions.

10 That farm is her protection. She will not be  
11 able to get the college degree that our younger daughter  
12 will get, and it's already been agreed upon that Katie  
13 would get the farm. If she has to drive through these  
14 turbines to go to work every day or adjust for shadow  
15 flicker and an employer can't do that, she will not be  
16 working, and she will become a burden on society. And  
17 she doesn't want that either. And she shouldn't have to  
18 live a lifestyle she does not want to.

19 Our home is very quiet in the evening. We go  
20 sit out and do bonfires once in awhile when there's a  
21 special celebration because of an achievement that those  
22 kids have done. We sit and listen to -- or watch the  
23 June bugs and listen to the birds. It's just the most  
24 beautiful place.

25 I didn't think we were going to find another

1 home that we would like as much as in Wyoming. It was  
2 very hard abandoning that place. It didn't sell for over  
3 two years after we left, and we took a big hit.

4 We also took a hit on our income. My kids in  
5 high school had to start over with friendships. There's  
6 socioeconomical issues with this. All my friends out  
7 there, they didn't stay in Wyoming. They were master  
8 gardeners who volunteered many hours in their community.  
9 They moved out of state.

10 My friends in Clear Lake who I have met through  
11 this issue, they're not staying in the area. There's a  
12 few staying in South Dakota, but many are looking out of  
13 state or have already purchased out of state.

14 They're not staying in the community, supporting  
15 the schools and the hospitals and the tax base. They're  
16 leaving. That is if they can sell their home. Two of  
17 them have already move --

18 MS. SMITH: I'm going to object to speaking on  
19 behalf of other people. I believe it's definitely  
20 appropriate to speak to own experiences, but when we  
21 start speaking for third parties it would be hearsay.

22 MS. CREMER: And I will acknowledge that would  
23 be an appropriate objection. However, we are an  
24 administrative agency, and the Commission will give it  
25 the weight it deserves.



1 MS. SMITH: Certainly.

2 THE WITNESS: I think -- in Wyoming I would sit  
3 on my deck, and I saw a wind project about 50 miles away.  
4 Those lights at night flickering were really annoying.  
5 And when you're annoyed you are stressed, and stress does  
6 cause health issues.

7 I don't know how many issues were -- I know my  
8 husband had to deal with PTSD because of the stress in  
9 living in the fracking field. I have no idea how he is  
10 going to handle these. And I will have one about  
11 three-fourths of a mile from my property in the next  
12 project.

13 Falk Farms is sponsoring one not far from my  
14 place. That's a little over a mile.

15 We did not know things in Wyoming until we went  
16 through it, and I do not think that -- you know, Wade and  
17 I should be best friends. We're both farmers, and we  
18 both need to do things to build up agriculture in  
19 South Dakota. And when he said that he trusts them --  
20 because you know what? That's the South Dakota way. And  
21 that's why we love it here. Because the people trust  
22 each other.

23 That company, Dakota Range, did not tell him and  
24 does not advertise the impacts that are going to happen  
25 and the changes in our community that are already

1       happening because those are coming in. And I feel bad  
2       because he didn't know and he doesn't know and he won't  
3       know until it gets here. And I've been there.

4                   CHAIRWOMAN FIEGEN: Take your time.

5                   THE WITNESS: So that's why I'm fighting so  
6       hard. If they were honest, if they knocked on  
7       everybody's door -- I bought my property in 2015. I  
8       would have never bought that property if there was a  
9       turbine within two miles. And that was when I wasn't  
10      knowledgeable about what the impacts are to the land, to  
11      the ecology.

12                   I wouldn't buy property within one mile of a  
13      transmission line. My daughter has epilepsy. She can't  
14      deal with electromagnet fields. Our house is very low,  
15      very quiet. We did have an original property here in  
16      South Dakota over by Reville. And a transmission line  
17      was going in and we sold it immediately because her  
18      health and it was important that she gets to stay farming  
19      and on the land.

20                   I don't believe -- I believe Falk Farms and  
21      everybody else should have their property rights. I  
22      really do. But I have mine, and nobody knocked on my  
23      door and said, hey, is flicker or excessive noise at  
24      night okay? Would you put up with this?

25                   They knew in 2016 the turbines were coming in.

1 I did not even know until 2017. And at that point I  
2 didn't get on the bandwagon because, like I said, I  
3 should have been the poster child. If it weren't for  
4 people telling their stories, I wouldn't be here today.  
5 And I do believe them because I've lived it.

6 They should not be allowed to have blinking  
7 lights. They should not be allowed to use somebody's  
8 property without their permission.

9 I do believe I'm not the only one that's looked  
10 at those maps. My friends are not on it. We did some  
11 Google Earthing. There were some homes, but we didn't go  
12 knock on doors. I have two friends that are not on that  
13 map being identified. I do believe -- and I'm sorry I  
14 did not bring a proper map to demonstrate, but I do not  
15 believe the receptor is on top of Teresa Kaaz's house.  
16 And I would ask that you -- the Commission ask for a new  
17 sound and flicker study correcting the missing receptors  
18 and verifying with a map that is readable and not  
19 little -- that's not even an 8 by 10. So you can  
20 evaluate it.

21 MS. CREMER: So I'm going to presume unless you  
22 tell me otherwise that you're done with a summary of your  
23 testimony. Did you have -- so that appeared to me to be  
24 a condition that you'd like us to look at.

25 Did you have any other conditions that you would

1 like us to consider?

2 THE WITNESS: I will not ask you to deny this  
3 even though I feel it's the wrong thing for my community.  
4 I do not see it helping taxes. I do not see a job  
5 problem in our community.

6 But I will ask you to respect private property  
7 rights and to allow the people who could host a turbine  
8 with themselves or agreeable participating neighbors to  
9 have them. What we are calling a two-mile setback with a  
10 waiver.

11 If they would have come to knock on my door, I  
12 could have evaluated if this would have been safe for my  
13 family. I do not believe it is. I have been looking at  
14 this for months. And it is peer reviewed reports. I  
15 know better. I've been through this.

16 But nobody knocked on my door, and there will be  
17 flicker on my property. So I am asking that the  
18 Commission really consider a two-mile setback with a  
19 waiver to protect public health and safety and protect  
20 property rights of South Dakota farmers.

21 MS. CREMER: Thank you.

22 Was that everything then?

23 THE WITNESS: I believe so.

24 MS. CREMER: And we'll turn to Dakota Range for  
25 cross-examination.

1 MS. SMITH: I don't have any cross-examination.  
2 Thank you.

3 MS. CREMER: Thank you.  
4 Staff.

5 CROSS-EXAMINATION

6 BY MS. EDWARDS:

7 Q. Thank you, Ms. Mogen. And maybe you already  
8 answered this and if you have, I apologize but how far is  
9 the nearest turbine from your property line?

10 A. I do not know that answer.

11 Q. Okay. Would the aircraft detection lighting system  
12 alleviate any of the concerns you just spoke about?

13 A. It would take away an evening annoyance of when  
14 we're outside, which we spend a lot of timeout side.  
15 It's beautiful.

16 MS. EDWARDS: Thank you. No further questions.

17 MS. CREMER: Ms. Kaaz, did you have any  
18 questions?

19 MS. KAAZ: I'm just glancing really quick.

20 CROSS-EXAMINATION

21 BY MS. KAAZ:

22 Q. Ms. Mogen, did you go to the Dakota Range CUP  
23 hearing in Grant County in June of 2017?

24 A. No. I wasn't aware of the turbines. I wasn't aware  
25 of the project. Or the impacts.

1 Q. Okay. Did Grant County send out certified letter  
2 stating that they were going to grant a Conditional Use  
3 Permit?

4 So did they provide notice for its residents or only  
5 the ones -- any residents that you know of?

6 A. I have never received notice by mail of a project,  
7 and actually until just recently there weren't even ads  
8 in the paper about it. Not -- they're doing half a page  
9 on the inside and the whole back page. Well, if they  
10 would have done that two years ago, we probably wouldn't  
11 be here.

12 Q. And I apologize if I word this wrong, but it's kind  
13 of covering how I semi feel but you semi feel.

14 Have you felt singled out as we have gone through  
15 this process through our Commissioners, our -- any public  
16 entities that we have gone through, has Apex -- has it  
17 felt to you that Apex has treated you unfairly?

18 A. I have no interaction with Apex, and I don't feel  
19 singled out. In fact, my friend base has grown because  
20 of the amount of people who are against the projects.

21 MS. KAAZ: I have no more questions.

22 MS. CREMER: Thank you.

23 That would take us to Commissioner questions.  
24 And, Commissioner Hanson, it's your turn to go first.

25 COMMISSIONER HANSON: Thank you.

1           Good afternoon.

2           THE WITNESS:  Afternoon.

3           COMMISSIONER HANSON:  You learned a lot of the  
4 process as we go through during this event?

5           THE WITNESS:  Yes.  Yes.  This is a very formal  
6 one compared to the other boards in the state.

7           COMMISSIONER HANSON:  Well, that's our -- that's  
8 our challenge.  And yours as well.

9           I was wondering -- I might need help from the  
10 Applicant here -- as I'm looking at your address,  
11 471 First Avenue in Twin Brooks and looking at maps I've  
12 been trying to figure out just exactly where your  
13 property is located.  And perhaps the Applicant could  
14 find which one of the maps would be --

15          THE WITNESS:  I don't think I'm actually on one  
16 of these maps.

17          COMMISSIONER HANSON:  That would be why I can't  
18 find you.

19          THE WITNESS:  There you go.  Yes.  Yes.  But I  
20 am actually closer than either one of the people that  
21 they called.

22          COMMISSIONER HANSON:  In what direction then?

23          THE WITNESS:  East.  If I had a map, I could  
24 tell you which -- I think I did know which turbine east I  
25 would be of.

1           COMMISSIONER HANSON:  You're east of -- I'm  
2 looking at A15-4, and I believe that's what that one is.  
3 That is leaning against the --

4           CHAIRWOMAN FIEGEN:  Do you see that really big  
5 map there?  That's the one that --

6           COMMISSIONER HANSON:  Could someone pick that up  
7 for her?

8           You'll need to use the mic. and sit down while  
9 you're doing it.  We'll give him a tip for holding that.

10          THE WITNESS:  Actually so this is 458th, and so  
11 I'm right here straight east.  So it must be turbine 44  
12 that we would be the closest to (indicating).

13          COMMISSIONER HANSON:  And you say you're a mile  
14 from that one?

15          THE WITNESS:  No.  No.  In the next project I'm  
16 a mile from -- Wade Falk is hosting one a mile from my  
17 place, but that's in the next project that will be in  
18 front of the PUC in our area.  It's Cattle Ridge.

19          COMMISSIONER HANSON:  All right.  Thank you  
20 much.

21          So this project is not affecting your property.

22          THE WITNESS:  It affects my family because we  
23 drive through here.  We recreate here.  Our friends --  
24 this is my friends.  I go to their homes every week.  We  
25 sit outside at a pond or we sit outside and hang out and



1 help each other farm or do projects. And my daughter  
2 drives through this every day to go to school. She will  
3 be.

4 COMMISSIONER HANSON: Okay. Now I fully  
5 appreciate and understand the way you were testifying and  
6 everything. Okay. Thank you.

7 I don't have any further questions then. Thank  
8 you.

9 MS. CREMER: Commissioner Nelson.

10 COMMISSIONER NELSON: Thank you.

11 And Commissioner Hanson really went down the  
12 same track I was going down. I understand that your  
13 residence is 8 or 9 miles east of the nearest turbine.  
14 And just so I'm clear, this project will not have any  
15 impact on your property; correct?

16 THE WITNESS: Correct.

17 COMMISSIONER NELSON: Thank you.

18 CHAIRWOMAN FIEGEN: Thank you. I get to call  
19 you Kristi. You know, thanks for coming. You know, it's  
20 really -- it takes effort to be in front of the Public  
21 Utilities Commission because it's judicial, and judicial  
22 is not always easy for our citizens of our state because  
23 they're used to going to their township board or their  
24 county board or their school board or their legislature  
25 where they can just visit and you can make decisions.

1           As you can see, ours is completely different,  
2 and I don't know if you knew that before, Kristi. Were  
3 you aware of how the Public Utilities Commission works  
4 and the judicial process and the four things that we need  
5 to look at?

6           Were you aware of that before you started  
7 getting involved?

8           THE WITNESS: Yes. And the concern that I have  
9 is public health and safety, which I was more  
10 knowledgeable to talk on the environmental because it's  
11 important to me. But knowing those four things, the  
12 public health, safety is the most important to me, and  
13 that is in your purview; is that correct?

14          CHAIRWOMAN FIEGEN: Right. It absolutely is.

15          THE WITNESS: Yes.

16          CHAIRWOMAN FIEGEN: Of course, as the Public  
17 Utilities Commission we have to look at facts and  
18 evidence and peer reviews and scientifics and have  
19 those -- as you know, if somebody presents something,  
20 that we need the scientist here that we can respond back  
21 and forth. So it becomes very tricky, and I certainly  
22 appreciate you coming forward and giving us all the  
23 information.

24           I have a question on your Wyoming setting. You  
25 talked about being in Wyoming and seeing the lights from

1 50 miles away. How about where you're at right now and  
2 where you live?

3 And I don't know your elevation or anything like  
4 that. So can you see lights where you're at now of any  
5 turbines within 50 miles of your home?

6 THE WITNESS: I do not know of any within  
7 50 miles of my home. There may be and then I don't see  
8 them. I do not know of -- I don't see them. No. Not  
9 now. Not at this property.

10 CHAIRWOMAN FIEGEN: Okay. I just know my drive  
11 on 29 so I'm not going to talk about that because then  
12 all the sudden I'm giving testimony and then Commissioner  
13 Hanson will put me on the stand and I'll have to take the  
14 oath of office -- the oath of office? The oath --

15 THE WITNESS: For Wyoming I do think that it had  
16 to do with I was on top of the hill and they were on top  
17 of the hill and there was pretty much valley all the way  
18 across. We actually couldn't see the turbine. We could  
19 see the lights at night.

20 CHAIRWOMAN FIEGEN: Okay. Thank you.

21 So I think actually everything has been --  
22 otherwise, I had some questions, but I think Commissioner  
23 Hanson and Commissioner Nelson have absolutely asked  
24 those questions of you so those have been answered. But  
25 thank you so much for coming and participating.

1 MS. CREMER: Well, I believe you can step down  
2 unless there's something you feel you need to comment on  
3 based on any questions that were asked of you.

4 THE WITNESS: The blinking lights. I'm trying  
5 to remember that. I lived in Douglas, Wyoming, and they  
6 were past -- they were close to Casper. So that's where  
7 I'm going on reference.

8 I didn't -- I didn't measure it out. I want you  
9 to know that but that's -- we usually kind of -- that was  
10 what we figured was about the 50 to -- 40 to 50, I guess.

11 CHAIRWOMAN FIEGEN: You're going to be  
12 surprised, but I used to go down there for about six  
13 years for a state track meet so those are areas I've been  
14 in before. But thank you. But not probably at night.

15 MS. CREMER: All right. I think you may step  
16 down then. Thank you so much.

17 (The witness is excused.)

18 MS. CREMER: Ms. Kaaz, do you want to follow  
19 that?

20 MS. KAAZ: Yes.

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

24 MS. CREMER: So we'll kind of do it the same  
25 way. You just need to tell us your name. You can give

1 us your address. I think we all know by looking at the  
2 maps kind of where your land is, but feel free to  
3 describe that again and just your concerns.

4 THE WITNESS: My name is Teresa Kaaz, and I live  
5 at 15610 459th Avenue in South Shore. I guess I would  
6 talk about my home, but I can't because I'm going to get  
7 emotional so I don't want that to happen.

8 CHAIRWOMAN FIEGEN: Take your time.

9 THE WITNESS: I'll just say a few things as to  
10 why I am here.

11 MS. CREMER: Let me do this. When did you move  
12 to your current location?

13 THE WITNESS: We bought our home in 2001.

14 MS. CREMER: And have you done some remodeling  
15 on it?

16 THE WITNESS: Yes. When we bought it we first  
17 moved off our trailer house from our property that was  
18 closer to Watertown and then my husband moved on his  
19 grandfather's shop so he could have a shop and then we  
20 built on a garage.

21 We stayed there for years. And due to financing  
22 issues and wanting to grow our property, because we only  
23 had a trailer house, I said we need to build a home.

24 So we worked on finding financing to try to  
25 build a new home, and it didn't work out at the time. So

1 I found a home to move on from Waverly. We purchased it  
2 for \$10. It's a Montgomery Ward house. Three stories.  
3 We moved it over to our home. We left it on blocks, and  
4 we waited for our financing, which was heart wrenching  
5 because my husband did not know I was purchasing a house  
6 until I already had it. Try to explain that was -- he  
7 was scared. I was positive it was all going to be fine.

8 But anyway we got our financing a little over a  
9 year after we had it. And then I started working on it  
10 the second it got on the basement. And we completely  
11 gutted it, remodeled it, put in new windows, free form  
12 insulation, steel roof. And I think it was about the  
13 spring of 2017, right around April or May, we finished  
14 connecting the big house to our garage and we were just  
15 finishing up the -- an old foyer into a garage stall so  
16 we could have three garage stalls --

17 (Discussion off the record.)

18 THE WITNESS: We had two, but we added a stall.  
19 I apologize. I'm sorry.

20 Anyway from there Dan was home for a week from  
21 work and we were busy working and our favorite mailman  
22 blew in the yard with a certified letter. That was in  
23 the middle of the week. Said there was a meeting on  
24 Monday. Showed a map of towers, which at that time there  
25 was between seven towers, I believe, all the way around

1 my property.

2 So he went back to work on Sunday, and I went to  
3 the first Codington County meeting on Monday night, and  
4 that's when they passed the Conditional Use Permit. So I  
5 was already behind the ball.

6 When my sister came with me that night just  
7 because I didn't know what was happening and I asked her  
8 just to come with me because I don't like to go to those  
9 things alone just because you never know what's  
10 happening. Anyway, I did speak that night even though  
11 she pinched me really hard in the arm because I told her  
12 if I started to move, to please pinch me.

13 But I just got up and I -- I pretty much spoke  
14 to Luke Mueller who was -- very acquainted with him due  
15 to our building process we had just been through for the  
16 last few years. And I said did you -- you know I live on  
17 a valley. I can see all the way to the Big Stone Power  
18 Plant from our hill at night. And Luke said, I  
19 understand, Teresa. You are probably the most -- you are  
20 probably the most affected landowner as far as what  
21 you're going to see in Codington County. Which I don't  
22 agree with that. I have more than me obviously. But I  
23 was terrified.

24 But my sister and I got up to leave after the  
25 meeting and Nate, I believe his name was, stopped and

1     tried to talk to me and my sister, but the only thing  
2     that they did was talk about how good wind was. And I  
3     said I don't want -- at this time I have nothing to say  
4     because nobody's talked to me about it, and I'm seeing  
5     where you're putting things so I have nothing to say.

6             Nate did call me a week later, but I was not  
7     home so he left a message. That's -- so I talked to my  
8     husband, Dan, about it, and he said wait until I get  
9     home. He usually works three weeks at a time and then is  
10    home for a week. So I waited for him to get home and by  
11    the time he had got home I had done some research on what  
12    this was all about and we both decided at that time we  
13    had nothing that we wanted to talk to wind about because  
14    we only owned 15 acres and assumed we had enough land for  
15    them to worry about and that's why we were not contacted  
16    in any way by them.

17            After that happened I just -- my niece Jennifer,  
18    she is a mayor of a small town Altamont in Deuel County.  
19    They were going through wind there. And so she was very  
20    aware what was going on so I was asking her how things  
21    were going. In turn with that, we ended up meeting a lot  
22    of people who were as concerned as we were, me and my  
23    husband. That's how we kind of met everybody.

24            And one night I got a call from Mr. Jamie Doland  
25    from South Shore. He's on the Punished Woman Lake



1 Association. He asked me to come to their meeting and  
2 sit in on it and see if there was anything that I could  
3 just make sure that they were asking the right questions  
4 or answering the right questions and I'm like I don't  
5 know anything, Jamie, but I will come.

6 So I went to that meeting. David Lau attempted  
7 to give a presentation at that meeting, but he was asked  
8 questions that he was unable to answer or would not  
9 answer so Jamie Doland ended that portion of the meeting  
10 and asked David to leave, which he did. And then I went  
11 home after the meeting.

12 And I didn't ask really anything at the meeting.  
13 I don't remember saying anything at the meeting. But  
14 anyway I got home. My phone rang, and it was David Lau.  
15 He said, hey, this is David Lau, which I did not know  
16 that he was a local man because I did not know him.  
17 Anyway he called, and he said -- he said, I understand  
18 you had some questions unanswered. And I said, I don't  
19 have any questions. And he goes, well, I'd like to talk  
20 to you sometime next week. And I'm like, I don't know  
21 when Dan is coming home yet. Because we don't always  
22 have a set schedule. I said, so we're going to have  
23 to -- call me at a later time, and I'll try to  
24 reschedule.

25 And at that time when he called the next week I

1 said I was actually on my way to work, and I said I'm on  
2 my way out. I will be gone. And then my husband came  
3 home I believe the following week when David called  
4 again.

5 And granted when we talked the night after the  
6 Punished Woman Lake Association meeting he asked me  
7 questions about my property and, of course, not thinking  
8 anything I just -- I just told him basically what we had  
9 put into our property and how much it meant to us really.

10 I'm like, you know, we put our whole heart and  
11 soul and this is our retirement and that was the end of  
12 our conversation.

13 He did contact my husband about a week later. I  
14 answered the phone and it was David and I handed it to my  
15 husband and I don't know what was said because I was  
16 doing laundry so I just walked away. And that's --  
17 that's all the conversations I have with him.

18 So today when he started to talk about -- and I  
19 know you brought him in because I had said his name  
20 earlier so that's fine. I don't have an issue with that.  
21 That's not a problem at all.

22 It's just I will actually see if I can get my  
23 husband up here, Daniel, because he -- this is really  
24 close to his heart more so than mine. Because it's going  
25 to affect his future in their -- him and his father's

1 future together. So I don't know. That's really all I  
2 have to say about it.

3 I did not ask to be thrown in this pond. But I  
4 have come to actually enjoy like today and yesterday. I  
5 don't know why. Maybe because I've had so many sleepless  
6 nights, and now I can feel it, you know, just kind of --  
7 it's either going to be done and I'll have nothing else  
8 to say or do, but I am worried about the possibility of  
9 having to either sell my property, that I can't live  
10 there, or not be able to sell it and still not be able to  
11 live there. So I am terrified just due to the closeness  
12 of these towers.

13 And I will see almost every 72 tower from my  
14 home, especially my second story of the house. So please  
15 don't put flashing red lights on there. I beg of you  
16 that because it will take every reason that I live there  
17 away. And that's really all I have.

18 MS. CREMER: So I think that was one of the  
19 conditions you wanted us to consider.

20 THE WITNESS: Yes.

21 MS. CREMER: Did you have anything else that you  
22 can think of?

23 THE WITNESS: I guess I have learned through the  
24 thing that maybe for homes that are so close to these  
25 towers and are around it and are going to experience

1 shadow flicker that just given -- or bestowed on them or  
2 however you say it, have they ever thought about doing a  
3 property value guarantee so I don't lose money?

4 Because we were going to side our house. That  
5 was what we had -- we had the financing all set to side  
6 our house in May. And when we got that notice I actually  
7 called the bank and said I'm not going any farther -- I  
8 actually contacted my insurance agent because they wanted  
9 us to side it and it would actually help our rates, our,  
10 you know, insurance rates. And I said I'm not siding it  
11 because I might lose my money. I'm going to have to hold  
12 off and see how this goes.

13 So I'm very worried about that, and that's why I  
14 asked Mr. Wade Falk if he wanted to be my financial  
15 advisor. Because he might tell me what I should do and  
16 not be afraid to move forward, but I am.

17 MS. CREMER: Okay. And if that's the end of  
18 your direct, I got the impression it was, then we will  
19 ask Dakota Range if they have any cross.

20 MS. SMITH: No. I have no questions. Thank  
21 you.

22 MS. CREMER: Staff.

23 MS. REISS: Yes. Thank you. I have just a few.  
24  
25

CROSS-EXAMINATION

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BY MS. REISS:

Q. Ms. Kaaz, when you spoke about the flashing lights in the condition, can you clarify what you would be requesting the condition would be?

A. Yes. I would request that they use the aircraft detection lighting system only. That's it.

Q. Thank you.

As you testified you spoke about a certified letter you received from the company?

A. Yes.

Q. Do you recall that?

A. Yes.

Q. When did you receive this letter?

A. If you hold on, I can go grab it. I've got the letter.

Q. Do you have the approximate time frame where you received it?

A. I believe it was June when we received the certified letter, but I'm not positive.

Q. Do you recall what year that was?

A. That was in 2017.

Q. And, Ms. Kaaz, were you present when Mr. Lau testified yesterday?

A. Yes, I was.

1 Q. And did you hear him testify that the company  
2 offered you a good neighbor contract at some point?

3 A. I was here for that.

4 Q. Are you aware of such an offer?

5 A. No. I have never been offered anything. I've never  
6 seen what you're talking about as far as an offer of any  
7 kind.

8 Q. Okay. And did anyone from the company contact you  
9 prior to that letter you received in approximately June  
10 of 2017?

11 A. No.

12 MS. REISS: Staff has nothing further.

13 Thank you.

14 MS. CREMER: Thank you. That would take us to  
15 Commission questions.

16 Commissioner Nelson.

17 Oh, wait a minute.

18 Ms. Mogen. I'm sorry.

19 MS. MOGEN: Thank you.

20 CROSS-EXAMINATION

21 BY MS. MOGEN:

22 Q. Teresa, that letter that came in 2017, what was that  
23 notice to?

24 A. It was notice to the Codington County Planning and  
25 Zoning Meeting. I believe it said looking at -- or I

1 can't remember. It was something to do with the  
2 Conditional Use Permit.

3 I did not know they were giving it that night. I  
4 did not understand it until they did.

5 Q. Before that time had you heard about a wind project  
6 in your neighborhood?

7 A. Absolutely not.

8 Q. Mr. MaRous had said he evaluated or reviewed the two  
9 appraisals on your property. And do you know when the  
10 last one was?

11 A. The last appraisal I believe actually -- well, we  
12 contacted the bank after that was brought up and got the  
13 files brought to us. But it was dated August 1. When my  
14 husband was home in May, home at that time, that's when  
15 we rolled over our building loan because we already had  
16 financing for the siding so we wanted to finish that up.  
17 Because you have to pay interest on the building portion  
18 of it so we asked them to close it up so the bank did  
19 that appraisal.

20 Q. So are you saying the appraisal was ordered in May?

21 A. Yes. I asked McKenzie today when I called her, and  
22 she said, yes, it was ordered -- I think, and I'd have to  
23 look back, but I think Dan was home at that time in  
24 April. Because our anniversary is on April 27, and he  
25 was home for our anniversary.

1           And that was when we decided then to contact the  
2 bank because the interest rate was going to go up another  
3 quarter percent on our building loan, and we were just  
4 finishing up -- we had the house done and the interior,  
5 and we were just going to finish up that garage. I said,  
6 let's just get it over, done and rolled out. So that's  
7 why they ordered the appraisal.

8 Q.   And when was the Conditional Use Permit approved in  
9 Codrington County?

10 A.   I believe that approval was like -- was it  
11 September?

12 Q.   June.

13 A.   June. Okay. I apologize.

14 Q.   Okay. And when did your bank first learn -- or your  
15 banker. Let's just say your banker, first learn that  
16 your home would be in a turbine project?

17 A.   Last week.

18 Q.   Okay. Are you -- are there any specific concerns  
19 you have about turbine number 67?

20 A.   I am terrified about turbine 67. After we heard  
21 about this project we drove down -- we were going to  
22 Lowe's anyway because we love Lowe's. And so we drove  
23 past those turbines.

24           And I was still -- didn't know anything about it but  
25 we weren't there for more than five minutes and I'm like



1 we need to leave. I don't like this. And we left. That  
2 was my first -- what do you call it -- physical turbine  
3 knowledge.

4 Q. Before the hearing at the PUC did you ever hear or  
5 even know the term good neighbor contract?

6 A. No. I did not.

7 Q. So this is the first time you've heard that term?

8 A. Yes.

9 Q. At the PUC?

10 A. Yes. Actually this week was the first time when you  
11 said it in talking, and I'm like what's that?

12 Q. What do you -- do you think the turbines will impact  
13 your health?

14 A. Yes. They already have. Sleepless nights.

15 When we moved our house on I had a choice of what  
16 direction to face it. I could either face my house to  
17 the west and look out over the valley that way or I could  
18 face it over to the east to look out the valley that way.

19 I chose the east so I could look out over the valley  
20 that way because it was so beautiful, and it's a valley  
21 that goes -- it's like a mile across the valley so that's  
22 why I chose that.

23 So that turbine terrifies me that it's going to be  
24 right at my window, so close, and it's going to loom over  
25 my house.

1           The other one worries me just as much, even though  
2 nobody wants to talk about that one either. But that one  
3 I get to see out my living room window where I -- I sit  
4 kitty-corner from that window. My husband sits over  
5 here. You know how you always have your spot in the  
6 living room.

7           Every time I sit down in that chair during the day  
8 when I take a break I do what I'm doing right now. I try  
9 not to.

10          My friends don't even want to talk to me anymore  
11 because they're tired of hearing about my turbines. And  
12 I apologize for that, but it's so hard because I somehow  
13 feel responsible to make sure that it doesn't happen to  
14 everybody in our area.

15          I have grown up in northeastern South Dakota, and I  
16 apologize, Commissioners, because my husband says when I  
17 get like this he just zones me out and doesn't listen so  
18 I have -- I can feel how they feel, and I apologize for  
19 that. But dear friends that we have met through all of  
20 this in Clark, we met them last year after the  
21 Conditional Use Permit because my husband is from Clark.  
22 His grandpa was from there. And I said -- and he said  
23 something about that he had heard they were fighting  
24 turbines up there so he called his -- I believe his uncle  
25 and said do you know anything about this? And he said

1       yes, I do. I know this couple.

2               So we were lucky enough to meet David and Darci  
3       Adams. And we went there that night and they told us  
4       about it and when we left she grabbed my hand and prayed.  
5       I had never met her.

6               She said I don't want you to worry, Teresa, but in  
7       our world -- and I apologize for the words that we use  
8       but big wind will not stop until they cover northeastern  
9       South Dakota somewhere between 12 and 1,500 turbines. I  
10      thought she was full of it. I literally did. But now  
11      they just keep coming and coming and coming, and it's  
12      basically for the tax credits.

13              It's sad that our community's going to change, our  
14      reason for living here is going to change. And I don't  
15      know where to go. We've both lived here our whole life.  
16      I said I don't know what to do, Dan. And he doesn't  
17      either.

18              But I cry way more than he does. He just drinks  
19      beer and gets mad. And I really worry. I'm a kind  
20      person. I've never wanted to punch somebody in the face  
21      that's way taller than me, but that's just being honest  
22      in how I feel so that's --

23              And when you talk about the logistics there is a lot  
24      of logistics. I apologize for crying. And I do know way  
25      more than I ever thought I wanted to. So basically if

1 you have any questions that you want to ask me, I will  
2 answer them. Because I have studied as much as I  
3 possibly can.

4 MS. MOGEN: I'm finished. Thank you.

5 MS. CREMER: All right. Now we're to  
6 Commissioner Nelson.

7 COMMISSIONER NELSON: Thank you for being here.  
8 The other thing I want to thank you for is I've read your  
9 story. I've read your husband's story. And it's a story  
10 of two people that have grit, two people that had a  
11 vision and didn't stop and aren't stopping to fulfill the  
12 vision that you had. I admire that tremendously.

13 THE WITNESS: Thank you.

14 COMMISSIONER NELSON: Questions.

15 The issue of setbacks from residences. I know  
16 that Codington County Commission has dealt with that  
17 issue. Currently the county setback's 1,000 feet.

18 Did you testify to your County Commission or to  
19 any of your Commissioners in regard to what the setbacks  
20 should be in Codington County?

21 THE WITNESS: No. The Conditional Use Permit  
22 was granted that first hearing. And I never got any  
23 information prior to that night. So that thousand feet  
24 is what this Application could have followed, and that  
25 would have been a 1,000-foot setback.

1           COMMISSIONER NELSON: Since that time I believe  
2 the Codington County Commission has dealt with the issue  
3 of what should those setbacks be going forward.

4           Did you testify to them or talk to any of them  
5 about that issue?

6           THE WITNESS: I believe that -- I know I have  
7 talked to them several times in, you know, sometimes --  
8 there was one meeting I think I got up like five  
9 different times and my husband got up several times and  
10 other people did. But I have talked to them.

11          COMMISSIONER NELSON: What did you advocate for  
12 for an appropriate setback in that county?

13          THE WITNESS: When I learned a lot about wind at  
14 that time -- because these are 500-foot turbines, and  
15 they've not been used in South Dakota. They've actually  
16 first known as offshore turbines, and the size of their  
17 wings are massive -- I pushed for a two-mile setback with  
18 a waiver, which means anything within that two miles they  
19 would need to contact that landowner and discuss a waiver  
20 that they would sign stating the tower could be closer,  
21 whichever they felt comfortable with.

22          And I know it's logistically very hard to do,  
23 but it is the safest setback for turbines of this size.

24          COMMISSIONER NELSON: Thank you. That's all the  
25 questions I've got.

1 MS. CREMER: Thank you.

2 Chair Fiegen.

3 CHAIRWOMAN FIEGEN: Thank you once again for  
4 coming. It is -- it makes me proud.

5 THE WITNESS: Thank you.

6 CHAIRWOMAN FIEGEN: I'm going to ask you the  
7 same question that I did Kristi.

8 Can you see the flashing lights of any other  
9 wind turbines on where your home sits right now?

10 THE WITNESS: No. There's no wind turbines in  
11 view of our home.

12 CHAIRWOMAN FIEGEN: All right. So that's a  
13 condition that you stated earlier that you would be  
14 interested in as the aircraft detection system; correct?

15 THE WITNESS: Yes.

16 CHAIRWOMAN FIEGEN: Okay. I have no further  
17 questions.

18 Thank you.

19 COMMISSIONER HANSON: I'm petrified to ask you a  
20 question.

21 THE WITNESS: I don't bite. I cry. I'm going  
22 to try not to.

23 COMMISSIONER HANSON: I just want to come to  
24 your husband's defense.

25 THE WITNESS: Oh, I know. He's -- he's gotten

1 great over this house. He has. I've drove him crazy.

2 COMMISSIONER HANSON: Well, there's such a thing  
3 called husband hearing, and I think we all have it.

4 COMMISSIONER NELSON: Speak for yourself.

5 COMMISSIONER HANSON: It takes a lot of courage  
6 to come before the -- a formal hearing like this, go  
7 through this process, and I know it's been an adventure  
8 for you and for Ms. Mogen as well. And I just want to  
9 congratulate you for the story you've been able to tell,  
10 the process that you've gone through. And we appreciate  
11 that very, very much. We need to have that  
12 understanding.

13 We go through reading a tremendous amount of  
14 information. We look at economics and environment and  
15 such like that, and very often the human story is left  
16 out of it so I appreciate that very much.

17 THE WITNESS: Thank you. Thank you.

18 COMMISSIONER HANSON: So I don't have any  
19 questions for you.

20 THE WITNESS: I was ready.

21 COMMISSIONER HANSON: Thank you.

22 THE WITNESS: Thanks.

23 MS. CREMER: Unless you have some concluding  
24 remarks, you can step down.

25 THE WITNESS: Just think about what you're

1 asking the citizens of these counties to -- what you're  
2 asking us to change about our lives. Because we're  
3 affecting Deuel County, Codington County, Grant County,  
4 Day County, Roberts County. Those are just a few that I  
5 know of.

6 So when you look out here from Pierre you might  
7 see our turbines in the corner of the state. So just  
8 remember that. It's going to be a lot. I would rather  
9 have seen turbines go up in every county across  
10 South Dakota, maybe, you know, in locations of 10,  
11 clusters of 10, you know, across rather than just coming  
12 through there. Because wind does blow all over the state  
13 of South Dakota, not just us.

14 That's my conclusion.

15 MS. CREMER: Thank you.

16 (The witness is excused.)

17 MS. CREMER: I believe that concludes --

18 COMMISSIONER NELSON: I think she had some  
19 rebuttal witnesses, perhaps.

20 MS. CREMER: Well, yeah. And I was going to see  
21 if she was going to do anything further.

22 COMMISSIONER NELSON: Okay.

23 MS. KAAZ: Is it okay if I bring up one person  
24 to talk about this?

25 MS. CREMER: And, again, there wasn't any



1 prefiled testimony and all of that, but I will ask Dakota  
2 Range, do you object to --

3 MS. SMITH: Well, I guess I will just point out  
4 that there isn't rebuttal for anyone except for the  
5 Applicant. So we may state for the record that we  
6 object, and we understand what is done with that is done  
7 with that.

8 MS. CREMER: Okay. Staff, do you have any  
9 objection to -- and I assuming you're talking about  
10 calling your poor, berated husband?

11 THE WITNESS: Yes. I originally was going to  
12 bring him up just to go over his comments, and that's why  
13 he's on my witness list. So I had copied his comments to  
14 go over them, but I understand you all read them, which  
15 I'm very happy with.

16 But due to the fact that he was spoken about  
17 this morning by Wade and by David Lau, I think he should  
18 be able to talk about that and what he remembers about  
19 that same thing.

20 MS. CREMER: Okay. And, Staff, do you have an  
21 objection?

22 MS. EDWARDS: While I hate to set a precedent of  
23 allowing witnesses to testify without prefiled testimony,  
24 I think I can say for Staff that I never intend to agree  
25 to that particular element of the procedural schedule

1 again and, if necessary, would agree to stipulate to  
2 amending it to allow him to testify.

3 MS. CREMER: And so I will turn to the three  
4 Commissioners and ask what you would like to do at this  
5 point.

6 CHAIRWOMAN FIEGEN: Fine hearing him.

7 COMMISSIONER NELSON: I would agree. And for  
8 Ms. Edwards' benefit, I can assure you that I will not  
9 agree to that particular provision in the future again  
10 either.

11 MS. CREMER: With that, then you may call Daniel  
12 to the stand.

13 MS. KAAZ: Okay. I call Dan Kaaz.

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

17 MS. CREMER: So I will let you ask him the  
18 questions. And remember he's under oath so feel free to  
19 ask him anything.

20 MS. KAAZ: Where were you on --

21 DIRECT EXAMINATION

22 BY MS. KAAZ:

23 Q. I was going to ask you to describe our home but I  
24 did that and I'm sorry I butted in again. But I did hear  
25 you were listening to the hearing this morning?

1 A. Yes. Yes, I was.

2 Q. Okay. Would you like to reiterate on anything that  
3 was spoken by Mr. Wade Falk?

4 A. Well, as far as by any of these, I guess I'm greatly  
5 disappointed. I had heard something this morning and  
6 this afternoon about a good neighbor clause.

7 To me a good neighbor is the guy that picks up  
8 your mail while you're on vacation. You know, if -- he  
9 helps you out. I have heard nothing of any good  
10 neighbor contract, clause, nor have any of my  
11 neighbors.

12 Shortly after we got the certified letter about the  
13 PUC meeting, the first one, we made a lot of copies, and  
14 we drove around talking to our neighbors. It was a  
15 Sunday afternoon, and out of the six people we stopped  
16 and talked to, two of them had been contacted by the wind  
17 turbine companies. Nobody else had any idea.

18 I spoke with Joe Waldren -- excuse me. I always  
19 screw his name up. He lives by the Interstate with his  
20 family, and that was the first time that I met him. And  
21 I showed him a map, and I said, have you heard anything  
22 about the turbines coming? And he said, I've heard  
23 rumors, but they're miles away. And I pulled out the  
24 map, and I said you have one about 1,500 feet from your  
25 house. He said, well, that's not possible.

1 I showed him the map, and that was quite an eye  
2 opener for him, as well as Wade Bauer, my neighbor to the  
3 north. He had not been contacted.

4 And I guess I don't like the way the business is  
5 being put out there. If I'm going to do something on my  
6 property and you're my neighbor and it's going to affect  
7 you, I'm going to come to you face to face and I'm going  
8 to say, hey, I got this project going. It could affect  
9 you. Just a heads up.

10 And we're finding this stuff out so far late in the  
11 game it's really hard to play catch-up.

12 And in my defense I only have a few beers so --

13 MS. KAAZ: He's on vacation right now.

14 Q. Dan, would you have purchased your home knowing when  
15 turbines would be within two miles?

16 A. No. No, I wouldn't have. You know, when I first --  
17 when you first hear about wind turbines you're like, oh,  
18 it's green. It's great. Saving the planet. Great  
19 energy and all of that.

20 And after you actually dig into it and you do the  
21 research, no. I guess I should probably not go much  
22 further, but I guess, in my opinion, a wind turbine is  
23 about as green as my old '82 suburban diesel was. It was  
24 green when it wasn't running.

25 Q. Thank you for answering that question without me

1 having to ask you twice.

2 How do you feel about us having -- or having to  
3 prove the safety zone -- Dakota Range having to prove the  
4 safety zone and getting the manual being requested upon  
5 them with these setbacks for both lay people and trained  
6 engineer workers? I mean --

7 A. In my opinion, I work in the oil field. Safety is  
8 paramount. At any time for any reason anybody can stop  
9 what's going on and say we're done here. Stop. Safety  
10 is paramount.

11 And as far as not having a manual and saying that  
12 it's preparatory, I have a hard time believing that. If  
13 I go down to your Chevy dealership and I buy a car, in  
14 the glove box there's an owner's manual. If I want to  
15 work on it, I can go online. I can call a mechanic. I  
16 can get a manual.

17 Anything on that turbine, if it has sensitive  
18 designs or whatever, it is protected by a patent. And to  
19 not -- in my opinion, why you're not seeing the manual is  
20 it's going to say about a safety setback and how far you  
21 should stay from that. And if that comes up, it's not  
22 going to be good.

23 But the other way to look at it, if something would  
24 happen to someone -- and I'm -- granted I'm spit balling  
25 here. I'm talking absolute worst-case scenario. If

1 someone would get hurt because of these things, the  
2 manual's going to come out then. One way or another an  
3 attorney will get a manual. Nobody wants to be on the  
4 side of negligence, especially if it costs somebody their  
5 life.

6 Q. Thank you, Dan. Can I ask you one more question?

7 A. Okay.

8 Q. What has this done to your family?

9 A. Oh, boy. Well, we don't talk much anymore.

10 I was over and we worked some cattle a week ago but  
11 wind never came up. We don't talk about it. When they  
12 had signed the contract they thought it was just for a  
13 met tower. And my father's exact words were, "I should  
14 have read it better."

15 He didn't understand he was signing his land away  
16 for 30 years and for possibly more than just a met tower.  
17 But yeah. That's the other thing that I really dislike  
18 about what this does.

19 I got a couple friends I used to ride motorcycles  
20 with. We don't talk anymore. One of them had even gone  
21 out 11 o'clock at night. He hit a deer with his  
22 motorcycle. I picked him up off the road and his  
23 motorcycle off the road, and we don't talk anymore.

24 I have another that -- you might get the impression  
25 I ride motorcycles once in awhile, okay. I'm sorry. We

1 used to always go to Bradley, and they have this little  
2 rally once a year. In fact, I believe it was last week.  
3 He used to always camp with us and that, and we don't  
4 talk anymore.

5 I guess it's -- you're either for wind or you're not  
6 for wind. There is no middle ground. And I guess I --  
7 costs friends, costs family. It sucks.

8 Q. Are you going to be able to fulfill your dream of  
9 taking over your grandfather's homestead at any time in  
10 your life?

11 A. Honestly, I don't know. I don't know.

12 Yeah. That was kind of always the plan. I have  
13 two sisters. I'm the only son. So it's kind of assumed  
14 that the boy would take over things. And, in fact, up  
15 until last fall I was talking with dad, and I was  
16 thinking I'm getting out of my current situation and  
17 going farming.

18 And with this going on, honestly, I don't know.  
19 It's up in the air. I don't know what this is going to  
20 do to my property. Because the original plan for our  
21 property, and she did call me one night at 10 o'clock  
22 to tell me she had bought the house. I didn't know she  
23 was looking at it or nothing. She completely surprised  
24 me.

25 But in either case, our plan for that entire house

1 was to make it a home and to really -- I'm not saying  
2 build a mansion but, I mean, build it nice. You know, we  
3 had lived in that trailer house for 20 years, and it was  
4 in need of a lot of repair. It was needing a roof and  
5 carpet, and it just seemed like a waste to me.

6 I wanted to put it into a home, and I wanted a nice  
7 home, the kind of home that you have Thanksgiving and  
8 Christmas and your friends come over and you're like,  
9 hey, look at my beautiful house.

10 I mean, we did all the floors ourselves, hardwood  
11 floors. We even went to Minneapolis to find replacement  
12 hardwood floors for the kitchen.

13 There's a buttload of time and money in that house.  
14 It's actually magnificent. And every time I would come  
15 home she was watching these DIY shows and -- and she  
16 knows her stuff. I mean, jeez. Even the tool catalogs  
17 come in her name and not mine because she orders tools.  
18 And she uses them. And she still has all her fingers  
19 too. She's good.

20 But that was our plan, to make the home nice so that  
21 some day when we get old and we can't take care of it  
22 anymore you can sell it and you can ask a good price for  
23 that because people can walk in and in five minutes you  
24 can go, well, gee, this is nice or they really cheaped  
25 out on us. I mean, we went with -- we did the house



1 nice.

2 And now there's discrepancy as far as what it's  
3 going to do to the property value. That's another thing.  
4 If they say there's no property value loss, hey, throw in  
5 a guarantee. If I'm not afraid of something, I'll  
6 guarantee it, you know.

7 Why do cars have warranties? They guarantee it.  
8 It's not going to break down, you know. And if they're  
9 standing up there saying there's no property loss,  
10 there's no property loss, fine. Guarantee it.

11 Q. Were you planning on being an Intervenor with us as  
12 well?

13 A. Actually I was and because I was so smart I had  
14 signed the paperwork and I neglected to get it notarized.  
15 Stupid, stupid man.

16 Q. So there would have been a lot more of us if we all  
17 understood the process?

18 A. Oh, yes.

19 Q. What time was involved? Yes?

20 A. Absolutely.

21 Q. Okay.

22 When did you first meet Kristi Mogen?

23 A. Oh, boy. About -- what are we, in June now? I want  
24 to say it was November, December-ish.

25 Q. Okay.

1 MS. KAAZ: I just wanted to let you know that  
2 most of our friends that we now know are new additions to  
3 our friends, and the number that we have lost almost  
4 equals the amount that we have gained.

5 But I have no further questions for Dan.

6 MS. CREMER: Thank you.

7 Dakota Range.

8 MS. SMITH: I have no questions. Thank you.

9 MS. CREMER: Staff.

10 MS. REISS: No questions. Thank you.

11 MS. CREMER: Ms. Mogen.

12 MS. MOGEN: No questions.

13 MS. CREMER: That takes us to Chair Fiegen.

14 CHAIRWOMAN FIEGEN: No questions.

15 MS. CREMER: Commissioner Hanson is shaking his  
16 head no.

17 Commissioner Nelson.

18 COMMISSIONER NELSON: Thanks for being here. No  
19 questions.

20 THE WITNESS: Thank you for your time. I  
21 appreciate it.

22 MS. CREMER: You may step down. Thank you, very  
23 much.

24 (The witness is excused.)

25 MS. CREMER: With that, I believe Ms. Mogen

1 and Ms. Kaaz have presented their case; is that  
2 correct?

3 MS. MOGEN: Yes.

4 MS. KAAZ: Yes.

5 MS. CREMER: That would take us to rebuttal.  
6 It's 5 to 5:00 or close to that.

7 Dakota Range.

8 MS. SMITH: So I think what we discussed earlier  
9 on the manual and perhaps -- can we take a short break to  
10 see if we can get resolved the one issue that we had to  
11 try to get the manual?

12 MS. CREMER: Yeah. And then so when we come  
13 back what's your plan then?

14 MS. SMITH: You know, I think if we are able to  
15 get it, it's clear that everybody's going to want to --  
16 the Commissioners are going to want to see it and have  
17 it.

18 So I think our plan would be to come back in the  
19 morning to finish with our witnesses so we can give time  
20 to look at it. So if we could do that and get this issue  
21 resolved, that would be great.

22 MS. CREMER: So be done right now until tomorrow  
23 morning, or do you need to come back?

24 COMMISSIONER NELSON: Let's find out if we can  
25 get it.

1 MS. SMITH: You guys want to know -- I don't  
2 mean you guys.

3 The Commission wants to know if they're going to  
4 have it. So if you can give us a few minutes to see if  
5 we can work out that out, maybe 10 minutes, we can come  
6 back and kind of finalize for the day.

7 MS. CREMER: So that sounds. Let's stand in  
8 recess for about 10 minutes and see what Dakota Range can  
9 tell us.

10 (A short recess is taken.)

11 COMMISSIONER NELSON: How many pages will this  
12 document be?

13 MS. SMITH: That's a good question. It's quite  
14 a few pages.

15 COMMISSIONER NELSON: In excess of 1,000?

16 MS. SMITH: No.

17 MS. AGRIMONTI: But I'd have to look. One  
18 moment, please.

19 MS. CREMER: What we're trying to determine is a  
20 time -- because by the time it gets posted tonight and  
21 then people have an opportunity to look at it either  
22 tonight or in the morning, we're trying to figure out a  
23 time to start in the morning.

24 So, I mean, is it 50 pages, do you think, or is  
25 it 200?

1           CHAIRWOMAN FIEGEN: And is there a section that  
2 is safety, or do we have to read the whole thing to pick  
3 out the safety portions?

4           MS. SMITH: So what I can tell you is it's kind  
5 of in multiple parts. And it does have a table of  
6 contents so you could reference to the table of contents.  
7 You know, there would be the ability to search it as far  
8 as a pdf as long as you have a search capability.

9           So that's kind of what we can tell you. This  
10 one -- is this the combined one?

11           It is approximately 600 pages.

12           MS. CREMER: Okay. With that said, we'll  
13 adjourn for the today.

14           MS. SMITH: Prior to adjourning, I believe you  
15 wanted me to offer this so that it's appropriate for the  
16 Commissioners to review.

17           So I believe we've designated it A22, and I  
18 would offer A22 into the record.

19           MS. CREMER: Thank you.

20           Staff, do you have any objection to A22, which  
21 is the safety manual they are --

22           MS. REISS: No, we don't.

23           MS. CREMER: Ms. Kaaz, do you have any objection  
24 to A22, which will be the safety manual?

25           MS. KAAZ: No. I have no objection.

1 MS. CREMER: Okay. Ms. Mogen?

2 MS. MOGEN: No objection.

3 MS. CREMER: Thank you.

4 With that, the A22 is admitted.

5 We will adjourn for the night, and the hearing  
6 will start at 10 o'clock tomorrow morning.

7 Commissioner Nelson.

8 COMMISSIONER NELSON: Yeah. I guess one more  
9 question.

10 So if we have questions on the contents, is that  
11 all going to be a confidential discussion tomorrow? And  
12 who will be the witness that can answer those?

13 MS. SMITH: We are still talking amongst  
14 ourselves. It's probably going to be Ms. Gunderson that  
15 would address -- obviously, this is not our manual so  
16 we're not speaking to it as the expert on the manual but  
17 more in our review, and if there's a question, we would  
18 address it.

19 If the manual does need to be referenced, it  
20 would need to be confidential. If there's a general  
21 discussion about it, I do not think it would need to be.

22 COMMISSIONER NELSON: Okay. Thank you.

23 MS. CREMER: Is there anything else that needs  
24 to come for us tonight?

25 Seeing nothing, we will see everyone at

1 10 o'clock in the morning.

2 (The hearing is in recess at 5:15 p.m.)

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1 STATE OF SOUTH DAKOTA)

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CERTIFICATE

3 COUNTY OF SULLY )

4

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 13th day of  
11 June, 2018, and that the attached is a true and correct  
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 22nd day of  
14 June, 2018.

15

16

17

18 /s/ Cheri McComsey Wittler  
19 Cheri McComsey Wittler,  
20 Notary Public and  
21 Registered Professional Reporter  
22 Certified Realtime Reporter

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